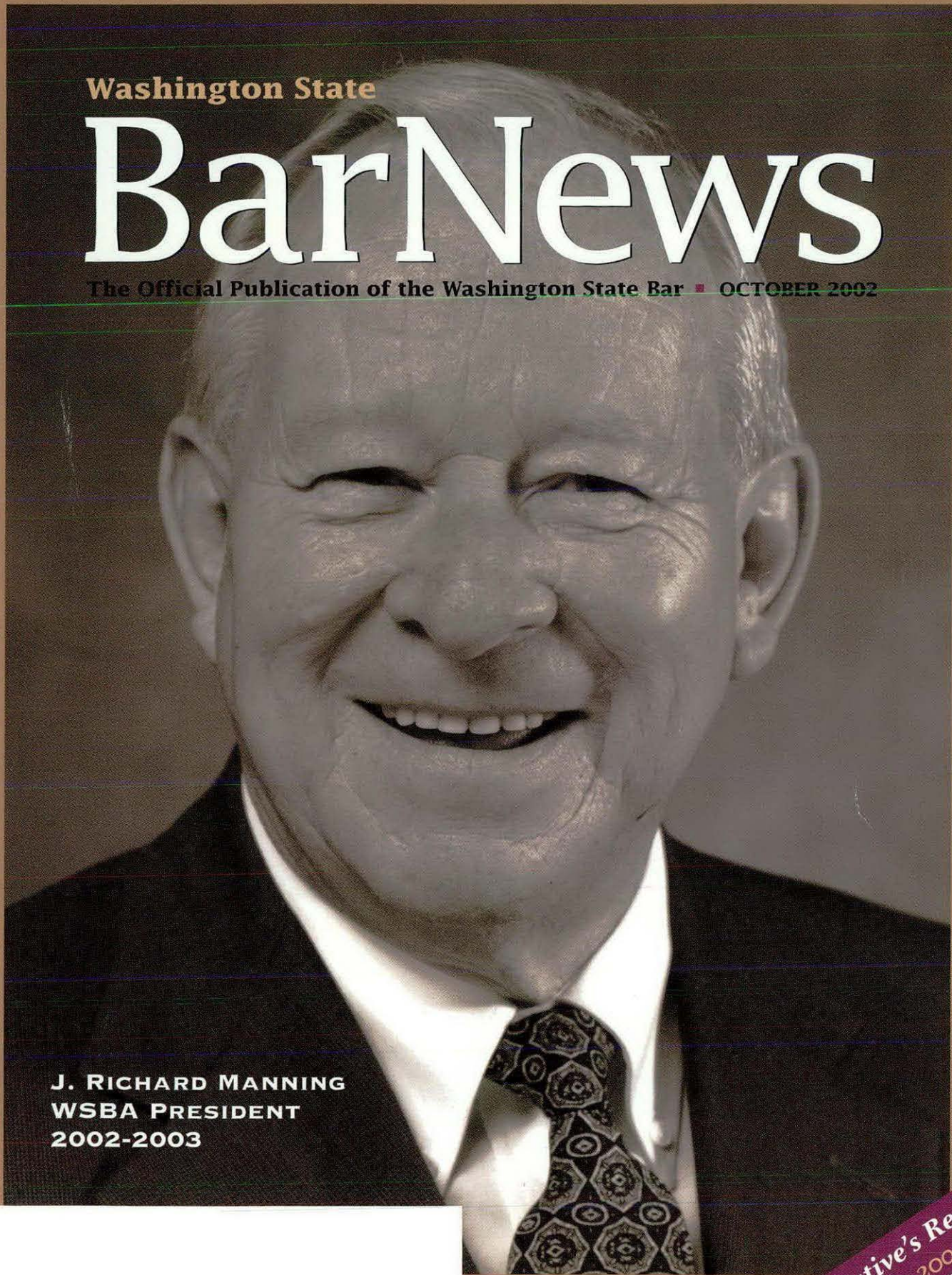


Washington State

BarNews

The Official Publication of the Washington State Bar ■ OCTOBER 2002



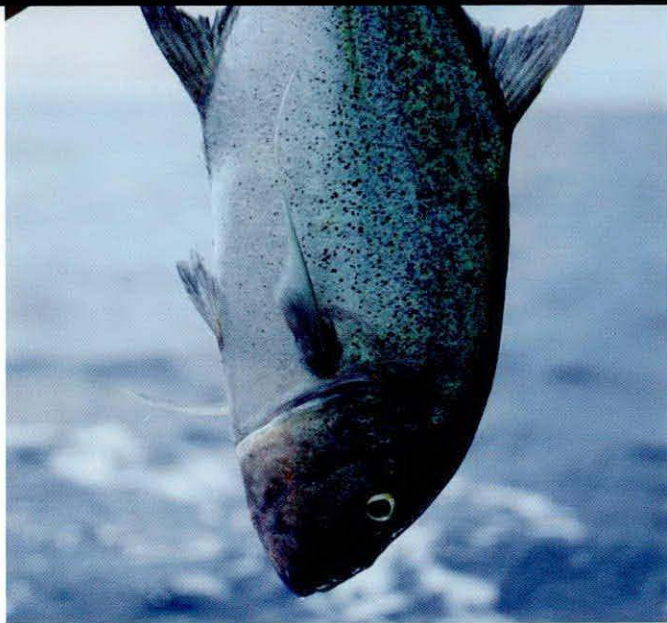
J. RICHARD MANNING
WSBA PRESIDENT
2002-2003

Executive's Report:
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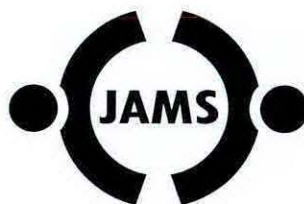
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to champion justice**

Submission Guidelines

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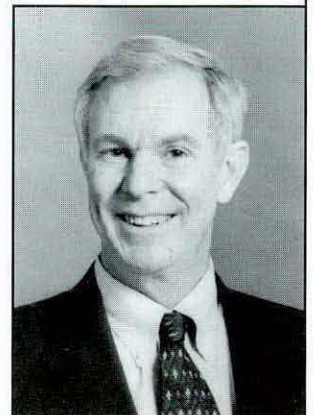
Terrence A. Carroll, former King County Superior Court Judge;

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Larry A. Jordan, former King County Superior Court Judge.

And, welcome to our newest member ...

R. Joseph Wesley, former King County Superior Court Judge.



Letters

Reduced-Fee CLE

Editor:

WSBA President Dale Carlisle, in the August 2002 *Bar News*, pointed out that many lawyers are heavily burdened with debt due to educational expenses or due to the lower pay scales of public-service employment. One solution, he suggested, would be reduced-fee CLE programs for young lawyers.

To further this objective, the Northwest Digital Law Library and the Seattle University School of Law, with the assistance of WSBA Professionalism Counsel Barrie Althoff, are sponsoring a free ethics CLE program on October 25. The program will be held, beginning at 9:00 a.m., at the Pigott Building Auditorium of the Seattle University Campus, near 12th and Union. As a cost-saving measure, participants are asked to download and print the written materials from the www.freecle.com Web site prior to coming to the seminar.

Edward V. Hiskes

Director, Northwest Digital Law Library
Richland

Super-Lawyer Status Dubious

Editor:

Congratulations to *Bar News* and to Guest Editor Patricia Novotny for the candid assessment of the "Super Lawyer" silliness visited upon us by *Washington Law & Politics* magazine every year. (To dispel any notions of sour grapes, I was included as a Super Lawyer in the 2001 edition, but for reasons unknown I did not make it on this year's list.)

I think most lawyers will acknowledge what Ms. Novotny observed, that the "Super Lawyer" list does not accurately reflect merit. As long as we all recognize this for what it is — a play on our egos to generate advertising revenue, there is no harm. Harm may come, however, from lawyers touting their Super Lawyer status to existing or potential clients that do not understand the dubious designation process used by *Washington Law & Politics*.

I congratulate those who were named "Super Lawyers" this year, and I acknowledge that many of you deserve it. Let's just keep it amongst ourselves, shall we?

Jerry N. Stehlik
Seattle

A Different View Re: Super-Lawyer

Editor:

If you were an actress, would you need to know the questions posed by the "blue ribbon panel" of judges chosen by the *National Inquirer* to make up a list of Super Actresses? If you were looking to spend a great deal of money on a service, would you review evaluations of service providers listed in a magazine without paying subscribers, and which is supported only by advertising? Do you think the clients who chose their attorney because she was listed as a "Super Lawyer" in the local ver-

sion of *Law & Politics* for her work advising Enron are happy today?

If you really don't know whether or not you are a Super Lawyer, make a list of the questions you think would root out the answer and send it to your clients. Wait for the response. If you don't hear that you are a Super Lawyer, buy a farm in Montana and raise goats. Bottom line: if your clients don't think you are a Super Lawyer, it doesn't even matter if you think you are.

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

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

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

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

marketing system he developed six years ago.

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

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

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

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

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

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

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

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Perceptions: A Conversation, A Movie, A Newspaper

by Dick Manning
WSBA President

August 8, 2002. It was 5:00 Thursday morning. The cabbie was taking me to SeaTac so I could catch a plane to the National Conference of Bar Presidents, held in conjunction with the ABA Annual Meeting in Washington, D.C. "How's business?" My question opened Pandora's box. I heard about criminal assaults on cab drivers and other dangers of the occupation. "It's the lawyers who have created the problem," he said. "It seems like anyone who's committed a crime can hire a lawyer and almost get out of it. And I blame the judges, too. It seems like they bend the law."

We talked about the plea-bargaining system — how the criminal-justice system would be totally gridlocked without it; how many crime victims (and/or their loved ones) are dissatisfied and disaffected with the system and would like to throw the key away.

"You seem very professional. You must be a doctor or a lawyer." I felt like Clark Kent, whose secrecy as Superman had been threatened. When I told him the second choice was the correct one, he was chagrined and, in a kindly way, excused himself, "Oh, I run off at the mouth." I thought about what he had said and what an interesting way this was to start off a day headed to a conference that would take up professionalism and the image of lawyers as a core topic.

Same day. United flight 1236 to Chicago. *Changing Lanes* with Ben Affleck and Samuel L. Jackson was the featured movie on this flight. A scene shows a smartly dressed, attractive younger woman lunching at an upscale restaurant with her Wall Street lawyer husband. He tells her of a conversation with the senior and founding partner of the firm, who happens to be his wife's father. She shares with her husband a confidence: "Did you know my father has cheated on my mother for over 20 years?" Her husband reacts with genuine surprise and shock. She reacts: "Why should you be so surprised — you work with people who cheat all the time for a living." I was beginning to think the gods had picked me out of a line-up so they would have an audience to hurl their indignities at.

Same day. *USA Today*. I picked up the paper and there was a lead article by Tony Mauro: "Cross-Trained Lawyers Ride to the Rescue." The article talked about the ABA meeting in Washington, D.C., and an ABA survey that found the legal profession ranked eighth out of nine in public esteem and confidence (only the news media ranked lower). Three-quar-

ters of Americans surveyed agreed with the statement that lawyers are more interested in winning than in serving justice. But then the article turned the corner to point out how lawyers in this country, starting with John Adams, had been called by their countrymen to nonlawyer public-service jobs in every walk of life. The news account was persuasive: many, many lawyers do believe that their calling is first to serve the public — their clients.

All of this happened in one day — a kind of microcosm of public perception of lawyers. We struggle to try to convince the public that we genuinely seek justice, that we strive to serve the needs of the public — all in a highly ethical and professional manner. And while I believe that there is much that can be done to enhance the public perception of lawyers and the professionalism of lawyers (more about that later), we must not forget that the most visible activity of our profession — namely litigation of every kind, civil and criminal — of necessity creates controversy. John Adams found this out when he defended the British troops who had killed citizens in Boston in a peacetime confrontation between the two groups. And even though the British were acquitted by a jury of their peers — and no doubt the advocacy of John Adams — the public came down on him with a vengeance: he very nearly lost most of his private law practice. It took him years to rebuild it. This is the kind of price many lawyers pay and will continue to pay as a cost of belonging to the profession and doing what is right. No amount of public relations can or will ever completely ameliorate a perception that is less than friendly. But we need to listen to the cab driver, to the Wall Street lawyer's wife, and to *USA Today*, because there are steps that can be taken to help lawyers be more professional, and the public to better understand what we are about.

In the coming year, the Bar will form a group to deal with the professional development of lawyers. Your Bar will be asked to look at the entire process of the education, admission and orientation of new lawyers in Washington starting even before they enter law school. Working with the deans of the three law schools in this state, we will review the process of education and how to help lawyers-to-be to interview and communicate with clients and to acquire work skills that are not a part of any regular law-school curriculum. All the law schools have legal clinics, but none of the clinics has the ca-

capacity to assist all students who plan to enter a private or public-interest practice with these much-needed skills. Interestingly, we are probably the only country in the Western world that does not require some kind of apprenticeship before admitting lawyers to practice. Canada has its minimum 12-month program of "articling," in which a lawyer works much like a law clerk for a qualified supervising lawyer. Great Britain requires an even longer tenure. (As I write, the WSBA Young Lawyers Division has already recommended that all lawyers in the first year of their admission receive an extra dose of CLE.)

A new committee has been formed by

the Board of Governors to deal with the student-loan crisis which has led to more than two-thirds of newly admitted lawyers each year having a student-loan debt in excess of \$80,000. The consequences of this crisis are enormous: most new lawyers cannot afford to work in the public sector (e.g., public defender, prosecuting attorney's office, civil legal services for those who are indigent and low-income, other public agencies, and so forth). What this means is that many are compelled to seek better-paying positions even though that may be contrary to their preferences and ideals.

Our profession (a profession of achiev-

ers) has an incidence of alcoholism and drug abuse that affects between five and 10 percent of our members, which, not surprisingly, often leads to victimization of clients and Bar discipline. None of this is good for the image of lawyers. We must continue to protect the public from such lawyers. But we must also stop treating victimless substance-abuse as a crime and start approaching it for what it is: an addictive disease. Because our courts have been overwhelmed by drug cases, most of which do not involve harm to others, I anticipate that the Board of Governors will continue to support the efforts initiated by the King County Bar Association in drug-policy reform. In so many cases, public funds should be shifted from corrections to treatment and education. This year, the Legislature made a first step in this direction; we need to support further implementation.

If we are to stay in touch with public needs and attitudes toward our profession, then we need to listen to the public. I am going to ask the Board of Governors to begin the process of having at least one nonlawyer serve as a public member with the governors. We can never improve our image or ourselves unless we listen to valid criticism.

And, finally, we will inform the public of our goals and our accomplishments. The WSBA will spend several million dollars in upgrading its information technology system. The WSBA Web site will be redesigned to make it more user-friendly to lawyers and the public. We will continue to emphasize the excellent programs created by Past-President Jan Eric Peterson ("Proud to Be a Lawyer") and further implemented by President Dale Carlisle to educate the public about what lawyers do and why.

Last but not least, I am grateful to outgoing President Dale Carlisle for the privilege of serving under him this last year. His strong focus on member benefits has been accompanied by total dedication, incredible attention to detail, and tireless energy. His is a remarkable role model. ☞

Dick Manning's e-mail address is jmb@seanet.com; telephone 206-623-6302; fax 206-624-3865. Send him your questions or comments.

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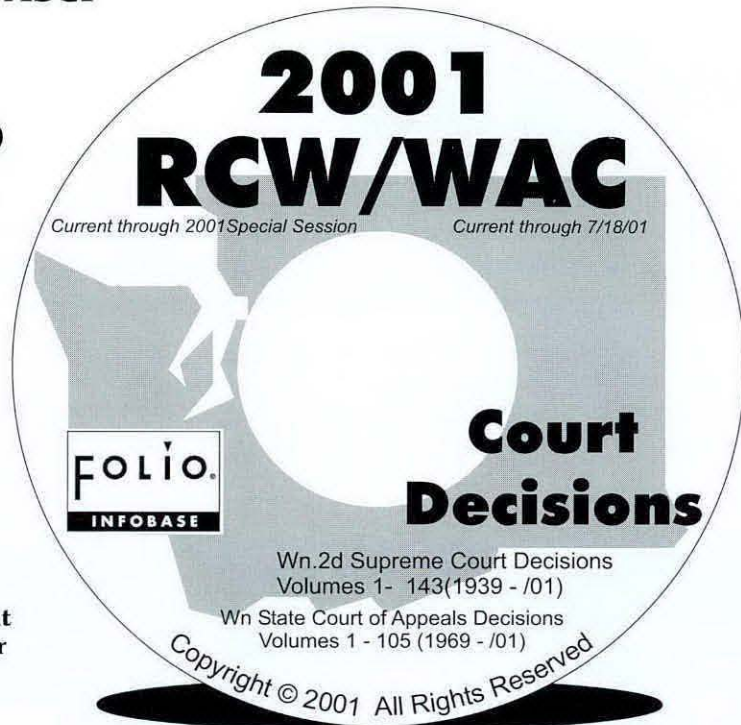
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Bar Year 2002-2003

by Jan Michels

WSBA Executive Director

Brief News

The new Bar year started October 1. We have a new president and five new governors. And ... we have the ambitious list of action items resulting from the long-range planning process that I wrote about in September. We also have a number of multiyear projects that have finally flowered.

The WSBA Foundation

After years of languishing, the WSBA Foundation has emerged with new leadership and a close connection to the Board of Governors (BOG) and the WSBA's Long-Range Strategic Plan. The foundation is debating about tackling a "Democracy Project" aimed at providing public legal information to citizens. This project could provide Web information; target citizen and student groups with specific information about our democratic form of government; and sponsor projects aimed at increasing the public's awareness of the importance of concepts like due process, separation of powers, independence of the judiciary, and the jury system.

After years of languishing, the WSBA Foundation has emerged with new leadership and a close connection to the Board of Governors (BOG) and the WSBA's Long-Range Strategic Plan.

New CLE Approach

The WSBA's new CLE director is Mark Sideman. He stands for member service and a strategic approach to professional adult education. Mark will work closely with other WSBA staff, including professionalism counsel, to integrate existing services, such as the ethics call-in line, the Law Office Management Assistance Program (LOMAP) and discipline diversion, with the goal of crafting CLE offerings that best meet member needs. He is also committed to developing mutually supportive relationships with sections and other bar associations in the interest of providing seminars and publications in substantive areas.

Mark will put his technology background to work in designing programs and materials for interactive distance learning, teleconference seminars, and programs that address the changing face of technology in the practice of law.

New Enforcement of Lawyer Conduct (ELC) Rules in Effect

In implementing the new ELCs, the WSBA will appoint a

chief hearing officer who will, in addition to handling his or her own caseload, act as a supervisor and coordinator of other hearing officers and will enter orders in cases for which a hearing officer has not yet been appointed. This, coupled with mandatory hearing-officer training and standards for selection of hearing officers, aims to assure more consistency in discipline outcomes. Members should also find the new ELCs easier to follow.

The WSBA will also launch a project to put disciplinary notices online, searchable by subject matter and respondent. (Currently, *Bar News* disciplinary notices dating back to January 1997 are posted on the WSBA Web site [www.wsba.org/notice], but they are searchable only by respondent.) The goal of these improvements is discipline prevention and uniformity in outcome.

Practice of Law Board (PoLB) Begins Its Work

The Supreme Court has made 13 appointments to the PoLB and appointed Steve Crossland chair for this first and very important year; Judge Paul Bastine has been appointed vice-chair. The board has met and is working through the backlog of issues and practices that will be their fare for the coming years. There are nonlawyers practicing law to refer for prosecution; there is a list of recommendations from the Access to Justice Family Law Committee about areas in which nonlawyers can assist the public and should be regulated; there is a request from the Supreme Court that the board look at possible expansion of courthouse facilitators to areas of law beyond family law; and there are issues to resolve about independent paralegals and persons who sell legal forms.

Facility Survey Feedback

Many members responded to the Facilities Committee's request for feedback on the potential location of the WSBA (July *Bar News*, p. 11). The most frequent question, often adamantly raised, was: "Why downtown Seattle?" Here are a few examples:

- "The services of the Bar Association should not be for the benefit of Seattle lawyers. It should not matter where the

Summary of WSBA Facility Survey Responses at BOG Meetings and Section Midyear Meetings as of August 27, 2002

(Numbers indicate rank order; #1 is the highest)

Overall message:

- Parking and accessibility are everyone's first and second choices.
- Next most-mentioned desirable feature is in-house CLE facility or CLE teleconferencing.

Feature	Business Law (62)	RPPT (100+)	Construction (75-80)	Litigation* (9)	Family Law (175)	BOG (8)
1. Landmark building						
2. Close to Seattle's legal hub	4	5	4			
3. Own	5	4		X		3
4. Accessible	1	1	2	X	2	1
5. CLE conference facility / CLE teleconference	3	3	3	X	3	5
6. Parking	2	2	1		1	2
7. Home away from home						6
8. Public transportation access			4			
9. Washington law-center concept						4
10. Professional image		5	6			
() indicates number of responses						
* No rank order given						

Bar offices are located in this day of electronic communication. In 26 years of practice I have been to the Bar headquarters only twice. I suspect the vast majority of attorneys both in Seattle and outside the Seattle area would say the same."

- "The critical mass of the Bar is in King

County, not necessarily downtown Seattle. Downtown Seattle is a 'good thing' for the majority of WSBA's members, but is problematic, too: difficult to reach, suffers traffic congestion, and is often plagued with construction projects. Probably only a minuscule number of lawyers commute by ferry."

