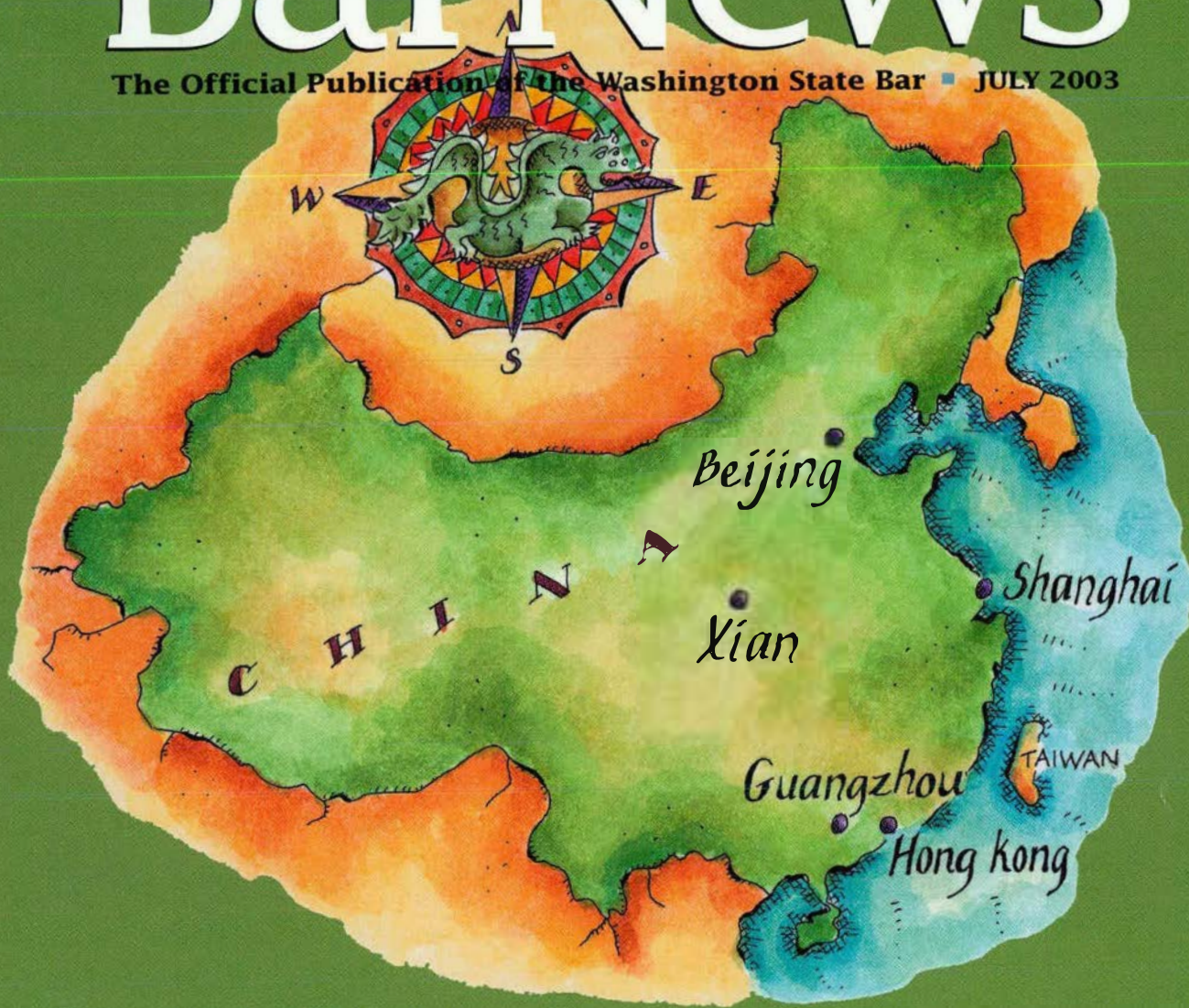


Washington State

# BarNews


The Official Publication of the Washington State Bar ■ JULY 2003



## China's "New Contract Law" A Practical Overview

Breaking News from Goose Prairie  
p. 64

# Uncovering the landlord's hidden assets was as easy as reading the sports page.



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July 2003

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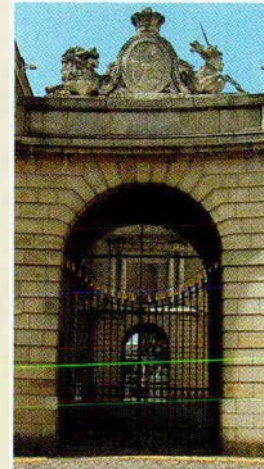
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### Submission Guidelines

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## Letters to the Editor

### Justice shared

I read with great admiration the article on the Garfield County Courthouse (*Bar News*, May 2003). About 20 years ago, while wandering through the halls of Sharpstein Elementary School here in Walla Walla, I came across a mural of the Walla Walla County Courthouse (one of many drawn by students), and the very old picture from which it was drawn—and realized that the Lady Justice atop the Garfield County Courthouse had come from Walla Walla (she was in the photo). I did some limited (and not terribly professional) research here and in Garfield County, and discovered that after a fire here in Walla Walla, she was transported there. The purpose in pointing this out is not to make any claim upon her for our county, but rather to let the world know that “back east” we believe in brotherhood and sisterhood, and waving our flags, and sharing our lovely lady with our neighbors.

John P. Junke Sr.  
Walla Walla

### You have the right to be eaten, and made into coats as well

I was shocked and surprised to read the several letters to the editor concerning the article on “Animal Rights.” The part that surprised me is that the letters were sent at all. I simply assumed that Mr. Karp’s article was an early April Fools’ joke. I thought that in the April edition of *Bar News*, a notice would be placed stating that the article was an early April Fools’ joke. Apparently, this was not an April Fools’ joke, but rather a complete and utter waste of space in your otherwise excellent magazine. I would like to write more, but I am off to lunch—I am going to have a big, juicy steak in Mr. Karp’s honor.

Jeffrey D. Eberhard  
Portland

I respond somewhat belatedly to the letters to the editor (*Bar News*, April 2003) regarding Adam Karp’s piece in the February *Bar News* on animal law. One writer said he “boggled in disbelief” when he saw *Bar News* “was devoted to the false issue of ‘animal law.’” Another pointed to the article as an explanation of “why lawyers are the butt of popular jokes.”

There is something heart-warming, af-

ter all, in seeing the same prejudice manifest itself down through the centuries in the same way, with ridicule.

The first modern legislation to promote animal welfare was introduced in the British Parliament in 1800, when Sir W. Pulteney forwarded a bill to ban bull-baiting (a bull was tethered by a short chain to a post driven into the ground, and was set upon by bulldogs trained to attack it by biting its nose and ultimately killing it; this was sport in England for 700 years). The bill failed.

In 1821, Richard Martin, an Irishman,

introduced a bill into the Commons concerning the ill treatment of horses and cattle. “The reaction of the house was to laugh the Bill out of court. One member suggested that asses be included—Martin agreed—laughter ensued—laughter increased when the amendment was read” (C.D. Niven, *History of the Humane Movement*, 57, 1967). The bill passed, and marked the first legislation of modern times in any country that protected animals against any kind of abuse by humans. More animal-protection legislation was adopted in 1835 at the urging of the En-



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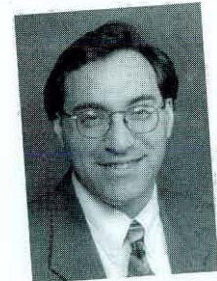
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glish Society for the Prevention of Cruelty to Animals. This legislation gave protection against abuse to all domestic animals, including dogs, and outlawed bear-baiting, badger-baiting, bull-baiting (again), dog fights, and cockfights. The first urban animal shelters were developed in England in 1860; *The Times* wondered if "the supporters of such an institution have not taken leave of their sober senses. . . . Why not a home for five-pound notes dropped in the streets?" (Niven, at 77). (*Bar News's* correspondent called the ideas in the ar-

ticle "goofy," but did not quite suggest that Mr. Karp has taken leave of his senses.) I will not trace any modern developments of animal law, except to observe that dogs and cats, at least, are now recognized in many jurisdictions as being members of the family. And animals are not just objects; they are the subjects of a life.

History demonstrates that progress in animal-rights law, and animal law, has been made. But anyone who advocates a positive change in legal doctrine, as Mr. Karp does, beware: you are likely to get

laughed at. The taunting laughter that greeted the earliest advocate of animal law reform 200 years ago echoes down through the centuries in good form.

Daniel M. Warner  
Bellingham

### WSBA exec doesn't speak for me

I was unpleasantly surprised by the response of Jan Michels to the letter of Lawrence Graham (*Bar News*, May 2003, p. 10).

Since the response was titled "WSBA Executive Director Jan Michels responds," and was published in the "Official Publication of the Washington State Bar," her response certainly bears the trappings of an official bar position.

If what she said is, indeed, an official bar position, I certainly missed the discussion about it or the minutes of the Board of Governors meeting where it was adopted. If it is her personal opinion rather than an official bar position, the comment should not have been titled as it was.

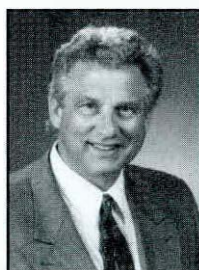
The bar association contains both plaintiff and defense attorneys, and it is Ms. Michels' obligation to represent the interests of both fairly. Her response, however, was very much the "party line" of the plaintiffs' bar. I am not a tort attorney, so I have neither a plaintiff's nor a defendant's bias, but I recognize that the situation is far more complex than Ms. Michels allows, and that there are fair and reasonable points to be made by bar members on both sides of the issue.

When, speaking as the executive director of the Association, Ms. Michels writes, "Lawyers . . . do not feel that capping damage awards is a response that helps the problem," Ms. Michels appears to speak for all lawyers, or at the least for a formally adopted bar position. I am certain that she does not speak for all lawyers (for one, she does not speak for me, since I believe the issue she addresses is still unresolved). If there is a Board of Governors' resolution supporting the position Ms. Michels takes, it would have been preferable simply to quote it. If not, if this is Ms. Michels's personal opinion about what lawyers believe, then I believe that while she is free to hold whatever opinions she wants to, she should not do them under the color of her position as though they were anything

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more than the personal opinions of a non-lawyer employee of the bar association.

*Christopher Hodgkin  
Friday Harbor*

The May edition of "our" magazine contains the following statement by WSBA Executive Director Jan Michels in response to a letter supporting tort reform: "Lawyers are very sympathetic to the malpractice insurance problems of doctors but do not feel that capping damage awards is a response that helps the problem."

I would be very pleased indeed if Ms. Michels did not presume to assert what my opinion on malpractice reform, or any other issue, is. "Lawyers," Ms. Michels, do not "feel." Individuals do, and many of us feel quite differently on this matter than you assert.

*Alec W. Brindle Jr.  
Seattle*

I read Mr. Graham's thoughtful (and lengthy) letter in May's edition of *Bar News*. What amazed me, however, was the fact that you printed Jan Michels's rebuttal to Lawrence Graham's assertions as if it was a point/counterpoint article. Many *Bar News* letters contain partisan opinions, yet I don't recall Ms. Michels (or anyone else) rebutting such positions (factual/technical issues aside). Is it because of the conservative position Mr. Graham takes? (A cynic might also conclude that this explains the flip title you included for his letter, versus the respectful title you used for the following pro-Manning letter.)

Moreover, I object to Ms. Michels, apparently speaking on behalf of the WSBA, showing partisan support for the tort reform issue. Like many issues, members of the WSBA fall on opposite sides of the tort reform issue. I don't expect the WSBA to take sides. Ms. Michels' response first states that "WSBA studies" support her opinion. What WSBA studies on insurance rates and tort reform is she referring to, and why is the WSBA funding such studies? I'm sure that with all its budget demands, the WSBA does not have extra money to fund such studies (which, I expect, would be expensive to conduct properly). Maybe she is referring to multiple studies she has read, as have I, collectively, with differing and even conflicting con-

clusions. Still, if this is the case, the question remains: Why does she pick out the ones supporting her position as the "WSBA studies"? Ms. Michels then moves from talking about "WSBA studies" to what "[w]e believe" about the complex issue of factors affecting insurance premium prices, as if "we" (who? the WSBA, her staff?) is an expert on this topic. Finally, she ends with attaching her opinion about how damage caps will not help the medical malpractice problem to all lawyers. I have no issue with Ms. Michels voicing her private opinion, but I do object to

her cloaking her opinion as that of the WSBA or all lawyers.

*Brian J. Deagle  
Redmond*

### **Tort reform: more thoughts from the MD side of the issue**

Some further thoughts in response to WSBA President Dick Manning's article on tort reform: My spouse's partner's former insurance carrier decided it would be prudent to pay a substantial settlement to a family for alleged negligence in connection with a shoulder distochia incident

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that resulted in minor palsy. It was the unanimous determination of any and all physicians who studied the case that there was absolutely no negligence in this particular incident and, in obstetrics, certain outcomes that we all hope to avoid are unavoidable—nonetheless, monies flowed to the family of the child and their attorneys because the insurer wanted to avoid trial and the uncertainties inherent therein.

I say that is wrong and it is "catching up with us." The thing that triggered my first letter (*Bar News*, May 2003) was the

position that Dick Manning took re the inequities inherent in capping attorney fees as compared to other professionals. I do not think the lawyers understand that obstetricians are at a "breaking point"! They cannot cover their costs if the costs continue to escalate and reimbursements continue to decrease.

