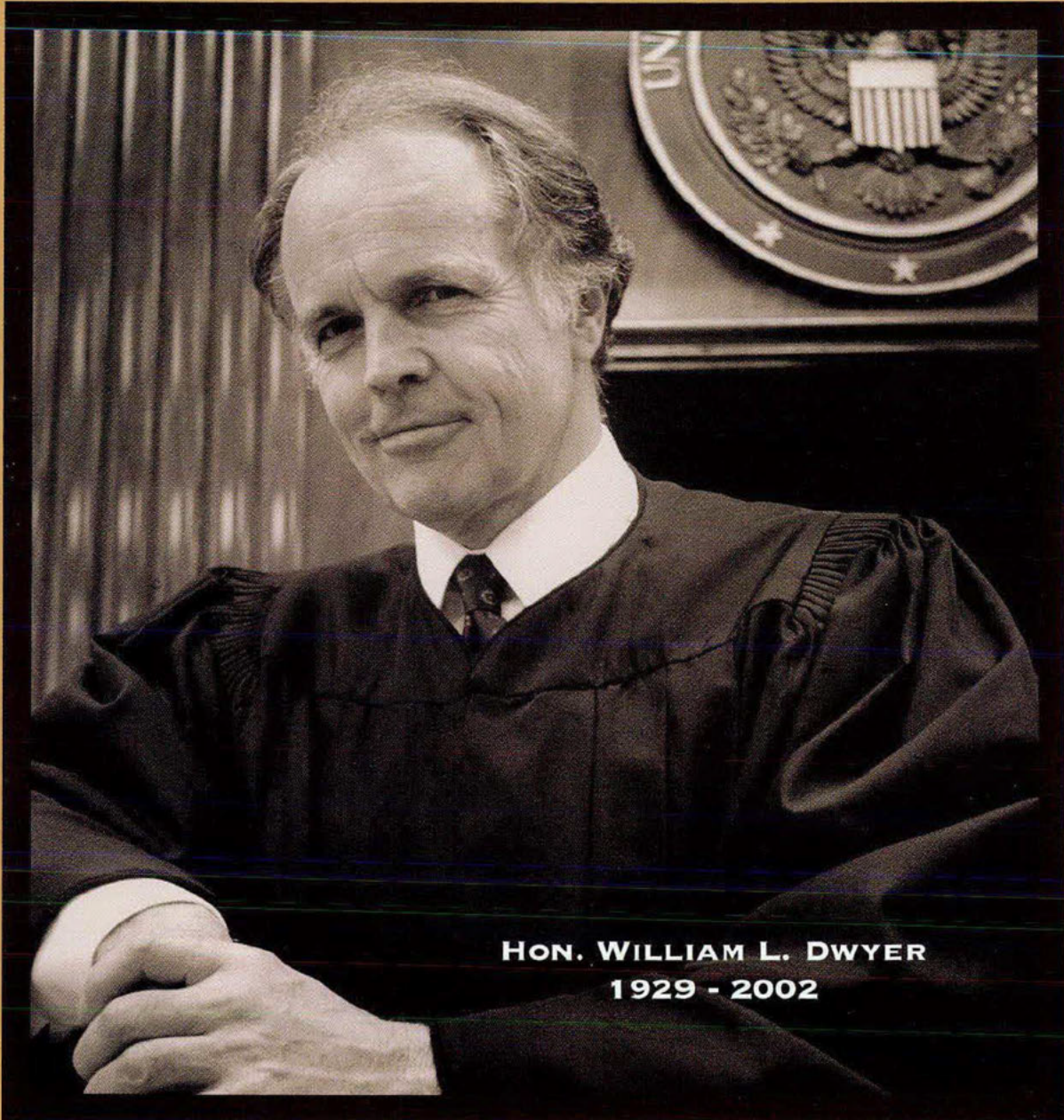


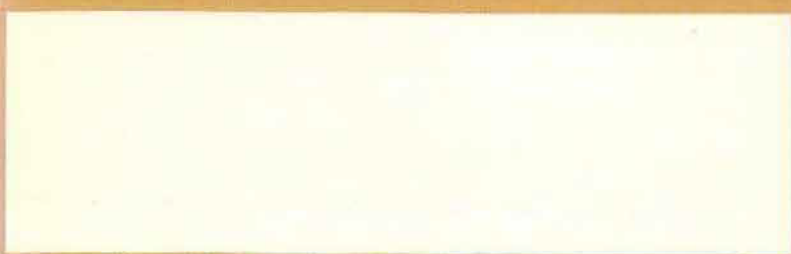
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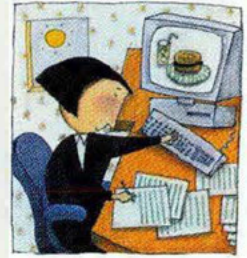
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On the cover: We note with sadness the passing of Judge William L. Dwyer of the U.S. District Court in Seattle. He made history, both as an attorney and as a judge. Judge Dwyer built his career as an anti-trust lawyer, but on the bench he was noted for decisions grounded in the most sophisticated social and biological science. His life was a bridge between the 19th and 21st centuries. He still had a lot more to teach us, and we still had a lot more to learn from him. Judge Dwyer will be missed with fondness and remembered with respect.

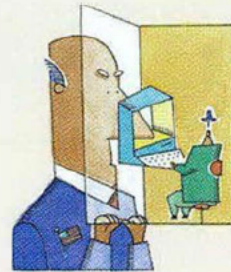
Photo courtesy of U.S. District Court, Western District of Washington



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Submission Guidelines

Readers are invited to submit correspondence and articles. They may be sent via e mail to comn@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to Bar News Editor, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121 2330. Article submissions should run approximately 1,500 to 3,500 words. Graphics and photographs are welcome. The editor reserves the right to edit articles as deemed appropriate.

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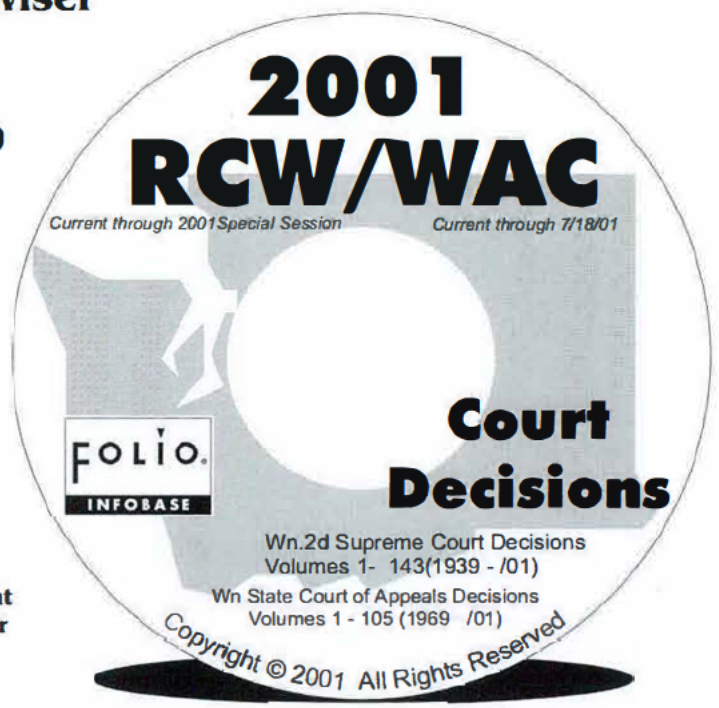
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Letters

Reaching for a Higher Standard

Editor:

My compliments to Mr. Panitch for his December 2001 editor's page article. He treated well a difficult topic, neither maligning religion nor excusing the excesses of those claiming to be religious.

We would all be better off if everyone, religious or not, actively respected the dignity of each individual. That is a high standard, but we ought to reach for it. Thanks to Mr. Panitch for keeping our eyes focused on a lofty goal.

David L. Evans
Federal Way

Editor:

I would like to thank David A. Larson for his article "Proud to Be a Lawyer: The Noble Profession" in the January *Bar News*. I was deeply moved by his words and inspired to consider my own actions. For the last month, since reading his article, I have been searching "within [my] own conscience the touchstone against which to test the extent to which [my] own actions should rise above minimum standards."

I've discovered that the highest standard is, and should be, immeasurable. Can one adequately measure their sense of justice? Truth? Equality? So long as we believe that the height of our standards is infinite, we will continually be striving to achieve excellence and our thirst for justice will never be quenched.

Thank you, Dave, for reminding me of the rewards our profession brings to the rest of society when we, as individuals, exercise nobility and moral virtue. I am truly proud to be a lawyer.

Fawn R. Sharp
Quinault Indian Nation

Death Penalty Moratorium

Editor:

I would like to comment on the American Bar Association's request (January *Bar News*, p. 9) that the WSBA, along with all other state bar associations, support a moratorium on the death penalty. While a "moratorium" implies a temporary halt, the ABA request is unclear about when such a moratorium would end, what criteria would need to be satisfied to end it, and who would judge whether those criteria were satisfied. It is not apparent to

me that the ABA is actually undertaking a program to address any of the adverse circumstances which it claims create the need for a moratorium. Rather, the moratorium itself will be seen as "solving" these problems, in much the same way that euthanasia solves all medical problems, and will therefore become permanent without a formal decision to make it so.

I am sure this formula for ending capital punishment, without making a formal decision to do so, appeals to politicians who want to placate both opponents and supporters of the death penalty, and it is

probably attractive as a rationale for those of us who are ambivalent on the question. We can tell ourselves that we support the death penalty "in principal," but that it is just too difficult to implement fairly and at a reasonable cost to society. But we would be dishonest with ourselves and our fellow citizens. If we oppose capital punishment in any possible case (including for Osama bin Laden and his fellow mass murderers), we should just say so and wrestle honestly with the real issue, rather than hiding behind procedural excuses.

The unwillingness to say what we



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

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mean is a major reason many of our fellow citizens do not trust the legal profession, yet here we are, doing it again, at the same time we are talking about being proud to be attorneys.

The problems of clogged criminal courts, inadequate defense counsel, and inadequate support for exculpatory scientific evidence are present in noncapital cases as well. While the finality of the death penalty is qualitatively, as well as quantitatively, more severe than incarceration, can we say that, so long as we are not threatening to take his life, a defendant should not complain that he was unjustly imprisoned for life due to these problems? The problems need to be solved anyway.

A proponent of the death penalty might respond to the ABA arguments as follows. First, clogging in the courts is largely a result of the care we take to ensure that capital sentences have adequate support in the evidence and undergo painstaking appellate review, combined with legislative refusal to properly fund the court system. Just as increased funding for prison facilities has allowed longer prison terms and decreased violent crime, increased funding for the courts will speed justice and decrease criminal activity between indictment and sentencing. Second, the problem of inadequate counsel is a failure of the legal profession to insist on high standards and adequate compensation for the criminal defense bar (in contrast to the free, independent counsel provided to all defendants in military courts-martial). Third, the fact that a new type of scientific evidence has absolved some defendants after trial is a reason to incorporate such evidence in all new trials and make it freely available to those appealing their sentences, but it is hardly a reason to relieve from the death penalty the majority of defendants whose guilt is not undermined by DNA evidence.

President Carlisle is correct in classifying this issue as one we should debate. And the proper forum for the debate is in the political process, where our fellow citizens can participate, rather than in an elitist and dishonest "lawyers know best" decision by the members of the state bar.

*Raymond Takashi Swenson
Idaho Falls, Idaho*

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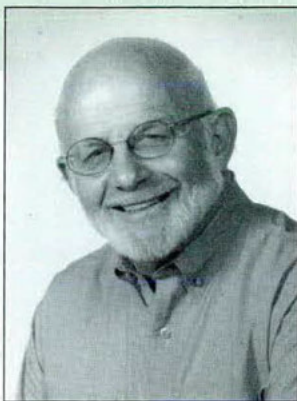
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Regulating the Unauthorized Practice of Law

by Dale L. Carlisle
WSBA President

The Practice of Law Board (POLB) will begin its operations this year. The formation of this board is under General Rule (GR)25, and the definition of the practice of law under which the board will operate is GR24.

In discussing this board with WSBA members, one of the first questions I am asked is why it exists. Its formation was proposed by the WSBA to the Supreme Court, which adopted the above-named rules. The first objective was to define the practice of law, to help recognize those areas which constitute the unauthorized practice of law. To identify problems that place consumers at risk, the POLB will receive and investigate complaints. The rule also lists 10 existing practice areas (such as lobbying and distributing forms) that are exempt. In the future the board may be asked to determine whether certain actions fall within one of the exemptions.

If a matter is investigated and a conclusion reached by the board that a violation has occurred, it is likely a county prosecutor will proceed under the unauthorized practice statute. The statute also provides a definition for use, and a method for investigating complaints of a violation.

The second and perhaps more important function of the POLB is to identify areas where, under the definition, the service performed may constitute the unlicensed practice of law, but it is a benefit to the consumer. This function will be of particular benefit to low-income clients, in that a licensing or regulatory procedure will allow the activity to continue — keeping in place those procedures that provide ongoing protection to the consumers benefited by the service.

The Supreme Court licensing of Licensed Practice Officers (LPOs) provides an example of identifying and regulating a service that is beneficial to consumers. As some of you may recall, this action arose from a Supreme Court decision that held that the completion of forms by an escrow officer

constituted the unauthorized practice of law. A court rule was adopted to create a regulatory and licensing procedure, and the Supreme Court assumed administration of the licensing of LPOs. Currently there are approximately 1,200 escrow officers licensed as LPOs in Washington. In adopting this new rule and establishing the POLB, we will look to the licensing of escrow officers as an example the board may emulate.

As part of GR25, the Supreme Court has designated the WSBA to administratively assist the POLB in its functions. The Court will also transfer the licensing of

LPOs to the WSBA, effective July 1, 2002. The WSBA will assist the Limited Practice Officers Board, which currently oversees this escrow-officer licensing function. Currently, this function is revenue-neutral, as the fees cover the costs. The expectation is that the result achieved by the licensing of LPOs can be achieved by the POLB.

This effort will not be without substantial challenges. For example, CPA firms believe they perform work that falls within the definition of the unauthorized practice of law, but it is work they have done for many years. Generally, they believe they should be excluded from the rule in their traditional area of practice. Currently, the WSBA has no specific method of dealing with this issue.

It will take several years to achieve the objectives of these rules. Our expectations are high, and we expect to exceed our goals in the area of consumer protection. Also, the POLB will provide assistance to our access-to-justice objectives by considering the implementation of POLB regulatory procedures where some limited-practice functions may be achieved more efficiently and more economically by nonlawyers.

For additional information, including links to GR24 and GR25, see the WSBA Web site at www.wsba.org/practiceoflaw board. ❧

The Supreme Court licensing of Licensed Practice Officers (LPOs) provides an example of identifying and regulating a service that is beneficial to consumers.

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The Corporate Spouse: A Necessary Ingredient to Business Success?

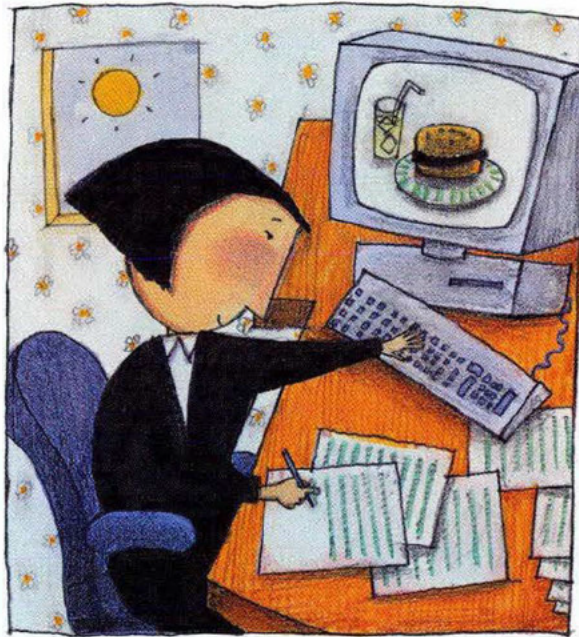
by Rosemary Daszkiewicz
Guest Editor

I don't have a "corporate spouse," that is, someone responsible for running the home and supporting me in my practice. Yet research completed in the late 1990s and cited in the *Washington Post* makes it clear that just such a helpmate is "essential for those who want to succeed in business." With a few exceptions, the same holds true for those who want to reach the highest rungs of success in the law — at least those who want that measure of success — and a family.

When I worked at a large firm, there were 12 partners in my department. Eleven were men. I admired many of them as attorneys and learned much from practicing alongside them. But I found no role models to help guide me toward a healthy work/family balance. At the time, only one of those partners had children at home, and a working spouse. The remaining seven who had children — including the two who served as department heads during my tenure — had wives whose contributions to their families were not in the form of a paycheck. The lone female partner was single and childless.

I left that firm in 1992 and started my family in 1994. Through various fits and starts I ended up at a firm that is just a bit larger than my former department. Although there are a few more people here who share the two-income-young-children demographic, we're far from a majority. And of the three attorneys and one non-attorney who have served on my firm's management committee over the past five years, only one (our executive director) has personal experience with the demands that a two-careers-with-children lifestyle imposes.

This nonscientific observation highlights the issues that continue to sidetrack women who want to climb the ladder



Those who climb the highest rungs are always able to put client needs first, no matter how demanding and unyielding ...

of success. How do you have the time to be successful at work, and take care of and enjoy a family? Is it possible to do both?

The way the system is currently structured, I've concluded that the answer is, unfortunately, "no." Those who climb the highest rungs are always able to put client needs first, no matter how demanding and unyielding — business trips on a moment's notice; dinners, sports or cultural events several times a week; weekends golfing or skiing with clients — not to mention the long hours of work demanded by the economic model we have created. None of this is possible without someone who is available to tend to the children, accommodate their schedules, see to the needs of the extended family, and keep the home in order (literally and figuratively).

There are several ways around this answer. One is to buy the services that would normally be provided by a stay-at-home spouse. From child care to cleaning to cooking to errands, entrepreneurs now offer the harried family all the comforts of a 1950s-vintage "wife." For a price, of course. If you're not careful, you find yourself working harder to pay someone else to do the things you would do if you weren't working so hard. There's also the option of stepping back on one front or the other; being less of a "player" at work, or having less of a role in your children's lives. The latter option has been forced on men for decades and has been a bitter pill to swallow for many. But it strikes me that it's easier to swallow that pill if the person filling in the gaps caused by your absence is a member of the family, and not just hired help.

As we mature, we learn that life is full of difficult choices. Still, I wish that more men shared my dilemma. Of those

who are sympathetic to it (and there are many), I wish more were ready to make some changes in the professional environment to allow success on both fronts. A few would make a world of difference.

First, we need a change in attitude, including an acceptance of the notion that there's more than one definition of success. Just because you got where you are working 16 hours a day and seeing your children only on weekends doesn't mean that is the only way to succeed professionally. This is not a fraternity. Hazing rituals are not necessary to create a bond.

Second, we must remind our clients

that there are limits to the scope of our jobs. Yes, I know how hard this is. But we all have to be willing to draw reasonable lines and stick to them, for ourselves as well as for the sake of our colleagues who have no option. If it's not an emergency, and you've worked a long, hard day, it's time to go home. Or to the gym. Or out with a friend.

Third, we must experiment with different types of leadership. Why should we limit our definition of success to those who work 2,400 hours a year? Wouldn't a more balanced approach result in better leadership? Firms must experiment to learn

whether different forms of leadership will make the practice more efficient and rewarding.