- "The biggest cost savings are likely to result from a move to Tacoma or area south of Seattle. Most lawyers have very little need to be physically present at the WSBA. Phone, fax, e-mail and Web site access are sufficient for most lawyers. Staff desires should not drive location decisions."

Meet the Northwest's newest peace-keeping force.



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- "There are other bus routes with regular service equal to the downtown area. Parking is free and available at areas outside downtown Seattle. Consider the U-District."

The most frequent plea was for parking and an in-house CLE facility or teleconferencing capacity:

- "We need a way to reduce our collective trip miles. Compared to building ownership and teleconferencing facilities, all other priorities have merit but are minor factors."
- "The Bar should not be in the CLE conference-room business. It is expensive."
- "Parking downtown is extremely expensive no matter who is paying for it, assuming you can find parking at all."

There were mixed feelings about ownership:

- "With so much available office space downtown, we should lock in a favorable lease now. Buying a building seems to be a huge expenditure which would take away from member services."
- "Ownership could only be considered if it would save the association money and would make economic sense."

And there were some general comments about other features:

- "All we need is office space that meets our needs and has a pleasant appearance. Anything more will be construed as extravagant by the general public and many members of the association. It appears that many of the characteristics listed in the article are ego-driven and are unnecessary for the purpose for which our association exists."
- "Do not spend Bar funds to create a monument to lawyers. This should be a 'service' facility."
- "Regardless of whether the Bar space is downtown or in another place, please consider scheduling more meetings at the beginning or end of the work day. Will the new federal courthouse now under construction at Stewart and 4th affect the Bar's current location? Some longtime downtown attorneys have already relocated to this area because of the rents. ... It would be nice to have it all: easy access and parking, and access to public transportation."

A survey was administered to sections at midyear meetings and to the BOG with the following results:

The BOG discussed this feedback at their July meeting. Their concerns are parallel to that of sections and members-at-large. The BOG endorsed the idea of staying in Seattle because it's an accessible location for most members, and downtown because it's a hub for those members who participate in WSBA activities. The BOG added that stretching beyond the actual retail core to include near-downtown may make economic sense. We know that the WSBA cannot afford to own a building in the downtown core, but we might find an economically favorable ownership option a little further from the retail core. We have also determined that to ease the parking situation, we might have to move, whether leasing or purchasing, even if it's simply to be more proximate to large public parking garages.

The Facilities Committee will work to address members' requests for a CLE facility/teleconferencing capacity. It may be desirable to have a dedicated facility to control costs and quality. A CLE facility would fix many seminars in one easily accessible place, but this place must have ample parking available. The WSBA's use alone could not cost-justify a dedicated facility, but a multi-purpose conference-facility option might meet this goal. A teleconferencing facility that would allow for remote attendance at CLEs is also desirable.

As a result of the BOG's discussion, the Facilities Committee has issued to building owners and developers (and posted on the WSBA Web site) a Request for Information (RFI) for buildings that meet the Bar's criteria for both lease and ownership options. The RFI asks respondents to address the features we heard members ask for. Member feedback will be used as evaluation criteria for considering the responses. Following this, the WSBA will issue a Request for Proposal to the owners of promising facilities. The Facilities Committee intends this process to be completed by the end of 2002.

The Facilities Committee and the PoLB continue to welcome feedback from members. ☞

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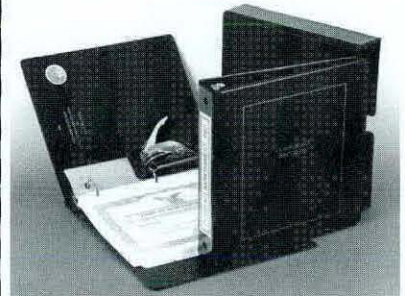
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For Dick Manning, law was an obvious choice. "I was very active in public speaking in high school, and won a number of medals and awards," he says. "I knew I wanted to be either a doctor or lawyer. I started looking at how long it takes and how much it costs, and thought, 'Well let's go for lawyer.'... The oratory skills I practiced in high school really helped. We were always dealing with subjects related to

shouldn't have been lawyers to begin with. ... I don't think all the students admitted to law school have been adequately screened and oriented to the aspects of law practice that create a lot of stress for people. I think a lot of that stress also leads to what some judges complain about, and that is a lack of civility.

"All of this points to the need to address professionalism in many different ways. There's an adjunct issue for which the

pects the group created to explore the possibility of adding a nonlawyer member to the BOG to wrap up their work this year. "We need to listen to what the public is saying about us," he says.

- Expanding the drug-policy project that was started by the King County Bar Association. "The Legislature has enacted legislation that allows savings from corrections to go to education and treatment. Substance abuse cuts across so many aspects

Dick Manning: Laying a Foundation for New Lawyers

by Allison L. Parker

WSBA Communications Specialist

major legislative issues. It was a natural fit. I couldn't do any of that if I became a doctor. ... My stepmother worked for two very well-known trial lawyers in the 1930s. One of them, Charles P. Moriarty, was my godfather. My dad was a funeral director, so he knew a lot of professional people. A lot of lawyers were part of a broad social circle, and I think they influenced me."

That influence is evident in his focus as WSBA president. Manning was impressed by the behavior of the lawyers he observed as a kid. He believes the legal profession can attain that level of professionalism again, and that it starts in law school. He has formed the Professional Development Committee, which will review the processes of the education, admission and orientation of new lawyers in Washington, and make recommendations to the Board of Governors. The committee will consider the feasibility of apprenticeships, modification of law school curricula, and law school/WSBA relations.

"Professional development involves a lot of things. We're the only country in the western world that doesn't give new lawyers or law students some sort of apprenticeship," Manning says.

"As many hiring partners will tell you, lawyers come out of law school equipped with smarts, but they're ill-prepared in most instances to do what lawyers are expected to do once they're admitted to practice. What they lack, I believe, are the skills of knowing how to communicate with clients, how to organize a practice, how to manage an office. Many of them are square pegs trying to fit into round holes. They

board has already created a task force, and that is the student-loan crisis. I see the Professional Development Committee and the Student Loan Crisis Task Force working together. There is a huge salary gap between private and public practice. The median starting salary for lawyers in private practice in Washington is \$90,000. The median starting salary for government attorneys is \$41,000. I suspect the other public-service positions, such as public defender or legal services, pay even less than that. We know that students coming out of Washington law schools are carrying an average student-loan debt of \$70,000-\$80,000. What that means is that lawyers with huge debt are forced to work for private firms who can afford to pay them the kind of salary they need to pay back student loans. A lawyer with that kind of debt cannot service an \$80,000 student loan on a public-interest lawyer's salary."

Manning expects the Professional Development Committee and the Student Loan Crisis Task Force to come up with a number of recommendations and begin implementing some of them this year. He says, "I would like to see us come up with some recommendations on how to handle professionalism starting before students even finish law school. To the extent that any of them require approval by the state Supreme Court, I'd like to send them on their way."

While professional development is on the top of his list, Manning has several other things on his agenda for the year, including:

- A change in the BOG makeup. He ex-

pects the group created to explore the possibility of adding a nonlawyer member to the BOG to wrap up their work this year. "We need to listen to what the public is saying about us," he says.

- Revising Washington's Rules of Professional Conduct (RPC). An ethics-review task force will be working with the Oregon and Idaho state bars to revise the RPCs.

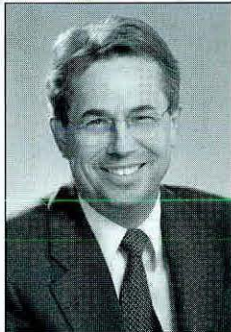
Manning recognizes that the WSBA faces some daunting tasks this year, and he believes other state bars view Washington as a trailblazer because of that. "I've been to several National Conference of Bar Presidents meetings, and the whole purpose of those meetings is information-sharing," Manning says. "I'm telling you, the state of Washington is on the cutting edge of almost everything. It's really amazing. I run into bar presidents at these meetings who are just beginning to talk about some of the things that we've already accomplished."

Dick Manning is looking forward to a year of challenges and triumphs for Washington lawyers. He wants to continue the good work begun by past presidents and is eager to lay a strong foundation for new lawyers. "I'm very proud of the profession. Jan Eric Peterson got a great movement started. We're going to build on what we're doing this year and through the years. It doesn't matter how good a PR program you have if lawyers don't upgrade their own image by how they conduct themselves. Otherwise, we're beating an empty drum."

Welcome to President-elect David Savage and the New WSBA Governors

President-elect

David W. Savage served as an at-large governor in 2001-2002. He is a shareholder and president of the Pullman firm Irwin, Myklebust, Savage & Brown, which he joined in 1973. Mr. Savage is a member and immediate past-chair of the WSBA Court Rules Committee, and has served as a hearing officer for the WSBA Disciplinary Board. He is also a member of the Idaho State Bar, and serves on a number of Idaho State Bar boards and committees. In 1995, Washington Governor Mike Lowry appointed him to the Walsh Commission to study and recommend procedures for judicial-election reform. Locally, Mr. Savage is active in the Pullman United Way, Pullman High School Mentor Program, and the Pullman Chamber of Commerce.



ally, he is author of the *Federal Employees' Compensation Act Practice Guide*.

Joni R. Kerr (District 3) is a solo practitioner in Vancouver, Washington, where her practice is limited to representing public school districts in Washington. She graduated from The Ohio State University College of Law in 1979 and clerked for the Ohio Court of Appeals from 1979 to 1981. Ms. Kerr was admitted in Nebraska in 1981 and in Washington in 1990. Before moving to Vancouver, she was a shareholder with Vandenberg, Johnson & Gandara in Tacoma. She served as president of the state board of Washington Women Lawyers from 1998-1999, and as its liaison to the WSBA Board of Governors from 1999-2000.



Governors

Andrea Brenneke (District 7-east) is a shareholder of MacDonald, Hoague & Bayless, and a member of the firm's litigation and employment groups. She is a long-time member of the Northwest Women's Law Center Legal Committee and has served on its board. Ms. Brenneke is an active member of the Washington Employment Lawyers Association, the Washington State Trial Lawyers Association, and the Washington chapter of Trial Lawyers for Public Justice. She is a past-chair of the King County Young Lawyers Division board of trustees. Ms. Brenneke was a contributing editor and author of the treatise *Violence Against Women Act: Law and Practice*, and has authored several articles on women's issues.

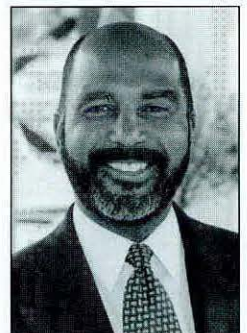


Fawn R. Sharp (At-large) grew up on the Quinault Reservation and now serves as lead counsel for the Quinault Indian Nation. She manages comprehensive legal services for the nation; provides counsel; and represents the nation at court, tribunal and administrative hearings. Ms. Sharp previously served as a special hearings officer for the Grand Ronde Tribe of Indians, an administrative law judge for the Washington State Department of Revenue, and an associate judge in Quinault Tribal Court. She has also been in private practice. Ms. Sharp is co-chair of the National Congress of American Indians Sovereignty Protections Initiative, and is vice-president of the National Intertribal Tax Alliance. *(We regret that a photo of Ms. Sharp was not available at press time. Her photo will be published in a future issue.)*

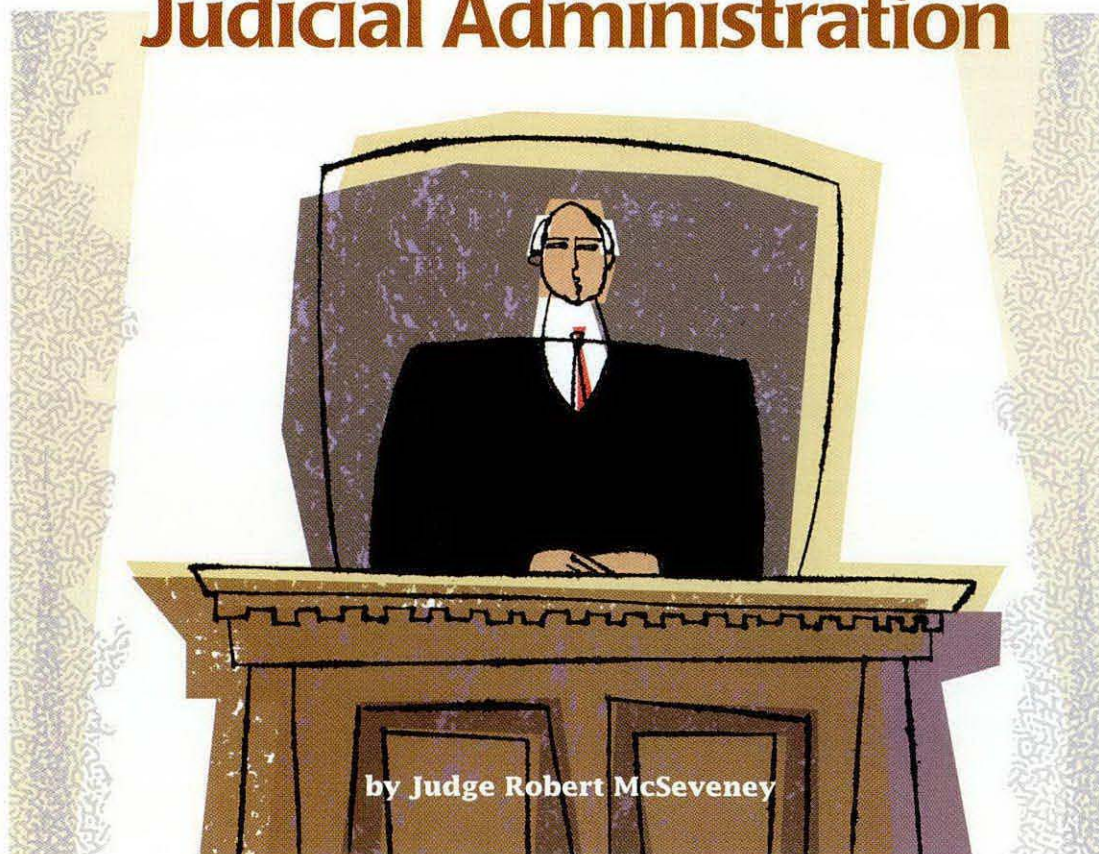
Howard L. Graham (District 6) is a sole practitioner in Tacoma, where his practice emphasizes disability issues, Social Security, federal employees' compensation appeals, and fair-housing litigation. He served as executive director of the Puget Sound Legal Assistance Foundation (now Tacoma's Columbia Legal Services), and helped start the Tacoma-Pierce County Bar Association Volunteer Lawyer Program. Mr. Graham was co-chair of the Systems Impediment Committee of the Washington State Access to Justice Board, and served on the Board of Judicial Administration Best Practice Committee in 2001-2002. Addition-



Ronald R. Ward (District 8) is a partner and shareholder in the Seattle law firm Levinson Friedman PS, where he concentrates on auto accidents; construction-site personal injuries; fisherman, seaman and processors' injuries; and wrongful death. Before going into private practice, he was an assistant attorney general. Mr. Ward has served as vice-president and as a seven-term board member for the Washington State Trial Lawyers Association. He is also a member of the Association of Trial Lawyers of America, the National Bar Association, King County Bar Association, and Loren Miller Bar Association. He was appointed to the 1996-1997 Court Composition Committee convened to study the Washington State Supreme Court, and is a past member of the WSBA Judicial Recommendation Committee.



Municipal Courts, Judicial Independence, and the Board for Judicial Administration



In his concurring opinion in *Discipline of Hammermaster*, 139 Wn.2d 211, 249 (1999), Justice Philip Talmadge penned the following tersely worded warning to municipal court judges and municipalities in Washington:

... I write separately to emphasize my views on the operation of some courts of limited jurisdiction in the state of Washington.

Justice Madsen appropriately notes in the majority opinion that concerns have arisen regarding the independence of courts of limited jurisdiction, particularly municipal courts, in our state. Indeed in this case, involvement of the City executive authorities in the

development of Judge Hammermaster's "rules" creates concerns over separation of powers and judicial independence.

Our opinion today conveys a very strong message to the judiciary and local governments in Washington that the Supreme Court will not tolerate short cuts in due process. While many municipalities have established municipal courts because they want to administer justice locally, it is also true many jurisdictions establish municipal courts for purely avaricious reasons — as revenue agencies to be operated if they "make money" and be dispensed with if they become inconvenient to administer or generate insufficient revenues. ...

Some local jurisdictions have even attempted to control performance of duties by municipal court judges through devices such as performance audits, the provision of substandard court facilities, or nonjudicial control of court personnel. Occasionally, in some jurisdictions, when the judge has been too independent, and has refused to generate sufficient revenue for the municipality, the city's legislative or executive authorities have forced the ouster of the judge.

The Washington Supreme Court has inherent authority to supervise the administration of justice in the lower courts. ... We must not condone any derogation of the independence of the

judicial branch of government by officials intent on revenue collection; we should not permit our courts to degenerate into collection agencies for local government at the expense of due process of law.

This article is about the current state of municipal courts in Washington, and will attempt to address why there is cause for concern about the independence of such courts, what is being done about it, and the new role of the Board for Judicial Administration (BJA) to ensure that courts of limited jurisdiction remain distinct and independent.

Judges have a legal and ethical obligation to administer justice according to law, without fear or favor, and without regard to the wishes or policy of the executive or legislative branch of government. Independence of any kind can be perceived as a threat by the other branches of government; however, such considerations are overridden by the demands of justice and our country's ideals, in which the judiciary in all areas of responsibility is independent of the other government branches. The independence of the judiciary from other branches of government is indispensable if there is to be public confidence in the administration of justice.

Background

There are currently 219 judges of courts of limited jurisdiction in Washington. There are 85 full-time elected district court judges and 28 part-time; there are 20 full-time elected municipal court judges and 86 part-time. These judges hear thousands of cases daily and are the "front-line" courts where the general public encounters and develops impressions and opinions on justice and the court system in this state. Audits show that these judges are, for the most part, well-trained and adept at processing and administering high volumes of filings and are able to dispose of cases expeditiously and as efficiently as possible given budget, space, staffing and other constraints. The public and the Bar have every reason to have confidence in these judges and the quality of justice being dispensed by courts of limited jurisdiction.

Overview of Municipal Court Law in Washington

Municipalities are agents of the state, and

responsible for the regulation and administration of the local and internal affairs of the incorporated city, town or district. *Lauterbach v. Centralia*, 49 Wn.2d 550, 554 (1956). They have been invested with extensive power to enact police-power regulations, and to that end must exercise power and control over internal operations to effect executive policy. But, municipalities have no authority over matters of judicial practice and procedure or court administration. GR 29, *Spokane v. J-R Distributing*, 90 Wn.2d 722, 726 (1998). Municipal court law has been well-established in

Judges have a legal and ethical obligation to administer justice according to law, without fear or favor, and without regard to the wishes or policy of the executive or legislative branch of government.

Washington. The Washington Constitution delegates to the Legislature the sole authority to create "inferior" courts and prescribe their jurisdiction and powers. (Article IV, section 1) *Id.* The constitution also bestows on the Legislature the sole authority to determine the qualifications of district and municipal court judges and the criteria for their removal. *Young v. Konz*, 91 Wn.2d 532 (1979); *Municipal Court v. Beighle*, 96 Wn.2d 753, 756 (1982).

The Court Improvement Act of 1984 governs courts of limited jurisdiction and is an example of the Legislature's exercise of its constitutional directive, vesting judicial power with district and municipal courts in an effort to provide an integrated and consistent trial-court system in Washington. *In Re Eng*, 113 Wn.2d 178 (1989).

Prior to the Court Improvement Act, judges were known as either "justices of the peace" or "police-court judges." The purpose of the Court Improvement Act was to reorganize the "inferior" courts of Washington in an effort to eliminate confusion over police-court judges and justices of the peace, allowing such courts to operate in a more effective and efficient manner. RCW 3.50.005. The act converted "justices of the peace" and "police courts" into the current district and municipal court system, which now provides for two types of judges, "municipal court judges" and "district court judges." *In Re Eng, supra*, pp. 185-186.

Judicial Independence and Separation of Powers

There are generally two categories of judicial independence. The first, decisional independence, pertains to a judge's ability to render decisions free from political or popular influence based solely upon the individual facts and applicable law. The second, institutional independence, involves the separation of the judicial branch from the executive and legislative branches of government.

For courts to effectively maintain their independence as a separate branch of lo-

cal government, they must have the power to do all things that are reasonably necessary for the proper administration of their office within the scope of their jurisdiction. *Zylstra v. Piva*, 85 Wn.2d 743, 754 (1975). This includes the power to control decision-making, the adjudicatory process, and ancillary functions subordinate to the decision-making process. *Id.* at 755. As stated:

It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the laws. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things, which are normally done by the other departments.

Thus, both the legislative department and the judicial department have certain housekeeping chores which are prerequisite to the exercise of legislative and judicial power. And, to accomplish these housekeeping chores, both departments have inherently a measure of administrative authority not unlike that primarily and exclusively vested in the executive department:

The inherent power of the judiciary is a judicial power, but only in the sense that it is a natural necessary concomi-

tant to the judicial power. The inherent power of the Court is non-adjudicatory. It does not deal with justiciable matters. It relates to the administration of the business of the Court.

Wayne Circuit Judges v. Wayne County, 383 Mich. 10, 20-21, 172 N.W.2d 436 (1969), modified on other grounds, 386 Mich. 1, 190 N.W. 2d 228 (1971). As cited in *Zylstra*, *Id.* at 755.