My spouse earns approximately \$1,700 for a complete delivery including pre and post-partum care—she cannot afford any more increases in her insurance. Physicians are severely capped—much more so

than lawyers. The system is an imperfect one at best—remember that ●.). Simpson is out golfing today. I experienced legal training and I have first-hand knowledge of the average trial attorney's day and, trust me, it does not come close to the training, stress and expectations placed on high-risk specialty physicians. You should note that the number of ob/gyns graduating from medical schools is way down, as are the applications for medical school. There is a shortage of health care providers and it may reach crises proportions—you can continue to deny it all and we can continue our "pissing contests," but the fact of the matter is, the MDs will soon be fed up. I am from Minneapolis/St. Paul and there are now *four* law schools pumping out hundreds of lawyers every year—that is just one metropolitan area—and the prerequisites for acceptance into most of these schools, followed by the passage of the bar, followed by the right to sue people, pales in comparison to the training and skill required to be a physician.

All those attorneys need to make a living like everyone else. Your reference to Republicans is also interesting—how do you know I am a Republican? The fact that the trial attorneys are the third largest contributor to the Democratic Party is, admittedly, interesting, but don't jump to conclusions. It is also a simple fact that no physician or other professional can pull in the \$\$ the tobacco attorneys, et al, just pulled in. I do agree that additional policing may be required to eliminate incompetent physicians, but it is not that simple.

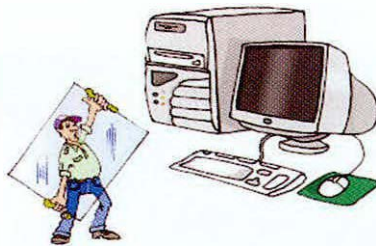
*Lawrence J. Graham  
Bellevue*

**Get a ticket? Pay it.**

James Goche (*Bar News*, April 2003) writes of his parking ticket battles. I don't want to sound like Goody Two Shoes, but in the 63 years that I have been driving, I have never received a parking ticket. And for 31 of those years behind the wheel, I was driving in jam-packed San Francisco, where parking is truly a hassle.

But I am well aware there's another generation out there who look upon beating the parking rules and their enforcement as a sporting proposition and an accepted way of life. A young attorney in our office in San Francisco breezily told me that his

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parking tickets ran about \$400 per month and that he looked upon this as merely a business expense, illegal parking being convenient and averaging out a better bargain than downtown monthly garage fees.

Goche seems to believe that his parking ticket woes are "all someone else's fault." He blames the collection agency, the police department, and the courts, but never admits that his own conduct got him into his troubles.

He set the whole thing in motion by loaning his car to a supposed friend for

what must have been a considerable time. In so doing he opened himself up to all kinds of liabilities, but he doesn't even yet seem to accept the consequences of this careless act. How well did he really know the "friend" to whom he so negligently entrusted his vehicle? What kind of a friend was it who enjoyed the use of the car, got a lot of tickets, apparently tore them up, and never told him? You hang out with the wrong crowd, you get in trouble.

Where is Goche's concern for the problems represented by the pile of tickets—

the deliveries that couldn't be made, the short-term parkers who could not find spots as the Goche vehicle illegally hogged parking spots long after the meter had run out, the tow-away zones blocked at rush hour, and all the other traffic problems the tickets represent?

Why is Goche so uniquely betrayed by the Postal Service? We use first-class mail for almost everything. Banks, brokers, all kinds of responsible parties use first-class mail in perfect confidence. Stock certificates go by first-class mail. Why does first-class mail repeatedly fail to deliver notice of court dates to Goche when the rest of us are thus served every day? Does he even have a mailing address?

More serious is the needless, egotistical, endless litigation that Goche inflicted on the overburdened court system. Going to court is not a form of recreation. When he learned of the fines, why didn't he admit his responsibility and just send in his check?

*Richard L. Meigs  
Olympia*

#### **Grammatical sensitivities taxed**

Now that Bob Cumbow has opened the door to legal writing errors, the perspective should be broadened to use of pet words and phrases—the editor described reaction to Bob's article as "amazing."

Since the Spiderman movie, use of this word has reached epidemic proportions—you cannot read three pages of a newspaper or magazine, watch a half hour of TV, or carry on three conversations, however brief, without use of this word. For attorneys it has supplanted "frankly," also recently popularized, and totally objectionable because it implies the issuer has been less than open, candid, or honest to that point. "Amazing" is more generic and consequently more widespread. It is the equivalent of "like," "you know," "whatever," and other cheap language fillers grating on the nerves of I, for one, of what is probably a very small minority of deviants to whom overuse of popularized words and phrases is like fingernails on a chalkboard. Quite frankly, I'm amazed my exaggerated response has led me to dash off this letter.

*Dean K. Knapton  
Kalispell, MT*

  
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## The WSBA Foundation: What Shall We Do?

by Dick Manning  
WSBA President

I'm critical of boring columns written by somebody occupying the very transient position I hold (*sic transit gloria mundi*). That's one reason you haven't seen a president's column in *Bar News* for the last couple of months. So I'm going to keep this brief so that you will persevere to the very last period.

### Birth of the Washington State Bar Foundation

The Washington State Bar Foundation was incorporated in 1957, but not formally organized until 1977. The foundation became a logical home for various funds and memorials, including those for Judge James Lawless, attorney Kevin McMahon, and Judge Morell Sharp. And from time to time, the foundation has received funds and distributed dollars for qualified charitable purposes as specified by the donors. In most years, the foundation's funds have been small, and have not triggered IRS income-tax reporting requirements.

### The Lawless Fund

Tri-City Superior Court Judge James Lawless tragically was assassinated in his chambers by a mail bomb. Judge Lawless was respected by his community and revered by his colleagues, and his death spurred the formation by the Superior Court Judges' Association (SCJA) of a scholarship fund for law students. The SCJA has continued to support this fund. The Lawless Fund distributes three \$1,000 scholarships annually to a student at each of our state's law schools. The current principal balance of the fund is about \$66,000. The Washington State Bar Foundation provides an IRS-approved nonprofit corporation to receive, hold, invest, and distribute scholarship aid.

### The McMahon Fund

Kevin McMahon was a highly respected business lawyer who died in a tragic car accident in the very prime of his life. A number of his colleagues—primarily those in the WSBA Business Law Section—decided to create a fund in his memory. The McMahon Fund was endowed to provide special programs and speakers for the WSBA Business Law Section. Its current balance is about \$16,000.

### The Sharp Fund

Judge Morell Sharp was a federal district court judge in Seattle. After his death, a fund was established that paid expenses for a memorial address at the annual State Bar convention. In 1997, the balance of the Sharp Fund was disbursed to support the establishment of a memorial sculpture on the grounds of the U.S. Courthouse in Seattle.

### Rebirth of the Washington State Bar Foundation

In 1999, WSBA Executive Director Jan Michels and General Counsel Bob Welden began working with WSBA officers and foundation trustees to revitalize the foundation. With *pro bono* assistance regarding private nonprofit reporting and IRS requirements, they were able to clarify the status of the foundation, and it emerged as a viable and flexible 501(C)(3) charitable organization.

The foundation board of trustees has recreated itself under the able leadership of WSBA governor Bryce Dille. The foundation is seeking direction and purpose. At a recent meeting, the trustees brainstormed new goals. Suggestions included:

- Creating scholarships to promote diversity of all kinds in the profession.
- Sponsoring futurist conferences/symposiums on cutting-edge technology and trends affecting the justice system.
- Educating the public about our justice system.
- Funding an ethics chair in law schools.
- Offering a tax-deductible haven for donors of local bar associations for qualified *pro bono* civil legal services.

### Helping Smaller Bar Associations

Perhaps the most intriguing idea involves bars without an IRS-qualified nonprofit corporation. Many of these associations have programs for providing indigent civil legal services but are unable to offer donors the benefits of a charitable income-tax deduction. The foundation could provide such a vehicle and distribute funds for qualified purposes as specified by the donors (although there must be a nexus between the *pro bono* program and the foundation—a legal requirement).

### A Separate Track from Other Existing Nonprofits

There are a number of qualified nonprofit corporations/foundations engaged in fundraising for legal services, scholarships, etc. LAW Fund is one. Others include the foundations of the King County Bar, Tacoma-Pierce County Bar, and other local bars. The consensus of the WSBA is that a state bar foundation should not be in competition with these other well-established programs. What our foundation can do is offer the services that larger bars can afford, but smaller bars cannot.

### Tell Us What You Think

What do you think? The Washington State Bar Foundation board of trustees wants to hear from you. It is open to any serious suggestion you have. Chair Bryce Dille can be reached at [bryced@cldb-law.com](mailto:bryced@cldb-law.com). I encourage you to e-mail him now. We have an exciting opportunity ahead of us. 🍷





## Scoring Our Progress . . .

by Jan Michels

WSBA Executive Director

It's July and we're heading into the home stretch for Bar year 2002-2003. So how are we doing? Well, in a nutshell, under President Manning's leadership we've put into play seven new initiatives, we've fielded several long-range strategic goals, and we've batted home five runs. Not bad for one year! Here's the scorecard to date:

### "Ethics 2003" Committee—Up to Bat

Ellen Dial chairs this extensive effort to review the ABA's "Ethics 2000" revisions to the Model Rules of Professional Conduct. Pitches coming to the committee include responding to the Sarbanes-Oxley regulations concerning a lawyer's duties in security transactions; multijurisdictional practice provisions and the hope to achieve uniform regulation in this area among states; possible revisions to lawyer-client confidentiality; amendments to rules governing conflicts of interest; proposed mandatory reporting of professional misconduct; and many other potential changes. The committee will remain at bat for most of 2004, while the board, WSBA members, the Washington State Supreme Court, and others field its recommendations. Committee meetings are generally held on the second Wednesday of each month at the WSBA office and are open to the public.

### Professional Development Committee—A Home Run

Under Jeff Tolman's leadership, this committee worked during the past year to create recommendations on how to better assist new lawyers who are beginning their practices. The committee recommends requiring pre-licensure training, 15 MCLE credits in specified areas, expansion of mentoring, improvement in the Rule 9 Legal Intern Program, review of law school curricula, availability of more information about how to practice law, and definitive research into factors associated with practice problems.

With the completion of this overview of new-lawyer development, two other efforts will begin: the Bar Exam Review Committee and the Student Loan Task Force.

### Panel on Defense—Now at Bat

Though it took more than eight months of thinking and planning to create the Panel on Defense, Justice Robert Utter (Ret.) and Marc Boman have stepped up to the plate as panel co-chairs and are ready to play ball. The panel's game plan is to



review the status of criminal defense and juvenile representation, and make recommendations about what the WSBA can and should do to correct problems and promote improvements in the defense delivery system.

### Facility Planning—No Runs, No Hits, No Errors

The WSBA's lease expiration of 2006 inhibits our ability to move quickly into other space or renegotiate our current lease despite currently favorable economic times. The Facilities Committee (the steering committee for working with a lease broker and watching the market in the coming years) will remain alert to the WSBA's interests in centrality, access, and parking, while deciding on future lease options.

### Court Funding—An All-star Game

The Supreme Court named Wayne Blair chair of the Court Funding Task Force. This task force of all-stars has broken into five work groups (discussed in my May column), and expects to have some draft principles about court funding by midsummer. The task force expects its work to be parsed into separate legislative and funding initiatives over the coming years.

### Timely Discipline—Two RBIs; One on Base

Since December 2001, the WSBA has been current in all disciplinary investigations. The previous backlog of investigations moved into the public proceeding phase, and we expect

rienced exceedingly heavy hearing loads through all of 2002 and into 2003. We are now cresting this wave of hearings and expect a glut of appeals in late 2003 and in 2004. For this huge effort to catch up and stay current with all disciplinary matters, the WSBA thanks Chief Disciplinary Counsel Joy McLean, and all disciplinary counsel and support staff.

**Member Benefits—Rounding Third; Heading for Home**

In the last two years, the Member Benefits Task Force has brought members medical coverage and, recently, long-term-care in-

surance. The task force is now investigating auto- and home-insurance packages, after which they are likely to declare their work finished, and adjourn.

**Nonlawyer Member on the Board—In the Bullpen**

Governor Howard Graham chairs a small work group investigating the possibility of including more nonlawyer members in WSBA governance. Many members have reservations about this proposal. It appears that lay interest is primarily in admissions, discipline, and consumer protection. There are various ways to include nonlawyer rep-

resentation in these areas, which the committee is exploring with the Board of Governors, WSBA members, and the Washington State Supreme Court.

**Fiscally Sound—A Solid Run**

By the end of the current bar year, the WSBA will achieve the promised eight percent of operating reserve. With the adopted two percent license-fee increase in each of the next three years, the WSBA will accumulate an additional contingency reserve for possible relocation or technology expense. No significant future staff growth is planned.

**Practice of Law Board—Game Won; Series Continues**

After a year of team-building and regulation development, the Practice of Law Board (PoLB) began investigating complaints of unlawful practice. By rule, the PoLB can develop advisory opinions, refer the complaint for prosecution, or evaluate it for public interest and possible regulation. The second task of the PoLB, investigating nonlawyer practice for possible regulation, is on the game schedule and will be the subject of a PoLB retreat later this year.

**Bar News Review Committee—On First with a Walk**

With the return of Lindsay Thompson as *Bar News* editor, the first step of the review was a walk to first base. In my June column, I hoped to raise consciousness about *Bar News* as a communication medium, and in the fall the committee will survey members about what you hope to see in *your Bar News*.