Finally, there must be an open discussion of these issues by all of us — men and women, singles, couples and parents. In the absence of discussion, resentment blooms. Someone is "taking advantage" by having another child and using maternity leave again. Another bemoans the fact that she got stuck with all the travel. Someone seethes that no one understands how difficult his life is when he doesn't pick up the kids precisely at 6:00 p.m. Many of these problems can be resolved with a little communication. Even if they're not solved, listening never hurt.

I suppose I shouldn't grouse, because I have achieved a workable balance using several of the options I've described above. I buy high quality, in-home child care for my first grader and preschooler. It's expensive, but the freedom of not having to pack children and tote them around outweighs the considerable cost — at least for now. My husband is an educator, with few weekend or evening obligations except grading papers. I work a bit less and get paid a bit less than my partners. Not every firm makes that a realistic option. And I have checked my ambitions to a certain extent — realizing that I will not be in charge of the world by the time I am 45, and trying to remember that raising children who know me well and look to me for their physical and emotional needs is so much more important.

This last choice is the only one that keeps me awake at night. Like many of my colleagues, I am ambitious. I would like to have the opportunity to contribute my ideas and vision. The question remains open whether, given my nontraditional balance, I can generate sufficient trust and respect from my colleagues to have the chance to do so. For now, I hold on to my balance dearly. I believe that I am contributing much on both the home and the work front. I hope my children and my colleagues agree. ☞

Rosemary Daszkiewicz is a principal at Cairncross & Hempelmann, where she heads the employment group.

Excerpts of this article were originally printed in *Business Law Today*.

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The New Board — Bigger, Broader, More Diverse

by Jan Michels

WSBA Executive Director

In September 2001, the WSBA swore in three new at-large governors. This was the culmination of two years of debate and consideration initiated by WSBA Past President Richard Eymann and shepherded by Past President Jan Eric Peterson. Since its inception, the Board of Governors (BOG) has had only eight female governors, one person of color, and one lawyer under 35 — and most of these since 1990. These small numbers exist despite the fact that membership demographics currently show 30 percent of WSBA members are female, 10 percent are persons of color, and 33 percent are new/young lawyers. The at-large seats were created to assure nonmajority representation on the board, to broaden the board's perspective, and to better represent all members. So has it worked?

Overall, cultural change is subtle and gathers strength over time, but there can be no doubt that the culture of the board has been affected by the addition of the at-large governors. The combination of these three new governors brings a wealth of experience and representation to the board: new/young, female, nonwhite, eastern Washington, rural, foreign-raised, technology-savvy lawyers. Further attributes of the at-large governors include being active in another state's bar association, having administrative law judge experience, and offering an "outsiders" view of the BOG. Following are some examples of the awareness the new board has inspired:

- In a discussion about bar exam regulations, the board learned how many other cultures view rules as inviolate and nonappealable.
- When discussing tribal judges in judicial status, the board was sensitized to how, historically, one Indian nation may

have been favored over others, and that Indian nations must be treated equally.

- We've learned the importance of the correct pronunciation of names as a form of respect.
- We've been sensitized to the huge logistics of active bar participation for members outside metropolitan transportation systems.
- We heard how terrorism measures can apply to all noncitizens, even our partners and friends. How frightening it can be to compromise due process and the attorney-client privilege for all noncitizens.
- Liaisons tell us that a diverse board encourages nonmajority liaison attendance and participation.
- The board met and talked with over 15 powerful, sensitive, and culturally competent nonmajority persons, all of whom would have made excellent governors. This alone was an educating experience.
- Board discussions are broader. There are new and different points of view to be heard.
- There is active recruitment of more nonmajority persons for committees, panels and governor positions.
- The board can talk in the first person about races, cultures, generations and backgrounds.
- We learn first-hand how other bar associations handle issues and problems.

Over time we will welcome representation from other nonmajority groups. As this experience builds, we should achieve full inclusion, diversity and multicultural competence. The WSBA has taken a watershed step, and these early results are very affirming. ✍

...cultural change is subtle and gathers strength over time; there can be no doubt that the culture of the board has been affected by the addition of the at-large governors.

WSBA Creed of Professionalism

by Harry J. McCarthy

On July 27, 2001, the Board of Governors approved a creed of professionalism for Washington lawyers. The creed is the product of the WSBA Professionalism Committee, who, with input from lawyers and judges throughout the state, considered, discussed and edited various versions over two years. Aspirational in spirit and in tone, the creed's purpose is to "inspire and guide lawyers in the practice of law."

It is our hope that attorneys and judges lend their support and refer to the creed in their daily practices for guidance in the elevation of professional and civil standards of conduct. At the same time, it is made clear that this creed does not supplant or modify the Rules of Professional Conduct, nor is it intended to be cited as authority for the imposition of any disciplinary action. Rather, it is a memorialization of professional and civil tenets of the practice of law, which should improve service to our clients and



In a ceremony at the Thurston County Courthouse, lawyers presented judges and court commissioners with Creed of Professionalism plaques to hang in their court rooms.

the public, and advance the administration of justice.

Now that the Board of Governors has officially endorsed the creed, our challenge is to ensure that it is not consigned to the dusty files of an office, library or court-



Superior Court Judge Wm. Thomas McPhee (right) accepts the Creed of Professionalism from Gavin Parr (left). Also pictured is Judge Daniel Berschauer, senior judge of Thurston County Superior Court.

Washington State Bar Association Creed of Professionalism

As a proud member of the legal profession practicing in the state of Washington, I endorse the following principles of civil professional conduct, intended to inspire and guide lawyers in the practice of law:

- In my dealings with lawyers, parties, witnesses, members of the bench, and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.
- My word is my bond in my dealings with the court, with fellow counsel and with others.
- I will endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution.
- I will honor appointments, commitments and case schedules, and be timely in all my communications.
- I will design the timing, manner of service and scheduling of hearings only for proper purposes, and never for the objective

of oppressing or inconveniencing my opponent.

- I will conduct myself professionally during depositions, negotiations and any other interaction with opposing counsel as if I were in the presence of a judge.
- I will be forthright and honest in my dealings with the court, opposing counsel and others.
- I will be respectful of the court, the legal profession and the litigation process in my attire and in my demeanor.
- As an officer of the court, as an advocate and as a lawyer, I will uphold the honor and dignity of the court and of the profession of law. I will strive always to instill and encourage a respectful attitude toward the courts, the litigation process and the legal profession.

This creed is a statement of professional aspiration adopted by the Washington State Bar Association Board of Governors on July 27, 2001, and does not supplant or modify the Washington Rules of Professional Conduct.

Resolution

WHEREAS, the Spokane County Bar Association recognizes the need for continued professionalism in the practice of Law;

WHEREAS, the Washington State Bar Association has adopted a Creed of Professionalism which addresses the need for professionalism in the practice of law; and

WHEREAS, the Spokane County Bar Association's officers and trustees believe it is in the best interests of the members of the association that it pass a resolution supporting the Creed of Professionalism

NOW THEREFORE, BE IT RESOLVED THAT: The Spokane County Bar Association hereby endorses and supports the Creed of Professionalism adopted by the Washington State Bar Association.

Dated this 19th Day of December 2001.

*Nancy L. Isserlis
President, SCBA*

room. Recent events are encouraging that the creed does, indeed, have a useful future.

In December, in an inspirational ceremony organized by 3rd District Governor Stephen Henderson, lawyers and judges joined together in rededicating themselves to basic civil and professional values set forth in the creed. Joining Governor Henderson were judges and commissioners from superior, district and municipal courts; and representatives from the Thurston County Bar Association, Government Lawyers Bar Association, Attorney General's Office, and Washington Women Lawyers.

During the ceremony lawyers presented a plaque to each judge. An unplanned highlight occurred when Judge Wm. Thomas McPhee asked that his creed be presented to him by Gavin Parr. Mr. Parr, who will serve next year as president of the Thurston County young lawyers, is the grandson of William Parr, who was Judge McPhee's mentor 30 years ago. Judge McPhee spoke about professionalism and his early years practicing with Gavin's grandfather and father in Olympia.

A Special Kind of Appeal

In more than thirty years of arguing, writing and teaching about appeals, as an appellate attorney and a law professor, I've convinced myself that appellate cases fall into at least two categories. In the first, the challenge is primarily rhetorical. These appeals are not "easy." They could reasonably go either way. But the legal issues were clearly understood below, and thus are clear on appeal as well and the identity of the competing legal and policy considerations is readily apparent. The challenge is largely to the lawyer's powers of persuasion – to establish that the considerations on one side are more compelling than those on the other.

Appeals of this kind are usually stimulating, but I prefer another kind – a kind in which the issues correctly stated admit of only one reasonable answer, but the odds are against that answer prevailing. Such cases are often signaled by the trial lawyer's nagging conviction that a case lost at trial should not have been or by anxiety that a case which was – and should have been – won below is in danger of being lost on appeal.

Frequently, in these cases, there was a bedeviling confusion inherent in the facts or the law, or both, which the trial court was unable to effectively dispel. Or, it was not confusion, but extraordinary factual or legal complexity – too many parts, too many relations – that created the danger. As a result, the wrong authority was applied, the right authority was applied mistakenly, or the framework necessary to insure appellate confirmation of a good decision was not created.

This kind of appeal poses not only rhetorical, but analytical or theoretical challenges. So, if you think an attorney who enjoys those kinds of challenges might be of help, please give me a call. I'd be delighted to talk to you about it.

Bill Bishin

for bio see:

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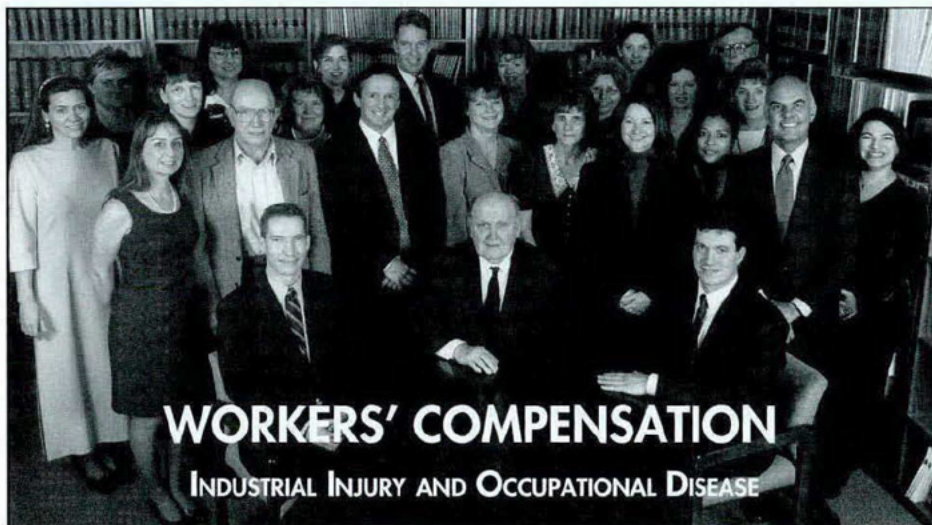
To emulate the Thurston County experience in inaugurating the use of the creed, we have contacted each county bar association with the hope that there will be similar presentations of the creed to courts in each county. Our desire is that a creed of professionalism plaque will be hung in a place of honor in every Washington courthouse.

The Spokane County Bar Association has passed a resolution of support for the creed (see p. 17), and several other county and specialty bar associations have enthusiastically supported it. The King County Bar Association Professionalism Committee and the WSBA Professionalism Committee are collaborating on common agenda items, including promotion of the creed. These coordinated efforts are extremely promising and bode well for making the creed a working reality in the professional lives of attorneys, judges and educators who care about the future of our noble profession.

To promote the creed and plant the seeds of the importance of professionalism for future generations of lawyers, the WSBA hopes to work with Washington's three law schools to use the creed in law-school curricula. In addition, contacts are being made with individual judges and judicial associations to obtain the courts' active support. Feedback from the law schools and courts has been most encouraging.

For the practitioner, copies of the creed (either suitable for framing or mounted on a plaque) can be obtained at a reasonable cost from the WSBA. (See order form on page 55.) As the creed itself is an aspiration of the better angels of our nature, we hope this document will occupy a prominent place in every law office in the state, proclaiming for all who may visit that office that the practitioner is, indeed, "proud to be a lawyer." ☛

Harry McCarthy has served on the WSBA Professionalism Committee for three years and was committee chair in 2000-2001. As the driving force behind the development of the creed, he has discussed the creed with hundreds of lawyers and judges throughout the state. Mr. McCarthy serves as a judge pro tem, is an adjunct professor at the University of Washington School of Law, and is a former federal prosecutor.



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Immigration Law and Civil Rights:

Where Do Aliens Stand After 9/11?

by Steven S. Miller and Laurie Bernbaum

Editor's note: *This is the first of two articles examining the consequences of September 11 for immigration law, policy and practice, as well as the broader questions of the impact of the war against terrorism on our legal system. Part one surveys the general immigration issues which are being debated for change in the future, the immigration laws already in existence to deter terrorism, and the USA PATRIOT Act.¹*

Part two will address the challenge of terrorism and legal responses that the government has chosen or is considering adopting, including military tribunals, new interim regulations for detention, client/attorney eavesdropping, interagency coordination of intelligence-gathering, and viable systems to record exits and entries of foreign nationals.



Effects of September 11

The unimaginable events of September 11 have shaken the direction of immigration law, and potentially will have long-term impacts on the delicate balance between civil liberties and protecting public security in the United States. The attacks, combined with the current economic slump, have derailed positive steps toward legal reform of U.S. immigration policy. There have been other civil liberties consequences as well, challenging such basic legal assumptions as attorney-client privilege and the right to public civilian trials for individual aliens accused of being terrorists.

As U.S. Attorney General John Ashcroft declared after first affirming that the U.S. is a welcoming nation of immigrants: "But as September 11 vividly illustrates, aliens also come to our country with the intent to do great evil.... We will not allow our welcome to be abused by those who are America's enemies."²

So we begin (not for the first time) a

strenuous effort to limit entry of suspect aliens and increase the monitoring of foreign nationals, particularly foreign students from Islamic nations. The costs of these efforts in legal, social and economic terms may be high. The balance between the relatively open borders found in an open society, and national security concerns, is complex and highly charged, involving civil liberties, privacy concerns, our immigration history and politics, as well as economic risks generated by our security actions.

Already, Congress has passed and the president has signed the USA PATRIOT Act. Modifications to the procedures for monitoring conversations between detained suspected terrorists and their attorneys, and adoption of secret military tribunals for suspected terrorists have been announced. These changes and others that are being considered may have impacts far beyond the lives of any specific foreign nationals affected.

America's focus has dramatically

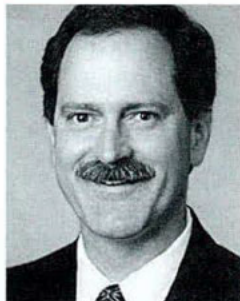
America's focus has dramatically shifted from an expanding and global view of immigration and borders to a restrictive and vigilant examination of all foreign nationals admitted into and present in the U.S.

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shifted from an expanding and global view of immigration and borders to a restrictive and vigilant examination of all foreign nationals admitted into and present in the U.S. A few short months ago, a booming economy and the growing importance of newly immigrated voting blocks had thrust immigration policy towards liberalization, including:

- discussion of a comprehensive amnesty provision for millions of foreign nationals illegally present in the U.S.;
- implementation of procedures to allow speedy adjudication of employment-based visa applications;
- a general campaign for a fluid flow of people across land borders.

Businesses were in desperate need of workers, and organized labor viewed these workers as beneficial to their union-building efforts. In addition, employers seeking highly skilled workers were allowed to buy expedited processing time with the submission of an additional "premium processing" fee. Implementation of the NAFTA treaty

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also facilitated the cross-border employment of professionals. Finally, border states were aggressively and successfully advocating against cumbersome restrictions on the swift movement of people and commerce across the border.

After September 11, the drive toward a liberalized immigration agenda slammed to a halt. Given the current situation, delays in the debate to legalize millions of illegal immigrants are inevitable; likewise, severe restrictions on the movement of people across the borders. The effort to deter terrorist activity and salvage national security has become our top priority.

A Short Introduction to Immigration Policy in the United States

Throughout U.S. history, immigration policy has been shaped by changing political, economic and social views. The traditional interests of immigration — sustaining economic prosperity, providing protection to refugees and asylees, and ensuring family unity — have been opposed by “nativist” movements that have sought to bar newcomers. As a result of this tension, immigration has vacillated from periods of restriction to periods of greater accessibility. During the first 100 years of our country's history, America experienced relatively unimpeded immigration, with the U.S. Supreme Court striking down state efforts to stop the influx of immigrants.³ The first federal controls on immigration barred convicts and prostitutes, followed by exclusion of lunatics and anarchists, persons with contagious diseases, and those likely to become public charges. By the late 19th century, however, race and ethnicity began to play a major role in legislation aimed at restricting immigration.

A notable example is the Chinese Exclusion Act of 1882, which specifically prevented Chinese people from becoming U.S. citizens and prohibited Chinese workers from immigrating. By the 1920s, the flood of new immigration, spurred by hard times in most of the world after World War I, gave rise to restrictive immigration policy. Where previously no numerical limitations on immigration existed, new laws were passed setting numerical limits on immigration based on “national origin,” sharply curtailing immigrants from southern and eastern Europe.

The 1952 Immigration and National-

ity Act (INA) presented additional restrictive measures, including restrictions against those who supported communism, anarchy or any ideology believed to be subversive, as well as other provisions retaining the national-origin quota system for all countries except those in the Western Hemisphere.

In October 1965, amendments to the INA brought about far-reaching changes aimed at ameliorating the racially based immigration system established in the 1920s. In particular, it placed a high priority on family reunification, and established a seven-category preference system for family members, skills-based individuals and refugees.

Since 1980, several pieces of important legislation have shaped the current immigration system. Dealing with illegal immigrants already in the U.S. was at the center of the Immigration Reform & Control Act of 1986, which attempted to legalize long-term illegal aliens who had substantial ties to the U.S., and, at the same time, cut down on further illegal immigration by penalizing businesses for knowingly hiring illegal workers.

The need for more business-related immigration visas was one of the main purposes of the Immigration Act of 1990. This law made the most substantial changes to the immigration system since 1952, increasing business-related immigration by 40 percent to 140,000 employment-based visas, and significantly increasing family immigration. More recently, the Anti-terrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), both adopted in 1996 (and discussed below), instituted severe penalties for being unlawfully present in the U.S., widely expanded the definition of aggravated felony to include a number of minor crimes, reclassified past infractions retroactively to become deportable offenses, and severely limited eligibility for waivers or judicial review of deportation orders.

Today, America's legal immigration system does not embrace an open-door policy. It is a highly regulated system, allowing a foreign national to lawfully immigrate only through employment, a close family connection, or for human-rights purposes.

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Today, America's legal immigration system does not embrace an open-door policy. It is a highly regulated system, allowing a foreign national to lawfully immigrate only through employment, a close family connection, or for human-rights purposes.

who are coming to the U.S. temporarily as visitors or for temporary work or study, are generally subject to the same exclusions as immigrants, and also need to obtain a visa to the U.S. unless they are from Canada or 29 low-risk countries eligible for waivers of visas for short visits. In practice, consular officers examining visa applications presented at U.S. consulates worldwide have wide discretion to grant or deny a visa based on a range of inad-

missibility grounds. The burden is on the visa applicant to convince the consular official that he is coming for an authorized purpose and will not overstay or violate the terms of the visit.