By implication, the constitutional provisions in Washington vesting judicial power in the courts carry with them the authority necessary to the exercise of that

power, including rule-making and judicial administration. *Id.* at 755.

It is sometimes possible to have an overlap of responsibility in governing the administrative aspects of court-related functions. "The branches of government need not be hermetically sealed off from one another; rather they must remain partially intertwined if for no other reason than to maintain an effective system of checks and balances, as well as an effective government." *In Re Juvenile Director*, *supra* at 239-240.

The separation of powers doctrine, then, allows for some interplay between

the branches of government. *Spokane County v. State*, 136 Wn.2d 663, 672 (1998). However, the spirit of reciprocity and interdependence requires that if checks by one branch undermine the operation of another branch or undermine the rule of law, which all branches are committed to maintain, those checks are improper and destructive exercises of the authority. *In Re Juvenile Director*, 87 Wn.2d 232, 243 (1976).

Thus, the purpose of the separation of powers doctrine is "to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed." *Commonwealth ex rel Carroll v. Tate*, 442 Pa. 45, 53 (1971) cert. denied 402 U.S. 974 (1971), as cited in *In Re Juvenile Director*, 87 Wn.2d 232, 245 (1976).

The test to determine whether a separation of powers violation has occurred is whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another. *Zylstra v. Piva*, 85 Wn.2d 743, 750 (1975). If it does, then the damage caused by a separation of powers violation accrues directly to the branch invaded. *Commodity Futures Trading Comm'n. v. Schur*, 478 U.S. 833, 851 (1986), as cited in *Carrie v. Locke*, 125 Wn.2d 129, 136 (1994).

Supreme Court Rules

The case of *The Washington State Bar Association v. State of Washington*, 125 Wn.2d 901 (1995), illustrates a separation of powers violation and the rule-making authority inherent in the Supreme Court. In that case, the Legislature had passed a statute making collective bargaining mandatory for Bar Association employees. The statute directly conflicted with court rule GR 12, which gave the Bar Association discretion as to whether or not to bargain collectively with its employees. In striking down the statute, the Supreme Court held: "Legislation which directly and unavoidably conflicts with a rule of court governing Bar Association powers and responsibilities is unconstitutional as it violates the separation of powers doctrine: Such legislation is therefore void." *Id.* at 906.

The court stated further:

The ultimate power to regulate court-related functions including the administration of Bar Associations, belongs exclusively to this court ... when a court rule and statute conflict ... if they can-

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not be harmonized, the court rule will prevail and... once this court has adopted a rule concerning a matter related to the exercise of its inherent power to control the bar, the Legislature may not therefore reverse or override the court's rule. *Id.* at 909.

Current Issues

Regrettably, there is an ongoing dark side to some municipal court operations in this state centering on the dilemma of which official is responsible to administer the court and the extent of the authority of the presiding judge. In many municipalities, it is all too common for the local judge to be considered a "department head" or worse, merely an "employee" of the court, void of any independent authority beyond the policies, procedures and dictates of the local government or a personal-service contract. Courts are also demeaned by being labeled a "department" or "office" of the city subject to the policies of the executive or legislative branch of the municipality. This conduct persists in courts of limited jurisdiction despite court rules, cases and statutes to the contrary.

Aware of these and other issues, in January 1995, Chief Justice Barbara Durham of the Washington State Supreme Court commissioned a comprehensive survey of the policies, procedures and facilities of the state's district and municipal courts (Courts of Limited Jurisdiction Assessment Survey Report 1995-1997 by Larry and Carol Wilson). The purpose of the Wilson Report was to audit the standards, practices and procedures in place in these courts. The Wilsons conducted this survey by interviewing all of the limited-jurisdiction judges in the state, and touring each court. Addressing issues of separation of powers, the Wilson Report concluded: "In our opinion, a totally independent trial court under the leadership of the State Supreme Court is absolutely necessary. An independent trial court will not survive unless the politically expedient tactics of the past are discontinued." *Id.* at 165.

The Walsh Commission Report also identified similar problems and reinforced the need for judicial accountability and judicial independence in Washington courts. (*The People Shall Judge: Restoring Citizen Control to Judicial Selection*, Walsh Commission Report, March 1996.)

In 1999, the King County Bar Associa-

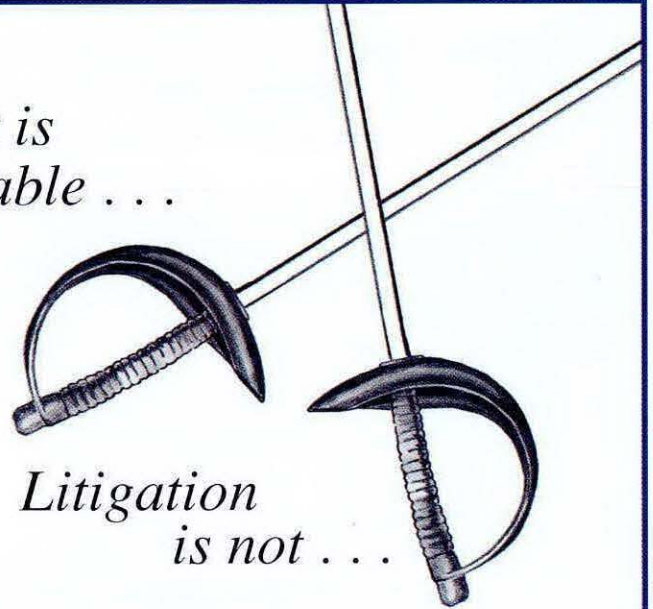
tion held a Bench Bar Conference addressing the issues surrounding the problem of independence in the courts of limited jurisdiction. Cited examples of abuse identified by the Judiciary and Courts Committee included:

Pressure being brought on judges not to impose jail sentences because of the cost to the municipality; reprimand, coercion, and firing or non-renewal of contracts by the municipality for "non-cooperative" judges; "score cards" being kept on whether judges dismissed too many cases; similar traffic offenses

committed a few miles apart with the fine being substantially different as an obvious moneymaking effort on the part of the higher fine jurisdiction; a disrespect for the independence of the judge who did not comply with the perceived goals of the executive or legislative branches of the municipality or county; and conduct appearing to show an absence of independence such as police personnel having free access into non-public court spaces.

(King County Bar Association, A Report by the Judiciary and Courts Committee, 1991.)

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The King County Bar study concluded:

The problem of judicial independence for judges of courts of limited jurisdiction, and in particular municipal courts, is a significant problem that bears close scrutiny by the Supreme Court.

The District and Municipal Court Judges' Association (DMCJA) had been fielding separation of powers and judicial independence issues for years, and responded by creating a judicial independence committee that documented the abuses. The DMCJA ultimately proposed

to the Supreme Court that it intervene by exercising its inherent authority to regulate the judiciary by court rule. In order for judges to carry out their legal and ethical duties administering their respective courts, the Supreme Court promulgated a court rule that both municipalities and judges could rely on to avoid conflicts and

In June of 2000, Chief Justice Richard P. Guy recreated the Board for Judicial Administration (BJA) and turned it into a governing board for the state's judiciary, similar to a board of directors.

violations of judicial independence. Effective September 1, 2000, ARLJ 5 was amended to contain administrative provisions setting forth the duties and authority of the presiding judge.¹

GR 29 and the New BJA (Board For Judicial Administration)

In June of 2000, Chief Justice Richard P. Guy recreated the Board for Judicial Administration (BJA) and turned it into a governing board for the state's judiciary, similar to a board of directors. Justice Guy believed the BJA should be representative of all judges in this state and should "speak with one voice" on all matters dealing with judicial administration and court improvement. The mission of the BJA is to secure adequate funding, maintain the independence of the judicial branch, and preserve and improve the core business functions of the third branch of government, assuring access to justice. To date, the BJA has been extremely successful, and responsible for implementing key changes in how judicial services are provided to the public.²

Under the current leadership of Chief Justice Gerry Alexander and Kitsap County Judge James M. Riehl, the BJA was briefed on the plight of municipal court judges, and, as a result, set about to implement a general rule applicable to all levels of courts setting forth the duties and responsibilities of the presiding judge. The BJA believed such a rule was critical, because it would delineate for all concerned the duties of the presiding judge. The new rule, GR 29, was passed by the Supreme Court and took effect April 30, 2002. Without question, GR 29 makes it clear that it is the presiding judge, not executive branch officers, who administers the court. Further, the court administrator and staff work for the judge and the judge cannot delegate, nor can a municipal administration interfere and assign judicial functions elsewhere. GR 29(f)(1-5). GR 29 provides that city or county government has authority over court employees limited to matters relating to "wages, or benefits directly relating to wages."³

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But GR 29 is a double-edged sword. First, it places significant responsibility and accountability on the presiding judge to ensure the court is managed correctly, free from improper executive or legislative power and control. The Wilson Report noted: "The independence of the court depends on the independence of the judge." *Id.* at 7. Judges cannot acquiesce to separation of powers violations. If judges do not respect and value their own independence, no one else will. The Wilson Report further noted: "Historically within the judiciary, judges in positions of responsibility have been so anxious to cooperate with their executive and legislative counterparts that judicial independence has been adversely affected." *Id.* at 6. Judges now must "step up to the plate" and administer their courts according to law and GR 29. If not, noncompliance may constitute a violation of the Code of Judicial Conduct. GR 29(h). Second, municipal and county governments are on notice as to which functions and duties are within the exclusive purview of the presiding judge. Judicial personal-service contracts are still permissible, but:

The personal service contract shall not contain provisions, which conflict with this rule, the Code Of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and this rule.

GR 29(k). (Also see State of Washington Judicial Ethics Rulings, Opinions 99-9 and 00-17, on the propriety of judicial service contracts and delegation of judicial duties.)

Well in advance of GR 29's effective date, the DMCJA took the initiative in contacting the Association of Washington Cities (AWC) to propose a joint educational component surrounding GR 29, beneficial to both organizations. In a letter dated November 1, 2001, President Judge Christopher Culp of the DMCJA wrote:

I believe our organization's concerns are best addressed through an educa-

tional component within each of our respective organizations involving ongoing annual training and education. I would like to suggest that the AWC consider working with the DMCJA to develop some mutually beneficial educational programs for each of our respective memberships. If we can accomplish this, it will foster and generate respect and accountability among the branches of government that will ultimately benefit the community and promote public confidence in government and our judicial system.

Unfortunately, to date, the AWC has ex-


pressed no interest in Judge Culp's proposal.

Ongoing Interference

Despite the Supreme Court's mandates in GR 29, the DMCJA continues to receive complaints and investigate requests for assistance from judges and court administrators who experience interference primarily from the executive branches of local government. Some post-GR 29 examples:

1. City ordinances and organizational charts that place the court administrator and staff under the direct supervision of the city operations director, finance direc-

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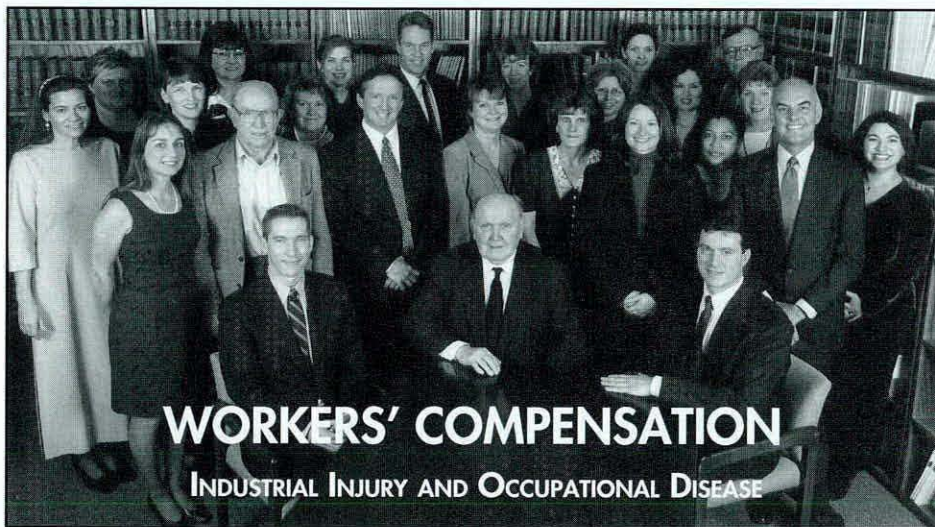


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tor or other executive officer contrary to GR 29.

2. City ordinances that identify the court as a "department" or "office" of the city, which reports to city administration. In Washington, virtually all local municipal court statutes and personal-service contracts contain provisions contrary to chapter 3.50 RCW, GR 29, and court case law. These built-in conflicts usually surface with respect to who hires, disciplines and fires court staff; to whom the court administrator reports; and the administrative powers of the judge. These ordinances and policies persist despite notice to the contrary.
3. Collective-bargaining agreements governing working conditions of court employees being negotiated and approved by the executive branch without the judge's input or approval. (GR 29(f)(5)(b)). The commentary to GR 29 states:

The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

Also see *Spokane County v. State*, 136 Wn. 2d 663 (1998). Also, *Zylstra v. Piva*, 85 Wn. 2d 743 (1975).

4. A budgeted and council-approved FTE court position being removed from the court and transferred to the city parks department over objection of the presiding judge.
5. A mayor telling the judge to cease recording court sessions because such recording "serves no purpose" and is a "potential liability."
6. A city executive, with the blessing of the city attorney, interfering with a court employee discipline/termination decision despite notice of GR 29 and the judge's prerogatives.
7. A city manager with the concurrence of the city attorney assigning all city bankruptcy filings and proceedings to a court clerk for processing over the judge's objection.

The BJA Court Independence Response Team (CIRT)

In a further effort to deal with indepen-

dence issues, the BJA has recently formed a committee called the Court Independence Response Team (CIRT), modeled after the Bench-Bar-Press Liaison Committee (or Fire Brigade, as it is commonly called). CIRT will serve as a forum for discussion and resolution of issues that arise between a court and the local executive or legislative authority. This committee is currently in the process of being selected and organized, and will consist of representatives from all levels of trial courts including court administrators, representatives of cities and counties, city attorneys, the ACLU, the attorney general's office, and others. As commissioned by the BJA, this committee will be both proactive and reactive to separation of powers and other court-related issues in our state courts.

Although proposed rule ARLJ 7 on court certification/decertification is dead, the BJA and the Administrative Office of the Courts (AOC) will monitor CIRT's progress and local government's adherence to GR 29 in their respective courts. It

to assist in ensuring the integrity of access to justice. County and municipal lawyers must be reminded of their ethical obligations to uphold the courts and not engage in or turn the other cheek to violations of GR 29. In order to assist in maintaining the fair and independent administration of justice, all lawyers should support and continue traditional efforts to defend judges and courts from unjust criticism, and not engage in conduct that is prejudicial to the administration of justice. RPC 8.2 and (d)(f). RLD 1.1(c):

Government attorneys should be proactive and make diligent efforts to amend or repeal conflicting local ordinances or personal service contracts to make them conform to state law and the express intent of the Supreme Court as set forth in GR 29. Such efforts would further promote an independent judiciary and eliminate significant potential conflicts between government branches.

Judges who are distracted or bogged down by administrative squabbles have no army to fight their battles and cannot effectively perform their job.

is hoped the CIRT committee will be educational and helpful to all concerned, fostering mutual respect and cooperation among the branches of government. It is possible that in some cases CIRT will be ineffective. If so, continued egregious violations could be documented through AOC performance audits resulting in published reports on the quality of due process in that municipality. Counties and municipalities need to remember that the continued growth and success of local courts depends on a variety of state resources and expertise. For example, continued access to the Judicial Information System (JIS) and other resources might be jeopardized if due process is compromised locally.

Significance to the Bar

The State Bar has a compelling interest in the quality of justice at the local level, given the foregoing discussion. Judges who are distracted or bogged down by administrative squabbles have no army to fight their battles and cannot effectively perform their job. Support from the Bar is critical

Timeless Concepts

The judiciary should be respected no matter what level of court is involved. Attorney Leonard W. Schroeter has been a champion and a "point of light" on issues of judicial independence. He has written extensively about separation of powers violations both locally and nationally. In a recent conversation with Mr. Schroeter about GR 29 and the impetus behind the rule, he remarked: "Judicial independence is the mechanism by which the rule of law is perpetuated and it is the backbone of a free society." Another judge has commented: "Every judge, lawyer and government official should honor and respect the rule of law and the role and function of each branch of government. Respecting and maintaining judicial independence does not involve an attitude of abrasive antagonism towards everyone in government." There is a great deal to be achieved through appropriate cooperation between the three arms of government. ("The Role of the Judge and Becoming a Judge," speech by the Hon. Murray Gleeson AC,

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Chief Justice of Australia; August 16, 1998; Sydney, Australia.)

Judges themselves must respect and value their own independence because the concept is timeless. This rings true for municipal courts and municipalities alike. Mr. Schroeter has so astutely written:

The people's courts in the large are courts of limited jurisdiction — the municipal courts, the traffic courts, and small-claims courts. And each is a court with a robed judge there to dispense justice. And if that court is beholden in any way to anything but the fundamental constitutional principals that protect individual rights from abuse of private or government power, there is no justice; there is no meaningful access to the justice system. Each of us is the prey of privilege, wealth, and power, rather than the majesty of equal justice under law.⁴ ↗

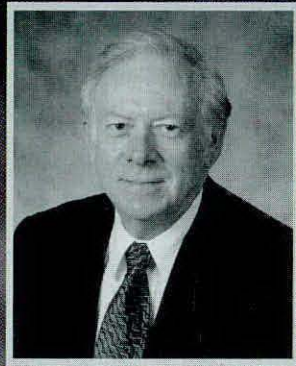
Judge McSeveney has served as a municipal court judge for the past eight years. He has been twice elected to the Board for Judicial Administration by the DMCJA, and was recently honored as Outstanding Judge for 2002 for his efforts addressing judicial independence issues and assisting other judges with matters of practice and procedure. He is also the five-string banjo player for the Lonesome Ridge Bluegrass Band.

NOTES

1. See <http://www.mrsc.org/focus/arlj5-rev.htm> for additional history behind the rule.
2. See www.wsba.org/ed/message/200008.htm for a synopsis of the history of the BJA.
3. In courts of limited jurisdiction, the court administrator and staff are "at will" employees who are appointed by and serve at the pleasure of the court. RCW 3.50.080, *Crossler v. Hille*, 136 Wn.2d 287 (1998). The *Crossler* case stresses the importance of the judge and staff being unrestricted to perform core judicial functions, and points out the distinction between city/county employees being "for cause" employees and court employees who are "at will." The court held: "County Commissioners have no authority to impose employment policies on a district court judge. ... County Commissioners cannot alter the employment status of a judge's employee from 'at will' to 'for cause' simply by issuing an employment policy handbook." *Id.* at 294. The court further noted that the clerk's employment was "governmental" because the position required "supervisory control" by the judge, and the judge retained the power of removal.
4. "KCBA Attacks the Erosion of Judicial Independence," article for *King County Bar Bulletin*, October 12, 1999.

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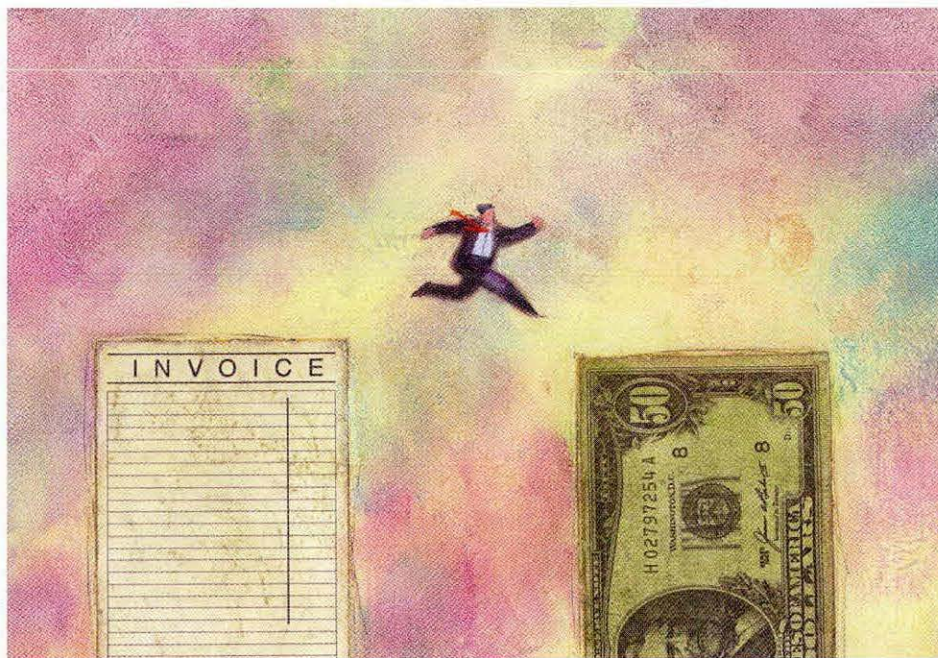
by Roger D. Mellem

I. Introduction – The *Unisearch* Decision

In a recent decision, *Puget Sound Financial, LLC v. Unisearch*,¹ the Washington State Supreme Court unanimously upheld the validity of a liability-limitation clause printed in a regular invoice for commercial services. The decision extended the applicability of the trade usage and course-of-dealing doctrines to commercial services transactions.² The exclusionary clause at issue restricted a public-records search company's potential liability to the cost of the search service that it provided, here, \$25.³ The Supreme Court held that the clause was not a material alteration to the parties' original oral contract, which did not include a liability limitation, but rather had been incorporated into the contract at issue three years later, through prevailing trade usage and a history of course of dealing.⁴

The *Unisearch* decision consisted of three major holdings. First, trade usage and course of dealing are appropriate evidentiary doctrines for determining the terms of a non- or partially integrated agreement, including one that began as an oral contract. Second, where there is a history of trade usage or course of dealing between commercial parties with respect to a liability limitation, that term is not unconscionable. And third, even in the absence of a history of trade usage or dealing, if the exclusionary clause is conspicuous and if both parties have had an opportunity to review it, the term is not unconscionable.