**Reciprocity—A Home Run**

Washington adopted a reciprocal admissions rule, APR 18, and Idaho and Oregon followed with the tri-state reciprocity agreement. Utah and Montana have voiced interest in joining the agreement. Similar agreements are under consideration by the “four-corner” states and the New England states. The states that are currently part of the tri-state agreement are now working on common multijurisdictional and *pro hac vice* rules.

**Legislative Initiatives—Two Hits; Two Left on Base**

The 2003 legislative session was almost



*Clockwise from left: Vernon Smith, Douglas Cowan, William Kirk, Garth O'Brien*

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rained out by the severe budget deficit. We managed to get two of our three section bills passed and signed, with the last one scheduled to resurface next session. Most tort measures were halted, but we did not manage to secure the temporary emergency filing fee increase for legal services.

#### **Diversity—An All-Star Team**

With the goal that was so eloquently stated by Ron Sims at the Loren Miller Bar Association Dinner in 2002—"Halls of justice that reflect the diversity in the streets"—the WSBA is close to achieving a governing board that reflects the population of Washington. Our Board of Governors also reflects a broad spectrum of practice areas, firm size, and plaintiff/defense/government-practice orientation. As a result, discussions are broader and richer.

#### **Legal Services Funding—Series Even at One Apiece**

Winning adequate, stable funding for legal services takes more than a game, a season, or a lifetime record. We won the U.S. Supreme Court IOLTA case, but lost the emergency filing-fee increase. We still have the legal-needs-assessment study to put into play, and are banking on the coaching of the Supreme Court's Court Funding Task Force.

#### **Washington State Bar Foundation—Home Run in the First Inning**

The Washington State Bar Foundation has stated its goals as supporting legal services, promoting public legal education, awarding scholarships and stipends to law students, offering humanitarian aid and treatment services to needy members, and administering grants and donations directed to the foundation's purposes. This is a home run, but it's early in the game. The foundation needs a cause that attracts giving, without reducing donations to established legal services and funds. We want to ensure it is considered for programs, services, and revenue streams not tapped or offered elsewhere.

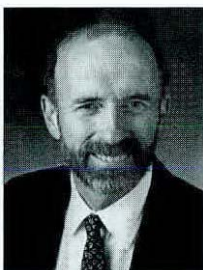
So, with the 2002-2003 season closing, your Bar has a good record. Bar leaders will work this summer to develop next year's game plan. We want to know what you think. Never hesitate to lob us a pitch or coach us from the stands. ☞

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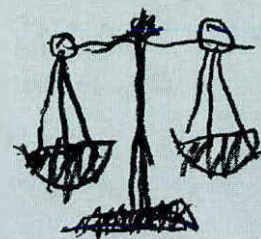
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# China's "New Contract Law"

## A Practical Overview

*by Gordon J. Liu*

**I**n March 1999, the Chinese People's Congress enacted the unified Contract Laws of the People's Republic of China (the New Contract Law), which went into effect on October 1, 1999. Simultaneously, previous laws governing business and commercial contracts, such

**Chinese and foreign legal experts believe that the New Contract Law provides users with a more consistent and coherent set of statutes closely paralleling international business contracting principles.**



as the Economic Contract Law of the People's Republic of China, the Law of the PRC on Economic Contracts Involving Foreign Interests, and the Law of the PRC on Technology Contracts, were repealed.

Chinese and foreign legal experts believe that the New Contract Law provides users with a more consistent and coherent set of statutes closely paralleling international business contracting principles. The New Contract Law sets forth—with a higher level of clarity—the essential elements of a contract, forming and performance of a contract, and parties' rights and obligations under the contract. It is an evident attempt by Chinese lawmakers to close the gap between Chinese business practices and international standards, in anticipation of China's membership in the World Trade Organization.

This article summarizes the New Contract Law while aiming to pinpoint the areas that require special attention from American companies in contract negotiations with their Chinese counterparts. It also provides an interesting contrast between familiar U.S. contract-law principles and those of an increasingly powerful global-market participant seeking to integrate its own social and business principles into a regime for doing business with the world.

### General Provisions

As in many other laws of the People's Republic of China, the New Contract Law contains some general provisions at the



outset of the text. The general provisions are meant as guidelines with general applicability to more specific provisions of the law. Although the drafting authorities do not specifically state it, the general provisions serve as a public-policy framework with which the interpretation of a particular section of the law must be consistent.

The New Contract Law is enacted to "protect contracting parties' legal rights, maintain social economic order, and improve the construction of socialist modernization." The stated purpose of the law reflects China's extreme sensitivity to social and economic stability, and China's national policy focus on the Four Modernizations.<sup>1</sup>

In furtherance of the stated purpose, the general provisions require that a contract not interrupt socioeconomic order or harm public interests, and that the contracting parties be honest and trustworthy, and respect societal ethics.

The general provisions specifically state that the New Contract Law does not apply to marriage, adoption, or guardianship matters, establishing it as a law principally governing business, commercial, and related activities.

Although the general provisions are rarely emphasized by contracting parties, sometimes they serve to void a contract if

a third party can prove that the contract disturbs social-economic order or causes harm to the public. The general provisions force contracting parties to be aware of public policies and restrict their covenants within the confines of the grand social-economic framework. This is different from the United States, where functions of interpreting public policies are generally left to the court; therefore, it is advisable for the contracting parties to adopt a cover-all clause mirroring the language of the general provisions in the beginning of their contract.

### Formation of a Contract

A valid contract can be in written, oral, or other form. Written contracts include telegram, telefax, facsimile, digital-based exchanges, e-mail, or other tangible forms of expression. A written contract is required if (1) other laws or regulations mandate the contract to be in writing; or (2) the parties agree to use a written contract.

Although content of a contract is subject to negotiation by the parties, a contract generally should include the following items: (1) the parties' names and addresses; (2) the contract price; (3) the contract quantity or amount; (4) the quality of the product or service; (5) payment or compensation terms; (6) the time, location, and method of performance; (7) liabilities for breach; and (8) a method of resolving disputes. (See Article 12.)

Contracts are formed with an offer and acceptance. To be valid, an offer must be (1) specific and definite, and (2) binding upon the offeror. An invitation for an offer is an expression of hope for an offer. Under Article 15, a mailed price list, auction announcement, bidding announcement, stock-placement brochure, or commercial advertisement may all be deemed an invitation for an offer. If its content satisfies the elements for an offer, a commercial advertisement may also be considered an offer.

An offer becomes effective when it "reaches" the offeree. (See Article 16.) The New Contract Law is not clear about whether the word "reaches" means that the offeree must actually receive the offer. For contracts in digital or electronic format (the recipient having specified the system through which such digital or electronic text may be transmitted), an offer is

deemed to have reached the offeree when it has entered into that system. (See Article 16.) An offer may be withdrawn before it reaches the offeree, or simultaneously upon reaching the offeree. An offer may be cancelled after the offer reaches the offeree, but before the offeree accepts. However, an offer may not be canceled if (1) the offeror specified a timeframe for acceptance or (2) the offeree has reason to regard the offer as noncancelable, and has prepared for performance of the contract. The New Contract Law is unclear on what reasons are sufficient or what preparation for performance is required. (See Articles 17, 18, and 19.)



Under Article 21, acceptance of an offer must be made known to the offeror through notice, except where acceptance may be made through conduct of the offeree if the offer so specifies, or established through industry customs. Acceptance must reach the offeror within the time fixed in the offer. If the offer does not fix a timeframe, then acceptance must be made immediately if it is an oral offer, or within a reasonable time if the offer is not oral. Acceptance may be withdrawn before the acceptance reaches the offeror, or simultaneously upon reaching the offeror.

A new offer, or counteroffer, occurs when the offeree makes substantive changes to the content of an offer. Under Article 30, "substantive changes" means changes to the price, quantity or amount, quality, payment or compensation, perfor-

mance time, location, method, liability for breach, or method of dispute resolution. It is notable that the New Contract Law treats dispute resolution as an essential element of a contract. Contracting parties must be specific about the method they wish to utilize to resolve any dispute, such as the selection of jurisdiction or venue, choice of law, or, if the parties decide on arbitration, the arbitrating organization. Ambiguity or failure to be specific may cause the court to invalidate the dispute-resolution provision and assert the court's own discretion on dispute resolution. This point is especially important for international transactions, and for companies

hoping to avoid litigation or dispute resolution in the Chinese courts or before a Chinese forum.

Under Article 32, the location where a contract is formed is the location where acceptance becomes effective. If a contract is made through digital or electronic means, the recipient's principal place of business shall be the place where a contract is made. If the parties contract through formal written agreement, the location where both parties sign or seal the document is the location of contract.

A potential conflict exists pertaining to the time when a contract becomes effective. Article 25 states that a contract is formed when the acceptance becomes effective. However, Article 32 states that if the parties adopt a formal written agreement as the form of contract, the contract

is formed when all parties sign or seal the contract. Article 33 states that when letters, digital transmission, or other forms are adopted, a party may request that the other party sign a confirmation letter, and the contract will be formed when the confirmation is signed. Obviously, questions exist as to how to synchronize the application of Articles 25, 32, and 33. Is signature or seal the only form of acceptance recognized by the New Contract Law? Or how should the confirmation letter be worded for it to be deemed an acceptance? Is the confirmation part of the contract, or is it an independent contract? What is

the difference between signing on the confirmation, and signing on digitally or electronically transmitted correspondence? The New Contract Law is silent on these questions.

The New Contract Law adopts a modified version of the principle of "equitable estoppels": where written contract is required by law, regulation, or agreement of the parties, but the parties fail to use a written contract, a contract is formed if one party performs according to the terms of the contract and the other party accepts the performance. If the parties agree on a written contract before the contract is

signed or sealed, and one party substantially performs and the other party accepts the performance, the contract is formed. (See Article 36.)

Under Article 54, a contract or part of a contract may be declared void or modified upon application by a contracting party if (1) the contract is formed due to a substantial and major misunderstanding; (2) the contract is obviously unfair and unjust in its formation; or (3) the contract is formed based on fraud, duress, or other circumstances where a contracting party enters into the contract involuntarily. However, a contracting party loses his right under this article if (1) he fails to act within one year from the date he knew, or should have known, the basis for application to have the contract declared void or modified; or (2) he expressly states, or through his own action indicates, that he has abandoned the right to apply.

Under Article 53, a disclaimer of liability in a contract is invalid and ineffective if (1) a contracting party causes personal injuries on the other party or (2) a contracting party intentionally or with gross negligence causes the other party property damages.

If the contracting parties conspired through the formation of a contract for purposes of personal gains at the expense and in harm of national, collective, or third-party interest, the gains resulting from the contract shall be condemned and returned to the government, collective entity, or such third party.

#### Contract Performance

In performing a contract, the parties may use a supplemental agreement to clarify certain provisions in the contract if such provisions are unclear. In the event the parties cannot reach a supplemental agreement, these provisions may be interpreted in accordance with other provisions in the contract, or trade and industry customs.

Under Article 62, if interpretation based on trade and industry customs cannot resolve the issues, the New Contract Law provides the following interpretation guidelines: (1) in case of unclear provisions on quality, the national or industry standard shall apply; if there is no such national or industry standard, then customary standard or special standards which are consistent with the purpose of the contract shall apply; (2) if the price or com-

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pensation provisions are unclear, then the market price at the location of performance shall apply; or if the local government regulates such price, then the government's regulation applies; (3) if the location of performance is unclear, the payee's location in payment of money transactions, or the location of real property in real estate transactions, or the location where the contract is actually performed, is controlling; (4) if the time for performance is unclear, the debtor may perform at any time and the creditor may demand performance at any time, provided that the creditor gives the debtor reasonable time for preparation; (5) if the method of performance is unclear, a method most suitable for materializing the

type of evidence required under this article, or the definitions for "deteriorating operating condition," "commercial credibility," or the "possibility of losing the ability to perform." Without clear definitions of these phrases, a party seems to have a subjective right to stop performance in anticipation of the other party's difficulties in performance.)

Articles 73 and 74 provide for the interesting scenario wherein a debtor owns a future right and fails to exercise such right upon maturity, which harms the creditor's interest. Under these articles, the creditor may petition the court for authority to act in the debtor's place to exercise such right. However, the creditor's right of substitution is limited to the debtor's

**If the contracting parties agree that the debtor shall perform his obligation in favor of a third party and the debtor fails to do so, the debtor remains liable to the creditor for breach of contract.**

contractual purpose shall be adopted; and (6) if the responsibility to bear the cost of performance is unclear, the performing party shall bear the cost.

Article 64 provides for the basic principles of transfer of contractual obligation and indemnity. If the contracting parties agree that the debtor shall perform his obligation in favor of a third party and the debtor fails to do so, the debtor remains liable to the creditor for breach of contract. By the same token, if the contracting parties agree that a third party should perform the debtor's obligation to the creditor and the third party fails to do so, the debtor remains liable to the creditor for breach of contract.

Under Article 68, a performing party to a contract may stop performance if he has confirmed evidence that the other party (1) is in a seriously deteriorating operating condition; (2) transfers assets, or cashes out to escape debts and liability; (3) has lost commercial credibility; or (4) has lost or faces the possibility of losing the ability to perform under the contract. However, if a party does not have confirmed evidence but nonetheless stops performance, he shall be liable for breach of contract. (This is a major red flag: the New Contract Law is not specific as to the

right, and the creditor shall bear the cost of enforcing the right. Furthermore, if the debtor abandons his right or sells assets at unreasonably low prices to the creditor's detriment, and the buyer of said assets has knowledge of the situation, the creditor may also petition the court to declare such sales void. The creditor must file such petition within one year from the time he knew, or should have known, the causes for the petition, or the creditor's right ceases to exist after five years from the time of the actual sale.