A visa can be denied, for example, if the foreign national fails to convince the consular officer that the individual has sufficient ties with his home country, that he has sufficient funds for support during the visit, or that he will depart within the time

given for the visa. A consular official is supposed to indicate to the foreign national the grounds for inadmissibility. There is no appeal from the consular officer's decision. All of the September 11 terrorists passed these tests and were granted a student or visitor visa. Countries that are considered friendly to the U.S., such as Saudi Arabia, and which have good records of their nationals abiding by their visa limits, are more freely given these discretionary visas. The State Department has now announced that males from the age of 16 to 44 from certain Muslim countries⁴ will undergo an additional 20-day security check as the applications are checked against FBI databases which are not yet integrated into the database available to consular officials.

After an individual obtains a visa from a consulate, or enters the U.S. from a country where the U.S. waives the necessity of obtaining a visa stamp (most European countries and Japan), a second screening occurs at the U.S. port of entry, where the visa applicant must present himself to an Immigration and Naturalization Service (INS) officer for inspection. The INS inspector may at that time refuse entry based on any of the same grounds of inadmissibility.

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Previous Anti-Terrorist Immigration Legislation

In response to the attack on the World Trade Center in 1993, IIRAIRA (referenced above) was already aimed at deterring terrorism and protecting national security. It created bars to admission based on terrorist activity.⁵ A person who has engaged in terrorist activity, or an individual that "a consular officer ... has reasonable grounds to believe ... is likely to engage after entry in any terrorist activity" is not admissible to the U.S.⁶ "Terrorist activity" was broadly defined to include planning, fundraising, soliciting for membership, and providing material support for an organization's terrorist activity.

Once in the U.S., IIRAIRA provides expansive deportability grounds applicable to any non-U.S. citizen. These grounds of deportability are broad and

give the INS the power to deport anyone who it believes has engaged in terrorist activities.

Furthermore, the law provides for "expedited removal" to deny admission and immediately remove any person whom the INS inspector believes is presenting fraudulent documents. The expedited removal provisions give INS inspectors broad and unreviewable authority to deny entry to individuals and prevent them from obtaining a U.S. visa for at least five years.

USA PATRIOT Act of 2001

The first new law enacted on October 26, 2001, in response to the September 11 terrorist attacks was the USA PATRIOT Act.⁷ The law contains provisions expanding the definition of terrorism, provides for mandatory detention of aliens suspected to have engaged in terrorist activity, and limits judicial review. The existing laws as outlined above have now been aggressively bolstered in an effort to prevent a recurrence of the recent tragic events. The act contains new provisions increasing enforcement capabilities at the northern border, implementing and improving monitoring technology capabilities, expanding the definition of terrorism, providing for mandatory detention of foreign nationals suspected of having engaged in terrorist activity, and limiting judicial review.

The USA PATRIOT Act expands the definition of terrorism and gives new grounds for barring admission to the U.S. at the border, and new grounds for deportation of those foreign nationals already in the country.

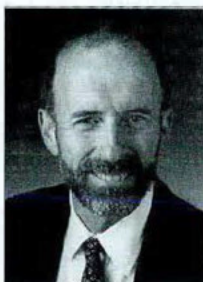
The statute makes inadmissible: "representatives of foreign terrorist organizations or any group that publicly "endorses acts of terrorist activity" and any alien determined to have "associated" with a terrorist organization, who "intends while in the United States to engage ... in activities that could endanger the welfare, safety or security of the United States." It also bars the spouses and children of aliens who are inadmissible on any of these terrorism-related grounds. Aliens in the U.S. are now deportable for any fundraising, solicitation for membership, or material support of groups that are designated as terrorist organizations by the secretary of state, and for solicitation of funds or other material support for groups not officially desig-

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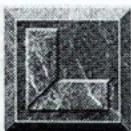
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nated as terrorist organizations unless the person can prove that he did not know and should not reasonably have known that the solicitation would further the organization's terrorist activity.

There are certain limits on retroactivity for cases where a person previously provided materials support to the humanitarian projects of a terrorist organization before it was designated as such by the secretary of state.

The USA PATRIOT Act provides for mandatory detention of an alien certified by the attorney general as a terrorist if there are reasonable grounds to believe that the individual is a terrorist or engaged in ter-

rorist activity. Certified persons must remain in custody irrespective of any eligibility for relief from removal. New provisions also allow the INS to detain a suspected terrorist alien for seven days before bringing immigration or criminal charges. Aliens not charged within seven days must be released, with habeas review of the detention and the basis for certification.

The USA PATRIOT Act also requires the integrated entry and exit data system (Section 110 of the Immigration and Naturalization Act) to be fully implemented at all ports of entry, with an integrated entry and exit data-system task force appointed immediately. The development of the sys-

tem will focus on the use of biometrics technology and tamper-resistant documents. It must also interface with law-enforcement databases to identify and detain individuals who pose a threat to national security, and requires the full implementation of the student visa database established by section 641(a) of IIRAIRA, which now includes all education institutions that are approved to receive foreign students.

Protecting the United States: Finding the Right Balance

The events of September 11 make the need for an improved and effective system of immigration screening consistent with our national security systems alarmingly dear. The difficulty in implementing such systems lies in the task of balancing the traditional interests of immigration — namely free movement of people for family unity, personal, business and economic reasons — and the need to minimize access of people who mean to do harm and jeopardize our national security. This will not be an easy task. ☞

Steven S. Miller is a partner in the firm Cowan and Miller, which exclusively practices immigration law with a focus on business immigration. He is an executive board member of the Washington chapter of the American Immigration Lawyers Association. Laurie Bernbaum is an associate with Cowan and Miller.

NOTES

1. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272.
2. *Seattle Times*, November 1, 2001, p. 1.
3. *The Passenger Cases* (Smith v. Turner), 48 U.S. (7 How.) 283, 12 L. Ed. 702 (1849); *Henderson v. Mayor of New York*, 92 U.S. 259, 23 L. Ed. 543 (1875); *Chy Lung v. Freeman*, 92 U.S. 275, 23 L. Ed. 550 (1875).
4. Afghanistan, Algeria, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, the United Arab Emirates and Yemen.
5. Section 212(a)(3)(B) of INA.
6. Section 212(a)(3)(B)(i)(I) & (II) of INA.
7. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56.

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Federal Protection for Vessel Hull Designs

by Mike Konczal

A New Intellectual Property Right Having Nothing to Do with the Internet

Anti-Hull Splashing

The U.S. Supreme Court decision *Benito Boats Inc. v. Thundercraft Boats, Inc.*, 489 US 141 (1989), invalidated a Florida "anti-hull-splashing" statute. The statute had attempted to protect manufacturers from "hull splashing" — the unscrupulous practice of producing knock-offs by using an existing boat as a plug to make a mold used in producing new hulls. The Supreme Court invited Congress to investigate whether the utility and design patents were inadequate to protect vessel hull designs. Congress enacted 17 U.S.C. §1301 in 1998, with a two-year sunset provision. The statute has become permanent. Vessel hull designs may be registered with the U.S. Copyright Office in a relatively simple and inexpensive procedure. The copyright office examines the application, publishes the design for notice purposes, and issues the registration certificate.

Circle D

A hull is specifically defined by the act as the frame or body of a vessel, including the deck, but not including the mast, sails, yards, etc. The act does not protect unoriginal designs, designs dictated solely by utilitarian function, or designs made public one year before the registration application. For the purposes of the act, vessel hulls includ-

ing plugs or molds are protected, but models and drawings of hulls are not.

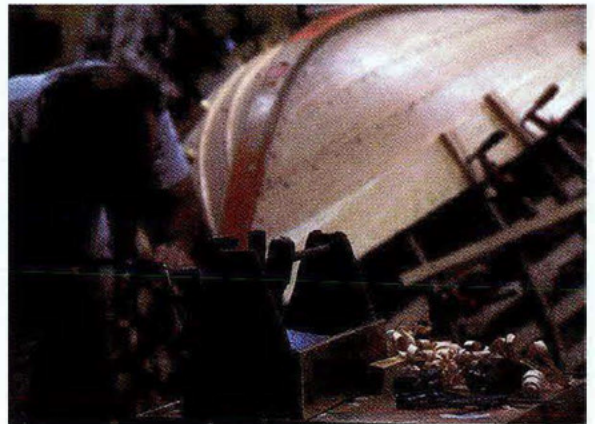
A design owner may mark his hulls with indicia of registration, such as a capital D with a circle around it. An owner may seek injunctive relief and damages for infringement, including damages of up to \$50,000 or \$1 per infringing copy, whichever is greater. The design owner may also seek the profits earned from the sale of the unauthorized copies. The act authorizes damages for falsely using design registration indicia (\$500 per copy); actions for false indication of registration may be brought by individuals, splitting the bounty with the government 50/50.

Since the courts have not yet had the opportunity to address the design registration statutory scheme, the legal interplay between design registration, copyright registration, and design and utility patents is not entirely clear. One thing that is clear is that design registration is not intended to replace design patents. The design registration statute contains a provision indicating that design registration is invalidated upon issuance of a design patent for the same design. The statutory exclusion of utilitarian designs from the registration statute steers such designs directly into utility patent waters. There is nothing in the statute, however, to prevent a vessel hull plan or model from being registered under copyright laws concurrent with design registration of the hull itself. Hull design protection registered with the copyright office is for a duration of 10 years, from the date of publication of the application or the date the design

was first made public, whichever is earlier.

Home-Built Design Patent

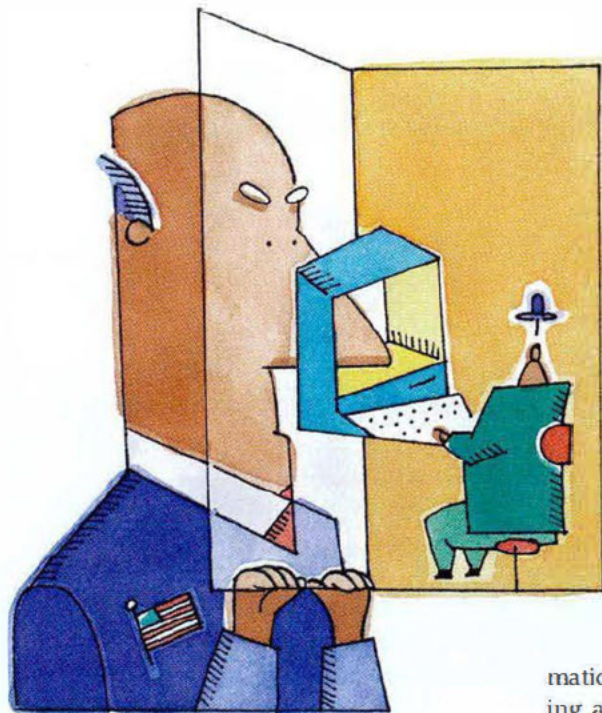
Given the 10-year term of design registration, a relatively simple application process, and mere \$75 application fee, it seems fair to say that design registration is something of a home-built design patent. The intellectual property protection is 10 years instead of 14, as with a design patent. The



protection is also not as complete as a design patent. Design registration prevents infringers from making direct copies of the protected hull, whereas a design patent provides more protection for the patented article itself, whether it happens to be copied or derived independently. Concurrent copyright protection can be used to prevent unauthorized reproduction of related plans or models. ☞

Mike Konczal is a member of the WSBA, admitted to practice before the U.S. Patent and Trademark Office. He is an amateur boatbuilder and former member of the Maritime Law Association. He may be reached at mkonczal@godwinger.com.

Privacy Issues and the Court System



by Pam L. Daniels

While the advancement of technology has provided tools for more efficiency, information and access, an added outcome has been the loss of personal privacy at local, state and federal levels. When individuals are faced with a choice between access and privacy, the average individual prefers privacy. Although citizens have become more aware of privacy issues at the government level involving their financial and medical records information, they are not aware of the growing access to court record information via technology. Document imaging and e-filing are becoming commonplace in federal courts, state supreme courts, courts of appeal, courts of general jurisdiction, and district and municipal courts throughout the United States, including Washington.

Document imaging and e-filing are becoming commonplace in federal courts, state supreme courts, courts of appeal, courts of general jurisdiction, and district and municipal courts throughout the United States, including Washington.

Judicial Information System

The JIS provides case-management automation to courts in Washington. It includes systems for appellate (ACORDS), superior (SCOMIS), limited jurisdiction (DISCIS), and juvenile (JUVIS) courts. Its purpose is two-fold: (1) to automate and support the daily operations of the courts, and (2) to maintain a statewide network connecting the courts and partner criminal justice agencies to the JIS database. Principal JIS clients are judicial officers, court managers and other court staff. Other clients include users from the state departments of corrections and licensing, law enforcement agencies, prosecutors, public defenders, the media and law firms.

At the superior court level, the JIS in-

cludes: (1) person information (term of art) for criminal and domestic-related cases, (2) statewide criminal case history for a person, and (3) domestic violence case and protection order history for a person.

1995 Domestic Violence Legislation

In 1995, Senator Lorraine Wojahn sponsored Engrossed Substitute Senate Bill 5218 (domestic violence legislation), and Representative Jeralita Costa shepherded the bill through the House. The bill, passed with the intent of preventing conflicting domestic violence protection orders (e.g., anti-harassment, no-contact, and domestic violence protection), states:

RCW 26.50.135 Residential Placement or Custody of a Child —

Prerequisite:

(1) Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with a child, the court shall consult the judicial information system, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has been requested....

RCW 26.50.160 Judicial Information System — Database:

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal and superior court by July 1, 1997, and shall include a database containing the following information:

Domestic violence and family law matters have provided beacons of light to shine on privacy issues in Washington courts. These issues exist on two levels: the actual paper document in the court file; and the court data entered, managed and maintained in the Washington State Judicial Information System (JIS).

(1) The names of the parties and the cause number for every order of protection issued under this title, every criminal no-contact order issued under chapter 10.99 RCW, every anti-harassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, and every parentage action under chapter 26.10 RCW;

(2) a criminal history of the parties; and
(3) other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee. [1995 c 246 Sec. 18.]

A project team involving court staff, county clerks and the Administrative Office of the Courts (AOC) met to implement changes in JIS to effectuate the domestic violence legislation. It was in this project committee that county clerks raised concerns regarding the level of personal identifying information being sought for the JIS's order-tracking system. The role of the county clerk is to receive, manage and maintain all court records, which includes entering data into the state's JIS system for docketing, calendaring and case-management purposes. RCW 26.50.070(5) requires the clerk to enter any order issued under this section within one judicial day. The date and time of issuance and the expiration date of the order are to be entered. In addition to privacy concerns, the clerks had liability and constitutional concerns.

The statutes mandate entering the names of all parties in the JIS. Consulting the JIS case history prior to issuing an order regarding residential placement of or contact with a child requires each of the parties to be uniquely identified on the JIS. The AOC proposed an amendment of JISCR Rule 18 to give clerks additional authority to collect and record person information about parties in domestic relations, dependency, paternity, anti-harassment, domestic violence protection, and victims in criminal domestic violence-related cases:

Rule 18. Adding Records to the Judicial Information System

In all courts adding records to the Judicial Information System, for all persons on whom a case is filed on juvenile or

adult criminal offenses, or infractions, and all parties in cases filed under Title 26 RCW, Title 13 RCW, or Chapters 10.14 or 10.99 RCW, or victims in domestic violence related criminal offenses, courts shall collect identifying information and create a record ~~will be created~~ in the person database ~~according to~~ to the extent required by the rules and procedures adopted by the Judicial Information System Committee. This requirement may also include dependents and household members as required by local courts or the rules and procedures adopted by the Judicial Information System Committee.

Identification information forms and protocols were created for gathering the personal information for clerks to enter into the database. Another concern was that the forms failed to inform the parties that the information would be going into a statewide database.

The good news is that, as a result of a lot of hard work on the part of county court clerks, the AOC, the JIS Committee (referred to above) and domestic violence advocates, a system has been put in place that everyone can live with. The focus of the personal information has been narrowed, and the form on which the information is collected makes it clear to the parties that some of the information requested is optional. The form also indicates that the information is confidential and will not be made a part of the court file. Parties are also made aware that the information will exist in the "confidential" JIS database and that it will only be available to authorized court-designated staff. As a result, where domestic violence is involved, the personal information of parties has been protected and the intent of the 1995 legislation has been met.

Dissemination of Court Information

On October 29, 1999, the JIS Data Dissemination Committee, the governing body created by the state Supreme Court to administer the computer network that serves the state's courts, conducted a first-time hearing as part of a full-scale review of the court system's data-dissemination policy. The policy was adopted in 1995 to balance personal privacy interests against the courts' need to conduct business openly, and the public's right to know how courts

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do their job. As a result of the hearing, it became clear that courts needed to develop an appropriate balance between disclosure of public court records and personal privacy, especially where persons must disclose so much of their personal and financial information. Since that hearing, the committee has been revisiting its policies on public disclosure.

Having experienced the privacy issues addressed by the 1995 domestic violence legislation, which involved significant modification to the JIS (implemented in 1997), the courts have become more proactive. Legislators, county clerks, domestic violence advocates, prosecutors, law enforcement, the WSBA, the Administrative Office of the Courts, judges and media have come to the table in the formation of workgroups focusing on access and privacy issues.

Family Law

As family law has evolved over the years with its own rules, courts and forms, so have more processes, procedures and the personal information of parties, both with and without children. There were two known incidents in the past year where a party was a victim of identity theft as a result of information contained in court

SSB 5975 ... provides systems for maintaining separate records in domestic relations cases to protect the privacy of individuals and minimize misuse of open court records for criminal activity such as identity theft.

files. Social security numbers, birthdates and drivers' license numbers provide all the information necessary for someone to open bank, debit and credit card accounts, arrange for telephone services, and obtain loans. This information has been readily available on the state-mandated Petition for Dissolution form, since family law matters are public records when filed with the court.

In October 2000, a privacy workgroup was developed to address privacy issues with regard to family law forms. The primary focus of the workgroup was to address the personal identifying information contained in the forms. In conjunction with identifying the information, the group identified access-to-information is-

ssues, and addressed needed legislation to remove current requirements for including personal identifiers and financial information in court documents that are considered open records.

In 2000, county clerks tried to have social security numbers removed from mandated court forms through a legislative bill, but the Department of Social and Health Services (DSHS) objected because of federal requirements to have social security numbers in divorce decrees for child-support enforcement purposes. The privacy workgroup addressed this issue and was able to arrive at a mutually agreed upon bill — hence, Substitute Senate Bill (SSB) 5975 sponsored by Senator Costa in 2001.

SSB 5975 removes the requirement that certain personal identifiers (social security numbers, drivers' license numbers, residential addresses, residential telephone numbers, and childrens' birthdates) be on the face of pleadings, and requires that the information be filed in an accompanying document entitled "confidential information form" or other such document that the court requires. A companion proposed court rule has been developed that restricts access to the confidential information form to only court staff, the state

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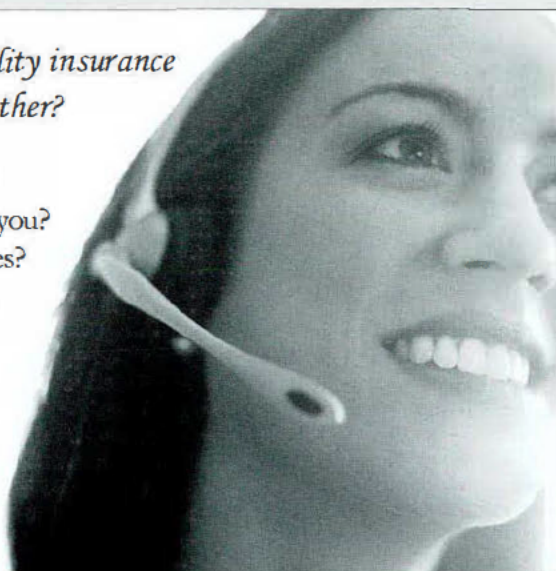
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agency responsible for collecting child support, or by court order. Federal child support enforcement requirements will be satisfied by collecting the information on the confidential information form, and the personal identifiers contained on that form will not be generally open to public access.