As noted below, by using the term "conspicuous," the Supreme Court does not actually require that a liability limitation



"stand out," but rather that the treatment it receives is comparable to that of other contractual terms. In practice, the inquiry is whether the term is "hidden in a maze of fine print" and/or if the term is *as* conspicuous as other terms in the contract.

II. Contract Interpretation or Contract Modification?

In *Unisearch*, the Supreme Court explored the issue of whether terms included in an invoice, but not expressly alluded to in a preliminary oral agreement, should be considered a part of that agreement or material alterations to the agreement.⁵ An analysis of which category the additional term should fall under requires a determination of (1) whether there is an integrated agreement, and (2) whether the term was incorporated into the parties' agreement as part of a layered contract.

A. Is there an integrated agreement?
Determining whether additional terms not

included in the original communication between contracting parties are part of the contract or material alterations to it depends upon the absence of a fully integrated agreement. The Restatement (Second) of Contracts § 210(1) states: "A completely integrated agreement is an integrated agreement adopted by the parties as a complete and exclusive statement of the terms of the agreement."

In general, when there is not an integrated agreement, or even when there is only a partially integrated agreement, a court has the authority to review extrinsic evidence. In *Berg v. Hudesman*, the Supreme Court held that "[contract] terms not included in the [original] writing may be proved by extrinsic evidence provided that the additional terms are not inconsistent with the written terms."⁶ While the *Unisearch* court did not expressly review the question of integration, the absence of an integrated agreement clearly informed its decision.⁷

B. Was the term incorporated as part of a layered contract?

When there is no integrated agreement, a court must determine which additional terms may have been incorporated into the contract. In *M.A. Mortenson v. Timberline Software Corp.*,⁸ the Supreme Court acknowledged the applicability of a "layered" contract analysis to sale-of-goods contracts under RCW 62A.2-204.⁹ According to the *Mortenson* court: "[B]ecause RCW 62A.2-204 allows a contract to be formed 'in any manner sufficient to show agreement ... even though the moment of its making is undetermined,' it allows the formation of

'layered contracts.'..." The *Unisearch* court extended this doctrine to commercial service contracts. It held that "Unisearch's contract with [Puget Sound Financial] could be interpreted as a 'layered' contract, which incorporates the search reports and sales invoices."¹⁰ Trade usage and course of dealing are two factors used to determine which terms have been incorporated into a layered contract.

1. Does the term correspond to an existing trade usage?

Where the contract is silent with respect to a particular term, it is proper to rely upon

evidence of trade usage to interpret the contract. According to the Restatement (Second) of Contracts § 222(3), "Unless otherwise agreed, a usage of trade in the vocation or trade in which the parties are engaged or a usage of trade of which they know or have reason to know gives meaning to or supplements or qualifies their agreement." This position was adopted by Division II of the Court of Appeals in *Bremerton Concrete Products Co. v. Miller*.¹¹

That court held that "[o]nce a contract is established, custom and usage are admissible to explain its terms."¹² *Unisearch* affirmed this position. Writing for the court, Justice Bobbe Bridge stated: "We find this unrebutted evidence persuasive of trade usage, supporting the inclusion of the limiting language in the contract between [Puget Sound Financial] and Unisearch."¹³

2. Has the term become a part of the parties' contract through course of dealing?

Course-of-dealing analysis is well-established in Washington. In the common-law context, the Washington State Supreme Court has adopted Restatement (Second) of Contracts §§ 212, 214(c)(1981)(App. E), and quoted with favor comment b to § 212.¹⁴ That comment states that "the course of dealing between the parties" is a consideration that should be addressed as courts interpret contracts.¹⁵

In the Uniform Commercial Code (UCC) context, the Washington Legislature has specifically adopted the UCC's course-of-dealing provision.¹⁶ Indeed, the very definition of "agreement" under the UCC "means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing. ..."¹⁷

Prior to *Unisearch*, the 9th Circuit had already explicitly endorsed the incorporation of invoice terms into a commercial service contract under a course-of-dealing analysis. In *Insurance Company of North America v. NNR Aircargo Service (USA), Inc.*, the 9th Circuit held that "[l]iability is a term inherent to shipping contracts. We have thus tacitly approved the use of course-of-dealing analysis in interpreting such contracts where the agreement is silent with respect to liability."¹⁸ The Restatement (Second) of Contracts takes a similar approach, stating that "[u]nless otherwise agreed, a course of dealing between the parties gives

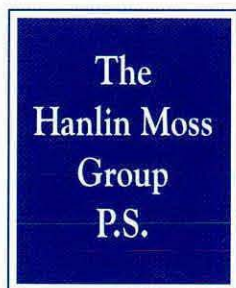
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meaning to or supplements or qualifies their agreement.”¹⁹ Relying on *NNR* and the Restatement, the *Unisearch* court upheld the liability-limitation clause printed on Unisearch’s invoices, stating that the limitation was “established through the course of dealing between the parties.”²⁰

III. Enforceability – Conscionability

Under Washington UCC law, an exclusionary clause is valid unless it is established that the limitation is unconscionable.²¹ Whether a limitation on consequential damages is unconscionable is a question of law.²² In *Unisearch*, the UCC approach was adopted for commercial service transactions.

A. Substantive versus procedural conscionability

Washington courts have identified two classifications of unconscionability: substantive and procedural.²³

1. Substantive unconscionability

“As an initial matter, it is questionable whether clauses excluding consequential damages in a commercial contract can ever be substantively unconscionable.”²⁴ Substantive unconscionability involves “cases where a clause or term in the contract is

alleged to be one-sided or overly harsh.”²⁵ Substantive unconscionability has also been described as “shocking to the conscience,” “monstrously harsh” and “exceedingly calloused.”²⁶ This type of unconscionability is rarely found in transactions between two commercial entities.

Under Washington UCC law, an exclusionary clause is valid unless it is established that the limitation is unconscionable.²¹

2. Procedural unconscionability

Procedural unconscionability is “described as the lack of a meaningful choice, considering all the circumstances surrounding the transaction including ‘[t]he manner in which the contract was entered,’ whether each party had a ‘reasonable opportunity to understand the terms of the contract,’ and whether ‘the important terms [were] hidden in a maze of fine print.’”²⁷ Most cases reviewing the unconscionability of warranty disclaimers and exclusionary clauses (such as a liability limitation) have framed the issue as one of procedural un-

conscionability. As such, this analysis will focus on this species of unconscionability.

B. Conscionability in the consumer-contract context

In the seminal consumer-warranty disclaimer case, *Berg v. Stromme*, the Washington State Supreme Court noted that “[p]rinted disclaimers of warranty ... are now regarded with increasing disfavor by the courts.”²⁸ The court reasoned that “[s]uch waiver, even though printed, should not be allowed to arise from the fine print to haunt the buyer ... unless he has agreed to be bound by it with the same degree of explicitness that he bound himself to the other vital conditions of the contract of purchase.”²⁹ The *Berg* court placed the evidentiary burden on the party trying to enforce a warranty disclaimer to show that the contract clause was conscionable,³⁰ and formulated a rule holding a warranty disclaimer to be “ineffectual unless explicitly negotiated between buyer and seller and set forth with particularity.”³¹

C. Conscionability in the commercial-contract context

Unlike consumer sales transactions, where a liability-limitation clause must be “explicitly negotiated between buyer and seller,”

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the inquiry in the commercial contracting context is whether, under the totality of the circumstances, the limitation is unconscionable.³² This is a question of law for the court to decide, and the party trying to exclude the clause has the burden of proof in light of the principle that "[e]xclusionary clauses in purely commercial transactions ... are prima facie conscionable."³³

Under totality of circumstances review, a history of trade usage or course of dealing can establish that a liability limitation is conscionable "regardless of the surrounding circumstances."³⁴ If no history of trade usage or course of dealing exists, a court must engage in a balancing test geared to-

ward protecting the integrity of good-faith dealings.³⁵ While Washington courts have developed a number of lists of nonexclusive factors that are applicable to the analysis,³⁶ the *Unisearch* court attempted to consolidate these efforts and focused its examination to the "conspicuousness of the clause" and the "presence or absence of negotiations."³⁷

The *Unisearch* court remarked: "[A court's] considerations regarding the conspicuousness of the clause are the same as 'whether the important terms were hidden in a maze of fine print.'"³⁸ In practice, courts have not required that liability-limitation clauses stand out, but rather that they are

at least as conspicuous as other contractual clauses.³⁹

A review of the presence or absence of negotiations consists of an evaluation of how the parties entered into the contract and whether the parties "had a reasonable opportunity to understand the terms of the contract."⁴⁰ Thus, even when a contractual term is not explicitly negotiated, courts are unlikely to strike a contractual term if the complaining party had occasion to review the term.⁴¹

There is no requirement that parties to an agreement have actual knowledge of the included term. In a commercial transaction, imputed knowledge suffices to bind a party to a liability limitation. According to the *Mortenson* court, "[i]t was not necessary for Mortenson to actually read the agreement in order to be bound by it."⁴² Additionally, in the *Unisearch* case, the Supreme Court held that where a party receives an invoice after the fact, if previous invoices had included the identical term, the party receiving the invoice had sufficient notice of its presence.⁴³

IV. The *Unisearch* Decision in Light of Underlying Policy Principles

A. There is a reduced need for governmental protection where both parties are commercial entities.

By refusing to require that all terms in a commercial service contract be explicitly negotiated, the *Unisearch* court acted consistent with Washington precedent. In explaining its reluctance to extend *Berg* to purely commercial transactions, the Supreme Court wrote in *American Nursery Products*: "To so hold would unnecessarily interfere with the freedom to contract in the commercial context."⁴⁴ The Court went on to explain that "[p]arties to a commercial contract ... generally have equal bargaining power and an equal ability to seek advice and alternative offers. As a result, commercial transactions are less subject to the type of unfair surprise which may be found in consumer sales transactions."⁴⁵

B. The difficulty of estimating damages exposure and pricing services accordingly supports enforcing liability limitations.

The *Unisearch* decision supports allocation of risk to the contracting party with the best information as to potential liability.



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In many industries, service firms are unlikely to be able to predict the nature and extent of the loss that they might suffer in any given business transaction. In *Unisearch* itself, the company with the most knowledge of potential liability resulting from an adverse outcome was Puget Sound Financial. It clearly would have been a perverse result had Unisearch become a *de facto* guarantor of Puget Sound Financial's loan, simply on the basis of running a \$25 search. Moreover, it would often be nearly impossible to determine what portion, if any, of any loss could be attributable to the service-providing company rather than to its customer or third parties.

C. Liability limitations reduce the cost of goods and services.

The U.S. Supreme Court has explained that liability limitations serve a public purpose by reducing the cost of goods, writing that in contract law "and the law of warranty in particular ... the parties may set the terms of their own agreements. The manufacturer can restrict its liability ... by disclaiming warranties or limiting remedies. In exchange, the purchaser pays less for the product."⁴⁶

Had the liability limitation in *Unisearch* not been enforced, liability would have been shifted from search-requesting companies to records-providing companies. But as noted above, the customers requesting searches — not the search companies — have the best information with respect to potential liability. Though search companies could demand that companies requesting searches provide them with all relevant information with respect to the potential liability resulting from an incorrect search, such duplication of information-gathering would be costly and imperfect.

V. Conclusion

The Supreme Court's extension of trade usage and course-of-dealing analysis in *Unisearch* significantly strengthens the ability of companies to form workable contracts and efficiently allocate risk.

The practical reality of commercial contract interpretation requires an acknowledgment that in a significant number of transactions, a court will be required to infer terms based upon subsequent actions of the parties involved and other extrinsic evidence. Trade usage and course-of-dealing analysis generally comport with

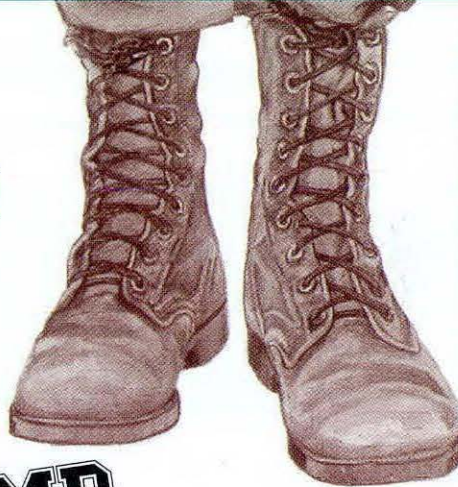
the intentions of the parties and are appropriate tools by which to review contract formation.

Additionally, it is important to allow parties to allocate risk between themselves, particularly where one party has far superior information with respect to potential liability. In scenarios where commercial parties have had a clear course of dealing, where there is a history of trade usage, or where there is fair notice of a contractual term, the Supreme Court has instructed that trial courts should uphold liability limitations, including those printed in regular service invoices. ◀

The author is a member of Foster Pepper & Shefelman PLLC, where he practices civil litigation. In January 2002, he argued the Washington State Supreme Court decision discussed herein. The author acknowledges the assistance of Sharon Cates and Samuel Bull in the preparation of this article.

NOTES

1. 2002 WL 1205735 (Wash. 2002).
2. Prior to *Unisearch*, it was clear that trade usage and course of dealing were appropriate criteria for examining contract formation in a sale-of-goods transaction. In Washington, sale-of-goods contracts are covered by the Uniform Commercial Code (UCC), which has been codified as under RCW Title 62A.



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3. Puget Sound Financial, LLC (formerly known as Factors of Puget Sound) is a commercial lender and receivables factoring company. Unisearch searches government files and computer databases for a fee. Puget Sound Financial sued Unisearch on the basis of an allegedly negligent search for a UCC filing. The dispute drew national attention because it was the first lawsuit in the public-records research industry to come so close to trial. Unisearch provides excellent service and has had only two dissatisfied customers in its 10-year history. Puget Sound Financial had made a loan thinking it was in first position on the collateral, when in fact the borrower had failed to disclose that a prior lien had been recorded under a slightly different name. The borrower subsequently defaulted. Puget Sound Financial contended that Unisearch should have lo-

cated the prior lien and that, had it done so, Puget Sound Financial would not have extended any credit to the borrower. Unisearch vigorously denied that its search was negligent, and in any event won a pretrial summary judgment ruling from King County Superior Court Judge Suzanne Barnett, who held that "[i]f plaintiff were to establish liability ... arising in contract or in tort, the measure of damages ... would be limited to the cost of the services rendered, viz., \$25.00." Unisearch, 2002 WL 1205735 at 1.

4. Unisearch, 2002 WL 1205735 at 4.

5. Neither party disputed the basic factual background. Puget Sound Financial would call Unisearch and request a search for UCC filings against a given debtor name; Unisearch would perform the search and then send the search results and an invoice; Puget Sound

Financial would pay the amount indicated on the invoice. Unisearch had performed dozens of searches for Puget Sound Financial over the course of several years prior to the allegedly negligent search. In addition, there was no dispute that every invoice included a liability-limitation clause.

6. Berg v. Hudesman, 115 Wn.2d 657, 670, 801 P.2d 222 (1990).

7. 2002 WL 1205735 at 2.

8. M.A. Mortenson Co. v. Timberline Software Corp., 140 Wn.2d 568, 584, 998 P.2d 305 (2000).

9. RCW 62A.2-204 states: "(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such contract; (2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined."

10. 2002 WL 1205735 at 4.

11. Bremerton Concrete Products Co. v. Miller, 49 Wn. App. 806, 745 P.2d 1338 (2d Div. 1987). Bremerton is a case in which a manufacturer relied upon industry standards to supplement the contract when applicable standards had not been written into the contract.

12. *Id.* at 810.

13. 2002 WL 1205735 at 3.

14. Berg, *supra*, 115 Wn.2d at 667-68.

15. Restatement (Second) of Contracts § 212 cmt. b (1981).

16. RCW 62A.1-205 (App. E).

17. RCW 62A.1-201(3) (App. E).

18. 201 F.3d 1111, 1113 (9th Cir. 2000).

19. Restatement (Second) of Contracts § 223(2) (1981).

20. 2002 WL 1205735 at 4.

21. RCW 62A.2-719(3).

22. Mortenson, 140 Wn.2d at 575.

23. Shroeder v. Fageol Motors, Inc., 86 Wn.2d 256, 260, 544 P.2d 20 (1975).

24. Mortenson, 140 Wn.2d at 586.

25. *Id.*

26. Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995).

27. *Id.* See also, Mortenson, 140 Wn.2d at 588.

28. Berg v. Stromme, 79 Wn.2d 184, 187, 484 P.2d 380 (1971). In this case, a car manufacturer attempted to waive all warranties, express and implied. The court disallowed the fine-print waiver, ruling that absent a negotiated agreement to the contrary, there could be no waiver of fitness for use.

29. *Id.* at 193-94.

30. Unisearch, 2002 WL 1205735 at 5.

31. *Id.* at 196.

32. Am. Nursery Prods., Inc. v. Indian Wells Orchards, 115 Wn.2d 217, 222-23, 797 P.2d 477 (1991).

33. *Id.* at 222.

34. Mortenson, 140 Wn.2d at 588 n.12, quoting Am. Nursery Prods., 115 Wn.2d at 223.

35. Shroeder, 86 Wn.2d at 262.

36. "In *Schroeder* we recognized the following nonexclusive factors to consider in assessing the unconscionability of a liability exclusionary clause: (1) the conspicuousness of the

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clause in the agreement; (2) the presence or absence of negotiations regarding the clause; (3) the custom and usage of the trade; and (4) any policy developed between the parties during the course of dealing. Additionally in *American Nursery*, we noted that "[u]nconscionability is determined in light of all the surrounding circumstances, including (1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms of the contract, and (3) whether the important terms were hidden in a maze of fine print." Unisearch, 2002 WL 1205735 at 7 (citations omitted).

37. *Id.*

38. *Id.*

39. In its analysis, the court observed that the clause was "written in the same font size as other print on the invoice" and that there were "only a few lines of text on the invoice" and proceeded to hold that "we conclude that the clause is not hidden in 'a maze of fine print' and is not inconspicuous." *Id.*

40. *Id.*

41. *Id.*

42. *Mortenson*, 240 Wn.2d at 584.

43. Unisearch, 2002 WL 1205735 at 7.

44. *Am. Nursery Prods.*, 115 Wn.2d at 224.

45. *Id.*

46. *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 872-73 (1986).

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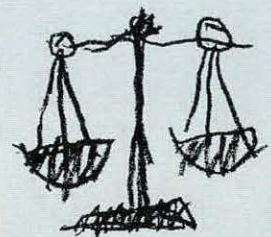
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The Authority of Superior Court Commissioners

by Kimberley Prochnau

At trial-setting on the involuntary mental-commitment calendar, one of the respondents was showing the effect of having not taken her medication.

Commissioner: "You have the right to an attorney in this matter.... You have the right to a trial in front of a commissioner, such as myself, or a jury trial. ..."

Respondent (shouting): "You're not a real judge, I want to see a real judge. ... The hospital is poisoning my food. ..."

Commissioner: "You may have a hearing in front of a commissioner and then if you are unhappy with the result, you may ask a judge to review the commissioner's decision. Or you can have a jury decide whether you should stay in the hospital; a judge will preside over the matter, but the jury will make the final decision."

Respondent (sullenly): "Well, then I want a real commissioner."

Commissioner: "I am a real commissioner ... I understand that you do not want a jury trial; I will set your hearing in one week before myself. Court is in recess."

(The commissioner breathes a sigh of relief and thinks: "Lucky for me she didn't ask what a real commissioner is. ...")

This article is written to provide some information on the use of court commissioners in Washington superior courts. In addition to the usual jurisdictional limits on a judicial officer's authority, superior court commissioners are constrained by limitations imposed by the Washington State Constitution, as well as by the policies and practicalities of the particular superior court.¹ When not sitting as a "constitutional commissioner," the powers, authority and jurisdiction of a commissioner are also limited by statute.²

It is rare to see an actual direct attack on the authority of a commissioner to rule or hear a particular case. A writ of prohibition to the Washington State Supreme Court is the recognized process for challenging a commissioner's powers — not simply a motion made to the commissioner or the revising judge.³

Although this article focuses on constitutional and statutory limitations to a court commissioner's authority, a commissioner is not only a judicial officer⁴ but is an employee of the court. They serve at judges' directions, pursuant to local court rule, administrative policy or informal directive.⁵ Therefore, while there may be no constitutional or statutory impediment to a commissioner hearing a particular type of matter, commissioners are usually

limited to particular types of calendars for reasons of policy and practicality. For example, since all commissioner decisions are subject to the right of revision, most courts assign commissioners to motions and short trials, where the impact of a successful revision on the case will not be so dramatic.

Scope of Authority

A. Constitutional commissioners.

Authority granted under state Constitution.

There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

Constitution of the State of Washington, Article IV, Sec. 23.