Once a contract is formed, change of the parties' names, entity, executive, manager, etc., shall not be basis for nonperformance.

#### **Contract Modification and Assignment**

Modification of a contract must be consented to by the contracting parties. However, the New Contract Law does not provide for the form of consent or method of modification. It states only that if the modification is unclear, there will be deemed no modification. (See Articles 77 and 78.) This creates a substantial likelihood for confusion. For example, the New Contract Law does not require written consent on modification of a contract,

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which implies that oral agreement is allowable. But if the contracting parties orally agree to modify the contract, and one party performs under the modified contract and the other party does not, have the parties modified the contract? Under these circumstances, the parties will almost certainly dispute whether the modification is clear. What is the standard governing the clarity of modification?

Under Article 79, the creditor under a contract may transfer all or part of his contractual rights to a third party, except where (1) the nature of the contract is non-transferable; (2) the parties have agreed

not to transfer the contract; or (3) the contract is nontransferable under other laws and regulations.

Upon transfer, the transferee of contractual rights shall have subrogated rights in relation to the contract, unless such rights cannot be separated from the transferor. Once the debtor receives notice of the transfer, he may raise any and all issues with the transferee. Vice-versa, the creditor may raise any and all issues with the debtor's transferee. (See Articles 81 and 82.)

Under Article 83, if the creditor's transferee owes an obligation to the debtor, and the debtor's contractual obligation ma-

tures before or at the same time as the transferee's contractual right, the debtor may request that his contractual obligation be offset against the transferee's contractual right.

A debtor under the contract must first obtain the approval of the creditor before he can transfer all or any part of his contractual obligations. If the debtor transfers his contractual obligations, the transferee must assume the debtor's obligation transferred to him, except where such obligation is inseparable from the debtor.

Under Article 90, if a contracting party merges with another entity, the legal person or the entity resulting from the merger shall succeed, and continue to perform under the contract. If a contracting party is divided, the legal person or the entity emerging after the division shall continue to perform under the contract unless the contracting parties agree otherwise.

#### **Termination of Contractual Rights and Obligations**

Under the New Contract Law, Article 91, the rights and obligations in a contract are terminated if any of the following events occurs: (1) the debt under the contract is paid in full; (2) the contract is cancelled; (3) the debt under the contract is offset entirely; (4) the debtor delivers the goods that are the subject of the contract; (5) the debtor is rid of his debt under the contract; (6) the contractual rights and obligations are consolidated into one person; or (7) the contract is terminated under the law, by agreement of the parties, or under other circumstances.

A contract can be terminated by agreement of the contracting parties. The contracting parties may also agree on a contingency, the fulfillment of which will trigger the termination of the contract. After the contract's termination, the contracting parties should act in honesty and good faith in giving notices, providing assistance, or maintaining confidentiality, etc., according to industry customs. (See Article 92.) The New Contract Law makes no further provisions concerning Article 92, which, by its language, invites the question of whether a contract is really terminated.

Under Article 94, a contracting party may cancel the contract when any of the following events occurs: (1) there is an occurrence beyond the parties' control that

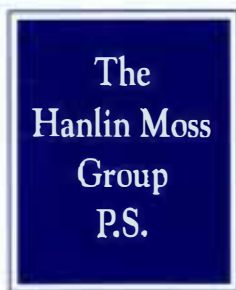
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prevents further performance of the contract (*force majeure*); (2) one of the contracting parties indicates either expressly or through his actions that he will not perform major obligations under the contract; (3) one of the contracting parties delays performance of major obligations and fails to redeem his performance after receiving reasonable notice and request for performance; (4) a contracting party delays performance of major obligations or breaches other provisions of the contract, making it impossible to fulfill the contractual purpose; or (5) other events as required by law occur.

To cancel a contract under Article 94(2), stated above, the canceling party must provide notice to the other party. The contract is cancelled at the time the notice reaches the other party. However, the right

**The New Contract Law  
allows damages beyond  
the contract price stipulated  
in the subject contract.**

to cancel under Article 94 may be terminated if the contracting parties do not exercise such right within a reasonable time. (See Article 95.)

After the contract is cancelled, the contracting parties are absolved from further performance of the contract. However, based on the nature of the contract, a contracting party may demand to be restored to its original financial condition, or demand payment for damages or other compensatory measures for performance already completed. (See Article 97.) Furthermore, the fact that a contract is cancelled does not affect the validity of the accounting and disposition provisions of the contract. (See Article 98.) Obviously, Article 98 seems to be in conflict with Articles 94 and 95, in that it keeps part of the contract valid even though the contract is legally cancelled.

If a contract is cancelled, the contracting parties may agree to offset each other's obligations by delivering to each other the subject of the contract or collaterals securing such obligations. However, a contracting party may deposit the subject of the contract in the following circumstances: (1) the creditor unreasonably refuses to ac-

cept; (2) the creditor cannot be located; (3) the creditor is deceased, or becomes incompetent without the appointment of a guardian; or (4) other events allowed under the law occur. If the subject of the contract is not suitable for deposit, or the costs of deposit are unreasonably high, the debtor may sell the subject by lawful auction and retain the proceeds that legally belong to him.

**Liabilities for Breach of Contract**

A contracting party is liable for performance, undertaking remedial efforts, or compensating for losses and damages when he fails to perform under the contract or if his performance does conform to the contract. When a contracting party expressly indicates, or by his own conduct indicates, that he will not perform under the contract, the other party may enforce the contract before the contract term expires. (See Articles 107 and 108.)

Under Article 110, a contracting party may demand specific performance if the other party fails to perform obligations that are nonpecuniary, or his performance does not conform to the contract, provided that the contracting party may not demand specific performance, if (1) the obligation cannot be legally or factually performed; (2) the subject of the contract is not suitable for specific performance, or the costs of such performance are unreasonably high; or (3) the creditor does not demand specific performance within a reasonable time.

The New Contract Law allows damages beyond the contract price stipulated in the subject contract. For example, Article 112 states that if the breaching party takes action to mediate but is unable to mediate the entire damages, the unmediated damages should be awarded. Article 113 provides that "lost profit" is recoverable upon breach of a contract, but such recovery is limited to the profit which is reasonably foreseeable, or damages which should have been foreseeable, at the time of breach.

The New Contract Law contains mechanisms for the parties to self-regulate in performing under the contract. Article 114 states that the contracting parties may enter into agreement that, in the event of a breach, the breaching party may pay a "breaching fund" to the other party; or the parties may agree on the method of calcu-

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lating damages in the event of a breach. If the breaching fund is less than the loss caused by the breach, the nonbreaching party may petition the court or an arbitrator for additional compensation. On the other hand, if the breaching fund is excessively more than the loss, the breaching party may petition the same court or arbitrator for a reduction. If a breaching party delays paying the breaching fund according to agreement, it shall be liable for the payment of the breaching fund in addition to liability under the contract.

Article 115 states that the contracting parties may stipulate that one party pay the other party a "guaranty fund" according to China's law of guaranty. When the debtor performs under the contract, the guaranty fund shall be returned or used to offset the contract price. Upon breach, the breaching party shall not be allowed to demand the return of the guaranty fund. But if the party receiving the fund fails to perform, it shall be liable for double the amount of the guaranty fund. If a contract contains provisions for both a "breaching fund" and a "guaranty fund," the nonbreaching party shall have a choice as to which provision to proceed upon.

The New Contract Law also contains several provisions based on *force majeure*,

or "Act of God." The term used therein is "irresistible force," which is defined as "an objective event which is unforeseeable, unavoidable and cannot be overcome." Upon occurrence of an irresistible force, the contracting parties may be excused of part or all of contractual obligations, except where the irresistible force occurs while a party delays performance of its obligations or if the law provides otherwise. If an irresistible force makes performance of the contract impossible, the

the contract, other contract provisions, industry custom and usage, and based on fair dealing and good faith. If a contract is prepared in two or more languages, *provided each version has equal force and effectiveness*, then any disputed term shall be interpreted consistent and in accordance with the contract.

Under Article 126, a contract involving foreign parties may provide for choice of law applicable to the contract. If the contract involving foreign parties does not

**If a contract is cancelled, the contracting parties may agree to offset each other's obligations by delivering to each other the subject of contract or collaterals securing such obligations.**

nonperforming party must timely notify the other party to reduce such party's damages, and provide the other party with evidence of the occurrence of the irresistible force. (See Articles 117 and 118.)

#### Miscellaneous Provisions

Under Article 125, any dispute over interpretation of contract provisions should be resolved according to the terms used in

provide for choice of law, then the law of the country to which the contract is most closely related shall apply. Contracts governing China-foreign-equity joint ventures, and cooperative joint ventures and contracts on joint exploration of natural resources that are performed within the Chinese territories, are governed under Chinese law.

Article 127 states that local business-

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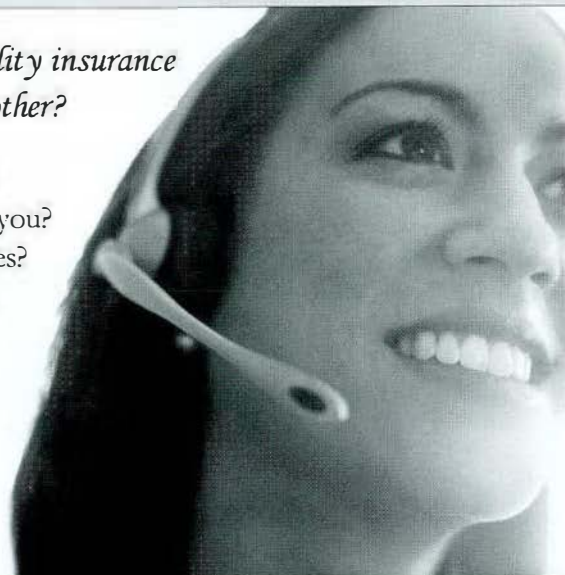
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administration or other governmental entities may exercise their regulating authority within their respective jurisdictions concerning contracts that harm China's national interest and social welfare.

Article 128 provides that a foreign contracting party may apply for arbitration before a Chinese or foreign arbitration forum according to the contractual arbitration clause. If the contract does not contain an arbitration clause or if the arbitration fails, any party may commence suit in Chinese court. Upon application, the court may enforce an arbitration award.

Article 129 contains a statute of limitations that limits the time to sue or arbitrate to four years on disputes over contracts dealing with the international purchase and sale of goods, or technology export and import. The statute of limitations begins to run when the contracting party knew, or should have known, the cause of action.

### Conclusion

The New Contract Law is certainly a step in the right direction in bringing China's business contract law on par with international standards. However, there are still inconsistencies and loopholes. Moreover, application of the New Contract Law is subject to local interpretation and enforceability. Companies contracting with Chinese entities must be keenly aware that China is just beginning to implement a business-legal infrastructure which is compatible with WTO requirements. Confusion in interpreting the law is bound to occur. Foreign companies should carefully study the New Contract Law and use it to their own advantage, but it is important to understand that having a good contract is just one aspect of ensuring that business in China goes smoothly. 📌

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### NOTE


1. The Four Modernizations (modernization in industrial, agricultural, science, and national defense) are a national goal set by the Chinese leader Deng Xiaoping (1902-97) more than two decades ago.


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
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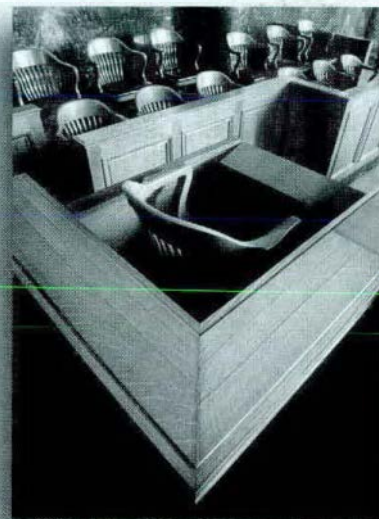
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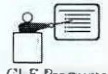


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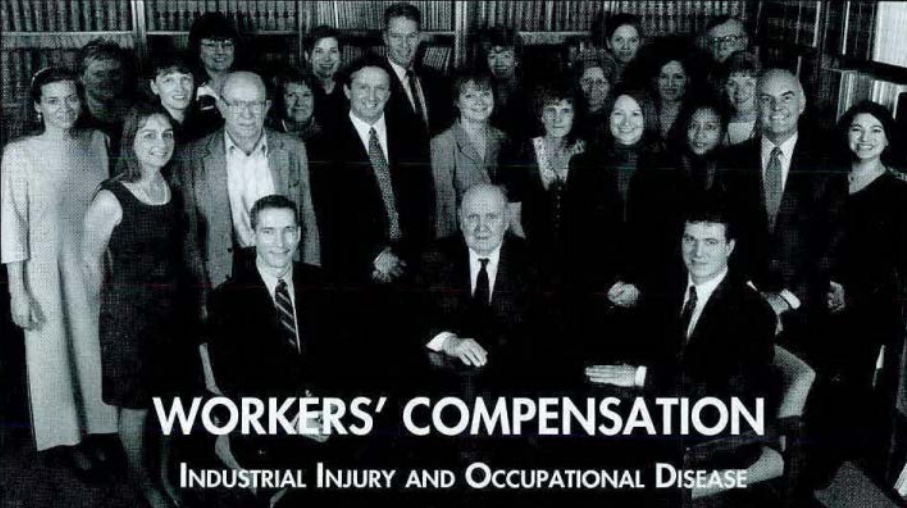
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# Dining at the King's Inns

by Sally Gustafson Garratt



**N**olumus Mutari, the carving reads above the huge stone fireplace that stands midway in the dining hall of the King's Inns. The crown and trumpets covered by an open book indicate the seriousness of the words. They mean, "We will never change," Helen translates, although the small red card on the hearth, which warns, "This is a gas fire. Do not dispose of paper or other refuse," indicates that perhaps some changes might be necessary.