County clerks have long awaited this bill, having been concerned for years about the personal data required in domestic forms, the JIS database, and the privacy of individuals. An average of 3,200 domestic cases are filed each year in Snohomish County, which represents approximately one-tenth of the state's court business. Statewide, 37,824 domestic cases were filed in 2001 with social security numbers, bank account and credit card numbers, tax returns, etc. in open court files for public access, viewing and copying.

SSB 5975 represents significant work on the part of the WSBA, county clerks, DSHS, judges, the press and the AOC. The bill provides systems for maintaining separate records in domestic relations cases to protect the privacy of individuals and minimize misuse of open court records for criminal activity such as identity theft.

The "family law privacy" bill was signed into law by Governor Locke and amends RCW 26.09.020, 26.21.305, 26.23.050, 26.23.055 and 26.26.130, effective October 1, 2001. General Court Rule (GR)22, regarding access to family court records, sets forth the means to implement SSB 5975, as well as defining access restrictions. The Washington Pattern Forms Committee has developed the confidential forms set forth in the bill and court rule as follows:

Section (d) Documents Containing Restricted Personal Identifiers Sets Forth:

Parties to a family law case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law case, except: (1) "Sealed financial source documents" filed in accordance with GR22(e)(1) below:

(2) The following confidential forms: Confidential Information Form, Domestic Violence Information Form, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form and any Per-

sonal Information Sheet necessary for Judicial Information System purposes. (3) Court requested documents that contain restricted personal identifiers.

Per (d)(1) of the court rule, "sealed financial source documents" would include tax returns, bank statements, credit card bills, wage stubs, W-2s, insurance statements, copies of checks, NSF check records, phone bills, collection letter/notices, credit applications and loan documents. Procedurally, clerks place the sealed financial records form cover sheet in the court file, and place the attached confidential

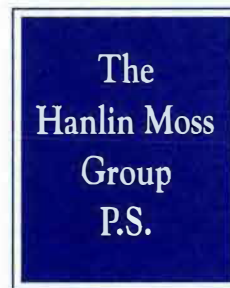
records in a sealed file. The JIS SCOMIS docket shows that a sealed financial records form was filed identifying the "titles" of documents, but the confidential records themselves are sealed.

Per (d)(2) of the court rule, currently the law enforcement information sheet and foreign protection order information form exist, and neither is kept in the court file. The new confidential information form indicates: "KEEP CONFIDENTIAL," and also is not kept in the court file. Counties have different practices in managing documents. County clerks may keep these confidential records in separate files or

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envelopes, or identified and separated within the existing court file for removal by the clerk when access is requested by the public.

Striking a Balance Between Privacy Issues and the Court System

The court system must be sensitive to the appropriate balance between disclosure of public records and privacy with respect to very sensitive personal information demanded of individuals using our court

Privacy issues and the court system, whether at state or federal levels, will continue to be issues as new technology trails are blazed.

system. (See *Privacy of Court Records* by Washington Supreme Court Justice Philip Talmadge, 2000, <http://www.courts.wa.gov/editorial/privacy.cfm>.)

The JIS 2000 Strategic Plan includes a new Web-based approach and electronic filing. These features clearly will enhance and improve the functionality of the JIS. It will also assist the courts and clerks in their ongoing efforts to meet access-to-justice needs of individuals involved in the court system.

On balance, a public hearing was held in March 2001 in Washington, D.C., with a panel of eight federal judges, on the privacy and security implications of a plan to grant public Internet access to all U.S. court documents. Many debates took place over what information, how much information and use of the information. Comments came from organizations with the biggest stake in the debate — journalists, legal foundations, and privacy and security advocates.

U.S. Chief Judge John Lungstrum (chair of the Judicial Conference Committee on Court Administration and Case Management) submitted recommendations to the Judicial Conference that documents in civil cases and bankruptcy cases, with some personal identifiers excluded, should be made available electronically, but that access to criminal case documents should not be available at this time. The Committee on Court Administration and Case Management plans to make a report to the Judicial Conference regarding any amendment to the recommendations no later than September 2003.

Privacy issues and the court system,

whether at state or federal levels, will continue to be issues as new technology trails are blazed. While court systems have historically been slow to change, technology has forced change upon us. For all the forward-thinking, futuristic opportunities that technology is providing, it is interesting to note how our forefathers instituted a system of checks and balances that works very well today as we grapple with technology-driven privacy issues and the court system. In Washington, the check-and-bal-

ance systems are working very well. They will continue to work well as long as individuals and groups are willing to commit the time, vision and leadership necessary to make it happen. As a body, there is a collective consciousness that has identified these privacy issues. Stakeholders at all levels are "at the table" in open dialogue as they strive to provide more efficient access to information in our open state court systems, while protecting individual rights to privacy. ☛

Snohomish County Superior Court Clerk Pam L. Daniels was re-elected to her second term of office in November 1999. She is certified as a Fellow of the Institute for Court Management of the National Center for State Courts. She is actively involved with the Washington State Association of County Clerks, and currently serves as the group's director of state legislation. Ms. Daniels also serves on the Washington State Public Trust and Confidence Committee and the Council on Public Legal Education.

NOTE

1. The workgroup consisted of Supreme Court Justice Bobbe Bridge, Court of Appeals Judge Ken Grosse, King County Superior Court Judges Dale Ramerman and Deborah Fleck, Snohomish County Superior Court Judge Tom Wynne, King County Commissioner Kimberley Prochnau, Snohomish County Clerk Pam Daniels, Thurston County Clerk Betty Gould, Chelan County Clerk Siri Woods, King County Chief Administrative Officer of the Superior Court Paul Sherfey, attorney Mark Weiss representing the WSBA family law section, Mary McQueen of AOC, Michael J. Killeen representing Allied Daily Newspapers of Washington, and Diana Kramer on behalf of Washington Newspaper Publishers Association.

The Board's Work

by **Mark A. Panitch**

Bar News Editor

Olympia (January 18-19) — The January Board of Governors' (BOG) meeting emphasized routine but vital issues of internal governance. Reports covered the annual closed-door meeting with the Supreme Court (Friday morning), information technology for the WSBA office, legislation status, and long-range planning. In addition, the board debated several issues related to the "war against terrorism," and discussed nominations for a number of committees.

Drug-Policy Reform

The meeting was almost a respite after more than two months of furious activity and debate — including a special session held by conference call — over the WSBA's official position on drug-policy reform bills facing the Legislature. (For the full text of the BOG resolution, see page 13 of the February issue of *Bar News*, or the WSBA Web site at www.wsba.org/2001/drugpolicy/resolution.htm.)

The debate officially began at last November's BOG meeting with the presenta-

tion of a report calling for a medical — rather than purely punitive — approach to drug addiction and low-level drug use. The report was jointly developed by the King County Bar Association (KCBA), the Washington State Medical Association (WSMA), and the Washington State Pharmacists Association (WSPA).

The report argues that for most addicts, treatment rather than prison would save dollars at both ends of the process; the cost of incarceration is far greater than the cost of treatment; those who complete treatment are less likely to repeat offenses; and savings in prison and jail costs would pay for treatment programs. Governor Ken Davidson (1st District), who served as the liaison between the BOG and the KCBA, urged the BOG to support the KCBA position.

After intense debate, the BOG was unable to agree, and decided to table the issue until the January meeting. But on December 11, in a classic case of events overtaking process, WSBA President Dale Carlisle convoked a special BOG meeting by teleconference, so the WSBA could have a voice in the legislative debate, which was scheduled to begin before the next BOG

meeting.

The result was a resolution that commended the KCBA, WSMA and WSPA for taking the lead on the issue; endorsed treatment without decriminalizing possession; called for using money saved from prison and jail sentences to pay for treatment; and retained criminal penalties for possession of large amounts of illegal drugs as well as violent crimes associated with illegal drug use.

Support by the BOG, the KCBA and other respected professional associations for drug-policy reform is a watershed event that marks a virtual 180-degree reversal of public policy. Several governors noted in debate that the "war on drugs" was a policy failure, while others argued that the driving force in drug-policy reform was the cost of keeping nonviolent offenders in custody. Both camps agreed that a change was due.

WSBA Director of Legislative Affairs Gail Stone reported there was wide support in the Legislature for drug-policy reform consistent with the WSBA position. She noted that bills in both houses clarify exactly how savings would be channeled into treatment, rather than simply being

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returned to the general fund. The BOG voted 11-0 to support the bills.

Sympathy Bill

On other legislative issues, Stone reported that a bill allowing "expressions of sympathy" was scheduled for hearings in both houses. The bill allows alleged tortfeasors to apologize or express sympathy to victims without those words being an admission of liability in court. The bill is the culmination of an effort by Past-President Jan Eric Peterson to make litigation more civil and professional (see the May 2001 issue of *Bar News*, p.13). A Dispute Resolution Section representative voiced support for the bill, as did the Washington Defense Trial Lawyers Association and the Washington State Trial Lawyers Association. The BOG voted its support 11-0.

Sections and Committees Evaluation

Governor Davidson reported that the Long-Range Planning Committee conducted a "zero-based" evaluation of sections and committees, and determined that the Resolutions, Legal Services to the

Armed Forces, Legal Assistants, Interprofessional, Court Improvement, and Civil Rights committees should be phased out. The BOG agreed to sunset Court Improvement, Interprofessional, Legal Assistants and Resolutions at the end of this fiscal year. Further consideration will be given to the Civil Rights and Legal Services to the Armed Forces committees. The Consumer Protection Committee will be sunsetted when the new Practice of Law Board is fully implemented. The committee proposed, and the BOG agreed, to establish a new committee called Public Information and Media Relations. WSBA Executive Director Jan Michels noted that there would be no conflict with the Bench-Bar-Press Committee, since it is a creature of the Supreme Court, and not the WSBA.

WSBA Technology Upgrade

WSBA Director of Technology Maureen Sunn introduced Project Manager/Senior Systems Analyst Robert Levinson, who presented three alternatives regarding WSBA technology upgrades for BOG consideration:

1. the BOG release of \$34,000 to retain a consultant for an infrastructure analysis, which will be needed regardless of which alternative the board chooses for a final system;
2. whether to develop new membership and financial software in-house or purchase an off-the-shelf system; and
3. whether to obtain integrated membership and financial software or acquire separate packages.

WSBA staff made the following recommendations on items two and three: purchase an off-the-shelf software package for both membership and accounting, and pursue a loose integration of the two. Staff reported that a request for proposal (RFP) will be issued, and after reviewing responses, a request for release of the remaining contingency funds will be made. Progress will be reported at the April BOG meeting (April 5-6). The governors did agree to release \$34,000 from the contingency fund for a network infrastructure consultant.

Refer them with a click...


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Local Hero

Olympia lawyer David D. Cullen received the WSBA Local Hero Award in recognition of outstanding service to the residents of Thurston County. 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. Recently, he was instrumental in coordinating the chapter's September 11 relief efforts. He has been involved with the West Olympia Rotary for more than 20 years, and served as club president in 1993. Mr. Cullen 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, which he now chairs. Mr. Cullen has practiced law in Olympia since 1973, focusing on business law, litigation and estate planning. 

That Most Noble of Addictions: Workaholism

by Jean Johnson, WSBA Lawyers' Assistance Program

Not long ago I was waiting in a ferry line and overheard a conversation between two people discussing a mutual friend. Both had noticed and were concerned about her workplace "addiction." They easily used the term "workaholic" as they described how she kept taking on more and more "valid" projects, which kept her distanced from her life and its problems — essentially providing her an escape hatch from the world. It struck me that the term "workaholic" is now part of our vernacular and that this casual conversation reflected a genuine understanding of the workaholic phenomenon and how we use it to avoid psychological discomfort.

Strangely enough, we can live in the clutches of a full-blown addiction and feel a sense of pride and satisfaction about it. The accolades of responsibility, dedication and reliability are bestowed upon countless people who work those extra hours, and who perform above and beyond the call of duty. In America we pay homage to diligence, hard work and success. One is often rewarded with money or status. To complicate matters, mixed messages are routinely doled out, touting the importance of a balanced life and of time spent with family and friends. Yet, people are often penalized or subtly chastised for not making the expected commitments and sacrifices. This promotes and institutionalizes a socially acceptable and destructive addiction.

The capitalist system of the American culture engenders a strong work ethic; however, the appearance of diligent work can be the deceptive guise of a more ominous reality — that of compulsive behavior run rampant. Earnest work efforts can insidiously transmute into addictive tendencies with dire consequences.

It is a hardwired human need to expe-



rience a sense of competence. From learning how to tie our own shoes to winning "Most Valuable Player" in the World Series, the work ethic is a firmly implanted American cultural norm. Our daily lives are made up of myriad tasks that we have mastered. But at what point do we slip over the line and fully engage in a compulsively driven mode that has little to do with completing the task at hand?

On the surface, workaholism may look no different from working hard. But for the workaholic, work is the buffer between oneself and unwelcome moods and feelings. It becomes the only haven that provides meaning, identity and self-worth. Work may also feed the inclination to make ourselves indispensable in the futile effort to satisfy the insatiable — the need to feel needed. Fertile ground for workaholism occurs when self-image is deeply embedded in vocational achievements. We work longer hours and take on more pro-

jects to enhance our self-worth. Our perceived value is then precariously linked to work-related performance and accomplishments, leaving us extremely vulnerable to psychological devastation when the outcome is disappointing or when we fail. The workplace may evolve into the only arena where "life" truly plays out. Family and friends exist somewhere in the dim periphery. With the absence of connection and interaction, the quality of those relationships inevitably erodes.

The common denominator of workaholics is that they all work too much; however, there are different manifestations of the same underlying condition. Therapist Bryan Robinson, Ph.D., author of *Chained to the Desk: A Guidebook for Workaholics, Their Partners and Children, and the Clinicians Who Treat Them*, identifies four major styles of workaholism:

Bulimic Workaholic Style — where the internal message is: "I need to do this perfectly or not at all." It resembles the bulimic eating disorder with its fluctuation between self-imposed hunger and binge eating, as one cycles through procrastination, then the eventual excessive work effort that often includes all-nighters and, finally, total exhaustion. Intense anxiety lurks during the procrastination phase, generated by worrying over the work not getting done. Central to this style is the fear of not doing the task perfectly, making mistakes, and experiencing failure. The only thing that can override the obsessive, perfectionistic self-criticism is the terror of not getting the project done before the deadline.

Relentless Workaholic Style — where there is a breathless pace with no let-up. We impulsively take on too much, are not

able to say "no," cannot prioritize, and are unable to delegate. At times, the quality of work suffers because we are unable to incorporate thoughtful reflection into the project at hand. Often characteristic of this style is a dependence on others' approval for a sense of self-worth.

Attention-Deficit Workaholic Style —

Robinson describes this approach as a form of self-medicating by "living on the edge" in order to trigger the adrenaline response. The desired result is the rush of new ideas and the surge of energy and

excitement at the initiation of a slew of projects which are left unfinished because of poor execution and the boredom that inevitably sets in. Some people may gravitate to this style as a way of combating depression.

Savoring Workaholic Style —

manifests itself in a painstakingly slow and deliberate manner. We become overly attentive to details, savoring tiny minutiae, but in the process inadvertently prolonging the endeavor, creating additional work, and eventually coming up against a dead-

line that leaves us feeling dissatisfied with our efforts. There's a strong whiff of perfectionism inherent in this style, and as a result we feel our work is never good enough.

In reality there may be permutations of any of these styles, creating a little discomfort or a great deal of havoc in our lives. As with many addictions, people may have to "hit bottom" before change can be seriously contemplated. A precious relationship is lost, sustained stress eventually manifests in a disabling physical or psychological problem such as migraine headaches or clinical depression, or a catastrophic "crash-and-burn" episode may require hospitalization.


To shed some light on workaholic tendencies, try the quiz on page 35, officially known as the Work Addiction Risk Test (WART). Put the number that best describes your work approach beside each statement: 1 – never true; 2 – sometimes true; 3 – often true; 4 – always true.

After responding to all 25 statements, add up your score. The scores are divided into three categories: those scoring 67-100 are exhibiting highly workaholic behavior; those falling in the middle range (57-66) are considered mildly workaholic. Those falling in the lowest range (25-56) are not engaging in workaholic behavior.

So, you've flinched at more than a few of those statements, recognizing yourself in some of the descriptions of workaholic behavior. The following list provides some concrete and philosophical suggestions that are neither novel, nor earthshaking, nor sure-fire "cures," but they can create subtle and even profound changes in a person's life.

- Believe that vacations, breaks and "down time" actually enhance your professional efforts. When work overshadows all other activities, stress results. Habitually working long hours with minimal relief leads to less productivity and increased inefficiency, and skewed perceptions of what is truly important.
- Gradually cut down the number of hours you work each day or week. Identify some logical steps such as not working on weekends, and reducing your workload by delegating or eliminating unnecessary tasks.

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- Establish a firm delineation between work and other areas of your life such as play, relationships, self-care and spiritual needs. Recognize how modern technology such as fax machines, pagers, and cell phones can invade, weaken and blur those boundaries, allowing work to seep into every facet.
- Renew neglected relationships and develop new ones. Believe this is time wisely invested.
- Learn to recognize that the need to control other people, external situations and outcomes has as its genesis one's own internal chaos.
- Ask yourself what all this busyness is about — what are you distracting yourself from or valiantly trying to avoid? Are you afraid of what will come to mind if you slow down or stop? What changes might you have to make? You might not feel up to the task or may be afraid of where those changes may lead.
- Make the distinction between perfectionism and respectable standards. Underlying perfectionism is a deep sense of inadequacy.
- Don't burden yourself with unrealistic notions of your unique set of skills or unparalleled level of competence; it is camouflage for a sense of self-worth that is dependent on others' approval.

It is crucial to remember that workaholicism is not a malady that appears suddenly. It is not caused by the particular work environment, nor is it an ugly but inevitable aspect of certain professions. It is a genuine psychological condition manifested by enduring behavioral, feeling and thinking patterns that people bring with them — whatever the job.

The effects of this addiction are dramatic and ultimately destructive. Take stock of what is important to you and what is possibly being short-changed. Call upon professional counseling assistance if you need someone alongside you to sort it out. ♣

Jean Johnson, MSW, is a clinical social worker. She can be reached at 206-727-8268.