The scope of constitutional commissioners' authority and powers is also delineated by RCW 2.24.040, although given the breadth of the constitutional authority, this section of the statute appears to be largely redundant. The powers granted by the Constitution have been deemed self-executing. Furthermore, the Legislature can add to a constitutional commissioner's powers but cannot subtract from them.⁶

No more than three sitting commissioners at any one time in a county.

No more than three "constitutional commissioners" may sit at any one time in a particular county's superior court. However, court commissioners need not be permanently hired as a constitutional or statutory commissioner, but may be redesignated periodically

... since all commissioner decisions are subject to the right of revision, most courts assign commissioners to motions and short trials, where the impact of a successful revision on the case will not be so dramatic.

to suit the needs of the court and the particular calendar. For example, Spokane County Superior Court has six to eight court commissioners who rotate every few months among all of the "commissioner" calendars. Other courts may allow a commissioner normally sitting on a "statutory" calendar, such as family law motions, to switch with a constitutional commissioner for a day or a week at a time to accommodate special sets and calendaring needs. However, court staff must be careful to ensure that no more than three court commissioners at any one time are handling matters that can be heard only by constitutional commissioners.

All rights exercised by a territorial judge "at chambers." May not preside over jury trials.

While the scope of authority was somewhat in flux in early opinions by the state Supreme Court, it now appears well-settled that a constitutional commissioner has the same authority (subject to the right of revision) held by a Washington territorial judge when sitting "at chambers" between terms. These courts existed during Washington's territorial days and before adoption of the Washington State Constitution. Unlike Washington superior courts, territorial courts were only "open" during specific terms. When closed, the territorial judges sat "at chambers" and could: "... entertain, try, hear and determine, all actions, causes, motions, demurrers, and other matters not requiring a trial by jury. ..." ⁷

Early Supreme Court cases interpreting constitutional commissioners' powers indicated that they derived their authority in three ways — they sat as a territorial judge at chambers, they could hear depositions, and additionally could perform "... such other business connected with the administration of justice as may be prescribed by law." Subsequent case law has interpreted this grant of authority very broadly. It appears that the only difference between a superior court judge's and a constitutional commissioner's authority to rule in a particular matter is that: 1) a constitutional commissioner's ruling is subject to the right of revision; and 2) a constitutional commissioner may not preside over a jury trial (unless accepted by the parties as a judge *pro tem*).

Case law has generally interpreted the third source of power, "acting in the ad-

ministration of justice," as synonymous with specific statutory authorization of a commissioner to hear or take action. However, even where the operative statute does not recognize the authority of a court commissioner to hear the matter, up to three court commissioners in a county can hear those matters that could have been heard by a territorial judge at chambers. For example, an early case held that a court commissioner could hear an action to modify alimony even without a specific grant of statutory authority.⁸

Although there is a suggestion in one early case that commissioners may not

preside over matters required to be heard "in open court," this holding appears to have been largely disregarded in later cases.⁹ To the extent that this decision reached the constitutional issue, it was questioned in *Claypool*,¹⁰ and appears to have been wholly disregarded by later courts. Later cases have uniformly construed constitutional commissioners' powers to act "... in any matter not requiring a trial by jury, subject to revision by a superior court judge."...¹¹ This is true even where the case might ultimately end up before a jury, but the jury has either been waived or has not yet been enpanelled.¹²



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B. Statutory commissioners.¹³

Statutory commissioners have all powers allowed to constitutional commissioners provided they are statutorily designated to act.

Although the Constitution limits each county to three commissioners, courts may appoint any number of additional commissioners to hear those types of actions so designated by statute.¹⁴

RCW 2.24.040: general statutory authority of court commissioners.

RCW 2.24.040 provides the broadest grant of statutory authority to court commissioners. Under this statute, any number

of commissioners may be assigned to hear and make determinations in the following types of matters:¹⁵ probate; defaults and default judgments; temporary restraining orders, injunctions and related bonds; supplemental proceedings; adoption of children; dissolution of incorporations; civil adult and juvenile commitments; all *ex parte* and uncontested civil matters; and small-claims appeals.

In adult criminal cases, commissioners may preside over arraignments, preliminary appearances, initial extradition hearings and noncompliance proceedings; accept pleas; make probable-cause determinations; and generally make pretrial rul-

ings as enumerated therein.

In addition to the matters specified above, court commissioners are specifically authorized to preserve the order of court and to punish for contempt of court. They may also take acknowledgements and proofs of deeds, take depositions, and authenticate with an official seal.

RCW 26.12.050: family court jurisdiction.

Since 1949, RCW 26.12.050 has allowed superior courts to appoint an unlimited number of attorneys to act as family court commissioners to "... assist the family court in disposing of its business."

RCW 26.12.060 allows family court commissioners to "... exercise all the powers and perform all the duties of court [constitutional] commissioners." Family-court proceedings are defined as: (1) any proceeding under this title [RCW 26] or any proceeding in which the family court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of parenting plans, child custody, visitation, or support; or the distribution of property or obligations; or (2) concurrent with juvenile court, any proceeding under Title 13 or Chapter 28A.225 RCW.

RCW 13.04.021: juvenile court jurisdiction.

Family court commissioners also have the "power, authority, and jurisdiction" to conduct hearings under Title 13 and RCW 28A.225, subject to the right of revision.¹⁶ Title 13 encompasses all juvenile court actions including juvenile-offender proceedings, dependencies, terminations of parental rights, youth-at-risk and child-in-need-of-services proceedings. RCW 28A.225 is the truancy statute.

Although *Ordell v. Gaddis* indicated that family court commissioners' powers were more limited than those of a constitutional commissioner, the only distinction made in *Ordell* or any other reported case found by this author is that the "statutory" or family court commissioner acts pursuant to specific statutory authority.¹⁷ Given the breadth of RCW 26.12 and RCW 13.04.021, a "family court" or "statutory" commissioner has the same authority as a constitutional commissioner in a proceeding under Title 26 or Title 13, or truancy action under RCW 28A.225.

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C. No limit on number of statutory commissioners who can sit; however, procedural steps must be complied with.

Although there is no constitutional limit on the number of statutory commissioners, their authority is prescribed by statute. The statute or local rules may require that they be appointed pursuant to a vote of the judges of that superior court, or may require action on behalf of the governing body of that county.¹⁸

D. Revision of a commissioner's ruling statute.

RCW 2.24.050 provides:

All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written notice, filed with the Clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days after the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

Although a revision must be filed within 10 days of the entry of order or judgment, it appears logical and is specifically spelled out by some local court rules that a timely motion for reconsideration will toll the time period.¹⁹

E. Authority to act even where ruling will be effectuated before time for revision.

Although a commissioner's decision is not final until 10 days from entry of the order, a decision may encompass issues that will become moot before a revision can be heard on the matter. For example, a commissioner may order a person to be involuntarily committed for 14 days under the Involuntary Treatment Act. A com-

missioner may order persons to be jailed until they satisfy conditions for release under a civil contempt order, may detain juveniles after finding them guilty of a criminal offense, or may order property to be sold or money paid pursuant to a settlement or dissolution decree.²⁰

F. Revision does not result in automatic stay.

Although there does not appear to be any case law directly on point, it is customary that a motion for revision does not automatically stay a commissioner's decision.²¹ The party seeking revision is required to

affirmatively seek a stay from the commissioner or judge assigned to hear the revision (or the judge who assigns out the revision). Obviously, the practice of using commissioners to handle certain types of proceedings, such as civil commitment hearings, would be undercut if a motion for revision resulted in an automatic stay.²²

G. Decision final and subject to appeal 10 days after ruling unless revision granted.

A commissioner's decision becomes a final decision of the superior court unless a motion for revision is filed within 10



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days.²³ An aggrieved party may move to revise within the 10 days, and, after a decision upon revision is made, may move for appeal of the judge's decision within 30 days of entry of the judge's order. Or the aggrieved party may appeal the commissioner's decision directly without seeking revision.²⁴ In the absence of a timely demand for revision, appellate review of a commissioner's decision is the same as review of a superior court judge's decision.²⁵

H. Procedure to be followed by judge hearing a motion for revision.

If no live testimony is taken, standard is de novo as to findings of fact.

Where the evidence before the commissioner does not include live testimony, the superior court judge's review of the record is *de novo*.²⁶ Specifically, a motion for revision of a support-modification trial heard on affidavits alone is *de novo* as to the facts.²⁷

Standard of review where live testimony is taken is not definitely settled, and is likely to be "substantial evidence" as to facts.

Case law is in flux as to what standard of review should be applied upon revision

when the commissioner hears live testimony, enters findings of fact and conclusions of law, and the proceedings are recorded.²⁸ Div. III construed *State ex rel. Biddinger v. Griffiths*, 137 Wash. 448, 242

If oral testimony was taken, however, failure to record the proceeding may require a completely new hearing.

Pac. 969 (1926), and other early Supreme Court cases to determine that no deference should be given to a commissioner's findings of fact and that the standard for review on a motion for revision is *de novo*.²⁹ Although *In re Smith* was decided in 1973 and cited by several subsequent cases, it has come under sharp criticism in recent years; recent *dicta* by the Supreme Court has appeared to limit its holding.

Judge Hicks has argued that *In re Smith's* holding is not only unrealistic and irrational in its application, but is a misinterpretation of *Biddinger*: "Do we really wish that no deference be given to those factual findings [based on evaluating credibility of witnesses' testimony] and that the judge be able to freely substitute inferences from the cold record, without any obligation or deference to the fact finder who saw the live presentation?"³⁰

In his article, Judge Hicks also argues that *In re Smith* and its progeny should be overruled or limited and that a commissioner's factual findings, at least where based on live testimony, should be tested against the "substantial evidence" standard on revision. He suggests a similar review standard as used by a superior court's review of an administrative agency decision.³¹

Although our Supreme Court has not had occasion since Judge Hicks' article was published to address the issue squarely, its *dicta* has signaled very clearly approval for his analysis. "In cases such as this one, where the evidence before the Commissioner did *not* include live testimony, then the superior court judge's review of the record is *de novo*."³² Division III of our court of appeals also quoted Judge Hicks' article for the same proposition, but again in a case where the commissioner did not hear live testimony.³³

However, Division I of the court of appeals recently reversed a trial court's determination in a juvenile-offender proceeding

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by holding that it was ineffective assistance of counsel where the juvenile's attorney failed to move for timely revision of the commissioner's ruling, despite the right of review to the appellate courts. One of the factors in the court's decision was its opinion that a timely motion for revision would have entitled the juvenile to a *de novo* review of both the findings and conclusions of law.³⁴ How a full *de novo* review, including evaluation of witness credibility, can be accomplished when the trial judge is listening to the taped recording rather than observing the witnesses is not made clear. Unpublished decisions from other divisions suggest that there may not be unanimous support for the *Wicker* position.

Failure to record commissioner's hearing may result in new hearing.

Regardless of the standard of review to be applied, failure to record the proceedings may require, upon a revision being filed, a new hearing. Minute entries by the court clerk are insufficient to sustain a record upon appeal, at least with respect to cases involving serious due-process concerns such as paternity actions.³⁵ If the trial or hearing was heard on affidavits, this may merely result in re-argument. If oral testimony was taken, however, failure to record the proceeding may require a completely new hearing.

Review of the legal conclusions is de novo. Regardless of whether live testimony is taken and what standard is applied to the facts, review of the legal conclusions is *de novo*; no special deference is accorded to the commissioner's legal conclusions.³⁶

Right to consider new evidence and issues limited.

Recent decisions concerning revision have centered on whether the revising judge should or may consider new evidence not submitted to the commissioner. Although earlier cases seemed to indicate that new evidence could be considered, recent cases have sharply limited what can be considered, and instead have favored either a review strictly on the record presented to the commissioner or a remand back to the commissioner who heard the case to supplement the record.³⁷

Remand to commissioner who heard the case may be utilized sparingly.

While both *In re Moody*³⁸ and *In re Bellanich*³⁹ stated that the revising judge cannot as a general rule consider evidence not presented to the commissioner, remand to the commissioner to hear new evidence should be utilized sparingly. Both cases indicated that "if appropriate the judge may remand to the commissioner." This may be in part a reaction to Judge Hicks' article criticizing earlier cases as implying that remand was never appropriate. However, using well-established principles embedded in appellate remands, remand for the purposes of considering *new* evidence presumably should only be allowed where

the requirements of CR 59 and CR 60 are complied with, i.e., the moving party is able to demonstrate the presence of material "newly discovered evidence" which could not have with reasonable diligence been discovered and produced at the hearing.

Miscellaneous Issues Affecting Commissioners' Decisions

A. Double-jeopardy problems may prevent prosecutor from appealing criminal decisions.

The problems of when jeopardy attaches to a commissioner's ruling and under what circumstances a prosecutor may appeal a

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commissioner's decision in a criminal case are beyond the scope of this paper and are simply noted. See Judge Hicks' law review article for an analysis of the problem.⁴⁰

B. Affidavits of prejudice not recognized against commissioners; sole remedy where no substantiated bias or conflict is revision.

The statutory right to unilaterally remove a judge from hearing a case under RCW 4.12.040 and .050 has been held not to apply to commissioners. Absent a showing of actual prejudice or conflict, the aggrieved party's sole remedy is that of revision or

appeal.⁴¹ Given that court commissioners are bound to the same canons of ethics as judges, they, of course, may be required to recuse themselves when there is an actual appearance of unfairness or conflict.

C. Court may appoint *pro tem* commissioners, although appointments may be limited.

The court has the inherent power to appoint *pro tem* commissioners to serve in the place of temporarily absent, regularly appointed commissioners.⁴²

In Division I or II, an attorney, while appointed to or serving as a paid guardian

ad litem, may not serve simultaneously as a commissioner or judge *pro tem* in any judicial districts with a population in excess of 100,000 people.^{43,44}

Commissioner Kimberley Prochnau has sat on every commissioner calendar on the King County Superior Court bench since 1994, including juvenile offender, BECCA, family law, civil commitments, ex parte, probate and guardianships. She graduated from the University of Puget Sound Law School in 1982.

NOTES

1. Credit should be given to the very thorough article by Thurston County Superior Court Judge Richard Hicks, which has since been cited by the Washington State Supreme Court. *Power, Removal, and Revision of Superior Court Commissioners*, Richard D. Hicks, 32 Gonz. L. Rev. (1996-70); (cited by *In re Moody*, 137 Wn.2d 979; 976 P.2d 1240 [1999]). The author also wishes to thank Judge Joan DuBuque for her editing of this article.

2. A court commissioner should not be confused with what was formerly referred to as a "commissioner" under CR 70. See also, RCW 6.28. The rule was changed to dispel any such confusion; the court may appoint any suitable person to execute a conveyance or deliver documents to fulfill the requirements of a court order.

3. *Ordell v. Gaddis*, 99 Wn.2d 409, 411, 662 P.2d 49 (1983).

4. As a judicial officer, a court commissioner is bound by the Code of Judicial Conduct. CJC, *Application of the Code of Judicial Conduct*.

5. Some superior courts have adopted local administrative rules governing court commissioners and specifying their duties. See, e.g., PCLR 0.4; KCLR 0.4.

6. *Howard v. Hansen*, 49 Wash. 314, 318, 95 Pac. 265 (1908).

7. *State ex rel. Lockhart v. Claypool*, 132 Wash. 374, 376, 232 Pac. 351 (1925).

8. *State ex rel. Lockhart v. Claypool*, *supra*, 132 Wash. at 376.

9. *State v. Philip*, 44 Wash. 615; 87 Pac. 955 (1906); see, Hicks, *supra*, at 32 Gonz. L. Rev. at 11 (commissioner had no authority to accept a criminal plea where statute requires the plea be taken "in open court").

10. *Supra*, 132 Wash. at 376.

11. *State v. Karas*, 108 Wn. App. 692, 701-2; 32 P.3d 1016 (Div. II, 2001) (despite lack of specific statutory authority under RCW 26.50 to hear permanent protection orders, within constitutional authority of court commissioners to do so; no distinction drawn between constitutional and statutory commissioners); *In Re Olson*, 12 Wn. App. 682, 686; 531 P.2d 508 (Div. III, 1975) (holding that since a jury trial is not required in a juvenile proceeding, it is within the constitutional power of court commissioners to hear juvenile matters).

12. *State v. Goss*, 78 Wn. App. 58, 59, 895 P.2d 861 (Div. II, 1995) (court commissioner may issue a criminal search warrant).



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13. It appears to be more descriptive to use the terms "constitutional commissioners" and "statutory commissioners," as commissioners may be authorized by statute to do far more than what the family court statute contemplates. The Legislature has also used the term "court commissioners" to describe family court commissioners, as well as commissioners authorized to act pursuant to other statutes. *Cf.*, RCW 26.12.060; RCW 2.24.010.

14. *Ordell v. Gaddis*, 99 Wn.2d 409, 412, 662 P.2d 49 (1983).

15. The following cases specifically affirm the authority of court commissioners to act in specific types of actions: civil involuntary commitment proceedings, *Nichols v. Severtson*, 39 Wn.2d 836 (1951); deprivation (termination) of parental-rights trials, *In Re Olson*, 12 Wn. App. 682 (1975); taking of acknowledgements, *Ankeny v. Pomeroy Grain Growers*, 170 Wash. 1 (1932); modification of alimony (maintenance) provisions in divorce decree, *State ex rel. Lockhart v. Claypool*, 132 Wash. 374 (1925); supplemental proceedings, *Howard v. Hansen*, 49 Wash. 314 (1908); jury selection, *State v. Wenatchee Holding Co.*, 169 Wash. 535 (1932); issuance of search warrant, adult criminal case, *State v. Goss*, 78 Wn. App. 58 (Div. II, 1995); and paternity hearings, *State v. Woods*, 72 Wn. App. 544 (1994). There are numerous other cases where commissioners' rulings have been affirmed upon appeal without the issue being raised as to their authority to act in a particular proceeding.

16. RCW 13.04.021; *see also*, RCW 26.12.010.

17. *Ordell*, *supra*, 99 Wn.2d at 412.

18. *See State v. Moore*, 73 Wn. App. 805; 871 P.2d 1086 (Div. II, 1994) (creation of office of district

court commissioners requires county to provide for the number and location of commissioners; appropriation of funds for commissioners to be hired insufficient to demonstrate compliance with statute).

19. *See* CR 59; KCLR 7(b)(7)(vi).

20. *State v. Goss*, 78 Wn. App. 58, 59, 895 P.2d 861 (Div. II, 1995) (commissioner may issue search warrant even though warrant will be executed before revision can be had; citing with approval practice of using commissioners to hear civil commitment, child support and juvenile offender proceedings even though decisions may take effect before revision can be heard).

21. Although Judge Hicks' law review article cites one court case for the proposition that commissioners' orders are stayed by a motion for revision, a more logical interpretation is that a motion for revision stays *not* the ruling *but* application of the speedy-trial rule in juvenile offense proceedings. *See State v. Lawley*, 32 Wn. App. 337 (Div. III, 1982); *see also*, *In Re Smith*, 117 Wn.2d 263 (1991) (construing JuCr 7.8 amendments thereto adopted after Lawley as automatically tolling speedy time period when motion for revision is filed).

22. KCLR 7(b)(7)(B)(iv) was amended in 2001 to specifically provide that all types of orders entered by commissioners remain in effect pending a hearing on revision, unless otherwise ordered. *See State v. Goss*, *supra*, 78 Wn. App. at 59 (commissioners have the authority to hear civil commitment matters even though order of commitment may expire before a revision hearing is held).

23. RCW 2.24.050.

24. *In re Guardianship of Bellanich*, 43 Wn. App.

345, 348-349, 717 P.2d 307 (Div. I, 1986).

25. *Dependency of B.S.S.*, 56 Wn. App. 169, 782 P.2d 1100 (Div. II, 1989).

26. *In re Moody*, 137 Wn.2d 979, 993 (1999).

27. *In re Balcom*, 101 Wn. App. 56, 59, 1 P.3d 1174 (Div. III, 2000).

28. As of June 17, 2002, an amendment to the King County Local Rules is pending before the Supreme Court to delete any reference to the standard of review to be applied on a motion for revision. KCLR 7(b)(7).

29. *In re Smith*, 8 Wn. App. 285, 288-289, 505 P.2d 1295 (Div. III, 1973).

30. *Hicks*, *supra*, 32 Gonz. L. Rev. at 30.

31. *See*, *In re Electric Lightwave* (Consolidated Cases), 123 Wn.2d 530, 542-3, 869 P.2d 1045 (1994) (discussion of substantial evidence standard in review of administrative agency decisions).

32. *In Re Moody*, *supra*, 137 Wn.2d at 993.

33. *In Re Balcom*, *supra*, 101 Wn. App. at 59.

34. *State v. Wicker*, 105 Wn. App. 428, 432-433, 20 P.3d 1007 (Div. I, 2001).

35. *State ex. rel. Henderson v. Woods*, 72 Wn. App. 544, 550-551, 865 P.2d 33 (Div. II, 1994).

36. *State v. Smith*, 8 Wn. App. 255, 505 P.2d 1295 (1973).

37. *In re Moody*, *supra*, 137 Wn.2d at 992-993; *In re Balcom*, *supra*, 101 Wn. App. at 59.

38. *Supra*, 137 Wn.2d at 992-993.

39. *Supra*, 101 Wn. App. at 59.

40. *Hicks*, *supra*, 32 Gonz. L. Rev. at 32.

41. *State v. Espinoza*, 112 Wn.2d 819, 826, 774 P.2d 1177 (1989).