Helen Bradford, a stylish, but proper, barrister "of a certain age," had invited us to dinner on guest night at the King's Inns, a late-18th century stone monument just north of the Liffey in Dublin. Designed by James Gandon, the architect who placed his mark on the Dublin landscape by designing the Customs House and the Four Courts, the King's Inns rises slightly above the North Dublin slums and tenements in stately grandeur, its black wrought-iron gates, neoclassical columns, and domed cupola proclaiming that this is an important place where barristers are trained, keep company, and, during the "dining sessions," eat dinner.

Helen's invitation included pre-dinner drinks, and, because dinner would begin precisely at 6:30, we were to arrive at 6:00. Crawling into the taxi at 5:45 at our south Dublin home, we knew it would be close, especially when we recognized the driver, an older gentleman who had driven us in the past. He never

appeared to be quite awake, and had a driving style to match his manner. Rush hour in Dublin is horrid, mass transit never having established much of a foothold in Ireland, so we expected the worst.

Our driver politely asked our destination and sounded confused when we mentioned the King's Inns. "Now would that be a public house?" he asked. Obviously he didn't associate with barristers much.

Ireland follows the British system that separates the legal community into barristers and solicitors. Solicitors form law firms, handle clients, advise on business matters, and draw up legal papers, but rarely appear in court. Barristers have no offices, no law partners, and no clients, other than solicitors. They pay for a small space in the Law Library, from which they prepare cases for court. Assisted by a "devil," an aspiring barrister in his or her first year of practice, they work alone, the often flamboyant superstars of the Irish legal system.

The path leading to the courtroom in Ireland is different from what we in the United States know. Students entering college study law during what would be our undergraduate years. After successfully completing a three- or four-year program, a student with a "law" degree chooses either to pursue a career as a solicitor, studying for three years with the Law Society, or to enter the King's Inns and, after two years and a term working for free as a devil, become a barrister.

Although the King's Inns has a director and staff, the faculty are all practicing barristers. Since I have some teaching background and was keen on making contact with Dublin's legal community, I volunteered to teach trial practice during our year in Dublin, but was politely refused. "We allowed for a visiting lecturer once," the director confided, "but we won't do *that* again." It seems that, unknown to the director, the visitor was a renowned criminal and con man who proceeded to use his status as a "visiting professor" of the King's Inns to enhance his résumé. I couldn't help but wonder if the students he taught were the same people involved in the many tribu-

nals now investigating corruption in the Irish government.

After a leisurely tour across town and through the side streets of North Dublin, our taxi pulled into Henrietta Street and deposited us at the imposing entrance to the King's Inns—only five minutes late. One of the few remaining Georgian streets in Dublin, the drive up the cobblestones



of Henrietta, amid the elegant decay of stately red brick townhouses, many dating from 1720, prepared us for the graceful archway entrance to the King's Inns.

Helen greeted us at the door, looking like a well-dressed rook in her flapping black robe, a requirement for all barristers at dinner. Immediately, I knew that my husband, a lapsed Catholic who finds the Church uninteresting without the Latin mass, would be fascinated. Helen began to explain the rituals we would be required to observe. We would walk in and stand at our table, with Helen, our host, seated closest to the front of the room. Bow to the "Benchers" (elected senior barristers and those lucky enough to be chosen as judges) when they arrive and are seated at a separate table in front. Do not leave the room until the conclusion of the meal, even for "emergencies"—so go now if you think you might need to. And, of course, no loud or unruly behavior.

She explained that there would be few guests on this cold January day, but most of the diners would be students, who are required to attend 20 dinners before graduating, the original thought being that students would dine with experienced barristers, learning the trade from their conversations. Of course, no barrister would be caught dead dining with a student, and conversation between them is non-existent. But it seemed a good idea.

After a glass of average Chilean cabernet in a small anteroom furnished with solid-oak sideboards, large overstuffed chairs, and ornate gold-framed mirrors, we headed up the stairs to the dining hall. The dinner gong rang, a deep bass knell in the cavernous hall.

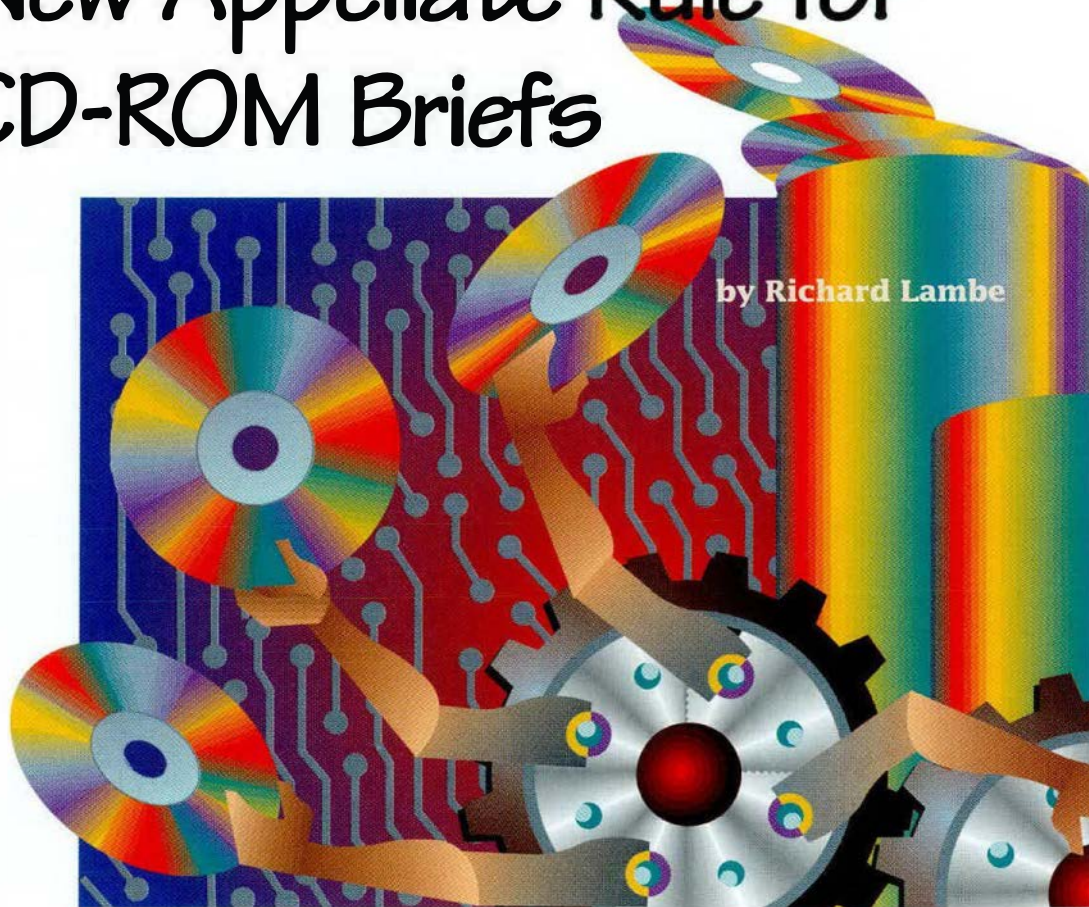
Nearly 40 yards long, the dining hall is a glorious commemoration of history, status, and formality. The ceiling reaches up three stories and holds enormous chandeliers, not ornate in the Victorian style, but, rather, stately brass fixtures suggesting weighty concerns. The walls, newly painted a lovely pale green, hold paintings of former chief justices, resplendent in their multicolored robes and long wigs. The paintings, 20 or so to each long wall, some as large as a car, dominate the room, the judges sternly observing this room half full with diners. The huge stone fireplaces blaze from each long wall with an even larger fire burning on the front wall just below the picture of The Right Honorable Lord Manners, 1807-1827, the obvious choice for a prominent position, reminding us to behave ours.

We stand behind our appointed chairs. The Benchers arrive. We bow. "*Benidictu benidictus.*" The liveried headwaiter intones the blessing. My husband beams. Dinner is served. ♣

---

*Sally Gustafson Garratt has practiced law in the Seattle area for over 25 years. She is a former assistant U.S. attorney and was division chief of the Consumer Protection Division of the Attorney General's Office. She is currently living in Dublin for a year while her husband completes a book on contemporary Irish fiction. She can be reached at [sorchareed@yahoo.com](mailto:sorchareed@yahoo.com).*

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To do so, he must first track down a copy of the report of the proceedings, locate the correct volume, and, finally, find the correct page. Conducting a comprehensive review of each citation will take many hours. He knows there has to be a better way.

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A hyperlinked CD-ROM brief is an exact electronic duplicate of a paper brief transferred to CD-ROM, with each citation to a case, transcript, clerk's paper, or exhibit hyperlinked to the source material. With one or two CD-ROMs, you can replace many boxes of notebooks.

If you've ever viewed information on the Internet and clicked on a colored or underlined word or phrase, you have used a hyperlink. A hyperlink is a word or series of words upon which you can click your mouse and be transferred to another page or document. In a CD-ROM brief, this means you click on a case name, and a hyperlink transfers you to the cited page of the full text of that case.

### Benefits to the Court, Client, and Attorneys

A hyperlinked CD-ROM brief benefits courts, your client, and you. Judges and their clerks can access the cited record and cases much more easily. The Washington State Supreme Court has said that the justices would like to see more hyperlinked CD-ROM briefs. According to the Court in a recent case:

The parties also submitted their briefs in CD-ROM form with hyperlinks to the record and the cases cited. We express sincere appreciation to the parties for doing this, as it greatly enhanced our ability to handle this case. The savings to the Court in time-motion efforts alone enabled us to retrieve and examine relevant parts of the record with ease, and made the record far more accessible than it would have otherwise been. The materials in this case occupy about 50 banker's boxes.

We note that there is no reason why parties in more routine appeals to this Court should not seriously consider submitting the record and briefs to us in a similar format. *Alcoa v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517, fn. 1, 998 P.2d 856 (2000).

A CD-ROM brief, which fits in a coat pocket, gives judges or clerks working away from the office access to the briefs and the entire record. Judges and clerks can simultaneously access the record, instead of competing for a single paper copy. Clients benefit because they can more effectively read and understand the briefs. The CD-ROM brief makes access to the source material much simpler. Attorneys also benefit from CD-ROM briefs during preparation for oral argument, since the hyperlinks in CD-ROM briefs allow much quicker access to the cases and record.

### Make Your Appeal Stand Out

A hyperlinked CD-ROM brief may make your appeal stand out from the crowd. If you are seeking discretionary review of a lower appellate court decision, this may be important.

Dan Grausz, general counsel for Holland America Line, was seeking to have the Washington State Supreme Court grant discretionary review of an adverse Court of Appeals decision. The case involved a class action with a voluminous record, and was very important to the company.

We knew that the Washington Supreme Court denies most motions for discretionary review, so we wanted something to make our case stand out from the crowd. We also wanted to make it easier for the judges to check on some of the statements made by the other side, which we did not think the record supported.

The Supreme Court granted our motion for discretionary review, and reversed the Court of Appeals decision. It was a complete victory, and both I and our appellate counsel, Steve Rummage of Davis Wright Tremaine, believe that the CD-ROM brief helped get our appeal noticed by the Court.

### The Requirements of the New Rule

Rule of Appellate Procedure (RAP) 10.9 allows and encourages CD-ROM briefs filed as companions to printed briefs for state court appeals, which the rule calls a "corresponding brief." The requirements of the rule are:

- \* 14 days' notice must be given to the other parties before filing. RAP 10.9(b).
- \* The CD-ROM must contain all briefs

filed by all parties, and if one brief is hyperlinked, all must be hyperlinked. RAP 10.9(b)(1).

- \* Formats allowed include Adobe Acrobat, Microsoft Word and WordPerfect, which all have free viewer programs. RAP 10.9(b)(2).
- \* The CD-ROM must be accompanied by instructions for viewing and a verification of no viruses. RAP 10.9(b)(3).
- \* The CD-ROM brief may be filed jointly (RAP 10.9(c)), but no party is required to prepare one. RAP 10.9(d). However, a party that decides not to join in the preparation of a CD-ROM brief must still cooperate by providing an electronic copy of its brief, if available.
- \* The deadline for filing is 60 days after the final reply brief. RAP 10.9(e).
- \* The costs of preparation are not recoverable as costs or attorneys' fees. RAP 10.9(f).

### The Nuts and Bolts of Preparing a CD-ROM Brief

A hyperlinked CD-ROM brief can be either prepared in-house by a law firm, or

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First, all the paper documents are converted to electronic form by scanning, and then transferred to the CD-ROM. Next, the citations in the briefs are hyperlinked to the correct page of the appropriate document. Finally, enhancements such as electronic highlighting and underlining can be added.

Except in unusual cases, the briefs of all parties, along with the entire transcript, the cases, the exhibits, and clerk's papers, will fit on a single CD-ROM. The entire process can be completed in about two weeks.