Work Addiction Risk Test (WART)

- 1. I prefer to do most things rather than ask for help.
- 2. I get impatient when I have to wait for someone else or when something takes too long.
- 3. I seem to be in a hurry and racing against the clock.
- 4. I get irritated when I am interrupted while I am in the middle of something.
- 5. I stay busy and keep many irons in the fire.
- 6. I find myself doing two or three things at one time, such as eating lunch and writing a memo while talking on the telephone.
- 7. I overcommit myself by biting off more than I can chew.
- 8. I feel guilty when I am not working on something.
- 9. It's important that I see the concrete results of what I do.
10. I am more interested in the final result of my work than in the process.
11. Things never seem to move fast enough or get done fast enough for me.
- 12. I lose my temper when things don't go my way or work out to suit me.
13. I ask the same question again without realizing that I've already been given the answer.
14. I spend a lot of time mentally planning and thinking about future events while tuning out the here and now.
15. I find myself continuing to work after my co-workers have called it quits.
16. I get angry when people don't meet my standards of perfection.
17. I get upset when I am in situations where I cannot be in control.
18. I tend to put myself under pressure with self-imposed deadlines.
19. It is hard for me to relax when I'm not working.
20. I spend more time working than socializing with friends, or on hobbies or leisure activities.
21. I dive into projects to get a head start before all the phases have been finalized.
22. I get upset with myself for making even the smallest mistake.
23. I put more thought, time and energy into my work than I do into my relationships with loved ones and friends.
24. I forget, ignore or minimize celebrations such as birthdays, reunions, anniversaries or holidays.
25. I make important decisions before I have all the facts and have a chance to think them through.

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Life as a PLLC: Are You My Member?

by Brian P. McLean

A growing number of law firms in Washington are forming as or converting to limited liability entities. Have you ever wondered why some law firms adopt as part of their name the abbreviation "LLC" while others adopt "PLLC"?¹ Neither have I.

Nevertheless, my future member and I took formation and naming issues seriously when we formed our own professional firm. First, we investigated whether we should form as a C corporation, a professional services (PS) corporation, a limited liability entity, or as a traditional partnership. Our accountant said that a limited liability company (LLC) or limited liability partnership (LLP) would offer us the most flexibility, and that LLCs and LLPs were "virtually" identical corporate forms. Engaging in due diligence, we took a cursory survey of Washington law firms. Within the subgroup of limited liability entities, there are more C suffixes than P suffixes. Suffice to say, we did the conservative, lawyerly thing and went with the majority C suffix.

Professional LLC Is Prefixed with P

We noticed that some law firms use the prefix P; others do not. "What the hey," we said. Uncharacteristically, my future member suggested we look up the law on the naming issue. So I did. State law provides that a professional limited liability *must* use the word "professional" or its abbreviation P.² Faced with the risk of professional censure or, even worse, having to amend our certificate of formation, we went with the law.

You've Got Meal!³

Four months into our PLLC, I discovered that my member was apparently accepting personal favors, goods and services in exchange for providing legal services. Let me explain.

It was probably a Tuesday. I asked my member, whom I will refer to as Richard,

what he was doing for lunch.

He advised that his client Tony was bringing him lunch in exchange for legal advice. I was flabbergasted.

Our membership agreement provides that "(a) Net Profits shall be allocated to the Members in accordance with their Sharing Ratios." The term "Net Profits" suggests the possibility that our firm will have profits. Profits derive from income. Our sharing ratio, at least on paper, at least when we executed our sacred membership agreement, was 50/50 with some year-end flexibility anticipated.

Apparently, that flexible anticipation encompasses consideration of the number

Maybe a new client would give Richard a manicure or a Mercedes in exchange for legal services unreported to the firm?

of free lunches Richard does not share with me, his member. The "meal" was income diverted from the law firm. No firm income, no firm profits. No firm profits, no equitable division of profits. No equitable division of profits, no firm.

Anger supplanted my flabbergast. I left and ate alone.

When I returned, the office smelled bad. Richard looked sheepish.

"How was lunch?" I interrogated. Tony had brought, stored in sturdy styrofoam, All-You-Can-Eat Buffet leftovers that had turned rancid. I am still struggling to place a value on it, despite the clear symbolic threat the meal poses to our PLLC.

Rappelling into a Deep, Dark, Dank and Smelly Eddy of Despair

As with any serious dispute involving philosophical differences between members or, as here, the clear breach of a fiduciary duty by one member to the other, I was left with the question — what to do?

The easiest thing, of course, was to ignore the transgression. But if Richard was left unadmonished, what would happen next? Would some client undisclosed to the firm install a hot tub at Richard's home? Maybe a new client would give Richard a manicure or a Mercedes in exchange for legal services unreported to the firm? I came to the inexorable conclusion that writing an article for *Bar News*, thereby sending Richard a clear message about the limits of my tolerance as well as my capacity for forgiveness, was the right thing to do.

Epilogically, it is simple for Richard and attorneys like him to rationalize away the steep grade of this slippery slope. But even now, as I metaphorically rappel into a deep, dark, dank and smelly eddy of despair facing ugly disputes, potentially inequitable division of profits and losses, and the stink of unshared free lunches, the only question that really nags me is this: why didn't our accountant recommend an LLP so I could forgive my partner instead of my member? ↗

Brian P. McLean practices in Tacoma, where he and Richard Brady are managing members of Brady & McLean, PLLC. The firm provides legal services to condominiums, homeowners and neighborhood associations, clients with stockbroker disputes, appeals, and now — attorneys thinking about a name change. See their Web site at www.bradymclean.com.

NOTES

1. PLLC stands for "Professional Limited Liability Company." LLC stands for...well, it's now obvious, isn't it?

2. "The name of a professional limited liability company must contain either the words 'Professional Limited Liability Company,' or the words 'Professional Limited Liability,' and the abbreviation 'Co.' or the abbreviation 'P.L.L.C.' or 'PLLC'..." RCW 25.15.045(4). Uncharacteristically, my future member suggested we look up the law on when the state Legislature uses the word "must" to mean "can," "could" or "should." I did not.

3. Fair Use. See *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994); 17 U.S.C. § 107.

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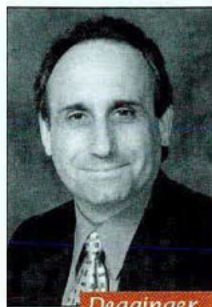
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Honors and Awards

Grant S. Degginger has been elected to a two-year term as deputy mayor of Bellevue. Mr. Degginger is a partner in the Seattle office of Lane Powell Spears Lubersky LLP.

Beth McCaw, Christopher S. Marks, Mary R. Knack and Gabe S. Galanda have been named "Rising Stars" by *Washington Law & Politics* magazine. All are associates in the Seattle office of Williams, Kastner & Gibbs PLLC.

Brad L. Englund has received his certification as a certified information system security professional. The certification is recognized in the information security field as a mastery of international standards for information system security. Mr. Englund practices with the Yakima firm Halverson Applegate PS.

The board of trustees of the Legal Foundation of Washington recently elected the following officers and board members: Katrin E. Frank, president; Jeanne J. Dawes, vice president; Ragan L. Powers, secretary; John W. Phillips, treasurer; and Robert T. Anderson and Lynn A. Watts, board members.

The East King County Bar Association has elected the following officers and trustees: Jason H. Grover, president; David Johnston, vice president; Greg L. Russell, treasurer; David J. Seeley, secretary; and Jim Clark, Al W. Richardson and Kathy Weber, trustees.

Kevin D. Swan has been elected to a one-year term as vice president of the Federal Bar Association of the Western District of Washington. Mr. Swan practices intellectual property law in the Seattle office of Preston Gates & Ellis LLP.

William H. Mays, a member of Williams Kastner & Gibbs PLLC, has been elected to a one-year term as president of the Washington State Golf Association

(WSGA). He has served as of counsel to the WSGA board of directors since 1992.

Bank Investment Marketing, a national magazine for bank securities and insurance professionals, has ranked Seattle lawyer Terrence E. Burns among its top-50 bank representatives for 2001. Mr. Burns is a private client manager for Wells Fargo in Bellevue.

Movers and Shakers

Seanna M. Bodholt, Jane E. Brown, Gerald Kobluk, Thomas L. McKeirnan and Hollie J. Westly have become partners in the Spokane firm Paine, Hamblen, Coffin, Brooke & Miller LLP. Ms. Bodholt has practiced with the firm since 1993, focusing on taxation, estate planning, probate and trust administration, and business matters. Ms. Brown concentrates on litigation, construction law and family law. Mr. Kobluk's practice emphasizes health care, hospital law and general litigation. Mr. McKeirnan focuses on corporate, securities and transactional law; mergers and acquisitions; and hospitality law. Dr. Westly's practice emphasizes health care, general business and corporate law.

Darcy M. Norville has become a partner in the Portland firm Tonkon Torp LLP. She focuses on executive compensation and employee benefits.

John L. Bley, former director of the Washington State Department of Financial Institutions, has formed a new firm in collaboration with Graham & Dunn PC. The new firm, Integra Advisors LLC, will help the management of banks, savings and loans, and other financial institutions with operational, regulatory and governmental issues.

Lara L. Hemingway and Richard A. Repp have joined the Spokane firm Witherspoon, Kelley, Davenport & Toole. Ms. Hemingway focuses on pension and ben-

efits, health care and taxation. Mr. Repp's practice emphasizes business and securities transactions.

Eighteen new associates have joined the Seattle office of Preston Gates & Ellis LLP. Cabrelle M. Abel focuses on commercial, employment and intellectual property litigation. Kristin J. Boraas concentrates on environmental law. Jay Carlson's practice emphasizes commercial and business litigation. Deborah Leppke Dean focuses on environmental and land use law. Mark S. Filipini concentrates on labor and employment law. J. Devlan Geddes focuses on technology, intellectual property and business. Jonathan H. Harrison focuses on litigation. Marni M. Hussong practices real estate law. Alina A. McLaughlan concentrates on environmental law and litigation. Jason R. Mirmelstein's practice emphasizes partnership law and investment advice. Kerri M. Millikan (member of the Oregon State Bar) focuses on litigation and environmental law. Shankar R. Narayan focuses on intellectual property issues. Jeremy E. Roller is developing a litigation practice. Yujing Shu practices business law. Robin Smith concentrates on taxation and exempt organizations. Heather M. Utter's practice emphasizes technology and intellectual property. Tiffany A. Werner (member of the New York State Bar) represents financial institutions in commercial real estate financing. Kris



Shadian



Lin



Thaler



Hough



Wallin



Leupold

S. Withrow focuses on business law.

Hertsel Shadian has joined the Portland firm McEwen Gisvold LLP, focusing on tax, estate planning and general business.

Eric P. Lin has joined the Law Office of Carol L. Edward as an associate practicing immigration and citizenship law.

Richard D. Thaler has been appointed to a three-year term as managing director of Williams, Kastner & Gibbs PLLC in Seattle. He replaces Sheryl J. Willert.

John W. Hough and Allison Steincipher Wallin have been elected partners at Lane Powell Spears Lubersky LLP. Mr. Hough is based in the firm's Olympia office, focusing on governmental and regulatory matters, general litigation, telecommunication law, and natural resource law. Ms. Wallin practices in the firm's Seattle office and focuses on litigation, specifically, complex commercial, health care and class-action litigation.

Grady J. Leupold has joined the Seattle office of Lane Powell Spears Lubersky LLP as an associate concentrating on labor and employment law.

The Washington Attorney General's Office has appointed the following assistant attorneys general: Garth Ahearn, Thomas D. Angier, Robert Antanaitis, Helen Arntson, Maia D. Bellon, Charnelle M. Bjelkengren, Tara D. Blair, William Blitz, Krista K. Bush, Tomas S. Caballero, Karen C. Calhoun, Susan Carlson, Janelle Carman, William G. Clark, Monty D. Cobb, Amy F. Cook, Susan Cruise, Matthew Daheim, Melanie deLeon, Robert C. Eisele, Donna R. Emmingham, Traci S. Friedl, Gretchen D. Gale, Ronald A. Gomes, Paul O. Goulding, Adrienne E. Harris, David W. Huey, Paul F. James, Brady R. Johnson, Jack Johnson, Meg L. Jones, Jennifer Karol, Hilery Kirchmeier, John Lane, Dale L. Lehrman, Matthew A. Love, Aileen B. Miller, Eric Nelson,

Shirley Waters Nixon, Stephen H. North, Lori Oliver-Hudak, David E. Parry, Amy M. Phillips, Janean Polkinghorn, Clayton G. Ramsey, Danae Rawson, Maria S. Regimbal, Frances Rhee, Michael J. Rollinger, Steven Rosen, Miriam Rosenbaum, Mark F. Schumock, Paul Silver, Andrew J. Simons, Kelly Taylor, Erika Uhl, Barbara Van Ess, Steve Vinsonhaler, Lisa Watson, Karen E. Webb, Greg Weber, Lisa E. Wochos, Marc Worthy, James

A. Yockey, and Jack G. Zurlini Jr.

Judge Philip H. Brandt has assumed the position of chief bankruptcy judge of the U.S. Bankruptcy Court for the Western District of Washington. He succeeds Judge Thomas T. Glover. Chief Judge Brandt has served as a bankruptcy judge since 1991.

John W. Branch and John Whitaker have been made officers in the Seattle office of Merchant & Gould. ☞

In Memoriam

Richard F. Broz died January 14 at age 74. Over the course of his career, Mr. Broz helped write voluntary desegregation legislation for the Seattle School District, helped incorporate the city of Mercer Island, and helped found Judicial Arbitration and Mediation Service. He also served as a special assistant to the U.S. attorney, served on the King County Superior Court bench, and worked in private practice. Memorials may be made to Northwest Harvest (711 Cherry St., Seattle, WA 98104) or Mercer Island Youth and Family Services (8236 SE 24th St., Mercer Island, WA 98040).

Marco DeFunis died January 16, following a heart attack, at age 52. Mr. DeFunis made history as a University of Washington undergraduate when he filed one of the country's first reverse discrimination lawsuits. In 1971, he challenged the admissions policies at the UW School of Law, claiming he had been denied entrance in favor of less-qualified minorities. By the time the U.S. Supreme Court heard his case in 1974, Mr. DeFunis had only one quarter of law school remaining, so the matter was dismissed as moot.

Edward "Ted" Evans died December 21 at age 56, following a nine-month battle with brain cancer. He was founder and president of Sure Fish, a company that has fish-testing laboratories in eight countries. Mr. Evans started the company because he believed the FDA would eventually regulate seafood in the same way the poultry and beef industries are regulated. In effect, he was able to write the standards for seafood quality around the world. Memorials may be made to the Fisherman's Memorial Foundation (PO Box 17356, Seattle, WA 98107) or the Nature Conservancy (217 Pine St., Ste. 1100, Seattle, WA 98101).

King County District Court pro-tem judge John D. Lawson died December 27 at age 73, suffering a heart attack as he was leaving an afternoon session at Aukeen District Court in Kent. Judge Lawson presided over district courtrooms throughout King County for more than 20 years, after serving as Redmond city attorney for 20 years. Remembrances may be made to the American Heart Association (4114 Woodland Park Ave. N., Seattle, WA 98103).

Harry C. Wilson died January 13 at age 80. Prior to practicing law, Mr. Wilson served in the Royal Canadian Air Force as a gunner in World War II. In 1957, he formed the Bellevue firm Wilson & Reardon with his sister-in-law, Barbara Reardon. An avid golfer and collector of antique golf equipment, Mr. Wilson founded Sahalee Country Club with friends in 1967.

Ethics in Corporate Failures

by **Barrie Althoff**

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

When times are good, usually people are also good. But when times are bad, virtue is sometimes deemed an unaffordable luxury, particularly when crime more clearly pays. Temptations to cover up, destroy or conceal evidence, loot corporate assets, cut corners, point fingers and avoid responsibility may arise. When a corporation fails, corporate executives may seek to blame others and destroy evidence, both to save their professional reputations and to shelter their now-imperiled personal assets. Corporate creditors, including rank-and-file employees, may be looking to recover moneys or obligations owed them, including unpaid wages and possibly greatly devalued stock options or retirement-plan funds. Dissatisfied corporate shareholders and securities regulators are likely to institute litigation against management and others associated with management, including in-house and outside counsel, particularly if the corporation has recently offered or sold any securities. Anyone with perceived deep pockets is a likely defendant.

This article assumes that the corporation has failed financially and is either dead and buried, or on its death-bed with little or no hope of recovery. It assumes that investors and creditors are either circling the corporate invalid or are actually already devouring its carcass through direct or derivative litigation. It assumes securities regulators are investigating the failure. It also assumes that the corporate lawyers (either in-house or outside counsel) are either within the carcass being devoured or have been identified as the next meal. In that scenario, this article explores some of the legal ethical issues that may arise for the lawyers, asks many questions, and answers at least some of them.



Am I Competent?

The first question a lawyer representing a failing or failed corporation or its management or creditors should be asking is whether he is competent to handle the representation. Rule 1.1 of Washington's Rules of Professional Conduct is identical to Rule 1.1 of the American Bar Association's Model Rules of Professional Conduct and to Disciplinary Rule 6-101(A) of Oregon's Code of Professional Responsibility. Each of them requires that: "A lawyer shall provide competent representation of a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

The lawyer should recognize that the legal issues arising in connection with a failing or failed corporation, particularly one with public investors and which is being merged or acquired or has corporate subsidiaries or affiliates, are numer-

ous, complex, and often very time-sensitive. Questions will arise under state corporate law; federal and state securities laws; federal patent, trademark and copyright laws; federal bankruptcy and state debtor-creditor rights laws; federal and state tax laws; federal and state employment laws; federal employee-benefit plan laws; whistleblower protection statutes; and so on. Complex litigation and difficult negotiations with creditors are likely. Depending on the nature, extent and location of the corporation's business, assets and employees, the laws of numerous state, localities, and foreign jurisdictions may be involved. If the lawyer is not qualified to handle these issues either directly or through assistance from other lawyers, the lawyer's representation will likely violate the lawyer's ethical duty of competence. Similarly, if the lawyer's office does not have the personnel and resources to

handle a complex corporate liquidation and related litigation, one wherein payment of legal fees and costs advanced may be very slow in coming, the lawyer should not undertake the representation.

If the lawyer's conduct violates the ethical requirement of competence, it may also constitute malpractice. Lawyers fearing they may not be competent and may be subject to malpractice claims, but wanting to undertake the representation anyway, should recall that under Washington's RPC 1.8(h) (based on ABA Model RPC 1.8(h)) they may not seek to prospectively limit their liability to a client for malpractice unless such limitations are permitted by law and the client is independently represented in making an agreement to limit the liability. A similar prohibition is set forth in Oregon's DR 6-102(A).

Am I Properly Licensed?

Generally a lawyer must be licensed to practice law in each jurisdiction in which the lawyer practices. Washington's RPC 5.5(a), the current ABA Model RPC 5.5(a), and Oregon's DR 3-101 each prohibit a lawyer from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction, or from assisting a nonadmitted person in the unauthorized practice of law. Even though the ABA provision is currently being re-evaluated and will likely be amended in light of the frequent multi-jurisdictional practice of many lawyers, as likely will the Washington and Oregon provisions, the lawyer should always assure appropriate licensing, since without it the lawyer may not only be subject to possible prosecution for ethical violations or violation of the UPL provisions of other states, but more practically may be denied legal fees. See, for example, *Birbrower, Montalbano Condon & Frank P.C. v. Superior Ct*, 949 P.2d 1 (CA, 1998), modified 17 CA.4th 643a (1998).

If the lawyer is representing a failing or failed corporation, the lawyer should determine whether the lawyer is licensed, or can associate with local counsel, in each jurisdiction in which the lawyer may be required to practice to represent the corporate client. Some jurisdictions have expedited admission procedures for lawyers who limit their practice entirely to repre-

senting a corporate entity. Washington, Oregon and Idaho have each recently adopted rules permitting general admission to practice, without the need to take a new bar exam, for lawyers already admitted in one of the other two states. If the failing or failed corporation is a small or local entity, the lawyer's licensing should not be an issue. If, however, the failing or failed corporation has operations or staff in various jurisdictions, the lawyer should assure he is duly admitted to practice where appropriate.