42. *Ordell v. Gaddis*, *supra*, 99 Wn.2d at 410 (1983); *Lake v. Butcher*, 37 Wn. App. 228, 232, 679 P.2d 409 (Div. I, 1984).

43. RCW 2.08.185.



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Seventh Annual Access to Justice Conference: *Access to Peace through Justice*

by Sharlene Steele

The happening place to be June 7-9 was at the seventh annual Access to Justice Conference in Yakima. The Honorable **Michael E. Schwab** of Yakima Superior Court graciously welcomed the conference of more than 350 registrants to the "Palm Springs of Washington." Held in conjunction with the annual WSBA Bar Leaders Conference and Board of Governors meeting, the conference provided a unique opportunity for representatives of the access to justice community to connect with WSBA leadership.

Thanks go to the Access to Justice Board for its continued sponsorship of this very important conference. Great appreciation also goes to **Colleen Kinerk** for her extraordinary vision and leadership as chair of the ATJ Conference Planning Committee — this was Colleen's sixth year as chair!

Conference attendees expanded far beyond the "usual suspects" of legal-services staff and volunteer-attorney legal-service program staff. The courts were well-represented by judges, court clerks, court administrators and courthouse facilitators.

The WSBA Indian Law Section collaborated with the conference planning committee to coordinate a workshop designed to increase cooperation between state and tribal courts. Dean **Daniel Morrissey** of Gonzaga University School of Law and students from Seattle University School of Law and the University of Washington School of Law attended the conference to meet key players in the access to justice "movement" and increase their understanding of their roles in providing improved access to the justice system for low-income people.

Many alternative-dispute resolution providers attended the conference to discuss challenges they face in assisting clients to choose the appropriate dispute-



Top photo: Pete Dewell (pirate), Robert Welden (Captain Schnook), Hon. Marlin Appelwick (pirate), Zulema Hinojos-Fall (Smee) and Scott Smith (pirate).

Lower photo: The cast of Ada Pan.

resolution process. Paralegals and other non-attorneys attended to discuss ways non-attorneys can assist volunteer lawyers. As always, members of the Washington State Supreme Court were present to show their unwavering support. Also high on the justices' priority list was participation in diversity training designed to provide highly motivated leaders with sophisticated and powerful tools for tackling bias

and other ethical issues related to ensuring that inclusion, diversity and multicultural competence are justice imperatives.

The plenary session, "National Security/Civil Liberties/Diversity," featured a panel discussion moderated by **Denny Heck**, president of TV Washington. Distinguished panelists included **John McKay**, U.S. attorney, Western District of Washington; **Anthony Griffin**, American Civil

Liberties Union of Texas; **Tom Hillier**, Federal Public Defender's Office, Seattle; and **Sal Mungia**, American Civil Liberties Union of Washington. The panelists held a stimulating and informative discussion of challenges posed to the legal community and the public by 9/11 and its aftermath. The panel addressed issues such as: How has 9/11 changed our perception of national security needs? Can we increase security without compromising individual liberties? What groups are most affected by new legislation such as the USA PATRIOT Act?

The conference was also a time for recognizing several commendable equal justice visionaries. The Judicial Leadership Award was presented to Washington State Supreme Court Chief Justice **Gerry L. Alexander**. In his acceptance speech, Justice Alexander pledged: "As long as I am chief justice of the Washington State Supreme Court I will continue to beat the drum from the bully pulpit for increased funding for civil legal services." The Civil Equal Justice Community Partnership Award was presented to KING Television;

the Equal Justice Coalition Award was presented to lobbyists **Gail Stone** and **Sandi Swarthout**; and the WSBA *Pro Bono* Award was presented to **Matthew Geyman**.

And it was a time for fun and silliness. The infamous Moderately Talented (Yet Plucky) Theatre of Justice entertained the audience at the welcoming reception with the musical skit "Ada Pan." The musical was a humorous way to get a very serious message across: Funding for civil legal services for low-income people is stretched far beyond the limit, and attorney volunteers are desperately needed to help fill the gap. **Mary McQueen** (administrator of the Office of the Courts) as Ada Pan; Supreme Court Justices **Alexander**, **Ireland**, **Owens** and **Sanders** as the Supremes; and the entire cast promised: "We won't give up!"

The eighth annual Access to Justice Conference will be held June 6-8, 2003, in Wenatchee. We hope you will join us. For additional information, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org. ☞

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A Call to Join in the Discussion of Washington Drug Policy

by Ellen Begley

I am writing this article as a new employee of the WSBA Lawyers' Assistance Program (LAP). Just five months ago, I was unaware of this remarkable community of lawyers aiding other lawyers. Now I work as a psychologist and addictions counselor in the LAP, providing confidential addiction treatment and therapy to individual attorneys. The more I learn about this position, the more impressed and humbled I am by the rich history of community responsiveness to which the LAP owes its existence.

Recently, it has come to my attention that the legal community, led by the King County Bar Association (KCBA), is attempting to change the way in which legal problems related to substance abuse are dealt with in Washington. There is ongoing discussion among legal, medical and mental-health professionals about ways to effectively address the problem of addiction. Foremost is the issue of large numbers of drug-related offenses overwhelming our legal system. The King County Bar Association cites statistics indicating that 60 percent of people arrested for any crime in Seattle and Spokane from July 1998 to June 1999 tested positive for drug use. In Spokane, 43 percent of men and 44 percent of women with either drug or non-drug charges indicated they would like the opportunity to participate in substance-abuse treatment.

In 1996, the cost of drug abuse to individual citizens and the state budget was estimated to be \$2.54 billion. Fifty-nine percent of that amount was attributable to alcohol and 41 percent to other drugs. Separating out governmental expense, substance abuse cost the state budget \$1.51 billion in 1998. Along with these disheartening statistics, anyone whose life has been impacted by addiction knows the staggering nonquantifiable costs of psychological

distress, physical injury, illness and death that result from substance abuse.

The problem extends into the community of attorneys in Washington. Chief Disciplinary Counsel Joy McLean, of the WSBA Office of Disciplinary Counsel, reports that "we suspect it [addiction and/or mental health issues] in probably 50 percent or more [disciplinary] cases." Other states have also documented that the substance-abuse problem among lawyers is significant.

State efforts to make policy changes are reflective of a national re-evaluation of the effectiveness of America's "war on drugs" (<http://www.fas.org/drugs/principles.htm>). At a national level, the societal response to the problem of substance abuse has been wild in its ambivalence. Just as addiction inspires individuals to resort to a range of defenses, such as denial or ineffective attempts at control, the laws of our land regarding the use of mind-altering substances have ranged from minimization of the problem to a punitive battle. Thankfully, the newest effort on both national and state levels seems to be an attempt to balance the medical model of addiction with the need for clear consequences for illegal behavior.

There is a great need for attorneys interested in addiction issues to join in the process of changing current drug policy. As discussed in former KCBA President Fred Noland's columns in the *King County Bar Bulletin* (November 2000, May and June 2001), and WSBA Governor Ken Davidson's guest column in *Bar News* (April 2002), the King County Bar Association has proposed specific changes in the way in which the legal system responds to the problem of substance abuse. (See http://www.kcba.org/drug_law/druglaw_index.htm for the KCBA's

drug policy and other related information.) In 2001, the WSBA Board of Governors followed up with a statement of resolution regarding drug-abuse policies in Washington. For a copy of the board's resolution, see www.wsba.org/2001/drugpolicy/resolution.htm.

The KCBA policy proposes that addiction problems related to alcohol, tobacco and illegal drugs may be better viewed as a public-health rather than a criminal-justice issue. The KCBA is gathering working groups to develop recommendations for drug-abuse prevention, treatment, and the use of criminal sanctions. Central recommendations of the proposal state that: 1) addiction treatment should be available to every Washington resident; 2) treatment should be coordinated with other services such as mental-health care; 3) a proactive effort should be made to provide treatment to minors; and 4) a commitment should be made to adequate funding of addiction treatment in Washington.

If you are interested in more information about the KCBA drug-policy project, or wish to participate, contact Fred Noland at fredn@mhb.com or Roger Goodman at re_goodman@hotmail.com. The phone number for the KCBA drug-policy project is 206-624-3565.

The sooner we join in the dialog, the more likely we can influence the ultimate report. Fred Noland states that the next few months should be the best window of opportunity for concerned attorneys to contribute to the discussion. Based on my experience with LAP, I believe Washington lawyers have much wisdom to give to this policy-making process. ♣

Ellen Begley, Ph.D., is a psychologist and addictions counselor in the WSBA Lawyers' Assistance Program. For more information, call the LAP at 206-727-8268.

Changing Venues

Honors and Awards

Joanne Blackburn has been voted president-elect of the Washington Defense Trial Lawyers. An owner in the Seattle firm Garvey Schubert Barer, Ms. Blackburn focuses on insurance coverage and defense, construction, products liability, and general litigation.

Former U.S. Attorney **Bruce Carter** has received the Distinguished Alumnus Award from Centralia College. Mr. Carter was student-body treasurer, class presi-



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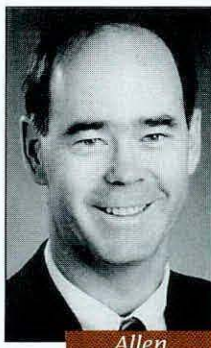
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Movers and Shakers

Sharon Friedrich has joined McKinley & Irvin PLLC as a senior associate concentrating on complex family-law litigation.

Angelie Chong has joined the Seattle firm Groff Mur-

phy Trachtenberg & Everard PLLC, focusing on commercial litigation and construction law.

Karen A. Klein has joined TOPICS Entertainment as in-house counsel. TOPICS is the ninth-largest software publisher in the United States.

Lawrence J. Wheeler has joined the Spokane firm P.B. Morgan & Associates as an associate focusing on business law.

Stuart C. Allen has joined the Seattle office of Lane Powell Spears Lubersky LLP as a partner in the business group. Mr. Allen represents hospitality and travel businesses, including resort and hotel developers, marketing and sales companies, and homeowners associations.

Peter Livingston has joined the real estate and land use team at the Portland firm Schwabe Williamson & Wyatt PC. He focuses on all stages of land-use permitting, including appeals.

Murray T.S. Lewis has joined the Seattle firm Short Cressman & Burgess PLLC as of counsel. As a member of the litigation group, he concentrates on commercial dispute resolution and litigation.

The Honorable **Frederick "Fritz" Hayes** has joined JAMS as a resolution expert. Prior to joining JAMS, he served as a Pierce County Superior Court judge for 12 years. ☞

dent, and Washington State Junior College debate champion when he attended Centralia College.

James R. Dickens, **Geoffrey Groshong**, **Brooks E. Harlow** and **Andrew H. Salter** have been named "superlawyers" by *Washington Law & Politics* magazine. All are partners in the Seattle firm Miller Nash LLP.

IN MEMORIAM

Long-time Spokane lawyer **William V. Kelley** died August 21 at age 98. Retired from Witherspoon, Kelley, Davenport & Toole in 1976, Mr. Kelley practiced insurance defense and business litigation for more than 40 years. He continued going into his office every day until a few years ago. In the 1940s, he was a professor of evidence at Gonzaga University School of Law, and he served on the GU Law School Council in the 1970s. A reading room was dedicated in his name at the new law school building in 1999.

Seattle lawyer **Hubert "Joe" Merrick** died August 24 at age 83. A Seattle native, Mr. Merrick began practicing law in 1950 and continued to visit his First Hill office until shortly before his death. When he turned 80, his partners named the firm's building after him. Mr. Merrick could frequently be found at Vito's, a watering hole that for years was a favorite hangout of lawyers, judges and politicians. He was a three-

sport star at Seattle Prep, where he was inducted into the athletic hall of fame in 1998. He attended Seattle College, now Seattle University, and then pitched in the Chicago White Sox minor-league system, rising to the AAA level.

Former 9th Circuit Court of Appeals judge **Eugene Wright** died September 3 of pneumonia and congestive heart failure. He was 89. Judge Wright graduated from the University of Washington School of Law in 1937. He practiced with his father for four years before joining the Army, where he translated Japanese documents and interrogated prisoners in the South Pacific. Judge Wright was appointed to King County Superior Court in 1954 and served for 12 years, until President Nixon appointed him to the 9th Circuit Court of Appeals. Remembrances may be made to the Eugene A. Wright Scholarship Fund at the University of Washington School of Law (1100 NE Campus Parkway, Seattle, WA 98105).

2002 WSBA Award Recipients

The WSBA is pleased to announce the winners of the 2002 Annual Awards:

J. Matthew Geyman, *Pro Bono Award*
 Walter R. Kreuger, *President's Award*
 Jerald R. Hamley, *Angelo Petruss Award*
 for Lawyers in Public Service
 Lise Olsen, *Excellence in Legal Journalism Award*
 Stephen R. Crossland, *Award of Merit*
 William A. Jaquette III, *Courageous Award*
 Justice Charles Z. Smith, *Lifetime Service Award*
 Smithmoore P. Myers, *Professionalism Award*
 Judge Michael S. Hurtado, *Outstanding Judge Award*
 Judge James M. Murphy, *Outstanding Judge Award*

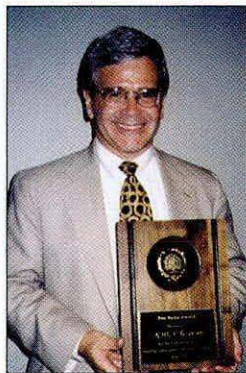
We regret that a photo of Ms. Olsen was not available at press time.



New governors being sworn in by Justice Charles Z. Smith (far right). L-R: Dale Carlisle; Dick Manning; new governors Joni R. Kerr, Howard L. Graham, Andrea Brenneke and Ronald R. Ward



Geyman



Kreuger



Hamley



Crossland



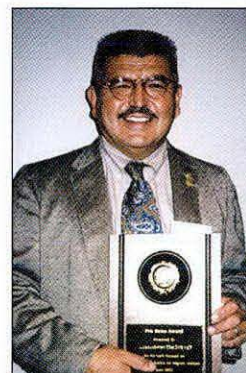
Jaquette



Smith



Myers



Hurtado



Murphy



Honoring the WSBA's 50-Year Members

The Washington State Bar Association proudly congratulates its 100 members who are celebrating 50 years of membership in the Bar and service to the public this year.

Vincent H. D. Abbey, Seattle
 Brockman Adams, Stevensville, MD
 Douglas Frank Albert, Federal Way
 Robert J. Allerdice, Seattle
 Paul Judson Allison, Spokane
 James A. Andersen, Bellevue
 Roy Franklin Atwood, Bellingham
 Alfred John Bianchi, Seattle
 Daniel Peter Brink, Seattle
 Dennis Judson Britt, Everett
 Ramon E. Brown, Camano Island
 Richard W. Buchanan, Seattle
 Melvin Francis Buol, Shoreline
 Keith M. Callow, Seattle
 Stephen Fowler Chadwick, Bainbridge Island
 Maxwell R. Chapman, Spokane
 Carlton G. Conkey, Walla Walla
 Donald John Crawford, Scottsdale, AZ
 Gordon Calvin Culp, Seattle
 Walter E. Curnutt, Selah
 R. Wayne Cyphers, Sarasota, FL
 Joseph Paul Delay, Spokane
 Lauren W. Dobbs, Yakima
 James Morgan Dolliver, Olympia
 Frank J. Dorsey, Coronado, CA
 Kingsley B. Eaton, Daly City, CA
 Donald A. Ericson, Poulsbo
 William Erskine Eubank, Glendale, AZ
 James Fernan, Alexandria, VA
 Stuart Crawford Gual, Pittsburgh, PA
 John Jarrard Gibbons, Los Angeles, CA
 Wayne Gladstone, Richland
 David N. Gordon, Portland, OR
 Ray Graves, Tacoma

G. Keith Grim, Seattle
 Ellsworth Gump, Spokane
 John Faris Hall, Seattle
 Raymond W. Haman, Langley
 William D. Hamilton, Seattle
 John Franklin Hansler, Tacoma
 Bruce P. Hanson, Yakima
 Edward F. Harris, Cathedral City, CA
 Thomas Aston Harris Hartwell,
 San Francisco, CA
 John E. Heath, Spokane
 Paul Hoffman, Lakewood
 Elihu Hurwitz, Laguna Woods, CA
 John Charles Huston, Seattle
 Donald Wayne Ireland, Duluth, MN
 Harold Alvin Irish, San Francisco, CA
 H. Victor Johnson, Lacey
 Arthur J. Lambo, Kirkland
 Herbert Hugh Legg, Olympia
 Gordon Allard Livengood, Seattle
 Melvin V. Love, Bellevue
 John P. Lycette, Seattle
 Roy Edwin Mattern, Bellevue
 Kathryn Ann Mautz, Spokane
 James J. May, Hailey, ID
 James Ben McInturff, Spokane
 Byron Eugene McClanahan, Shelton
 Alan A. McDonald, Yakima
 Joseph T. Mijich, Seattle
 Jacob A. Mikkilborg, Seattle
 John Presley Mucklestone, Seattle
 Virginia S. Mueller, Sacramento, CA
 Grant Austin Mueller, Wenatchee
 Andrew Toft Nielsen, Everett

Joseph G. Panattoni, Ellensburg
 Wayne R. Parker, Kent
 Richard Glenn Patrick, Pasco
 Louis Henry Pepper, La Conner
 Walter Fenton Pitts, Olympia
 Dean F. Ratzman, Spokane
 Edward A. Rauscher, Bellevue
 John F. Raymond, Seattle
 John Warren Riley, Bellevue
 Phyllis Adelaide Kem Schatz, Everett
 Phyllis Dolvin Schoedel, Spokane
 Larry C. Shannon, Olympia
 Patrick H. Shelledy, Seattle
 John Thune Slater, Bellingham
 Max D. Soriano, Seattle
 Orly J. Sorrel, Seattle
 Robert Wesley Speck, Coeur d'Alene, ID
 Howard P. Staley, Fairbanks, AK
 Paul Winsor Steere, Seattle
 Samuel Joseph Steiner, Seattle
 Milton John Stickle, Chevy Chase, MD
 James Bentley Strong, Olympia
 Kenneth W. Sullens, Graham
 Duane Eugene Taber, Pasco
 James Milton Taylor, Issaquah
 William Roscoe Thomas, Mercer Island
 Gordon Neil Tocher, Redding, CA
 Robert W. Twigg, Cusick
 Stephen C. Way, Olympia
 William O. Webb, Naples, FL
 Robert Curtis Wetherholt, Shoreline
 Paul M. Williams, Hansville
 William Porter Wimberley, Kihei, HI

Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Washington State 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.

Suspended

Patricia A. Toy (WSBA No. 20178, admitted 1990), of Tacoma, was suspended for 60 days by order of the Supreme Court effective May 8, 2002, following a stipulation. This discipline is based on her failure to properly maintain her IOLTA account from 1998 through 2000.

The WSBA audit manager examined Ms. Toy's trust-account records for the period December 1998 through November 2000. During this period, Ms. Toy did not maintain contemporaneous balances of the funds in the trust account or prepare individual client ledgers. For some of the months during the audit period, Ms. Toy did not retain bank statements or cancelled checks. Ms. Toy did not have sufficient records for the audit manager to reconstruct the account activity. The audit manager obtained microfiche records from the bank, and reconstructed a check register and client ledgers.

Prior to February 2000, Ms. Toy was not able to obtain a personal checking account. During this period, Ms. Toy used her IOLTA account as her personal checking account. Ms. Toy retained earned fees in the trust account and deposited earned fees into the trust account to cover her personal disbursements. In February 2000, She obtained a personal checking account and made no further personal disbursements from her IOLTA account. No clients lost funds or were denied access to their funds during this period of time.

Ms. Toy's conduct violated RPCs 1.14(b)(3), requiring lawyers to maintain complete records of all funds in their possession and render appropriate accounts to clients; and 1.14(a), prohibiting lawyers from maintaining personal funds in their trust accounts, except for amounts to pay bank charges or amounts in dispute.

Randy Beitel represented the Bar Association. Ms. Toy represented herself.

Suspended

Robert N. Getz (WSBA No. 17926, admitted 1980), of Everett, has been suspended for six months by order of the Supreme Court approving a stipulation, effective May 1, 2002. This discipline is based on his *ex parte* contact with one of the parties of a mandatory arbitration and the abuse of his position as arbitrator in 2000.

Mr. Z, former husband of Ms. S, moved for lowered child support and the court ordered mandatory arbitration. Mr. Getz was the court-appointed arbitrator. At the conclusion of the hearing, Mr. Getz asked Ms. S to remain behind in his office. Once alone, Mr. Getz described matters of a sexual nature, and at one point began to rub or massage Ms. S's shoulders. Ms. S told him she had to leave and he walked her to her vehicle. Mr. Getz then told her he wanted to take her to dinner.

On June 8, 2000, Mr. Getz left a message for Ms. S at her home asking her to return his call, leaving his personal cell phone number. On June 9, Ms. S called his office and left a message instructing Mr. Getz to leave a message for her if he needed more information to make his decision. Mr. Getz did not call Ms. S again.

On June 8, Mr. Getz mailed his award and filed his decision with the court. Mr. Getz's decision reduced the child support as requested by Mr. Z. Ms. S subsequently filed for a trial *de novo*. The trial court upheld Mr. Getz's decision.

Mr. Getz's conduct violated RPC 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice.

Christopher E. Young and Jean McElroy represented the Bar Association. Leland Ripley represented Mr. Getz.