### Appeals in Which CD-ROM Briefs Have Been Filed

Although CD-ROM briefs are relatively new, they are being used increasingly in courts throughout the United States. Some recent appeals in which hyperlinked CD-ROM briefs have been filed include: *Alcoa v. Aetna Cas. & Sur. Co.*, 140 Wn.2d 517 (2000); *Pickett v. Holland America Line Westours, Inc.*, 145 Wn.2d 178 (2001); *State of California v. Lockheed Martin* (California Court of Appeals, Third Appellate District); and *Microsoft Corporation v. United States of America*, 2001 U.S. App. Lexis 18715 (D.C. Cir. 2001).

### Cost

The cost varies, depending on the length of a brief, the number of pages requiring scanning, and the number of hyperlinks. For a case with three briefs (opening, response, and reply), the total cost, using an outside service, may range from \$5,000 to \$15,000, or about \$1,500 to \$5,000 per hyperlinked brief. In addition, the appellate counsel will spend some additional time to coordinate the process.

### Possibilities for the Future

So far, most hyperlinked CD-ROM briefs have been filed for appeals. The same benefits would also be available at the trial level, and may be particularly appreciated by harried trial judges. Further, the move toward electronic filing may make it possible to file a hyperlinked brief without a CD-ROM.

Many trial courts are moving toward electronic filing. The bankruptcy court for the Western District of Washington has already implemented electronic case filing, and the Eastern District will implement that system soon. The U.S. District Court for the Western District of Washington has published a proposed rule for electronic filing; King County Superior Court plans to implement a pilot project this year. Since you may be filing your briefs electronically anyway, why not file them with hyperlinks and make them much more usable? For electronically filed briefs, you could dispense with the CD-ROM and include the referenced material with the electronic filing.

### Conclusion

The form of paper brief filed in most cases today would be familiar to attorneys practicing in 1900. Technology now readily available allows you to make a better appellate brief. A hyperlinked CD-ROM brief makes a brief more usable to courts and clients, and can make the important appeal stand out from the crowd. As courts become more familiar with the considerable advantages of this form of brief, hyperlinked CD-ROM briefs may define the standard for a well-prepared appeal. ☞

*Richard Lambe is a Washington attorney and owner of CDBrief, LLC, a Bellevue company that puts hyperlinked appellate briefs on CD-ROM for other attorneys. He may be reached at [www.cdbrief.com](http://www.cdbrief.com).*



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# The Board's Work

by **Lindsay Thompson**

Spokane, May 9-10

## Headlines

- The board passed a resolution supporting principles developed by the Access to Justice Technology Bill of Rights Committee. The principles are supposed to be a best practices guide for using technology in the justice system to make information and access greater rather than inadvertently less. The principles will be fleshed out by comments later. You can see the work as it stands at [www.atjtechbillofrights.org](http://www.atjtechbillofrights.org).
- The board approved a task-force recommendation to add long-term care insurance coverage for WSBA members through a sponsored insurance program, designating the Marsh Company as the broker.
- Joe Delay of Spokane and Greg Dal-laire of Seattle were reappointed to the state Judicial Conduct Commission. Lish Whitson and J.D. Smith were appointed to the ABA House of Delegates.
- The Spokane County Bar Association Volunteer Lawyers Program and the Tacoma-Pierce County Bar Association Volunteer Legal Services Program received the 2003 WSBA *Pro Bono* Award at the Access to Justice Conference in June.
- Spokane lawyer Michael Pontarolo won a three-way race for the 5th District seat on the board. Bellevue attorney Kristin Olson won the 1st District race. In the 7th-West District a runoff election was called between Ellen Conedera Dial and Mark A. Johnson. (Mark Johnson won the runoff election.)

## Details

May means Spokane. The board met at the newly restored and reopened Davenport Hotel, convening in the grand oak-paneled Elizabethan Room with nary a hey nor a ho nor a hey nonny no.

WSBA Executive Director Jan Michels briefed the board on an apparent outbreak of mold or fungus in the ventilation system of WSBA headquarters in Seattle. A sickening, acrid smell rendered some parts of the office unusable, forcing relocation of some staff to other parts of the office tower and some to work from home. (The culprit was later discovered to be a batch of new computer monitors in the office.)

This has contributed to delays in the summer issues of *Bar News*.

One of the board's ministerial tasks is appointing people to things. The American Bar Association's House of Delegates had some vacancies come up in the Washington delegation, but a threshold question was, how many?

An easy question on the surface, but the ABA has more ways to get to the House of Delegates than you can shake a stick at. There were definitely two members' terms expiring. But then there was a requirement

that another seat be held by a lawyer under 35, and the possibility that growth in ABA membership in Washington could lead to the creation of another seat this summer. But one of the people applying for appointment was also considering running for a regional seat and was considered a shoo-in for it. If that person got appointed to a seat from Washington in the meantime, it would cause the loss (assuming a win) of that extra regional seat, since someone from another state would win it.

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As you can see, ABA politics is more than a little complicated. How many seats to fill occupied some time. In the end, the board took the conservative route and appointed incumbent Lish Whitson to another term and Young Lawyers President-elect J.D. Smith to the other certain seat. The rest will sort itself out some way later.

Another decision was appointing a member and alternate to the Judicial Conduct Commission, which reviews complaints against judges. It's a gig where experience counts, so the board renominated

current member and alternate Joe Delay and Greg Dallaire.

Giving awards is another vexing problem for the WSBA. There's a morbid urge to give them every year just because they exist, and, over time, to create more of them. The WSBA annual meeting gets more like the Academy Awards every year. Try to limit the recipients' comments? Good luck. Try to silence them? The presenters will fill up the slack.

So lately they've been spreading the awards around to other events, like the

Oscars ("This year's award for best footnote form was presented at a luncheon earlier today..."). The board voted to confer the WSBA *Pro Bono* Award at the June Access to Justice Conference in Wenatchee. The recipients are the Spokane County Bar Association Volunteer Lawyers Program and the Tacoma-Pierce County Bar Association Volunteer Legal Services Program.

The WSBA marked the halfway point in its fiscal year in May, and all signs point to an on-budget landing. No surprises there.

The board has had a committee tinkering with its long-range plan to cast it forward another long range into the future. The committee brought forth the goals, saying the comments and details would follow if the board approved the direction they were proposing to head.

One goal called on the WSBA to lead more in juvenile and criminal law matters in the state. That brought a call for a mention of victims' rights, as well, from Ed Holm, the Thurston County prosecutor. Governor Jon Ostlund, a public defender, harrumphed politely and everyone began dividing along the usual lines—prosecutors to the right, defenders to the left.

A variety of ways to address the issue were bruited about until it began to sound like the Legislature announcing it would raise prices on liquor in state stores rather than increase the liquor tax, thus raising more money without raising taxes. They came up with something everyone could live with and adopted it. I'll come back to the issue when the details come out.

The board had lunch with members of the Spokane County Bar Association and polled them on what they thought was important in life, the law, their practices, and WSBA affairs. The results get assembled after every meeting, so showing up and speaking up counts.

Spokane lawyer Joe Nappi appeared after lunch to present some recommendations from the task force he chairs on member benefits. The committee recommended picking an insurance broker to offer members some long-term disability-insurance plans.

Why pick a broker? The reasoning's the same as for having a broker offer professional-liability insurance, as the WSBA has

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Tom D'Amore is licensed to practice in Washington, Oregon and California, and is certified as a civil attorney by the National Board of Trial Advocacy. Tom is a WSTLA Eagle member, a member of the OTLA Board of Governors,

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for years. The market goes up and down, and you can't always count on companies offering coverage. Having an endorsed broker is a sort of safety net to ensure coverage is available to members.

A question popped up from the audience about whether the half-dozen plans the broker said it intended offering treated same-gender couples the same as opposite-gender ones, since the plan summary talked about spouses and partners. More likely law partners, was the answer, but other than that we don't know. Quick call to the broker's rep. They didn't know ei-

ther? Then why put it in the information for the board if no one knows what it means, came the rejoinder. If you don't know the plans treat all members equally, it's not really a Member Benefit, it's a Some Members Benefit, or a More Members Than Not Benefit. Well, said one board member, if policies don't offer the same benefits to everyone, there you are. That's the market for you. And how do we know we are serving all members if we don't ask? We'll look into it, was the reply.

Having blitzed through the agenda in double-quick time, the board rose mid-

afternoon Friday. Saturday morning they heard the report from Legislative Committee Chair Michele Radosevich and WSBA lobbyist Gail Stone. Both looked remarkably unruffled from their 105-day trip through the looking glass into the Legislature's sandbox. The short version is that two of the three WSBA-sponsored bills were passed and signed. The filing fee bill, to raise the filing fee for support of legal services to the poor, was "on life support," said Administrator of the Courts Mary McQueen, but the odds of a resurrection in the special session would have to be considered, well, miraculous.

Tort reform didn't amount to much, because its backers insisted on all or nothing and so got nothing.

The most interesting thing reported was that the chair of the Senate Judiciary Committee was reported to have written the Chief Justice to say no lawyers or judges were welcome in the committee. Governor Bill Hyslop called for creation of a work group to assess ways to enhance WSBA's standing in the Legislature. Gail Stone commented that much of the problem is personality driven: Some legislators get worked up over something, and there's no one much to tell them to behave (that's my characterization, not hers: she's much more diplomatic).

Governor Paul Lehto and Don Horowitz presented a set of best-practices principles to guide the Access to Justice Technology Bill of Rights project. The goal is to help the law system use technology to make it easier to access and use, not harder, which can occur when no one thinks to ask about consequences of actions, or assumes that one size always fits all. The details are to be worked in. I'll return to the story when they have been. In the meantime, you can see the work in progress at the website listed at the top of this space.

The board adjourned midmorning. I got out in time to catch the Lilac Festival Junior Parade: scores of middle-school bands snaking their way through downtown Spokane. "Louie Louie" is eternal. ♪

*The Board's Work is an unofficial account of meetings of the Board of Governors. The official summary is available at [www.wsba.org/lawyers/links/flash.htm](http://www.wsba.org/lawyers/links/flash.htm).*

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# Proactive Risk Management for Lawyers

by Emily Eichenhorn

Ever since lawyers were allowed to charge for their services, they have faced the possibility of being sued for malpractice. Claims activity against lawyers has either remained steady or climbed over the past 10 years. Experience also shows that claims against lawyers tend to increase in both frequency and severity in the years following an economic downturn. Thus, risk management looms important for lawyers in all sizes and types of practice.

Lawyers who are committed to proactive risk management at every stage of practice—from starting a firm through taking on clients, delivering services, and ending representations—can lessen the likelihood they will be faced with a claim. And if, despite their best efforts, they are sued, that same planning can affect the magnitude of a potential loss.

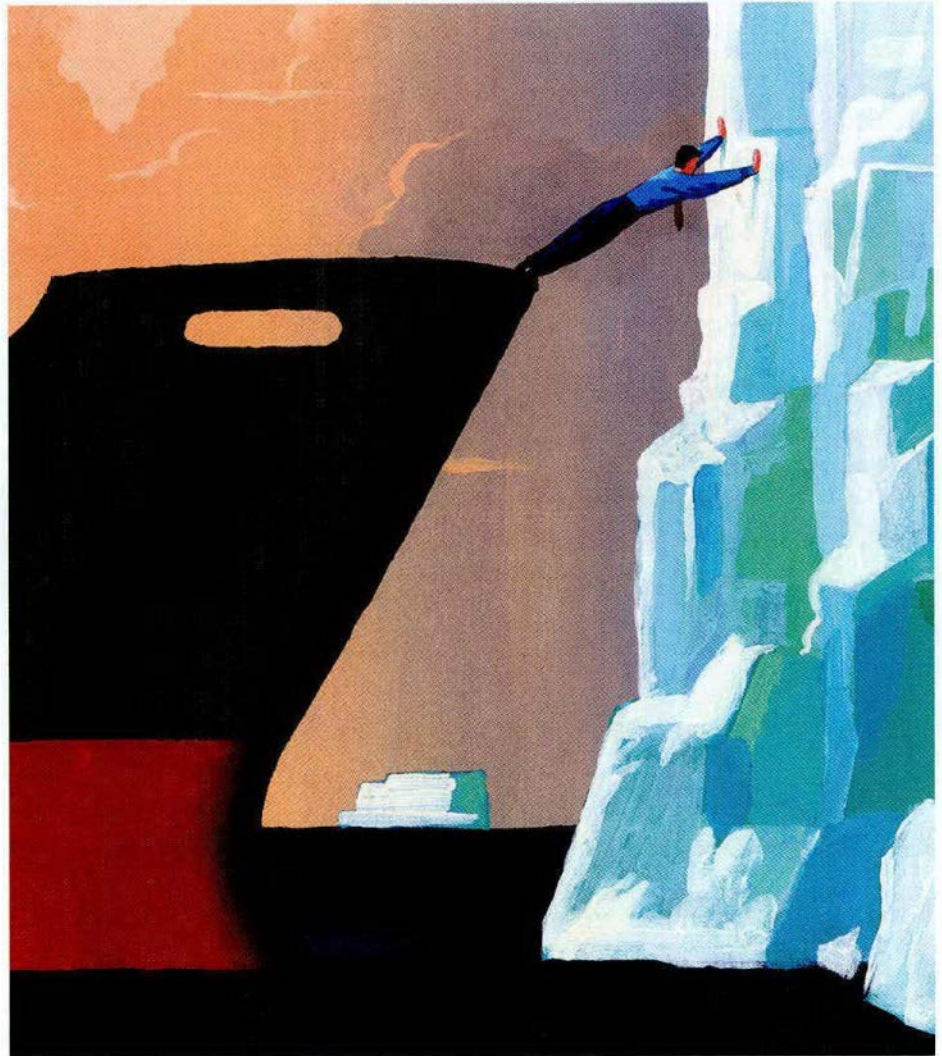
### Establishing a Practice

Risk management begins with business decisions about how and where to organize your firm. One important choice is whether to share space with other independent lawyers.