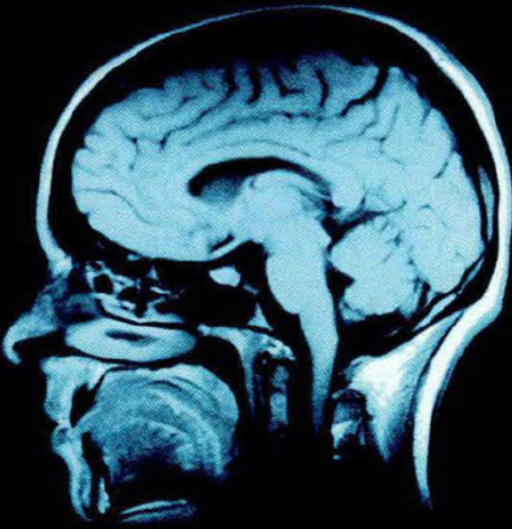
Can I Exercise Independent Legal Judgment and Render Candid Advice?

A lawyer representing a failed or failing corporation may serve the corporation both as an advocate in litigation and as an adviser. Washington RPC 2.1 and ABA Model RPC 2.1 require a lawyer as an adviser to exercise independent professional judgment and render candid legal advice.²

If the advising lawyer is involved in any conduct arguably related to the failure of the corporation, or if the advising lawyer

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is an investor in the corporation, the lawyer may have a conflict of interest which would prevent the lawyer from providing the required independent judgment and candid advice. Thus, RPC 2.1 forms an independent ground for requiring a lawyer to avoid conflicts of interest that may impede the lawyer's ability to provide independent judgment and render candid advice. Further, if a lawyer representing a corporation knows it intends to undertake a course of conduct with likely significant adverse legal consequences to it, the lawyer has a duty under Washington's RPC

1.4 and ABA Model RPC 1.4 (duty to communicate) to provide the corporation with candid advice about the legal consequences of such conduct.³ If the corporate management is inexperienced in legal affairs, the lawyer may be required to advise the client that more than merely technical legal advice may be involved. (See comment 3 to ABA Model RPC 2.1.) For example, in a failed or failing corporation, the corporate client will likely need professional advice from accountants, investment bankers or other financial specialists.

RPC 2.1 also makes it clear that a law-

yer representing a failing or failed corporation may provide advice to corporate management on other than merely technical legal issues.⁴ The lawyer may also refer, for example, to other nonlegal considerations such as moral, economic, social and political factors, which may be relevant to the corporate client's situation.

For example, the lawyer may want to advise corporate management that while the corporation may undertake a particular course of conduct, it will have significant adverse consequences for the community or employees, or likely receive publicity reflecting adversely on both the corporation and the executive officers. Or, the lawyer may simply tell corporate management that their proposed course of conduct is legal but foolish, or legal but socially irresponsible. In providing such nonlegal advice, however, the lawyer should not expect to be paid as a lawyer, if at all, for such advice, unless the client specifically agrees to pay for nonlegal advice.

Who Is the Client and Do I Have a Conflict?

Conflicts of interest for a lawyer arise not merely between existing or former clients, but also as to the lawyer's own interests. For example, if the advising lawyer has invested a significant amount of personal money in the capital of the corporation, either independently or through its stock option or other employee investment plans, the lawyer may well have interests which are in conflict with those of the corporate entity or its officers or directors that would disqualify him or her from continuing a representation. (For further discussion of investment conflicts, see Althoff, "Investing in Your Client's Business," *Washington State Bar News*, p. 45, March 2000.)

Most conflicts of interest arise, however, between current or past clients of the lawyer. Unless the lawyer knows whom he is now representing and whom he has represented in the past, the lawyer cannot comply with many of the ethics rules which are client-based, such as those requiring the lawyer to maintain client confidences and secrets, and those prohibiting the lawyer from representations which conflict with other representations of the lawyer.



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When a client is other than an individual, questions often arise as to exactly who is the client. The general rule is that a lawyer who represents a corporation does not thereby create a lawyer-client relationship with any of the corporation's constituents, such as promoters, founders, directors, shareholders or employees.⁵ The lawyer should thus determine whether his client is the corporation, a subsidiary, an affiliate, or one or more members of senior management, and so on. In a closely held corporation, these distinctions can often be difficult to make, but if the lawyer does not make them, he will likely be violating his ethical duties to one or more clients. In any case, since the corporate lawyer represents the corporation and not its constituents, the lawyer's duty must be to the corporate entity; accordingly, if the lawyer becomes aware that the constituents are not acting in the best interests of the corporate entity, he may be required to take action to protect corporate interests, such as going to higher corporate officials, or ultimately in some cases resigning from

the representation. See generally ABA Model RPC 1.13 (organization as a client), which has not been adopted by Washington, and *ABA/BNA Lawyers' Manual on Professional Conduct*, p. 91 2401 and following.⁶

The general rule is that a lawyer who represents a corporation does not thereby create a lawyer-client relationship with any of the corporation's constituents, such as promoters, founders, directors, shareholders or employees.⁵

The general rule that a lawyer's representation of a corporation does not of itself create a lawyer-client relationship with the corporation's constituents does not prohibit the lawyer, however, from also representing those constituents if the lawyer can do so without engaging in conflicts of interest, or in certain cases where there is a conflict, if the clients consent to the waiver.

Rules 1.7 through 1.13 of the ABA Model RPCs, Rules 1.7 through 1.12 of Washington's RPCs, and Oregon's DR 5

set out the detailed conflicts rules. Under those rules, a lawyer generally may not represent two persons with conflicting interests, or represent a client if the lawyer's own interests conflict with those of the client. In some cases the otherwise con-

flicted clients may waive the conflict, while in other cases the representation is prohibited and cannot be waived.

Conflicts of interest must be determined not only at the initiation of a representation, but also throughout the course of the representation.

At various times during the corporate existence, a lawyer (either in-house or outside) may have represented the corporation on corporate matters and various members of senior management or other employees on personal matters unrelated to the corporation, without there having been any conflict of interest. However, since the time of those representations, conflicts may have arisen which would require the lawyer to decline further representation of one or all clients related to the failing or failed corporation. Similarly, if the lawyer represented both



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the corporation and another person (for example, a manager or employee) in the same transaction, the usual rule is that if a conflict develops as to that representation the lawyer must withdraw not merely from representing the corporation or the other person, but from representing both the corporation and the other person.⁷ If investors or creditors have made claims against both a failing corporation and its senior management, for example, and if a lawyer has in the past represented both the corporation and management prior to

the failure, it is possible, depending on the nature of the claims being made against the failing corporation and its management, that the lawyer may have to withdraw from representing both the corporation and its management.

Even where a corporation is not failing it is not unusual for employees to seek legal advice from the corporation's lawyer, particularly when the lawyer is in-house. If the representation involves a personal matter unrelated to the corporation, the lawyer usually can undertake the repre-

sentation (assuming the lawyer is duly licensed to practice law in the jurisdiction). For example, an employee wanting the lawyer to draft a simple will, or to assist in a marital dissolution or property acquisition, could normally do so without conflict to the lawyer's corporate representation.

Where the corporation is failing or has failed, however, employees (or former employees) may have questions in regard to their personal financial situation which are related to their employment, such as issues about wages, retirement or stock-option plans, and so on; the interests of the corporation and the employee may be adverse. In these cases, the lawyer should beware of conflicts and advise the employee that the lawyer represents the corporation and not the employee, and that anything the employee tells the lawyer is neither privileged nor confidential. Better yet, the lawyer should politely decline to communicate with the employee about the matter.

The lawyer representing the corporation should be particularly alert and careful should an employee (or a member of management) seek the lawyer's legal advice about the employee's own possible misconduct, since it is likely the corporation and the employee may have conflicting interests and the lawyer would be unable to represent both. If the lawyer fails to do so, the lawyer may find that he is representing both the corporation and the employee and is in an irreconcilable conflict requiring withdrawal from both representations. If the employee seeking legal advice from the corporation's outside counsel or from another in-house lawyer is an in-house lawyer, both the consulted lawyers would be conflicted out if they undertook the employee representation. They would also likely be prohibited from reporting the erring lawyer's known misconduct as they would otherwise be required to do under RPC 8.3, discussed below, except to the extent they reasonably sought to prevent a future crime or sought to defend themselves.⁸

Lawyers serving as in-house counsel of a failing or failed corporation will likely need new employment. In seeking and securing it, they need to take care to preserve their former client's confidences and



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secrets and to avoid new employment in conflict with the corporation's interests. They should recall that if they were to be employed by a law firm, for example, with adverse interests to their former corporate client, that law firm may be disqualified from its representations because of hiring the lawyer by reason of the RPC imputation provisions in Washington and ABA Model RPC 1.10. While Washington's RPCs generally allow screening to avoid imputed conflicts, the ABA Model RPCs do not.⁹

Do You Want to Know a Secret?


Unless the client gives informed consent to disclosure, a lawyer is ethically required to maintain a client's confidences and secrets, subject to a few narrow exceptions. See Rule 1.6 of the ABA Model RPCs, Rule 1.6 of Washington's RPCs, and DR 4 of Oregon's Code of Professional Responsibility. The evidentiary attorney-client privilege rule similarly protects certain lawyer-client communications, but is generally more narrow than the ethics provisions.

Where a corporation is failing or has failed, difficult issues of confidentiality may arise for the lawyer. These issues may arise either directly under the confidentiality ethics provisions cited above, or indirectly under the conflicts-of-interest or other RPC sections. In addition, if the corporate client is asked to voluntarily make, or is required to make, disclosures of otherwise ethically confidential information or information protected by attorney-client privilege to governmental regulatory authorities, the lawyer should advise the corporate client of the consequences of making such disclosures. Those consequences may include waiving the privilege of confidentiality such that the information might be usable against the corporation and its management not only in governmental enforcement or criminal proceedings, but also in private damage lawsuits. Similar concerns may arise when the corporate lawyer is asked to provide otherwise confidential information to the corporation's auditors.¹⁰

(A) **Disclosure to Prevent Future Crime.** The ABA Model RPCs, Washington's RPCs, and Oregon's CPR each permit a lawyer in some cases to disclose client information without client consent to

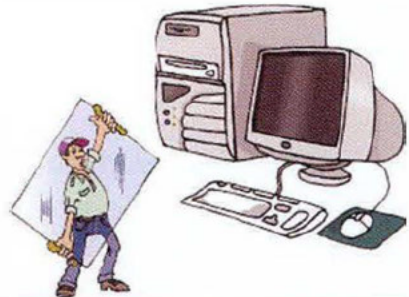
prevent the client from committing a crime. In each case, the rule permits, but does not require, the lawyer to make the specified disclosure, although some jurisdictions mandate disclosure in certain cases. Since only a future act and not a past act can be prevented, the rules' permission to disclose confidential client information "to prevent" the client from committing a crime necessarily means that the crime must be a future crime and cannot be a past crime. Reality, however, sometimes declines to fit precise classifica-

tions of a past crime or a future crime, particularly when the client's course of conduct may be viewed as an ongoing or continuing crime, which in effect rolls together past, present and future crimes into one crime. In these cases, the lawyer may not make a general disclosure of past and present crimes but may disclose only that information reasonably necessary to prevent future crime. Since there are few guidelines to help the lawyer making such a distinction, the lawyer will have to measure his conduct against the purpose of



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the rule, the imminence and seriousness of the future crime, and against the standard of what a "reasonable lawyer" would do under the circumstances. To assure compliance with the rule and lessen the likelihood of being subjected to either malpractice suits or disciplinary sanctions, a lawyer confronted with these thorny issues should, when in doubt, seek counsel from an experienced legal ethicist and heed that counsel.

ABA Model RPC 1.6(b)(2) provides that a lawyer may disclose, without client consent, information relating to the representation of a client to the extent the lawyer reasonably believes necessary "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm." Washington's RPC 1.6(b)(1), which corresponds to ABA Model Rule 1.6(b)(2), provides that a lawyer may reveal a client's confidences or secrets to the extent that the lawyer reasonably believes necessary "to prevent the client from committing a crime." Oregon's DR 4-101(C)(3) provides

that a lawyer may reveal "the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime."

Washington's RPC 1.6(b)(1) differs from the ABA Model RPC 1.6(b)(2) in sev-

erally fraudulent conduct could not be disclosed unless the conduct was likely to result in imminent death or substantial bodily harm. For example, disclosure regarding planned fraudulent conduct relating to safety hazards of a consumer product (for example, defective tires) might be permitted, whereas disclosure regarding planned financial fraud would likely not be permitted." Oregon's DR 4-202(C)(3), like Washington's rule, has no limitations on the nature or required results of the planned crime.

If the lawyer is permitted under RPC 1.6 to make a disclosure, the disclosure may not be a general disclosure, but must be narrowly directed to the appropriate enforcement agency (for example, the police or prosecuting attorney), and must only relate to the planned criminal conduct. The lawyer may not, for example, disclose any other confidences or secrets of the client which are unrelated to the planned crime.

In the case of a failing or failed corporation, the lawyer may learn of past crimes

In the case of a failing or failed corporation, the lawyer may learn of past crimes of the corporation or of management. If the lawyer represents either, however, the lawyer may not disclose information related to that client's past crimes.

eral ways. Washington's RPC 1.6(b)(1) permission to disclose a client's planned crime does not have the limitations set out in the Model ABA rule, which requires the lawyer to have a reasonable belief that the planned crime will result in imminent death or substantial bodily harm. Thus, under Washington's more permissive RPC, a lawyer may disclose a client's planned future fraudulent conduct if it constitutes a crime, but not if the conduct is merely civilly fraudulent. Under the current ABA Model rule, however, future

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of the corporation or of management. If the lawyer represents either, however, the lawyer may not disclose information related to that client's past crimes. If the lawyer learns that either the corporation or management whom the lawyer represents are planning on committing a future crime in connection with the failed corporation, the lawyer is in a different situation. Under Washington's rule, the lawyer may, but is not required to, disclose that planned crime. Under the ABA Model rule, the lawyer may, but is not required to, disclose the planned crime only if the lawyer has a reasonable belief that the planned crime will likely result in imminent death or substantial bodily harm.

Before the lawyer makes any disclosure permitted by either Washington's or the model rule, the lawyer should consider whether it is appropriate to make the disclosure even if permitted. The lawyer has a duty of loyalty to the client and should, after having determined that the client's planned conduct would in fact be a crime, try to dissuade the client from engaging in the planned conduct. If the objective of the planned client conduct can be achieved in a legal, noncriminal manner, the lawyer should so advise the client, and the client will likely follow the legal path. If the client's objective cannot be accomplished legally, the lawyer should advise the client, that the planned conduct is a crime which the lawyer is ethically permitted to disclose.

If the client assures the lawyer that the client will not engage in the planned criminal conduct, the lawyer should evaluate the client's credibility and the risk to others if the planned crime were in fact executed. If the lawyer believes the client's assurances, he may determine not to report the conduct, but the lawyer may want to consider whether he wishes to continue the representation or withdraw from future representation.¹² If the lawyer decides to withdraw, he should be careful in doing so not to disclose client confidences or secrets beyond what is permitted under RPC 1.6. So-called "noisy withdrawals" are dangerous to the lawyer,¹³ and likely will lead to claims of ethical violation and malpractice by the client.¹⁴

If the lawyer does not believe the client's assurances, however, the lawyer

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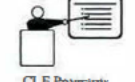
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may report the planned crime. Whenever a lawyer makes a permitted disclosure under RPC 1.6, the lawyer should also expect that the client will likely claim that he never intended to commit the crime, and possibly file a disciplinary grievance (claiming breach of RPC 1.6) and malpractice action against the lawyer.

(B) Disclosure to Defend/Protect Lawyer. Washington's RPC 1.6(c), ABA Model RPC 1.6(b)(2), and Oregon DR 4-101(C)(4) each permit a lawyer to make certain disclosures of otherwise confidential information in order to protect the lawyer's own interests. Washington's RPC 1.6(c) provides that the lawyer may reveal the information, to the extent the lawyer deems reasonably necessary,

to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, to respond to allegations in any proceeding concerning the lawyer's representation of the client, or pursuant to court order.¹⁵

This provision gives the lawyer considerable leeway in disclosing otherwise confidential client information when the lawyer reasonably believes it necessary to defend himself. Again, the disclosure should be only to the extent necessary, and the lawyer should take reasonable precautions to limit access to the information such as seeking protective orders. For example, if a third person claims to have been defrauded by the lawyer's corporate client, or by managers thereof, and claims the lawyer participated in the fraud, the lawyer may disclose otherwise confidential information in his own defense.

Must I Squeal on My Fellow Lawyer?

Sometimes lawyers are not mere observers in misconduct which leads to a corporation's failure, but are active participants. The involved lawyer may be either an in-house lawyer or outside counsel. What should a lawyer do who has knowl-

edge of another lawyer's participation in such misconduct?

Under Washington's RPC 8.3(a), a lawyer who knows another lawyer has violated the Rules of Professional Conduct should report that misconduct to the

For misconduct to be reportable, the lawyer must "know" that another lawyer has committed the misconduct with knowledge being actual knowledge and not merely a suspicion.

WSBA Office of Disciplinary Counsel; however, that duty is aspirational in nature. A Washington lawyer who fails to report another Washington lawyer for such known violations will not be disciplined by the Washington disciplinary system for failing to do so under Washington's RPCs.¹⁶ Under Rule 8.3(a) of the ABA's Model RPCs, and similar rules in some other jurisdictions, however, that same duty to report is mandatory, and failure of a lawyer to report another lawyer's known ethical misconduct is conduct subject to discipline.

Oregon requires a lawyer having non-confidential information about another lawyer's misconduct to report that misconduct to the Oregon Bar, and if requested, to other regulatory authorities. See Oregon's DR 1-103 (A & B). Thus, a Washington lawyer who is also admitted to practice law in other jurisdictions and who knows of another lawyer's ethical misconduct should be alert to the possibility that the ethics rules of other states may require the lawyer to report that misconduct. With the recent adoption of reciprocal admission for Washington, Oregon and Idaho lawyers, lawyers admitted in those states should take care to comply with each of those states' reporting provisions.

For misconduct to be reportable, the lawyer must "know" that another lawyer has committed the misconduct with knowledge being actual knowledge and not merely a suspicion. Further, the known misconduct must raise a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer.

Known violation by a lawyer of certain

ethical provisions would clearly seem to raise substantial questions about a lawyer's honesty, trustworthiness or fitness as a lawyer. For example, Washington's RPC 4.1 and ABA Model RPC 4.1 prohibit a lawyer in the course of representing a client from knowingly making a false statement of material fact or law to a third person, or from failing to disclose (subject to the lawyer's RPC 1.6 duty not to disclose client confidences and secrets) a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Oregon's DR 102(A)(5) provides that a lawyer shall not "knowingly make a false statement of law or fact," while its DR 102(A)(3) provides a lawyer shall not "conceal or knowingly fail to disclose that which the lawyer is required by law to reveal." Further, Washington's RPC 8.4, ABA Model RPC 8.4 and Oregon's DR 1-102(A)(2 & 3) each include as acts of lawyer misconduct the commission of any criminal act which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, and a lawyer's engaging in any conduct (whether a crime or not) which involves dishonesty, fraud, deceit or misrepresentation.

In the case of a failing or failed corporation, the most likely lawyer misconduct that may come to light is participation in fraud, dishonesty or deceit (including, for example, knowingly making false representations or statements to others in legal documents or opinions), and knowing destruction of documents or evidence.