Suspended

Yukio Morikubo (WSBA No. 21608, admitted 1992), of Redmond, has been suspended for 60 days by order of the Supreme Court approving a stipulation, effective May 30, 2002. This discipline is based on his practice of law while suspended, and failure to file an affidavit of compliance from 1997 to 2000.

By order on December 26, 1997, the Su-

preme Court suspended Mr. Morikubo from the active practice of law in Washington for failure to comply with mandatory continuing legal education (MCLE) requirements. Notice of this suspension was sent the same day, by letter, to Mr. Morikubo. Following his suspension, Mr. Morikubo failed to file an affidavit establishing compliance with the provisions of RLD Title 8.

In March 1999, Mr. Morikubo requested information regarding the amount of license fees, late fees and CLE credits required for him to be reinstated to active practice. By March 2001, Mr. Morikubo had obtained sufficient credits to satisfy the CLE requirement, and had paid the applicable fees and penalties. He submitted an application for change in membership status which stated that he had engaged in "direct or continuing active legal experience since [he] became suspended." Specifically, Mr. Morikubo disclosed that he had been employed as corporate counsel for two companies and as an associate in a Seattle law firm during his suspension. During this period of time, Mr. Morikubo did not appear in court.

On April 24, 2001, the MCLE Board sent a declaration of compliance to the Supreme Court. By order of the Supreme Court, entered April 27, 2001, Mr. Morikubo was reinstated to the active practice of law.

Mr. Morikubo's conduct violated RPC 5.5(a), which prohibits lawyers from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; RLD 8.2, which states a disbarred or suspended lawyer shall not accept any new retainer, give any legal advice, or act as the lawyer for another in a pending case or legal matter of any nature after the effective date of his or her disbarment or suspension; and RLD 8.3, which states a lawyer shall, within 25 days after the effective date of his or her disbarment, suspension or transfer to disability inactive status, file an affidavit with the Bar Association stating that he or she has fully complied with the provisions of these rules.

Douglas Ende represented the Bar Association. Kurt Bulmer represented Mr. Morikubo.

Suspended

Scott Wheat (WSBA No. 25565, admitted 1995), of Suquamish, has been suspended for 18 months by order of the Supreme Court approving a stipulation, effective May 30, 2002. This discipline is based on his submitting a false statement to the court; disregarding the rule of law; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation from 1999 to 2001.

On September 13, 1999, Mr. Wheat was charged with driving under the influence of drugs and/or alcohol, and possession of a controlled substance. On September 17, Mr. Wheat entered the Kitsap County Drug Court Program. In order to participate in the program, Mr. Wheat agreed to seek drug and alcohol treatment as directed by the drug court, and to remain clean and sober for six months before he could graduate from the program. Mr. Wheat agreed to provide the drug court with access to his treatment reports. As part of the agreement, the state agreed to dismiss the charges if he successfully completed the program. If Mr. Wheat failed to abide by the terms of the program, he agreed to have a stipulated trial.

Mr. Wheat obtained the ordered drug and alcohol treatment. During the treatment, urinalysis test results were reported to the treatment center by a testing facility. On at least five occasions during 2000, the test results were positive for marijuana. However, the treatment center submitted reports to the court indicating that Mr. Wheat's tests were clean of drugs. In September 2000, the treatment center filed a report indicating that Mr. Wheat had successfully completed the ordered treatment. In August, Mr. Wheat submitted a written statement to the court implying that he had not used illegal drugs or alcohol for nine months. In September, the court dismissed the charges against Mr. Wheat, with prejudice.

On March 10, 2001, Mr. Wheat was arrested for driving while intoxicated. On September 28, 2001, the court granted him a deferred prosecution providing he receive drug and alcohol treatment for 24 months and be supervised for 60 months. On January 11, 2002, the court vacated the dismissal of the criminal charges against Mr. Wheat on the grounds that the mis-

representation by the treatment center was the basis for the order of dismissal. The charges were reinstated and Mr. Wheat was found guilty after a stipulated trial.

Mr. Wheat's conduct violated RLD 1.1, prohibiting lawyers from committing acts involving moral turpitude, dishonesty or corruption; or any unjustified act of assault or other act which reflects disregard for the rule of law; and RPC 8.4(c), which prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Jonathan Burke represented the Bar Association. Zachary L. Fleet represented Mr. Wheat.

Suspended

Paul White aka Krishan Kumar (WSBA No. 26511, admitted 1996), of Tukwila, was suspended for 30 days by order of the Supreme Court approving a stipulation, effective December 20, 2001. This discipline is based on his failure to represent a client diligently and competently, and on making a false statement of material fact to a tribunal. (*Note: Mr. White is to be distinguished from Paul J. White of Golden, Colorado; WSBA No. 11585.*)

In March 1997, Mr. White agreed to represent two clients who were plaintiffs in a personal-injury lawsuit. Prior to Mr. White's involvement, the clients filed a lawsuit in King County Superior Court and each received a \$10,298 arbitration award. The defendant's counsel appealed the arbitration award and trial was set for May 24, 1997. The order setting the trial date indicated that no further continuances would be granted for plaintiffs' lack of counsel.

At this time, Mr. White had been admitted to the Washington State Bar Association for four months, had never tried a case in King County Superior Court, and was not familiar with superior court practice. Mr. White did not conduct any additional discovery prior to the trial date. He did not know that the clients had received the earlier arbitration award or that the defendants had appealed that award. Mr. White did not investigate the client's history of numerous prior automobile accidents. Mr. White did not subpoena any witnesses for trial, including the client's

treating physician, nor did he interview any of the defense's 65 witnesses. He did not file a trial brief, prepare jury instructions, or review the local court rules.

When the parties arrived for trial, the clerk told them that the case would not go to trial that day. Mr. White told opposing counsel that he needed to continue the case because he had a criminal matter in California on June 3 and 4, 1997. In reality, Mr. White and a client had an INS appointment regarding a business matter. As part of the business matter, Mr. White's client would undergo a criminal background check. On June 3, the clerk informed Mr. White that the trial would be heard on June 4. Mr. White filed a motion for continuance of the trial date.

In the supporting affidavit, Mr. White stated that he would be in California for a "criminal investigation related to a federal matter." Mr. White also stated that he had been in Chicago on May 28 to attend a criminal matter. Although he planned to go to Chicago, he advised his client to find another lawyer, because he needed to stay in Seattle to wait for the trial to start. Mr. White did not appear for trial on June 4. The client appeared with a paralegal, and the judge ordered that the case go forward. The jury returned a verdict in favor of the defendants.

Mr. White's conduct violated RPCs 4.1 and 3.3, prohibiting lawyers from making false statements of material fact; 1.3, requiring lawyers to diligently represent their clients; and 1.1, requiring lawyers to competently represent their clients.

Sachia Stonefeld Powell represented the Bar Association. Joseph J. Ganz represented Mr. White.

Reprimand

Andrew G. Burnfield (WSBA No. 4271, admitted 1964), of Seattle, received a reprimand on May 10, 2002, based on a stipulation approved by the Disciplinary Board in January 2002. This discipline is based on his sharing of legal fees with a nonlawyer, assisting in the unauthorized practice of law, and conflict of interest from 1999 to 2000.

On January 7, 2000, Mr. M, an insurance agent for an estate-planning group, met with Mr. D and his wife and provided them with information to complete an

estate-planning application and a revocable living-trust package. Mr. M collected \$1,495 from the Ds, and contacted Mr. Burnfield, who did not have a prior relationship with the Ds.

On January 11, 2000, Mr. Burnfield contacted Mr. D to discuss the revocable living-trust package. On January 18, Mr. Burnfield received a \$600 check from Mr. M. Shortly thereafter, Mr. Burnfield drafted two wills, a trust, and two medical power-of-attorney forms, based on the information given to him by Mr. M. Mr. Burnfield had several telephone contacts with Mr. D in late January and February, and during this time Mr. D expressed doubts about his and his wife's need for a revocable living trust.

On February 25, during a phone call, Mr. Burnfield informed Mr. M that the Ds were ready to sign the living-trust documents. On February 28, Mr. Burnfield and Mr. M visited the Ds, who signed the documents. In late March, the Ds' daughter contacted Mr. Burnfield to request a refund of the money her parents paid for the estate-planning documents. Mr. Burnfield refused, and directed the daughter to Mr. M.

Between April and June 2000, Mr. Burnfield continued to work on the trust, twice visiting the Ds' home to discuss the transfer of assets. On July 10, Mr. D wrote to Mr. Burnfield stating he did not want to have any further dealings with him, and requesting a refund. Mr. Burnfield wrote back that he would not further contact Mr. D, but would assist him in transferring assets if he changed his mind.

On September 2, 2000, Mr. M refunded \$895 to Mr. D and informed him the remaining \$600 was paid to Mr. Burnfield as a retainer. On March 9, 2001, Mr. Burnfield returned \$100 of the payment, stating he had held the \$100 to cover filing costs for the trust. The Ds had not requested his services to transfer the assets for the trusts.

Between April 1999 and July 2000, Mr. M sent 12 applications from purchasers of estate-planning packages to Mr. Burnfield. In each case, Mr. M collected the fee from the purchaser, Mr. Burnfield drafted the trust documents, and Mr. M sent Mr. Burnfield a check for providing these services. Mr. Burnfield did not disclose to any

of the clients that he had a continuing business relationship with Mr. M. Mr. Burnfield did not obtain written consent from the clients indicating they were informed of his continuing business relationship with Mr. M and still wished to be represented by Mr. Burnfield.

Mr. Burnfield's conduct violated RPCs 5.4(a), stating that lawyers shall not share legal fees with nonlawyers; 5.5(b), stating that lawyers shall not assist persons who are not members of the Bar in the performance of activity that constitutes the unauthorized practice of law; 1.7(b), stating that lawyers shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to a third person; and 1.8(f), stating that a lawyer shall not accept compensation for representing a client from someone other than the client.

Mark F. Rising and Kevin Bank represented the Bar Association. Mr. Burnfield represented himself.

Reprimand

Richard T. Hoss (WSBA No. 12976, admitted 1982), of Shelton, received two reprimands based on a stipulation approved by the Disciplinary Board on March 8, 2002. The discipline is based on his directing a family member to assist a client in signing a will.

In the 1980s, Mr. Hoss regularly advised the Js regarding personal matters and their residential development, golf course and resort. Prior to 1990, Mr. Hoss performed estate-planning work for the Js. Sometime after this, Ms. J contacted another lawyer and executed a new will. On January 25, 1990, Ms. J was in the hospital in deteriorating condition. Mr. Hoss met with Ms. J with one of her three daughters present. Following this meeting, Mr. Hoss prepared a new will for Ms. J.

On January 29, Mr. Hoss, his secretary, two of the daughters, Ms. J's doctor and a nurse entered Ms. J's room for the purpose of executing the new will. The witnesses dispute whether or not Ms. J was comatose. After reading the will to Ms. J, Mr. Hoss directed one of the daughters to take Ms. J's hand and make an "X." Mr. Hoss asked the doctor and nurse to sign witness statements without explaining the legal effect of these statements. Ms. J died

within four hours of her signature being placed on the new will. Although the new will was admitted to probate, Mr. J refused to honor the bequests made to the daughters.

Mr. Hoss's conduct violated RPCs 1.1, requiring lawyers to competently represent their clients; 1.3, requiring lawyers to diligently represent their clients; and 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice.

Maria Regimbal and Jean McElroy represented the Bar Association. Kurt Bulmer represented Mr. Hoss. The hearing officer was J.C. Becker.

Reprimand

Craig E. Kastner (WSBA No. 8141, admitted 1978), of Poulsbo, received a reprimand on May 10, 2002, based on a stipulation approved by the Disciplinary Board in January 2002. This discipline is based on his failure to disclose to the tribunal all relevant facts in an *ex parte* proceeding.

Mr. C, a former tenant at an Issaquah building property, retained Mr. Kastner in May 2000 to represent him in a pending suit against the property owner and the roofing company that installed a new roof at the property. Mr. C sought damages based on exposure to roofing materials. Attorney Ms. S represented the property owner until her dismissal in June 2000.

On or before March 2001, Mr. Kastner contacted Mr. S about removing a sample of the roof for testing. Mr. S told Mr. Kastner he did not see a problem in permitting him to obtain a sample of the roof, and that he would seek the new building owner's approval. Mr. Kastner prepared and filed a motion for taking a sample of roofing material, and declaration in support of a motion dated March 23, 2001.

The March 23 declaration stated: "I have contacted the attorney who represented the owner of the building before being dismissed ... and he did not believe there would be a problem in obtaining a sample of the roof." Mr. S called Mr. Kastner before April 3 to notify him that the property owner would not voluntarily agree to the removal of the roof sample. On April 3, Mr. Kastner obtained a judge's signature on the proposed order permitting the sample. Mr. Kastner did not ad-

wise the court that Mr. S told him that the property owner would not voluntarily agree to the sample removal. On April 19, the sample was removed from the property.

Mr. Kastner's conduct violated RPC 3.3, requiring a lawyer, in an *ex parte* proceeding, to inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Nancy Miller represented the Bar Association. Patrick C. Sheldon represented Mr. Kastner.

Reprimand

Dennis G. Ott (WSBA No. 12172, admitted 1981), of Kelso, received a reprimand on May 10, 2002, based on a stipulation approved by the Disciplinary Board in January 2002. This discipline is based on his failure to abide by a client's decisions, failure to act with reasonable diligence, and failure to keep clients reasonably informed about the status of their matters from 1999 to 2000.

The Fs hired Mr. Ott on April 22, 1999 to initiate a nonjudicial foreclosure sale on real property in Pacific County. The clients instructed Mr. Ott to proceed with the sale immediately. On April 23, Mr. Ott sent the buyers a letter informing them that the Fs had retained him to initiate a foreclosure of their interests on the property. Mr. Ott did not cause a notice of default to be issued and posted on the property until June 10. Mr. Ott executed a notice of trustee sale on July 14, and set the date of the trustee's sale for October 14. The notice was legally deficient because Mr. Ott had not been appointed successor trustee of the deed of trust and he set the sale in Cowlitz County, though no part of the property is in that county.

On August 26, the buyers filed bankruptcy, Mr. Ott received notice, and the bankruptcy court set the meeting of creditors for October 6, 1999. The Fs did not learn of the bankruptcy proceeding until October 8, when they called Mr. Ott's office and spoke to his secretary. On the same day, they wrote Mr. Ott a letter shortly after inquiring about the bankruptcy. Mr. Ott did not respond to either the call or the letter. Although Mr. Ott was

notified, he did not attend the meeting. Mr. Ott did not advise the Fs that through the bankruptcy they might have a right to the money the buyers collected as rent and/or to the personal property the buyers removed from the property.

On December 20, 1999, Mr. Ott obtained a second notice of resignation and appointment of successor trustee, but he failed to record the notice. Even though Mr. Ott lacked the statutory authority to act, he initiated a second foreclosure proceeding on December 28 by mailing and serving a second notice of default on the buyers. By letters dated January 10 and 28, 2000, Mr. Ott erroneously informed the Fs that the notice of resignation and appointment of successor trustee was in effect and the foreclosure was progressing on schedule.

On January 28, Mr. Ott signed and processed a second notice of trustee sale. The notice contained a typographical error setting the trustee's sale for Sunday rather than Friday as required by RCW 61.24.040. The notice of trustee sale was deficient because Mr. Ott failed to follow the time requirements in the statute and failed to publish the notice in a newspaper. In April, Mr. Ott billed the Fs \$1,320 in additional attorney's fees. Mr. Ott voluntarily refunded the original retainer and wrote off the additional bill.

Mr. Ott's conduct violated RPCs 1.2, requiring lawyers to abide by clients' decisions concerning the objectives of representation; 1.3, requiring lawyers to act with reasonable diligence and promptness in representing clients; and 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters and promptly comply with any reasonable requests for information.

William D. Robison and Anthony Butler represented the Bar Association. Leland G. Ripley represented Mr. Ott.

Reprimand

Mark C. Prothero (WSBA No. 18702, admitted 1989), of Spokane, received a reprimand on April 5, 2002, following a stipulation approved by the Disciplinary Board in November 2001. This discipline is based on his failure to properly manage his trust account from 1998 to 2000. (*Note: Mr. Prothero is to be distinguished from Mark*

W. Prothero of Kent; WSBA No. 12400.)

As a result of overdrafts on Mr. Prothero's trust account, the WSBA audit manager examined his account and records for the period January 1998 to November 2000. The examination revealed that Mr. Prothero did not maintain a contemporaneous running balance of the funds in his trust account and did not maintain client ledgers. Mr. Prothero did not reconcile trust-account statements received from the bank with individual client ledgers. During the same period, Mr. Prothero transferred funds from the trust account to his general checking account without any client identification or purpose stated for the transfer. Mr. Prothero deposited funds into the trust account without any client identification, and disbursed funds from the account in excess of the amount individual clients had on deposit. He also disbursed funds on behalf of some clients from the funds of other clients and failed to reimburse the account for bank charges that were his responsibility.

Mr. Prothero was not aware of the shortages until the overdrafts and the subsequent examination by the WSBA audit manager. By October 4, 2001, Mr. Prothero had deposited his own funds into the trust account to correct the shortage.

Mr. Prothero's conduct violated RPCs 1.14(b)(3), requiring lawyers to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer, and render appropriate accounts to his or her client regarding them; and 1.14(a), requiring that all funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable interest-bearing trust accounts, and no funds belonging to the lawyer shall be deposited therein.

Randy Beitel represented the Bar Association. Mr. Prothero represented himself.

Censured

Virginia Coop-Ullman (WSBA No. 19378, admitted 1990), of Kent, received a censure following a hearing in 2001. This discipline was based on her failure to diligently represent and adequately communicate with a client from 1997 through 1999.

In August 1997, Ms. Coop-Ullman agreed to represent the husband in a marital-dissolution action. In September 1999, Ms. Coop-Ullman failed to appear for a contempt hearing against her client. She also failed to attend the settlement conference and timely file required witness and exhibit lists. On the original trial date, Ms. Coop-Ullman requested a continuance. The court granted a 15-day continuance and imposed \$100 in sanctions.

On November 16, 1999, the court informed Ms. Coop-Ullman that the trial would be held on November 22. Ms. Coop-Ullman did not inform her client of this continuance. Neither Ms. Coop-Ullman nor her client appeared for the trial date. The court entered an order of default and signed the final orders prepared by the wife's lawyer. Ms. Coop-Ullman received copies of the final orders in late November, but did not contact her client until December 1999. She took no steps to cure or revise the orders. The sanction imposed in this matter considered significant mitigating factors.

Ms. Coop-Ullman's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; and 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters.

Jonathan Burke represented the Bar Association. Kurt Bulmer represented Ms. Coop-Ullman. The hearing officer was Lish Whitson.

In Memory of Clare Cox

The WSBA notes with sadness the death of our friend and co-worker Clare Cox, who passed away suddenly on September 9. Clare was a talented desktop publisher who was known for her delightfully quirky sense of humor. During her six-year career at the WSBA, Clare worked with many section newsletter editors on their publications. She also designed and produced CLE brochures, the *WSBA Membership Guide*, and numerous other materials. We will miss her.

Legal Foundation of Washington Board of Trustees

Application deadline: November 15, 2002

The WSBA Board of Governors is accepting letters of interest from members interested in serving a two-year term on the Legal Foundation of Washington (LFW) board of trustees (one position). Incumbents are eligible for re-appointment (up to two consecutive terms) and must also submit a letter of interest. The LFW 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. More information about trustee responsibilities is available by e-mailing bcclark@legalfoundation.org. Please submit a letter of interest and résumé to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Northwest Justice Project Board of Directors

Application deadline: November 15, 2002

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Northwest Justice Project (NJP) board of directors (two positions). Incumbents are eligible for re-appointment and must also submit a letter of interest. The three-year term commences in January. The NJP is a not-for-profit organization that 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. More information about board member responsibilities is available by e-mailing mac@nwjustice.org. Please submit a letter of interest and résumé to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Limited Practice Officer Board – Two Positions

Application deadline: November 15, 2002

The WSBA Board of Governors will be nominating two members who are appointed by the Supreme Court to serve a four-year term on the Limited Practice Officer Board, commencing January 1, 2003. Incumbents are eligible for re-appointment (up to two consecutive terms) and must also submit a letter of interest. The board oversees administration of and compliance with the Limited Practice Officer Rule (APR 12), and meets every other month. Please submit a letter of inter-

est and résumé to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

BOG Meetings

December 6-7 – Everett
 January 17-18 – Olympia
 February 6 – Seattle

With the exception of a one-hour executive session the morning of the first day, BOG meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org. The complete BOG schedule is available on the WSBA Web site at www.wsba.org/bog/schedule.htm.

Information Updates

Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory at <http://pro.wsba.org>. If any of your contact information has changed, please notify the WSBA Service Center as soon as possible. You may contact us by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling us at 800-945-WSBA or 206-443-WSBA.