While office-sharing can help make practice more cost-effective, it also can present risks. Depending on their interactions, lawyers in shared space can create *de facto* partnerships, possibly risking vicarious liability for officemates' torts. Office-sharing increases the risk that lawyers from different firms will inappropriately share confidences, possibly leading to disciplinary or professional-liability problems.

Managing risk in shared space demands that you adhere to internal rules and ethical guidelines, and that you know and communicate well with your officemates.

- Maintain strict autonomy of all practices in the space. Always act like the separate firms that you are, to help avoid any confusion that could lead to presumed



partnership. This includes using separate letterhead for each entity, clearly indicating separation in signage, and answering phones with individual firm names.

- Do not share confidential client information with your officemates without first getting client consent, and instruct everyone to maintain strict confidentiality across firms, including not leaving case materials in common areas.

### Initiating Representation

The beginning of a representation arguably offers both the greatest risk and the

best opportunity to manage that risk. Here you get to establish rapport and communicate with clients in order to help limit claims grounded in confusion or misplaced expectations, weed out conflicts of interest, and exercise risk management through good client selection.

### Engaging clients

Interactions with potential clients raise several risk-management issues. A primary concern is conflicts of interest. Such conflicts are both an ethical concern and a liability risk. Disputes about the expected

scope of the attorney's responsibilities also account for a large number of malpractice claims. When the client's expectations differ from the lawyer's understanding about what the lawyer will and will not do, the resulting "expectation gap" can raise the risk that the client ultimately will be disappointed with the representation. Before accepting the matter, ask, "What do you want me to do?"

The pressure to generate business can result in another potential problem—acceptance of clients or matters that should have been rejected—leading to representation of certain problem individuals incapable of being satisfied, despite your best efforts.

Putting in place good policies and procedures—and following them—is essential to managing these risks.

- Develop a conflict-of-interest warning system. At a minimum, include a formal data bank with the names of all former clients, current clients, adverse parties, and other information that might help identify potential conflicts. Cross-reference to the respective files.
- Avoid accepting an engagement before checking for conflicts. If you do not discover a conflict until later, address the situation as quickly as possible.
- Discuss the client's expectations and document the scope of the representation in writing. A straightforward, easily understandable, but comprehensive engagement letter, coupled with frank discussion with the client about its terms, provides the first and best opportunity to shape reasonable expectations.
- Make accurate assessments about your available time, resources, and expertise or ability, and reject those representations you feel you or your colleagues would not be able to handle adequately.

#### **Rejecting potential representation**

While selective client rejection is a significant risk-management tool, it can present its own risks. For example, a person who comes to an attorney seeking representation may form a reasonable belief that the lawyer will act on this person's behalf, while the lawyer has no intention of doing so. Then, when the lawyer does nothing

to advance the matter—believing there was no obligation to do so—the "client" claims tortious neglect.

Even with the clearest declination, delay can cause the individual to lose valuable time or legal rights. Rejected clients who delay or completely abandon their search for other counsel after your rejection of the case may claim that you led them to believe that their case lacked merit, or that there was no urgency in moving forward, when you rejected the representation.

The keys to managing risk when declining representation include:

### **Even the most talented and intelligent lawyers can make serious administrative errors.**

- Be unequivocal—actually say the words, "We have decided not to represent you," with reference to the specific matter or matters.
- Avoid commenting on the merits of the case or its potential value, which later could be deemed to be legal advice, creating the attorney client relationship you were trying to reject.
- Confirm every declination in writing.
- Include language that describes that it is possible that one or more deadlines or statutes of limitation may be about to expire, may work to bar your ability to bring your action or defense, or may work to prevent you from proceeding in the near future. If such a deadline expires before you act, you may lose valuable rights. You should therefore take steps immediately to contact another attorney to preserve whatever rights you may have.
- Add the rejected client's name to the firm's conflicts database.
- Respect the confidentiality of any information you received in the initial interview.

#### **Duties by implication**

Related to risks arising when rejecting a client are risks from implied duties to people you believed were not your clients. A common implied-representation sce-

nario is where you are approached by more than one person at the beginning of the representation, but you intend to represent only one of them. Several investors beginning a business, a husband and wife seeking counsel regarding a personal-injury suit, a daughter bringing her mother in for advice regarding the drafting of a will—each situation presents the potential for confusion about your loyalties.

Prudent practice suggests that you work to dispel any misunderstanding on the part of an individual you do not intend to represent or protect.

- Communicate both orally and in writing with everyone involved, clearly indicating whom you do and do not represent, and what the parameters of your responsibilities are, as you understand them.
- Act consistently within the parameters established. For example, if you intend to represent only the entity's interests, don't regularly answer legal questions for an individual officer.

#### **During Representation**

While lawyers are not held to a standard of perfection, they are held to a standard of care, which requires that they exercise their professional judgment on behalf of their clients and that they perform services in a reasonably competent manner.

#### **Avoiding administrative errors**

National statistics suggest administrative errors spawn the majority of malpractice cases. Even the most talented and intelligent lawyers can make serious administrative errors. The key to reducing such errors is to have in place easy-to-follow procedures that are supported by effective systems and adhered to by everyone in the firm.

- Every law office should use both a centralized, separately maintained office calendar, and individual calendars for each attorney. Having separate sources of information maintained by different people provides added protection against lost data or overlooked deadlines.
- Make realistic estimates of how long particular tasks are likely to take, and block

out time on your calendar to do the work you know will be required.

- Review all files regularly, and document their status on a set schedule.
- Make sure that everyone in the office—professionals and nonlegal staff alike—understands the importance of carefully handling client funds, and never allow any deviation from the rules.
- Invest time and money in frequent and thorough training. Well-trained and appropriately motivated individuals are far more likely to spot and correct administrative errors.

#### *Avoiding substantive errors*

Perhaps the most common substantive practice error is failing to discover that a new statute has superseded an earlier one, or that a higher court has overturned an earlier precedent. Another frequent substantive error is miscalculating deadlines, typically caused by failing to accurately apply the rules in the jurisdiction, or by not taking into account a statute of repose or a case interpreting a discovery provision in a statute of limitations. Certain strategies can reduce your risk of making substantive errors:

- Use checklists to guide you through your analyses and processes to ensure that you have considered each aspect of even the most familiar types of matters in your practice, and treat every representation as unique. Never assume that you know the law. Verify it, every time.
- Regularly review advance sheets and professional articles, and participate in continuing legal education.
- Avoid representations outside your experience. If you do decide to venture beyond your existing experience, commit to learn the law and the rules carefully and thoroughly, and consider associating with experienced counsel the first time you venture into a new practice area.
- Regularly have another lawyer review your plans and conclusions. This second set of eyes may spot important strategy lapses and lend a fresh perspective to the advisability of everything from pretrial motions to witness preparation.

#### *Avoiding intentional torts*

While negligence is at the base of most

lawyers' professional-liability claims, lawyers certainly also face allegations of intentional torts—including malicious prosecution, defamation, or conducting improper business transactions with clients—or other claims.

Intentional torts may be particularly problematic, because insurance carriers, in keeping with public policy, generally exclude intentional acts from professional-liability coverage. A lawyer accused of an intentional tort may, therefore, face liability without coverage.

The best way to avoid intentional torts is to be thoroughly familiar with the rules of professional conduct and the laws governing attorney-client relationships in the relevant jurisdiction, and to strive to adhere to those rules at all times.

- Undertake and document steps to verify that any case you file is supported by facts and law, or by a reasonable argument that existing law should be changed to support the claims.
- Maintain a professional relationship with opposing counsel. During the course

of litigation, avoid engaging in vituperative letter-writing battles.

- If you realize you lack actual factual or legal support for a claim, attempt to convince your client that the claim should not be pursued. If the client insists on continuing with the matter, take steps to withdraw.
- Do not make statements you believe are or may be false, or which you have not verified in any fashion. Be particularly careful about any out-of-court statements, including press releases, articles in professional journals, and letters.
- Have any client with whom you want to enter into a transaction obtain the advice of independent counsel. Think of every business partner as a "client" for purposes of ethical considerations, thus minimizing the potential for later accusations of undue influence.

#### **Ending Representation**

Potential problems can arise while closing a file—or long after regular activity on a matter has ended—depending on the lawyer's interactions with the client at the time the matter was drawing to a close.

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### *Withdrawing from representation*

Handled properly, withdrawal from a problematic representation can be a useful loss-control tool. Handled improperly, withdrawal can lead to professional liability or disciplinary problems.

Whether your withdrawal is voluntary or mandatory, you are obligated to protect the interests of your client. If you fail to notify the client and allow reasonable time for the client to employ other counsel, or you breach confidentiality, for instance, you may be faced with a malpractice action, even if the court had approved your withdrawal.

Often, withdrawal is prompted by lack of payment. Fee disputes frequently lead to malpractice actions against the lawyer, especially if the lawyer takes action in court to recover unpaid fees.

Several actions can help you use withdrawal as an effective risk-management tool without creating new problems or exacerbating existing ones.

- Set forth in the engagement agreement the possibility that you may need to withdraw in the future. The agreement also can indicate that all unpaid fees and costs are due immediately and payable upon termination of the relationship.
- Seek the client's consent to withdraw, even if you are not technically required to do so. A client might be more willing to dissolve the relationship peacefully if asked.
- If you must file a motion to withdraw in court, avoid stating the exact reason for seeking to withdraw. Consider preparing a separate, more detailed supplemental declaration to offer to the court in camera to help avoid improper disclosure of protected or sensitive information.
- Undertake careful analysis before deciding to sue your client for unpaid fees. The cost of responding to a counterclaim for malpractice, and the possibility that you may be faced with a judgment against you, may well outweigh any potential benefit the fee-suit recovery will present.

### *Natural termination of engagement*

You can also assume unnecessary risk if you do not achieve clear finality or closure

at the natural end of an engagement. Attorneys who fail to clearly indicate the end of a matter can inadvertently extend the client's ability to bring an action. Mishandling of closed files and client materials is also a risk.

Clear communication, good documentation, and consistent handling of files and client materials can help you avoid risks at the close of a representation.

- Send a disengagement letter to the client, wrapping up the representation and clearly indicating that your responsibilities have been fulfilled.

**Whether your withdrawal is voluntary or mandatory, you are obligated to protect the interests of your client.**

- Do not offer to store material for the client, even for a fee, to avoid giving rise to a claim that you undertook continuing obligations as a result.
- Save all communications or evidence of communication with the client, all agreements with the client, and copies of any final work product for the malpractice limitations period, plus five to 10 years.
- Index all material returned to or rejected by the client, obtaining written receipts and confirmations from the client.
- At the close of the retention period, send a last letter to the client warning of the impending destruction of the file.

### **Professional-Liability Insurance**

Effective risk management not only can help lawyers avoid numerous potential pitfalls, but also promotes positive business practices that can differentiate firms' reputations in the eyes of potential clients. Still, there is no such thing as 100-percent risk-free practice. That's why professional-liability insurance is so important.

Legal-malpractice policies provide coverage for claims that may arise from various "wrongful acts" committed in the rendering of "legal services," when those claims are made and reported to the carrier within the policy period.

The amount of coverage you purchase should be guided by your own philosophy about risk-taking, your financial wherewithal, and the types of risk you face in your practice. Factors to consider include potential defense costs; indemnity for liability; and billable time lost to depositions, trial, or other claims proceedings. Consider the history of frequency or severity of claims in your primary practice areas; different practices face different risks.

Like most other insurance, lawyers' professional-liability coverage is provided subject to a deductible. Obviously, premium costs change with the amount of the deductible. You should confer with an experienced broker or agent, and consider your financial circumstances, your risk, and your limits when deciding what deductible you wish to have.

Protecting yourself and your firm requires both adequate insurance coverage and proactive risk-management efforts. The decisions you make in these areas are critical to the viability of your practice. ✎

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*Emily J. Eichenhorn is responsible for all aspects of CNA's lawyers' risk-management services and products. Emily lectures and writes regularly about law-firm business-management, risk management, and professional-responsibility issues. She has an undergraduate degree in communication from Michigan State University and a J.D. from Yale.*

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## Reading Around

### News of Interest to Members

#### Barbara Durham Honored

Former Chief Justice Barbara Durham was honored by the Washington State Supreme Court in a memorial service May 1, 2003, in the Temple of Justice in Olympia. Durham died December 30, 2002, aged 60, of complications from a neurological disorder. During her career, she opened doors previously closed to women, searched for better ways to protect domestic-violence victims, and campaigned for changes in how judges are selected in Washington.

"She was truly a pioneer for women in the legal profession," recalled Chief Justice Gerry Alexander. "She served at every level of court in our state and was one of the most respected jurists of her time."

Durham was born in Anacortes and graduated from Vashon Island High School. She attended Gonzaga University, and earned a degree in business administration and finance from Georgetown University in 1964. After working for a year in New York City as a securities analyst, she attended Stanford University Law School, graduating in 1968.

Durham first practiced law as a deputy prosecuting attorney in King County, focusing primarily on felony cases, including child abuse and first-degree murder. In 1973, the King County Council appointed her to the Mercer Island District Court, and in 1977 she was elected to the King County Superior Court.