If the lawyer engaged in misconduct is outside counsel and other outside or in-house counsel know of such lawyer's misconduct, they should consult with their client (unless the client is the errant lawyer) and urge the client, or seek authorization from the client, to report it to the appropriate disciplinary authority. If the lawyer engaged in misconduct is in-house counsel, and other in-house or outside counsel know of the lawyer's misconduct, they should likewise consult and, where appropriate, report it. In both cases, however, the potential reporting lawyer's knowledge of the errant lawyer's misconduct may

involve confidences or secrets of the corporate client (presumably the erring lawyer is not a client of the potential reporting lawyer) which may not be disclosed except with the corporate client's consent or, as discussed above, to prevent the client from committing a future crime or to defend the reporting lawyer.

Who Owns the Files?

Failing corporate clients may have few resources left to maintain valuable corporate records and documents. In-house counsel may be especially hard hit since that lawyer, like any lawyer, has an obligation under Washington's RPC 1.14, ABA Model RPC 1.15, and Oregon's DR 9 101 to safeguard client property in the possession of the lawyer, but likely has insufficient clerical and other support to do so. Similarly, outside counsel must preserve any corporate records in their possession, but may have little likelihood of being paid for their expenses in doing so from a failing or failed corporation.

If the lawyer is withdrawing from representation of a failing corporation, the lawyer is required, as any withdrawing lawyer is, to take steps to protect the clients' interests which may include, for example, surrendering papers and property to which the client is entitled, and refunding any unearned advance fee payments. The lawyer is generally entitled to retain papers under a lawyer's lien for unpaid fees provided that the client does not need those papers and cannot afford to pay the fees. See Washington's RPC 1.15(d), WSBA Formal Opinion 181, and ABA Model RPC 1.16(d). Lawyers should be wary, however, of claiming retaining liens on the files when the client needs the files and cannot afford to pay the amounts due the lawyer.

Whether inside or outside counsel, a lawyer in possession of files or other property (for example, advance fee deposits) of a failing or failed corporation may find warring corporate factions claiming the right to possession of, or to destroy, the files or property. The lawyer is required in such a case to maintain security of the files and property, and seek to resolve the dispute including, if appropriate, instituting litigation such as a declaratory judgment action.

A lawyer should be alert to the possibility that the failing corporate client, its management or employees may intend to destroy files and other materials which would be evidence in likely litigation and regulatory investigations. RPC 3.4(a) provides that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." Similarly, RPC 1.2(d) provides that a lawyer shall not "counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent." In addition, such conduct may be subject to criminal prosecution for obstruction of justice. The lawyer confronted with plans to destroy files should first consult with senior corporate officials and, if the proposed conduct appears to be a crime and the lawyer is not reasonably assured that the proposed misconduct will cease, determine whether the lawyer should disclose it to prevent the commission of a future crime.

Conclusion

When a corporation fails or is failing, in house and outside counsel will both likely be faced with difficult ethical issues, including issues of competence, appropriate professional licensing, independence, confidentiality, conflicts of interest, and so on. The range of issues the lawyer will face can be vast. For the lawyer to act ethically, the lawyer must know both who the client is, what ethics rules apply, and what those rules require or prohibit. The more complex the corporation, and the more complex the failing or failure thereof, the more complex the ethical problems related to the corporation's failure are likely to be.

When first beginning a representation of a failing or failed corporation, the lawyer should take the time to carefully re-read the applicable ethical rules and, when in doubt, seek ethical assistance from lawyers knowledgeable in these areas. Throughout the representation the lawyer should apply them, abide by them, and document his continued attempts to do the right thing. Compliance with the ethical requirements of the legal profession not only serves the client and the public

well, but enhances the reputation of both the individual lawyer and of the entire legal profession, and verifies that the law is indeed a noble profession. ☞

NOTES

1. This article was initially prepared for the 22nd Annual Northwest Securities Institute. For a related discussion of the ethical responsibilities and challenges facing an in-house lawyer, see Althoff, "The Sad Story of an In-House Lawyer," 54 *Washington State Bar News* 46 (May 2000).

2. Oregon does not have a directly parallel provision. Its DR 5 108, prohibiting a lawyer from permitting third-party hiring, recommending, or paying the lawyer's fee to direct the lawyer's judgment in providing legal services, which is similar to Washington's RPC 5.4(c), implies independence but does not directly require it.

3. Oregon does not have a directly parallel provision to this, although the ABA Model Code of Professional Responsibility, the predecessor of the ABA Model RPCs and on which Oregon's Code of Professional Responsibility is based, discusses in its Ethical Considerations 7 8 and 9 2 a lawyer's duty to com-

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municate and keep a client informed. Oregon did not adopt the ABA Model CPR ethical considerations.

4. Oregon does not have a directly parallel Disciplinary Rule. See ABA Model CPR Ethical Consideration 7.8, which likewise permits the lawyer to discuss nonlegal factors.

5. See, for example, *McCarthy v. John T. Henderson Inc.*, 587 A.2d 280 (NJ Superior Court Appellate Division 1991), wherein the court permitted a lawyer who formerly represented Corporation A to represent a person opposing Corporation B which had the same shareholders and officers as Corporation A. For further discussion, see *ABA/BNA Lawyers' Manual on Professional Conduct*, 51:210; ABA Formal Opinion 95-390 (1995), and Rotunda, *Legal Ethics—The Lawyer's Deskbook on Professional Responsibility* (2000), Section 14-7.

6. Oregon does not have a disciplinary rule parallel to ABA Model RPC 1.13. See ABA Model Code of Professional Responsibility Ethical Considerations 5.18 and 5.24, although not adopted by Oregon, which explain Disciplinary Rule 5, relating to conflicts of interest, and raise issues similar to those addressed in ABA Model RPC 1.13.

7. If the representation is one that a future conflict should reasonably have been anticipated at the outset of the representation, the lawyer may also not be entitled to legal fees for the representation. See, for example, *Eriks v. Denver*, 118 Wn.2d 451, 463 (1992), wherein the court affirmed a trial-court order of disgorgement of legal fees where a lawyer undertook multiple conflicting representations, namely representing both tax shelter investors and promoters in an IRS audit. The court observed that: "disgorgement of fees is a reasonable way to discipline specific breaches of professional responsibility, and to deter future misconduct of a similar type." In re Eastern Sugar Antitrust Litig., 697 F.2d 524, 533 (3rd Cir. 1982)."

8. The lawyer should also comply with Washington's RPC 4.3 (and the ABA Model RPCs' counterpart Model RPC 4.3). Those rules prohibit a lawyer who is dealing with a person not represented by counsel from stating or implying the lawyer is disinterested, and, if the lawyer knows or reasonably should know the person misunderstands the lawyer's role, to make reasonable efforts to correct the misunderstanding.

9. In 2001, the ABA Ethics 2000 Commission recommended amending the ABA Model RPCs to permit such screening, but the ABA House of Delegates tentatively rejected that recommendation. It is expected that on conclusion of the House's review and debate of the Ethics 2000 recommendations, likely either later in 2002 or the following year, the House will take a final vote on all of its tentative decisions.

10. See ABA, Statement of Policy Regarding

Lawyers' Responses to Auditors' Requests for Information, 31 *Business Lawyer* 709 (1976), and other ABA publications thereon cited at *ABA/BNA Lawyers' Manual on Professional Conduct*, p. 91:2409 et seq.

11. The ABA Ethics 2000 Commission has proposed modifying ABA Model RPC 1.6 by adding a new section (b)(3) which would permit a lawyer to disclose a client's confidential information "to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services." The ABA House of Delegates has tentatively rejected the proposal.

12. The lawyer may be required to withdraw under Washington's RPC 1.15(a)(1) and ABA Model RPC 1.16(a)(1) if the representation will result in a violation of the RPCs or other law.

13. Official comment 16 to ABA Model RPC 1.16 states that a withdrawing lawyer may give notice of the fact of withdrawal and may also withdraw or disaffirm any opinion, document, affirmation or the like. Washington has not adopted any of the ABA Model RPC comments. For a further discussion of noisy withdrawals, see ABA Formal Opinion 92-366 (1992) and *ABA Annotated Model Rules of Professional Conduct*, Fourth Edition (1999), pps. 79 and 249.

14. The clever client, suspecting that the lawyer might disclose his planned crime, might fire the lawyer and then contend that RPC 1.6's permission to disclose a client's confidences and secrets applies only to a current client and that the now ex-client's plan to commit a crime may not be ethically disclosed. While the client would be correct in believing that a lawyer's duty of confidentiality continues after the lawyer-client relationship terminates, the clever client's argument will not prevail. Rule 1.9(b) of the RPCs, while prohibiting a lawyer from using confidential information of a former client without the client's consent, also contains an exception to the general prohibition: "except as rule 1.6 would permit." Thus, a lawyer may disclose the planned crime of a past client on the same basis as the lawyer may disclose the planned crime of a current client.

15. The ABA version of this rule, ABA Model RPC 1.6(b)(2), is identical, except it does not have the final phrase "or pursuant to court order." Oregon's provision is substantially the same as the ABA Model RPC provision.

16. For a more detailed discussion of a Washington lawyer's duty to report known misconduct, see Althoff, "Reporting Professional Misconduct," 53 *Washington State Bar News* 49 (Sept. 1999). The duty to report another lawyer's known misconduct does not require the lawyer to report his or her own known misconduct.

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Supreme Court's Rules for Lawyer Discipline, and pursuant to the February 18, 1995 policy statement of the WSBA Board of Governors.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name and your address.

Disbarred

William Wheeler (WSBA No. 11557, admitted 1981), of Bellevue, has been disbarred by order of the Supreme Court approving a stipulation, effective June 30. The discipline is based on his acts of fraud, dishonesty and misrepresentation while attempting to arrange a world-class boxing match in 1991 and 1992.

In 1991, Mr. Wheeler and a business partner operated a boxing promotion company named Wheeler and Associates (W&A). In February, W&A agreed to assist a Chinese corporation (CX) in planning a world-class boxing event in China, agreeing to act as agent for CX. Later in 1991, a disagreement regarding W&A's compensation developed. When CX asked for the names of W&A's directors, Mr. Wheeler provided a false response, naming two individuals who were not directors of W&A.

In December 1991, CX and W&A signed a supplemental agreement providing that CX would advance \$700,000 for Mr. Wheeler to sign boxer George Foreman. Mr. Wheeler did not sign Mr. Foreman, but used the money for personal and business expenses. When Mr. Wheeler suggested that the main event involve two other fighters, CX agreed, and the parties signed another agreement in March 1992. This agreement was signed in both Chinese and English. The Chinese version was four pages and did not contain any fee provisions for W&A. The English version contained five pages, the last of which included an \$850,000 fee for W&A. Mr. Wheeler caused CX's president, who could not read English, to sign this last page without knowledge of the fee.

In March 1992, Mr. Wheeler delivered two signed boxing services agreements to CX. These agreements purported to be

signed by the agents of the two main-event fighters. In fact, Mr. Wheeler's business partner had forged the signatures at Mr. Wheeler's direction. Mr. Wheeler falsely told CX that he had advanced \$1.8 million dollars of W&A's money to secure the two main-event fighters. On April 21, CX wired \$1 million to Mr. Wheeler's personal account.

On May 1, 1992, Mr. Wheeler told CX, falsely, that the two main-event boxers' contracts were cancelled to avoid a \$5.6 million-dollar charge, because W&A and CX had not rescheduled the boxing match. Mr. Wheeler also falsely told CX that the \$2.4 million already advanced to the two fighters was forfeited as a result of the cancellation of the boxing match. On May 11, knowing that he would not be able to sign the two main-event fighters, Mr. Wheeler allowed CX to announce the fight in a press conference in China.

During May, Mr. Wheeler continued to demand that CX reimburse him for the money he falsely claimed to have paid the fighters. On May 16, CX wired \$600,000 to Mr. Wheeler's personal bank account and another \$800,000 on May 18. On May 27, Mr. Wheeler transferred \$1 million to an investment account. Mr. Wheeler continued to press CX for more money, indicating that if he did not receive \$400,000 "there will be no event."

In August 1992, Mr. Wheeler and his business partner were in Beijing, meeting with the CX representatives. Mr. Wheeler and his partner gave CX a false letter of credit, to show that they had obtained funding for the television pay-per-view contracts. Mr. Wheeler's partner drafted the letter on bank stationery, and Mr. Wheeler signed a fictitious name as bank chairman. Later, Mr. Wheeler told CX that the letter was only a sample. On the way home from Beijing, Mr. Wheeler vacationed in Europe, financing his trip mostly with money from the \$3.1 million provided by CX.

On August 24, Mr. Wheeler and his business partner split the remaining funds. A former employee of Mr. Wheeler and his partner contacted CX and suggested that they ask for an accounting. In response to CX's requests for cancelled checks and receipts, Mr. Wheeler produced a false report stating that \$1.2 million had

been advanced to each main-event fighter and that the money had been forfeited due to cancellation. Mr. Wheeler paid one fighter's manager \$70,000 at most, and made no payments to the other.

Mr. Wheeler's conduct violated RPCs 8.4(a), prohibiting lawyers from knowingly assisting others to violate the RPCs; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RLD 1.1(a), prohibiting lawyers from committing acts involving moral turpitude, dishonesty, corruption or other acts reflecting disregard for the rule of law; RLD 1.1(c) and APR 5(d), prohibiting lawyers from violating the oath or duties as a lawyer; and RLD 1.1(p), prohibiting lawyers from engaging in conduct demonstrating unfitness to practice law.

Linda Eide and Anne I. Seidel represented the Bar Association. Mr. Wheeler represented himself.

Censured

Ronald W. Anderson (WSBA No. 7418, admitted 1977), of Lakewood, has received a censure pursuant to a stipulation approved by the Disciplinary Board on November 30, 2001. This discipline is based on his disclosure of client secrets and confidences in 2000. (*Note: Ronald W. Anderson is to be distinguished from Ronald M. Anderson of Bellevue and Ronald E. Anderson of Bremerton.*)

Mr. Anderson represented a client who sustained a closed brain injury in a collision. The client's ex-wife alleged that the client threatened her in the courtroom after a December 2000 hearing. Mr. Anderson agreed to represent the client in his ex-wife's anti-harassment petition; a hearing was set for January 9, 2001. On December 27, 2000, Mr. Anderson wrote the client that he would not continue to represent him unless the \$9,776 balance owed on attorney's fees was paid by January 3, 2001. On January 8, the client left a voice-mail terminating Mr. Anderson's services. Mr. Anderson practiced out of his home and used the same telephone number for home and work.

At the beginning of the January 9, 2001 hearing, Mr. Anderson submitted a motion to withdraw from representing the client. His supporting declaration stated

that the client "left a voice-mail at home" and that the client was "highly intoxicated and agitated." Mr. Anderson's declaration also stated that he and his wife were afraid of the client. Subsequently, Mr. Anderson sued the client for unpaid fees. In the lawsuit, Mr. Anderson filed a "confidential memorandum" that he had previously sent to the client. The memorandum discussed the client's "substance abuse and sales of controlled substances," prior criminal record, and harassment of the defendants in the personal injury suit.

Mr. Anderson's conduct violated RPC 1.6, prohibiting a lawyer from revealing confidences or secrets relating to representation of a client unless the client consents after consultation.

Anne I. Seidel represented the Bar Association. Mr. Anderson represented himself.

[REDACTED]

Opportunities for Service

WSBA Presidential Search

Application deadline: May 15, 2002

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as WSBA president for the 2003-2004 term. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the primary place of business for the president must be the area east of the Cascade mountain range generally known as eastern Washington. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications will be accepted through May 15, 2002, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 selected references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 31, 2002. Applications and endorsement letters should be sent to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted May 16-31, 2002 at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Following the interviews, the board will select the president.

Although prior experience on the WSBA's Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2002, following selection. A one-year term as president-elect will begin at the annual business meeting in September 2002. The president-elect is expected to attend the two day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national and local meetings. In September 2003, at the WSBA annual business meeting, the president-elect will assume the presidency of the WSBA. During his or her service, the president-elect and president will also be required to meet with members of the bar, courts, media and public and legal-interest groups, as well as be involved in the bar's legislative activities. Appropriate time will need to be devoted to communication by letter, electronic mail and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA bylaws.

Presidential Search Committee: Victoria L. Vreeland, chair; Robert M. Boggs; Dale L. Carlisle; William D. Hyslop; Lucy Isaki; J. Richard Manning

ABA House of Delegates

Application deadline: March 15, 2002

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving on the ABA House of Delegates representing Washington. There are two positions available and one new position "pending ABA approval." A written expression of interest is also required for any incumbents seeking reappointment.

The control and administration of the ABA is vested in the House of Delegates, its policymaking body. The house, which has approximately 500 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is \$500 per year per delegate. Members appointed to the House of Delegates serve a two-year term, which begins at the close of the annual meeting (August 2002).

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail oed@wsba.org.

WYLD Trustee District Positions 2002-2005

Filing deadline: June 3, 2002

Young lawyers interested in serving on the WYLD board of trustees are invited to submit a statement of eligibility and qualifications for the following trustee district positions:

- Northwest District – representing Island, San Juan, Skagit and Whatcom counties
- North Central District – representing Chelan, Douglas, Ferry, Grant, Kittitas and Okanogan counties
- Snohomish District – representing Snohomish County
- Greater Spokane District – representing Lincoln, Pend Oreille, Spokane and Stevens counties
- Greater Olympia District – representing Lewis and Thurston counties
- King County District – representing King County
- Southeast District – representing Adams, Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman and Yakima counties

To be eligible for one of these positions, a candidate must reside or have his or her principal place of business in the district he or she wishes to represent, and must be a member of the WYLD for the entire term of the position. Elected trustees will serve a three-year term commencing October 1, 2002. Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until the December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

WYLD President-elect 2002-2003 Nominations

Filing deadline: June 3, 2002

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president-elect automati-

cally succeeds to the position of president of the WYLD upon completion of a one-year term commencing October 1, 2002. To be eligible for the position of president-elect, candidates must have a principal place of business in Washington and must be a member of the WYLD at the time of taking office as president-elect. Additionally, WSBA Bylaws require that the president and president-elect have principal places of business in different counties. Therefore, this year's candidates may not have a principal place of business in King County.

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

Individuals intending to stand for election must send a statement of eligibility and qualifications to Lance Hester, WYLD President-elect, Law Offices of Monte Hester, 1008 S. Yakima Ave., Ste. 302, Tacoma, WA 98405; phone 253-272-2157; fax 253-572-1441; e-mail lance@montehester.com.

2002 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members of our profession and the public who deserve the legal profession's recognition. Nominations are sought for the following awards:

Award of Merit

This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only — both lawyers and nonlawyers.

President's Award

As the name implies, this award is given for special accomplishment or service to the WSBA during the term of the current president.

Board of Governors' Award for Professionalism

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petrus Award for Lawyers in Public Service

This award is named in honor of the late Angelo R. Petrus, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors. The selection criterion is a significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.

Excellence in Legal Journalism Award

This award recognizes that describing the context, facts and players involved in our system with fairness and sensitivity requires intelligence, knowledge, dedication and high skill levels. This award is given to a journalist and his organization who set the standard for relevance, clarity, accuracy and understanding in reporting.

Pro Bono Award

This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts, as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

Outstanding Judge Award

This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.

Courageous Award

This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Affirmative Action Award

This award is made to a lawyer or law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women, and the disabled in the legal profession within the state of Washington.