LOMAP on the Road — Smart Strategies for Improving Efficiency

WSBA's Law Office Management Assistance Program (LOMAP) kicks off its annual traveling seminar series in October 2002. LOMAP Manager Pete Roberts and Professional Responsibility Counsel Chris Sutton present "Smart Strategies for Improving Efficiency." Topics include case-management software and client management, plus a segment about transitions in lawyers' careers. The course offers 4.0 credits, including 2.0 ethics credits (CLE credits pending at press time). Cost is \$69. For more information, please see www.lomap.org or contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Reference event code LOM1102. "LOMAP on the Road" will visit:

October 21	Pullman	Quality Inn Paradise Creek Conference Center
October 22	Walla Walla	Holiday Inn Express
October 23	Richland	Hampton Inn Richland
October 24	Yakima	West Coast Yakima Center Hotel
November 5	Vancouver	Phoenix Inn Vancouver
November 6	Ocean Shores	Quinault Beach Resort
November 7	Olympia	Phoenix Inn Olympia

Equal Justice Coalition Recognizes Champions of Justice

The Washington State Equal Justice Coalition (EJC) honored three legislators, Senator Lisa Brown, Representative Frank Chopp and Representative Barry Sehlin, with its 2002 *Champion of Justice* award. The annual award goes to individuals dedicated to achieving civil equal justice for low-income people in our state. The three legislators listened to their communities' needs for access to justice and responded despite a \$1.6 million state-funding deficit. House Speaker Chopp and

caucus budget writers Senator Brown and Representative Sehlin advocated for restoration of critical funds for civil legal-services programs in the supplemental budget. It was their leadership, along with the grassroots communication from EJC supporters, which prevented the \$2.4 million cut in funding. The EJC is proud to honor these legislators for their courageous action and commitment.

New Discipline Rules Adopted

On September 5, the Supreme Court adopted the Rules for Enforcement of Lawyer Conduct (ELC), replacing the Rules for Lawyer Discipline. The rule changes include related amendments to the Rules of Professional Conduct and the Admission to Practice Rules. The changes are effective upon publication, which is scheduled for the October 1 advance sheet of *Washington Reports*.

The changes, published for comment in April, were developed by the Discipline 2000 Task Force and were recommended by the Board of Governors. A link to the new rules is available on the WSBA Web site at www.wsba.org/rules, and cross-reference tables between the old and new rules are available at www.wsba.org/2001/d2k/report.htm.

A "Call to Justice" and the Washington Juvenile Justice Assessment Project

Are children in Washington able to access counsel and receive quality representation? As part of the ABA's National Juvenile Defender Center's "Call to Justice," several organizations across the state have joined together to learn what is working in our state and where we need to make improvements. The study involves a written survey to defense attorneys representing children in juvenile delinquency and/or Becca (CHINS, YAR, truancy) matters. This will be followed by visits to several counties across the state by trained volunteers who will interview juvenile court professionals, talk with children and their parents, and observe court proceedings.

We need your help! If you represent juveniles in offender or Becca proceedings in Washington, please complete the online survey (anonymously or signed) at www.defensenet.org/survey, or call Sarah Yatsko at 206-623-4321 for a hard copy of the survey or with questions.

Collaborating agencies include the American Bar Association's National Juvenile Defender Center, the Governor's Juvenile Justice Advisory Committee, the Northwest Regional Juvenile Justice Center, TeamChild, the Washington Defender Association and the Washington State Bar Association.

Online Resource for Court Decisions and Other Info

There's a new Web site you'll want to bookmark: <http://www.LegalWA.org>. This site contains Washington State Supreme Court opinions from 1939 to present, and published Court of Appeals opinions from 1969 to present. It also includes links to the full text of the RCW, WAC, and 70 Washington city and county municipal codes.

LegalWA.org was created cooperatively by the Washington State Bar Association, Municipal Research & Services Center, and the Washington Office of the Code Reviser to provide free public access to case law.

The site has been designed for ease of use. The full text of

court decisions is searchable by keyword, and navigation around the site is simple and straightforward. The site also contains useful links to other legal resources, and is updated weekly.

Find Your Court Date Online

The Washington Administrative Office of the Courts (AOC) has unveiled a newly automated program to find appearance dates for cases in Washington district and municipal courts. Located at <http://www.courts.wa.gov/calendars>, the program enables the public to locate future proceeding dates by entering a valid name or case number. This new program utilizes information from the Judicial Information System, which provides case-management automation to Washington courts. The program includes systems for appellate, superior, limited jurisdiction and juvenile courts.

Informal Ethics Opinions Online

We are pleased to announce that informal ethics opinions are available on the WSBA Web site at <http://pro.wsba.org/io/search.asp>. You can search by subject, key word(s), opinion number, year issued or authority.

Informal ethics opinions are issued by the WSBA RPC Committee, which researches and prepares responses to written ethical inquiries submitted by WSBA members. Informal opinions have not been approved by the Board of Governors, nor do they reflect the official position of the WSBA.

To discuss ethical questions about your own prospective conduct, phone the WSBA ethics line at 206-727-8284 (or 800-945-WSBA, ext. 8284). Your inquiry is considered confidential. If you have a question about the ethical conduct of another lawyer, please call 206-727-8235.

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff are available to provide materials, answer questions and recommend options. To make an appointment, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Keep in Touch

The WSBA uses e-mail to communicate with members quickly, efficiently and inexpensively, and increasingly it is becoming the preferred method of communication among committees and sections. Please consider providing us with your e-mail address. Contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@wsba.org. Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m.

Newer Admittees Need Your Lawyering Skills

The WSBA's Lawyer-to-Lawyer Program matches newer admittees with experienced lawyers. Help new lawyers get a head start on learning those lawyering skills not found in any textbook. The program is not a structured mentoring program and does not supplant any similar programs of local or specialty bars. We connect lawyers with similar practices in the same geographic area for mutual information-

sharing and goodwill. For more information, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Changes in Professional Liability Program

Liberty International Underwriters has been selected to replace Great American Insurance Company in the WSBA-sponsored professional liability insurance program. Liberty has committed to continuing the current program's focus on broad coverage at competitive rates. They have also agreed to maintain all of the current policy features such as claims expense outside the limits of liability, an aggregate deductible providing first-dollar defense, broad prior-acts coverage, and a 50 percent reduction in deductible for early claims reporting. The WSBA program continues to be administered by Marsh Affinity Group Services. For more information about the carrier change, contact Pamela Blake at 206-613-7802 or John Chandler at 206-613-7804.

Join the Northwest Indian Bar Association

The Northwest Indian Bar Association (NIBA) is a nonprofit organization of Indian attorneys, judges and advocates in Alaska, Idaho, Oregon, Washington, British Columbia and the Yukon Territory. The association aspires to improve the legal and political landscape for the Pacific Northwest Indian community. For more information about joining NIBA, contact Gabriel S. Galanda at 206-628-2780 or ggalanda@wkg.com.

CLE Credits for Pro Bono Work? Limited License to Practice with No MCLE Requirements?

Yes, it's possible! Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six hours of credit annually for providing *pro bono* direct representation under the auspices of a qualified legal-services provider. APR 8(e) creates a limited license status of emeritus for attorneys otherwise retired from the practice of law to practice *pro bono* legal services through a qualified legal-services organization.

For more information, contact Access to Justice Liaison Sharlene Steele at 206-727-8262 or sharlene@wsba.org.

Online MCLE Credit-Tracking System

Using the online MCLE Credit-Tracking System, you can do the following:

- View your CLE courses and credits on your online attendance roster.
- Make changes to your online attendance roster.
- Search for approved courses.
- Apply for course approval.

To enter the MCLE Credit-Tracking System, go to <http://pro.wsba.org> and click on the Member tab. Select Member Login, and follow the onscreen instructions. If you have questions, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Web Site Links from Lawyer Directory

A link to your Web site can be added to your directory listing, so current and potential clients can find out more about you and your practice at the click of a button.

The fee is \$75 annually (\$50 if you sign up July 1 or later).

If your firm has seven or more lawyers, you'll save through our special pricing structure. Special pricing is also available for those who work for nonprofit or government agencies. For more information and sign-up instructions, see www.wsba.org/directory/addlink.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2002 is 1.615 percent. The maximum allowable interest rate for October 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 is on the WSBA Web site at www.wsba.org/barnews/usuryrate.html.

The WSBA Store Is Open

The WSBA online store is open at www.wsba.org/store. Purchase Cutter & Buck polo shirts, twill baseball caps, ballpoint pens, and brass luggage tags emblazoned with the WSBA logo. The store features secure online credit-card ordering. You can also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

- Polo shirt (pewter or white, size L or XL) – \$56
- Baseball cap (stone) – \$24
- Ballpoint pen – \$12
- Luggage tag – \$7

Prices include shipping and handling. Sales tax (8.8 percent) will be added to orders shipped within Washington.

Honoring Local Heroes

As part of Past-President Jan Eric Peterson's Proud to Be a Lawyer initiative, in 2000 the Board of Governors began to honor "local heroes" as they traveled around the state for their meetings. The tradition continues, and it is a pleasure to recognize some WSBA members who serve their communities in so many ways. This past year, the following lawyers were honored:

Mirta Laura Contreras, *Yakima, May 2002*

Ms. Contreras has been a lawyer with the Yakima office of Columbia Legal Services for the last 10 years. She has dedicated her career to helping farmworker women, a passion that stems from her childhood spent working in Yakima Valley fields with her parents and extended family. She began representing farmworker victims of domestic violence in 1999. Since then, she has assisted numerous battered immigrant victims and children with custody matters, accessing immigration remedies under the Violence Against Women Act, and seeking nontraditional court remedies for domestic violence issues. Ms. Contreras heads Amigas Unidas Project, working with community leaders to provide outreach and education to farmworker victims of domestic violence, and is a board member of the Washington State Coalition Against Domestic Violence.

David D. Cullen, *Olympia, January 2002*

For 21 years, Mr. Cullen was a board member of the Thurston-Mason County chapter of the American Red Cross, serving

as president from 1986 to 1993. He was instrumental in coordinating the chapter's September 11 relief efforts. Mr. Cullen has been involved with the West Olympia Rotary for more than 20 years, and served as club president in 1993. He is vice-president of the South Puget Sound Estate Planning Council, and has been a member of the council for more than 20 years. Since 1999, he has served on the WSBA Disciplinary Board, and served as 2001-2002 chair. Mr. Cullen has practiced law in Olympia since 1973, focusing on business law, litigation and estate planning.

Henry Haas, Tacoma, December 2001

Mr. Haas is partner in the Tacoma firm McGavick Graves PS. He is a board member of the Anti-Defamation League and serves as chairman of Tacoma United Jewish Appeal. As a member of the City of Tacoma Library Board, Mr. Haas helped pass and implement a bond issue to rehabilitate all city library facilities. He has been a board member and president of the Boys and Girls Clubs of Tacoma-Pierce County, serves as a member of the Tacoma Urban League, and is a founding member of City Club of Tacoma. Mr. Haas was instrumental in establishing a volunteer legal-services program for the Tacoma-Pierce County Bar Association.

Richard A. Melnick, Vancouver, October 2001

Mr. Melnick is a Clark County senior deputy prosecutor responsible for misdemeanors, including DUI, domestic violence and vehicle-license fraud cases. He was instrumental in creating a drug court for Clark County Superior Court in 1999. A youth soccer coach for the past eight years, Mr. Melnick is a board member of the Prairie Soccer League, and the Today Foundation, a youth-sports scholarship foundation. He has served on several Hockinson Public Schools bond-and-levy committees. Mr. Melnick is a long-time volunteer at the St. Joseph's Sausagefest fundraiser for St. Joseph's parish school. For the last 15 years, he has volunteered at a Vancouver restaurant, serving Thanksgiving dinner to homeless families.

Ronald E. Thompson, Gig Harbor, February 2002

From 1960 to 1999, Mr. Thompson was a principal in the firm Thompson, Krilich, La Porte, West & Lockner PS. He is now a sole practitioner in Gig Harbor. Mr. Thompson is a life member of the Optimist Club of West Tacoma, and served as president of the Optimist International Foundation. During his term as international president of Optimist International, Mr. Thompson formed the NOW program to assist clubs in building memberships. He also initiated the Adopt-a-Neighborhood program that encouraged clubs to focus their programs on specific neighborhoods. For that, he received a Citation for Community Service from the U.S. Department of Housing and Urban Development. As chair of the Downtown Tacoma Association, he was instrumental in attracting a University of Washington branch campus. Mr. Thompson has been a member of the Tacoma-Pierce County Economic Development Board for 23 years, and has been a board member for the Tacoma Rescue Mission since 1988.

Announcements

Cutler & Nylander PS is pleased to announce that

Thomas W. Hayton

has become a principal in the firm,
and the firm name has changed to

**CUTLER NYLANDER
& HAYTON**

Professional Service Corporation

Cutler Nylander & Hayton will continue its practice of mediation, arbitration, litigation and appeal of a broad range of commercial disputes. Tom Hayton contributes to the firm's expertise in construction, development, real estate and intellectual property issues.

**CUTLER NYLANDER & HAYTON
Professional Service Corporation**

505 Madison Street, Suite 220
Seattle, Washington 98104
Telephone: 206-340-4600
Fax: 206-340-4646

FLOYD & PFLUEGER PS

is pleased to announce that

Marshall L. Ferguson

and

Ken Lederman

have become associates of the firm.

The firm's litigation practice emphasizes complex civil litigation, including the defense of construction-defect claims, claims of professional negligence, and toxic torts.

2505 Third Avenue, Suite 300
Seattle, Washington 98121-1445
Telephone: 206-441-4455
Fax: 206-441-8484

FOSTER PEPPER & SHEFELMAN PLLC

Attorneys at Law

We are pleased to announce the expansion
of our firm with the addition of:

Sabina Silver

Real Estate
Associate

Stacy Connole

Litigation
Associate

Washington admission for
Ms. Silver and Ms. Connole is pending.

www.foster.com

ANCHORAGE PORTLAND SEATTLE SPOKANE

Attorney Soloman Sang Min Kim (UW, 1995)
is very pleased and excited to announce
the establishment of the

LAW OFFICE OF SOLOMAN KIM, PS

to continue serving clients in Snohomish County,
and now in King County.

Referrals and association are sought on
matters involving Korean-speaking clients,
Korean-language issues, or within the following
practice areas: family law, business organization,
contracts, criminal defense, traffic infractions,
real estate, personal injury, general civil
litigation, and estate planning.

1150 Skyline Tower
10900 NE 4th Street
Bellevue, Washington 98004
Telephone: 425-450-8887
Fax: 425-637-8666
E-mail: solomankim@qwest.net

GROFF MURPHY TRACHTENBERG & EVERARD PLLC

is pleased to announce that

Angelie Chong

has joined the firm as an associate.

Ms. Chong is a graduate of
Brown University, and received
her law degree from the
University of Washington School of Law.

Ms. Chong's practice will focus
on commercial litigation and
construction law.

300 East Pine Street
Seattle, Washington 98122
Telephone: 206-628-9500
Fax: 206-628-9506
E-mail: achong@groffmurphy.com

Stephen D. Rose, J.D., M.B.A.,

former chair of the
Health Law Department at
Inslee, Best, Doezie & Ryder PS,
is pleased to announce the opening of

ROSE HEALTH LAW GROUP PLLC

Rose Health Law Group focuses its
practice on representation of health care
providers in matters of Medicare/Medicaid
reimbursement, corporate compliance plans,
HIPAA compliance, defense against
health care fraud and abuse
accusations, formation of joint ventures
and other contractual relationships,
and employment law issues.

ROSE HEALTH LAW GROUP PLLC

P.O. Box 13110
18311 Bothell-Everett Highway, Suite 250
Mill Creek, Washington 98082-1110
Telephone: 425-806-8292
Fax: 425-806-0013
stephen@rosehealthlaw.com

ROSE HEALTH LAW GROUP PLLC

is proud to announce

Dawn R. Kreysar

has joined the firm as an associate attorney.

Dawn joins us from
the Detroit law firm of
Honigman Miller Schwartz and Cohn LLP.

She received her J.D. *cum laude* from the
University of Michigan Law School in 1995,
where she was a member of the
Michigan Law Review and Order of the Coif.

Dawn will continue her practice
drafting organizational documents for
corporations, partnerships and limited liability
companies; assisting in the formation
of health care joint ventures;
and conducting due diligence and
Stark compliance reviews.

ROSE HEALTH LAW GROUP PLLC

P.O. Box 13110
18311 Bothell-Everett Highway, Suite 250
Mill Creek, Washington 98082-1110
Telephone: 425-806-8292
Fax: 425-806-0013
dawn@rosehealthlaw.com

O'BRIEN & ASSOCIATES INC., P.S.

is pleased to announce that

Stuart W. Carson

has joined our firm.

Stuart's practice emphasizes real estate transactions, Section 1031 tax-deferred exchanges, and business matters. He received his undergraduate degree from the University of Oregon in 1990 and his J.D. from Northwestern School of Law of Lewis & Clark College in 1996.

O'BRIEN & ASSOCIATES INC., P.S.

Attorneys at Law

O'Brien Professional Building
175 NE Gilman Blvd., Suite 100
Issaquah, Washington 98027
Telephone: 425-391-7427
Fax: 425-391-7489

The Washington State Bar Association

is pleased to offer advertising services
in the Announcements section

of *Bar News*.

For more information,
please contact Jack Young,
Bar News advertising manager,
at 206-727-8260, or
jacky@wsba.org.

Calendar

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

WSBA *Bar News* Calendar
2101 Fourth Avenue, Suite 400
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.

ADR

Professional Mediation Skills Training

October 4-6 & 19-20 - Seattle. 34 CLE credits, including 2 ethics. By UW-CLE; 800-CLE-UNIV.

ANTITRUST

Antitrust Section Annual Meeting & CLE

November 1 - Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

RPPT Oregon Estate Planning & Probate Practice

October 3 - Seattle; November 1 - Vancouver, WA. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Navigating the Maze: A Checklist Approach to Land Use, Permitting Approval

October 4 - Seattle. CLE credits TBD. By WSBA-CLE and RPPT Estate Planning; 800-945-WSBA or 206-443-WSBA.

WYLD: How to Draft Wills

October 10 - Seattle; October 17 - Vancouver, WA. CLE credits TBD. By WSBA-CLE and Washington Young Lawyers Division; 800-945-WSBA or 206-443-WSBA.

WYLD: How to Probate an Estate and Handle Post-Mortem Issues

October 11 - Seattle; October 18 - Vancouver, WA. CLE credits TBD. By WSBA-CLE and Washington Young Lawyers Division; 800-945-WSBA or 206-443-WSBA.

47th Annual Estate Planning Seminar

November 14-15 - Seattle. 15.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethical Dilemmas

October 16 - Yakima; October 23 - Tacoma; October 30 - Vancouver, WA, and Spokane; November 20 - Mount Vernon. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Curse of the Virtuous Lawyer

November 6 - Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Mystery of the Virtuous Lawyer

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

Tele-CLE: Ethics Issues for Estate Planners

November 7 - telephone. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

10th Annual Professional Responsibility Institute

November 16 – Seattle. CLE credits TBD. By UW-CLE; 800-CLE-UNIV.

Tele-CLE: The Son of Halibut Klutz

November 21 – telephone. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Tele-CLE: Ethics and Technology in the Office

November 26 – telephone. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Affirmative-Action Briefing

October 3-4 – Seattle. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

23rd Annual Employment Law Conference

November 14-15 – Chicago; November 21-22 – San Francisco. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

FAMILY LAW

Adoption Law and Procedure: Dealing with New Frontiers and Old Stumbling Blocks

October 11 – Spokane. 6.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CASA's 10th Annual State Conference

October 11-13 – Yakima. 8 CLE credits, including 2 ethics. By Washington State Association of CASA/GAL Programs; 206-667-9716.

Family Law/Military Matters

October 24 – Everett; October 29 – Tacoma. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

King County Guardianship & Probate Review Program

October 18 – Seattle. 3 CLE credits pending. By King County Superior Court Ex Parte and Probate Department in cooperation with the KCBA Elder Law and Guardianship Section; 206-296-9297.

Pacific Legal Technology Conference

October 18 – Vancouver, BC. CLE credits TBD. By Law Society of British Columbia; 800-903-5300.

Mental Illness and the Law

October 18 – Seattle. CLE credits TBD. By UW-CLE; 800-CLE-UNIV.

Clients Who Talk Too Much: Coping with Confessions

October 25 – Seattle. 6.5 CLE credits, including 1 ethics. By WACDL; 206-623-1302.

INSURANCE

Insurance Issues

October 2 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LABOR & EMPLOYMENT LAW

2nd Annual Labor & Employment Law Section Meeting and Seminar

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

LAW PRACTICE MANAGEMENT

Computer Camp

October 9-10 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LOMAP on the Road: Smart Strategies for Improving Efficiency

October 21 – Pullman; October 22 – Walla Walla; October 23 – Richland; October 24 – Yakima; November 5 – Vancouver, WA; November 6 – Grays Harbor County; November 7 – Olympia. 4 CLE credits, including 2 ethics. By WSBA-LOMAP; 800-945-WSBA or 206-443-WSBA.

Digital Practice of Law

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

LITIGATION

Moderated Video Replay: Auto Cases

October 9 – Spokane. 6.75 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Pre-existing Conditions

October 10 – Seattle. 7 CLE credits. By WSTLA; 206-464-1011.

Effective Legal Writing (with Judge Rideout)

October 16 – Seattle; October 30 – Bellingham. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Valuation & Litigation

October 23 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Moderated Video Replay: Reciprocity

October 24-25 – Seattle. 17 CLE credits, including 2 ethics. By WSTLA; 206-464-1011.

Nuts & Bolts of Trial

October 31 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

APPEALS OF THE SECOND KIND

Bill Bishin

Cases that should win, but may lose, in the absence of analysis and articulation of a special kind.

LAW OFFICES OF WILLIAM R. BISHIN PS

1111 Third Ave., Ste. 1865
Seattle, WA 98101

206-682-1584

E-mail: bbishin@SpecialAppeals.com
www.SpecialAppeals.com

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