Outstanding Elected Official in the Legislative Branch

This award is presented to an elected official for outstanding service to Washington residents, with special contributions to the legal profession. The recipient has demonstrated a commitment to justice beyond the usual call of duty.

It is important to note that presentation of any WSBA award is made only when there are truly deserving recipients. Some years, no award is given in some categories. If you know of someone who fits the criteria set forth above, please send a letter of nomination and relevant information by May 1, 2002. Awards will be presented at the WSBA Annual Business Meeting and Awards Dinner. Send nominations to WSBA Executive Director, Attn: Awards, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; fax 206-727-8319; e-mail oed@wsba.org.

Joy McLean Named Director of Lawyer Discipline

Joy McLean has been named director of the Office of Disciplinary Counsel (ODC). Ms. McLean received her J.D. from Gonzaga University in 1983 and has worked in the ODC since 1995. Barrie Althoff has become the WSBA professionalism counsel, and will continue his writing and presentations related to professionalism and lawyer conduct.

Address Updates

Please be sure to notify us if you change your address, telephone number or e-mail address. Simply call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, send an e-mail to questions@wsba.org, or fax the change to 206-727-8319.

If we don't have your e-mail address, we ask you to consider providing it. E-mail enables us to communicate with members quickly, efficiently and inexpensively, and increasingly it is becoming the preferred method of communication among many committees and sections.

If we may be of assistance to you, please don't hesitate to contact the WSBA Service Center. Representatives are avail-

able weekdays from 8:00 a.m. to 5:00 p.m., and may be reached by phone at 800-945-WSBA or 206-443-WSBA, or by e-mail at questions@wsba.org.

2002-2003 WSBA Committee, Board and Panel

Preference Forms

Preference forms have been mailed to all active WSBA members. The Board of Governors makes appointments based on these forms. Since appointments for most committees are reviewed and renewed annually, current members of committees, boards and panels who are interested in reappointment must submit a preference form each year. Please visit www.wsba.org/c/preference.htm to complete and submit the form online. All applications must be received by March 15, 2002. If you have questions, please contact Jerri Ninesling at oed@wsba.org or 206-727-8239.

WSBA Legislative Committee

The WSBA Legislative Committee is seeking new members. The committee deals with proposals for legislation that relate to the improvement of justice. It also reviews proposed legislation of interest to the bar and the judiciary, and makes recommendations to the Board of Governors on positions to be taken by the WSBA. Application deadline is March 15. For more information, see the WSBA Web site at www.wsba.org/legislative/application, or contact Gail Stone at 360-943-9977 or gails@wsba.org.

Upcoming BOG Meetings

April 5-6, 2002 – Walla Walla

May 10-11, 2002 – Stevenson

With the exception of a one-hour executive session the morning of the first day, BOG meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated, but not required. Please contact Lori Lee at 206-727-8244 or loril@wsba.org. The complete BOG meeting schedule for fiscal year 2001-2002 is available on the WSBA Web site at www.wsba.org/2001/bog-schedule.htm.

YMCA Mock Trial Seeks Volunteers

The YMCA Mock Trial state final will be held March 22-23 at the Thurston County courthouse in Olympia. Volunteer raters are needed both days. For more information, contact Jason Leggett at 360-534-0155 or wamocktrial@earthlink.net.

WSBA Bar Leaders and Access to Justice Conferences

The 2002 WSBA Bar Leaders Conference and Access to Justice (ATJ) Conference will be held at the Yakima Convention Center, June 7-9. Conference registration brochures will be mailed in April. For bar leaders' registration information, please contact Toni Doane at tonid@wsba.org or 206-727-8293; for ATJ information, please contact Sharlene Steele at sharlene@wsba.org or 206-727-8262.

License Fee Reminder to WSBA Members

Licensing Packets

Licensing packets, which include license fee, trust account and MCLE reporting (C-2 Compliance Affidavit) forms, were

mailed in early December. If you have not received your licensing packet, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

Fees

In addition to your license fee, per APR 15, the Supreme Court has ordered all active members to pay a \$13 assessment to the Lawyers' Fund for Client Protection (LFCP). We encourage you to pay your license fee (and active members the LFCP fee) promptly to avoid penalties. A 20 percent late-payment penalty is imposed if the annual license fee is not paid by March 1, 2002. After April 1, 2002, a 50 percent late-payment penalty is imposed. If your license fee, penalty assessment or LFCP fee remain unpaid after May 1, 2002, the delinquency will be certified to the Supreme Court, which will enter an order of suspension from the practice of law. In order to be reinstated to your former status after suspension for non-payment, you must pay double the amount of the combined fee and penalty (triple the original fee). For active members, nonpayment of the LFCP fee is also cause for suspension.

More Information

For more information, please see the WSBA Web site at www.wsba.org/licensing, or contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@wsba.org.

MCLE Reporting

Group 1

Active WSBA members who are in reporting group 1 (active members admitted through 1975; or in 1991, 1994, 1997 or 2000*) are reporting CLE credits this year for activities undertaken in 1999, 2000 and 2001.

**Newly Admitted Members*

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

CLE Compliance

If you are in reporting group 1, your C-2 compliance affidavit was due to the WSBA on February 1, 2002. If you are in group 1 and have not yet met your CLE requirements or submitted your C-2 compliance affidavit, you will receive an automatic four-month extension, but you must also pay a late fee. You must make up any needed credits before May 1, file the signed C-2, and pay the late fee. The late fee is \$150 the first year, and then increases by \$300 each consecutive reporting period that you file late (a reporting period is a three-year reporting cycle). For more information, see the WSBA Web site at www.wsba.org/faq/mcle.htm.

Web Site Links From Lawyer Directory

The lawyer directory on the WSBA Web site has been enhanced! A link to your Web site can be added to your direc-

tory 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.

New Online MCLE Credit-Tracking System

The new online MCLE Credit-Tracking System (<http://pro.wsba.org>) is now ready for you to use. Here's what you can do using the new system:

- 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>, 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.

The WSBA Store Is Open

The WSBA store is open online (www.wsba.org/store). You can 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%) will be added to orders shipped within Washington.

Law Week 2002

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

CASA Volunteers Needed

King County Superior Court is seeking volunteers to serve as court-appointed special advocates. Volunteers receive extensive training to represent children involved in custody and visitation disputes in family law cases. They conduct interviews, write reports, and testify in hearings or trials. For more information, call 206-296-9320.

Creed of Professionalism

The WSBA now has an aspirational Creed of Professionalism. Developed by the Professionalism Committee with input from many members around the state, and approved by the Board of Governors, the creed's purpose is to "inspire and guide lawyers in the practice of law." The full text of the creed



can be found on the WSBA Web site at www.wsba.org/creed.

Printed copies of the creed are available for purchase (we have made every effort to keep the cost as low as possible). Printing is in black and gold on heavy cream-colored paper. The creed is available unframed, or mounted on a mahogany finish wooden plaque. It is our hope that Washington lawyers will display the creed proudly in their offices.

Creed suitable for framing:		
@ \$4 each (includes shipping)	\$	_____
Creed mounted on a wooden plaque:		
@ \$20 each (includes shipping)	\$	_____
If in Washington, add sales tax @ 8.8%	\$	_____
	Total	\$ _____

- Check enclosed (payable to WSBA)
- MasterCard Visa

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

No. _____
 Exp. date _____
 Name as it appears on card _____
 Signature _____

Please send to:

Communications Department, WSBA
 2101 Fourth Ave., Ste. 400, Seattle, WA 98121 2330

Name _____
 Address _____
 City _____ State _____ Zip Code _____

WSBA office use only: 1 40072 210		
Date _____	Check no. _____	Amount _____

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.

Information for Your Clients

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

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

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

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

2001-2002 Resources on Sale for Half Price

The 2001-2002 *Resources* membership directory is now on sale for half-price:

- \$8.50 – WSBA members (\$9.25 in WA)
- \$17.50 – non-WSBA members (\$19.04 in WA)

To order a copy of *Resources*, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or mail a request to WSBA Order Processing, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Payment may be made by check (payable to WSBA), MasterCard or Visa, and must accompany your order. Please note that the 2002-2003 edition will be available in the spring.

NJP Board to Meet Quarterly

The Northwest Justice Project board of directors will hold the rest of its 2002 meetings on April 13, July 13 and October 19. Public meetings begin at 9:30 a.m. For site information, contact Lisa Giuffré at 888-201-1012 or 206-464-1519.

Northwest Women's Law Center Seeks Award Nominations

The Northwest Women's Law Center will present the Cynthia Gillespie Award at its annual dinner on April 23. The center is seeking nominations for the award, which is presented to someone who has worked tirelessly in the advancement of women's rights. Nominations should be directed to Lisa M. Stone, Executive Director, Northwest Women's Law Center, 3161 Elliot Ave., Ste. 101, Seattle, WA 98121-1016; e-mail lstone@nwwlc.org.

Photo Bar Cards Now Available

The WSBA is pleased to offer photo bar cards to members. This is an option for those who are interested in having their photo on their card; original and replacement cards without photos are provided at no cost. Here's how it works:

- You can either e-mail an electronic photo in .bmp format or mail a hard-copy photo that we will scan. Photos can be any size.
- You may submit a black-and-white or color photo, however all photos will be printed in black and white.
- The cost is \$10 for cards created from electronic photos, and \$15 for cards created from hard-copy photos. Checks, MasterCard and Visa are accepted for payment.
- If you're mailing a hard-copy photo, please mail the photo with the completed order form and payment.
- If you're e-mailing an electronic photo, mail the completed order form with your payment. If paying by credit card, you may fax the order form.

If you have questions, please contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org.

YES! I would like to order a photo bar card.

Select one of the following:

- Photo submitted electronically \$ 10.00
(If in Washington, add WA state sales tax @ 8.8%.) .88
Total \$ _____
- Hard-copy photo enclosed \$15.00
(If in Washington, add WA state sales tax @ 8.8%.) \$ 1.32
Total \$ _____

If submitting an electronic photo, please e-mail to allisonp@wsba.org. We recommend that you e-mail the photo the same day you send this form. If paying by credit card, you may fax this form to 206-727-8319. If submitting a hard-copy photo, be sure to write your name on the back and enclose it with this form. Your photo will be returned to you.

check enclosed (payable to WSBA) MasterCard Visa

No. _____

Exp. date _____

Name as it appears on card _____

Signature _____

Please send to:

Communications Department, WSBA
2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330

Name _____

Address _____

City _____ State _____ Zip Code _____

WSBA office use only: 1-40199-180		
Date _____	Check no. _____	Amount _____

Announcements

GORDON MURRAY TILDEN

is pleased to welcome

Heather Reed

as an associate of the firm.

Heather joins us from the Milwaukee law firm of Godfrey & Kahn, S.C. She received her J.D. from Duke University School of Law in 1998. Heather will continue her practice in a broad range of civil litigation.

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ATTORNEYS AT LAW
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Seattle, Washington 98101 2510
206 467 6477
www.gmtlaw.com

THE LAW FIRM OF

JOHNSON CHRISTIE ANDREWS & SKINNER

is pleased to announce that

SCOTT M. BARBARA

has become a shareholder of the firm
effective January 1, 2002.

7400 Bank of America Tower
701 Fifth Avenue
Seattle, Washington 98104
Telephone: 206-223 9248
Fax: 206 623 9050

KENYON DORNAY MARSHALL, PLLC

The Municipal Law Firm

We are pleased to announce that

Sandra S. Meadowcroft

has become a member of Kenyon Dornay Marshall, PLLC. Sandy is a 1991 graduate of Northwestern University School of Law, co-chair of our prosecution team, and serves as the firm's criminal appellate prosecutor.

We are also pleased to announce that

Heidi L. Brosius, David B. St.Pierre and Darin H. Spang

have joined our firm.

Heidi is a 1997 magna cum laude graduate of Southwestern University School of Law in Los Angeles, California. Prior to joining our firm, Heidi served as a deputy prosecuting attorney in the San Juan County Prosecuting Attorney's Office.

David is a 1997 magna cum laude graduate of Seattle University School of Law. Following 17 years' service in the U.S. Navy, David served as a Mason County deputy prosecuting attorney, and as a Bremerton assistant city attorney.

Darin is a 2000 graduate of Seattle University School of Law. His prior experience includes service as a public defender for several Pierce and King county cities, and as the Orting city prosecutor.

Kenyon Dornay Marshall, PLLC provides practical advice and a full range of legal counsel to Washington municipalities.

Please let us know if we can help.

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Telephone: 425 392 7090 or 206-628 9059
Fax: 425 392 7071

McKINLEY & IRVIN, PLLC

is pleased to announce that

Jennifer J. Payseno

has become a member of our firm,
and continues to focus her practice on
complex divorce and family law litigation.

We are also pleased to announce the
January 2, 2002 opening of our Seattle and
Bellevue office locations.

The firm continues to focus
its practice on complex divorce and
family law litigation.

Seattle
City Center Building
5th & Pike
206-625 9600

Bellevue
City Center Building
108th & NE 8th
253 838-7003

NIELSEN, BROMAN & KOCH PLLC

(formerly Nielsen, Broman & Associates)

is pleased to announce that

David B. Koch

has become a partner of the firm
effective January 1, 2002.

We are also proud to announce that

Jennifer L. Dobson

has joined the firm as an associate.

Before joining the firm, Ms. Dobson served as a
judicial clerk to the Honorable Charles W. Johnson,
Justice of the Washington State Supreme Court.

The firm continues to advise on appellate matters
and represent clients in civil and criminal appeals.

320 Central Building
810 Third Avenue
Seattle, Washington 98104
Telephone: 206 623 2373

SEBRIS BUSTO PS

announces that

Ellen T. Kremer,

a shareholder in our firm,
is retiring from the practice of law
effective March 1, 2002.

Our congratulations to Ellen
on her engagement to Edward Lenhart.
While we will miss our colleague greatly,
we wish Ellen and Edward great joy.

SEBRIS BUSTO PS
14205 SE 36th, Suite 325
Bellevue, Washington 98006
Telephone: 425-454-4233
Fax: 425 453 9005

WASHINGTON ARBITRATION & MEDIATION SERVICE (WAMS)

is pleased to announce the addition of

Michele M. Coad

to its Domestic Relations ADR Panel.

Ms. Coad will concentrate her practice on
the resolution of conflicts involving all aspects
of dissolution and family disputes.

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www.usamwa.com

The Law Offices of
**SCHROETER GOLDMARK
& BENDER**

is pleased to announce that

KATHY GOATER

has become a shareholder in the firm
and

SANDRA WIDLAN

has joined the firm as an Associate

Kathy Goater continues to participate in a wide range of personal injury, medical negligence, sexual assault, and wage and hour litigation.

Recently, she was part of the legal team that won a \$3.1 million judgment against IBP, Inc. for violation of wage and hour laws.

Sandra Widlan has worked for the past two years as an attorney for The Defender Association for King County. She will continue her successful trial practice in the areas of employment law, personal injury, and medical malpractice.

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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.

ADMINISTRATIVE LAW

Administrative Law Section CLE

March 22 - Tacoma. 5.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

New Vistas in Dispute Resolution

April 4-6 - Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

ARTS & ENTERTAINMENT LAW

Music Without Borders

March 29 - Seattle. 2 CLE credits pending. By Washington Lawyers for the Arts; director@wa-artlaw.org.

EMPLOYMENT LAW

Employment Law Briefing

March 3-6 - Vail, CO; March 24-27 - Santa Barbara, CA. 20 CLE credits pending. By National Employment Law Institute; 303-861-5600.

9th Annual WSBA Employment Law Institute

March 8 - Seattle. 6.75 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL LAW

Environmental and Land Use Quarterly Meeting and CLE

March 21 - Seattle. 1 CLE credit. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate Planning for Small to Medium-sized Estates

March 8 - Seattle; March 21 - Mount Vernon. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

Working with Difficult People - Strategies to Enhance Relationships in the Legal Profession

March 7 - Tacoma; March 8 - Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Superior Court Update

March 13 - Spokane. CLE credits TBA. By Spokane County Bar Association; 509-777-0078.

New Members/Young Lawyers CLE: Trial Skills

March 14-15 - Seattle. 12.25 CLE credits. By WSTLA; 206-464-1011.

Reciprocity CLE (Admittance to OSBA)

March 21-22 - Bellevue. 17 CLE credits, including 2 ethics. By WSTLA; 206-464-1011.

Appellate Court Update

March 29 - Spokane. CLE credits TBA. By Spokane County Bar Association; 509-777-0078.

Americans with Disabilities Act Briefing

April 4-5 - San Francisco; April 11-12 - Chicago; April 16-17 - Washington, D.C. 12 CLE credits pending. By National Employment Law Institute; 303-861-5600.

Professionals

Persuasive Writing

April 23 - Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Legal Document Drafting

April 23 - Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

INTELLECTUAL PROPERTY

Intellectual Property Institute

March 27 - Seattle. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

How to Have a Highly Effective Law Firm

March 8 - Seattle. Up to 5.75 CLE credits available; up to 5.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Office EXPO: Free Exhibit Hall plus Free Mini-CLEs

March 8 - Seattle. Up to 2 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

How to Win Your Next Civil Jury Trial, featuring David J.F. Gross

March 20 - Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Advanced Purchase and Sale of Real Estate

April 18 - Vancouver; April 19 - Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

APPEALS

TALMADGE & STOCKMEYER PLLC

Phillip A. Talmadge

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

Cleveland Stockmeyer

Former law clerk,
Washington Supreme Court

Available for consultation
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Tukwila, WA 98188-4630

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and

Douglas W. Ahrens

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medication errors, and
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Helga Watson at 425-742-4545 or
helgaw@millcreeklaw.com.

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Mill Creek, WA 98012

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and
DISCIPLINARY ISSUES**

Joseph J. Ganz

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

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

**MEDICAL OR DENTAL
MALPRACTICE**

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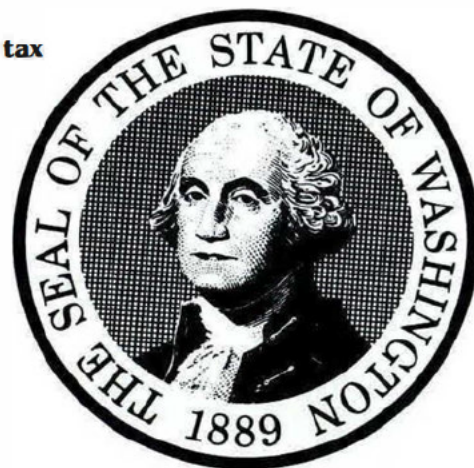
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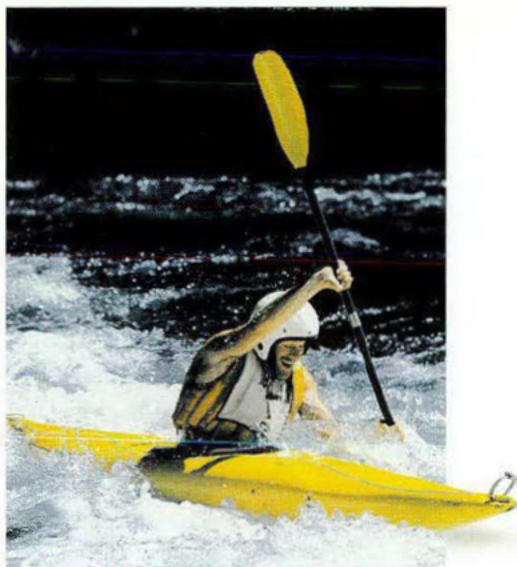
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