Governor Dixie Lee Ray appointed Durham to the Court of Appeals, and in 1984 she was elected the first woman chief judge in any division of the state Court of Appeals. Governor John Spellman appointed her to the state Supreme Court in 1985, and she became the first woman chief justice in January 1995, when she was elected by her fellow justices.

During her tenure on the Supreme Court, Durham wrote the decision establishing standards for use of DNA evidence in state courts, as well as the decision that upheld the civil commitment of sexual predators. She co-founded the Judges in the Classroom project and, with state Attorney General Christine Gregoire, organized a summit on improving protections for domestic-violence victims.

In 1995, Durham was named Judge of



**The Random Acts of Professionalism program is a way to further promote the creed, recognize our colleagues for noteworthy conduct, and increase awareness of professionalism in general.**

the Year by the King County Bar Association and King County Washington Women Lawyers. In 1998, she received the William O. Douglas Award from the Washington State Trial Lawyers Association for 20 years of distinguished service. She was nominated for an appointment to the 9th U.S. Circuit Court of Appeals, but withdrew her name from consideration due to health concerns. Durham retired from the Supreme Court in September 1999.

#### "Random Acts of Professionalism" Program Introduced

The WSBA Professionalism Committee has announced the launching of its Random Acts of Professionalism program. This program is a way for lawyers and judges to honor others in the profession who have conducted themselves in a highly professional manner consistent with the spirit of the WSBA Creed of Professionalism.

The creed was developed by the WSBA Professionalism Committee and adopted by the WSBA Board of Governors in 2001. Since that time, many county bar associations have held ceremonies in which lawyers presented Creed of Professionalism plaques to judges for their courtrooms.

The Random Acts of Professionalism program is a way to further promote the creed, recognize our colleagues for noteworthy conduct, and increase awareness of professionalism in general.

The program is simple. Any member of the Bench or Bar may recognize another member. To nominate a lawyer or judge for this award, contact WSBA staff liaison to the Professionalism Committee Judy Berrett ([judithb@wsba.org](mailto:judithb@wsba.org); phone 206-727-8212; fax 206-727-8319) with a brief statement or anecdote about the person you are nominating. The committee will send the recipient a certificate, a copy of the Creed of Professionalism, and a letter of congratulations. Recipients' names will be published in *Bar News* and posted on the WSBA website. Recipients to date are Chief Justice Gerry Alexander, J. Patrick Aylward, Judge Christopher Culp, Jay Johnson, Robert Kaufman, T. Jeffrey Keane, Judge Harry McCarthy, Marijean Moschetto, and Richard Price.

The committee hopes that lawyers and judges throughout the state will take advantage of this program to recognize those among us who demonstrate a high level of professionalism and make us proud to be lawyers.

## Youth Court Start-up Conference Held at Seattle U School of Law

The Council on Public Legal Education (CPLE) held a Youth Court Start-up Conference May 31 at Seattle University School of Law. Titled *Young People Delivering Justice: Volunteers Use Peer Pressure in Positive Ways*, the conference featured presentations—including a mock trial—by currently functioning youth courts from all over Washington, including Whatcom County Teen Court, Granite Falls Youth Court, North Thurston Youth

Court, University Place Youth Court, and Shorecrest Teen Court.

There are currently 19 youth courts in Washington, and the CPLE plans to launch 20 more over the next two years. Youth courts provide a venue for volunteers aged 12 to 18 to help their peers who have committed nonviolent misdemeanors or engaged in other problem behaviors. Participating offenders are required to plead guilty or agree not to contest the charges against them. Participation in the program is voluntary, and parental con-

sent is required. "Typically, these offenders would appear before a judge, meet with a community accountability board, or be called into the office of a school administrator," explained CPLE Manager Pam Inglesby. "In all of these cases, their fate is in the hands of adults. Youth courts offer an innovative alternative, as they allow young people who have acknowledged their wrongdoing to appear instead in front of a jury of their peers. Peer volunteers use peer pressure in positive ways, letting offenders know their behavior is wrong."

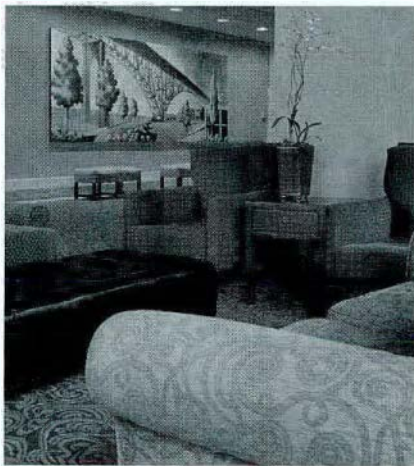
According to former ABA President Robert E. Hirshon, youth courts benefit everyone in the community. "Young respondents learn that there are consequences for their misbehavior and that their peers are willing to take the time to ensure that those consequences are just. The youth volunteers learn about due process, restorative justice, and the benefits of volunteering to improve their community. The community benefits by giving young respondents a chance to turn their lives around while educating youth volunteers about the value of participation in our justice system."

The conference was led by National Youth Court expert Margaret Fisher, author of *Youth Courts: Young People Delivering Justice*, and creator of a national award-winning youth-court curriculum. "Youth courts are a win-win situation," says Fisher. "The youth volunteers participate actively in their justice system as offenders take responsibility for their problem behaviors and repair the harm they caused."

Washington Supreme Court Justice Faith Ireland provided introductory remarks, and facilitators included Court Commissioners Chuck Snyder and Martha Gross from Whatcom County, and Lake Forest Park Municipal Court Judge Linda Portnoy. Sponsors included the Washington State Bar Association, Washington Judges Foundation, the Family and Juvenile Law Committee of the Superior Court Judges' Association, the Public Trust and Confidence Committee of the Board for Judicial Administration, Seattle University School of Law, and the Administrative Office of the Courts.

The conference was open to individu-

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als and teams interested in starting a youth court in their community. Teams typically consist of three to five "stakeholders" from a specific community, including school administrators, prosecutors, judges, juvenile probation officers, law enforcement, attorneys, youth-service organization staff, teachers, community leaders, and young people.

The Council on Public Legal Education was created in 2000. Co chaired by Judge Marlin Appelwick and former Washington State Superintendent of Public Instruction Judith Billings, its 30-plus members include lawyers, judges, educators, elected officials, journalists, and community representatives. Its mission is to ensure that the people of Washington have the knowl-

edge they need to participate effectively in the justice system and government, by creating, coordinating, and encouraging many kinds of legal education programs ranging from a media resource guide to teacher-training workshops to a comprehensive law-related website for the general public. For more information about the CPLE, visit [www.plecouncil.org](http://www.plecouncil.org).

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Cost for the dinner is \$60 per person. To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 3, 2003. (Please note that refunds cannot be made after September 3.)

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# Around the State

## Clallam County Report

Distinguished Services Awards from the Clallam County *Pro Bono* Lawyers have gone to Port Angeles lawyers **David V. Johnson** and **W. Brent Basden**. Johnson was praised for taking a *pro bono* case and winning his client \$26,000 in back child support. Viola O'Neil, the client and a mother of three, praised Johnson's 80 plus hour effort. "Without Dave we would have nothing."

## Clark County Report

Two local attorneys were honored in the spring for their *pro bono* work. **Nancy Nellor** and **Carin Schienberg** received the Volunteer Lawyer of the Year Award from the Clark County Bar Association Volunteer Lawyers Program. The awards were a feature of the group's Law Day Luncheon in May.

## Cowlitz County Report

by *Our Local Correspondent*

The Association of Veterinary Practice Management Consultants and Advisors (AVPMCA) elected local attorney **Karl Salzsieder, DVM**, as president of their 122-member organization. This is the only national organization of veterinary management consultants and advisors. Dr. Salzsieder is a founding member of the association, whose members include attorneys, veterinarians, certified public-accounts consultants, advisors, and industry representatives.

In addition to the \$10 a day jurors usually receive for their days spent listening to the "thorough" trial work of such attorneys as defense attorney **Ian Northrip** and senior criminal deputy prosecuting attorney **Ed Norton**, Cowlitz County jurors in the first week of May also received donuts each morning of their jury duty in celebration of Juror Appreciation Week. County commissioners expect the resulting budget crunch to require the elimination of Judge **Stephen Warning's** lunch hour.

*(Information for the September issue must be received by July 20 at CWBAnews@hotmail.com.)*

## Snohomish County Report

**Bruce J. Lambrecht**, formerly of Bullivant Houser Bailey, and **A.J. Goertz**, a sole practitioner, have formed the firm **Goertz &**



**Lambrecht PLLC** in Edmonds. "Our firm offers services in various areas of civil litigation, including torts/injury, commercial, insurance, products liability, construction defect, and mold claims, as well as probate administration/litigation and estate planning," they report.

## Judiciary Report

by *Lindsay Thompson*

Pierce County District Court Presiding Judge **Jack Nevin** has been named Judge of the Year by the Washington State Trial Lawyers Association. He was honored during the association's Law Day Dinner May 1 in Seattle. Also honored were Washington Supreme Court Justice **Faith Ireland** and Chief Judge **John Schultheis** of the Court of Appeals Division III for their 20 years of service to the law.

Nevin has worked to improve the justice systems in Central America, Africa, and Europe, and works locally to educate young lawyers and high-school students on the fundamentals of trials and the law. He was honored for his leadership in promoting the civil justice system and his work on behalf of the global community. Nevin is a graduate of Washington State University and Gonzaga University Law School. He served as an Army lawyer at Fort Lewis before joining the Pierce County Prosecutor's Office in 1984. He was appointed to the Pierce County District Court bench in 1997 and later was elected to the position.

Nevin traveled to El Salvador in 2002 to help establish a victim/witness assistance program, and was chosen by the

United Nations in 2001 to serve on a detention review commission in Kosovo, where he also helped draft guidelines for the country's first bar exam in 10 years. In 1999 and 2000, as an adjunct faculty member of the Defense Institute of International Legal Studies, Nevin traveled to Malawi in south central Africa to teach government officials about law and human rights, with an emphasis on women's rights.

Nevin also teaches in the Judges in the Classroom program in local schools, and teaches trial advocacy at the University of Puget Sound and Seattle University School of Law. He started a monthly trial practice program in his courtroom to teach trial fundamentals to young lawyers, and teaches rules of evidence to new judges in the state as a State Judicial College faculty member.

President Bush has nominated U.S. Magistrate Judge **Lonny R. Suko** of Yakima to a seat on the U.S. District Court for the Eastern District of Washington. A graduate of Washington State University and the University of Idaho School of Law, Suko was in private practice from 1969 until his appointment as a magistrate judge in 1995, and served as a part-time magistrate from 1971 to 1995. He was nominated to fill the vacancy created by Judge **William Fremming Nielsen's** decision to assume senior status on the court.

## Law Schools Report

University of Washington School of Law Professor **Julia Gold** has been awarded a Senior Fulbright Scholar grant to lecture and conduct research at Tribhuvan University in Kathmandu, Nepal.

Gold, who directs the mediation clinic at UW and founded its Street Law program, will teach mediation and conflict resolution to graduate students at Nepal's oldest university from August to December 2003. She is one of approximately 800 U.S. faculty and professionals who will travel to more than 140 countries during the 2003-2004 academic year through the Fulbright Program.

Established in 1946 and named after the late Senator **J. William Fulbright** of Arkansas, the program supports educational exchanges to build mutual understanding between the United States and

other nations. It is sponsored by the U.S. State Department's Bureau of Educational and Cultural Affairs. The more than 250,000 American and international Fulbright alumni include Nobel Prize-winning economist **Milton Friedman**, poet **Rita Dove**, who has received a Pulitzer Prize, and Craig Barrett, CEO of Intel Corporation.

Another UW law prof, **Meade Emory**, received the 2003 Roger Stouder Award at the Washington State Bar Association Tax Section Luncheon on May 21. Emory is the third recipient of the award, which is named in honor of a well-known Seattle tax lawyer who died of cancer.

**Robert Chicoine**, past president of the Tax Section and a partner of Seattle-based Chicoine & Hallett, PS, presented the award, recognizing Emory for his tax-law expertise, his passion for teaching, and his remarkable collection of bow ties and fedora hats. He described Emory as a unique individual who has spent time in government service, in private practice, and at several renowned law schools. "Perhaps most important for us . . . as director of the University of Washington Graduate Program in Taxation, he has been instrumental in helping the program achieve its recognition as one of the top graduate tax programs in the country," said Chicoine.

Among the well-wishers who personally congratulated a surprised Emory was WSBA member Governor **Gary Locke**, who attended the luncheon.

Emory has been on the UW School of Law's faculty for eight years, and has directed the Graduate Program in Taxation since its inception in 1996.

## In Memoriam

### Remembering our colleagues and friends

#### Judge Jo Anne Alumbaugh

*Lawyer served as judge on both sides of the state*

Jo Anne Alumbaugh was the first woman attorney in Ellensburg, and the first woman elected a superior court judge in eastern Washington, serving from 1985 to 1989.

A graduate of Fort Hays State University in Kansas and the University of Puget Sound School of Law, Alumbaugh served as an adjunct professor of law and justice at Central Washington University, where her husband, Richard, served on the faculty for over 30 years.

While in Ellensburg, Alumbaugh worked with United Way of Kittitas County, the county mental health board, a public-schools task force, and the League of Women Voters. She created the guardian *ad litem* program for abused children in the county. She also served as a *pro tem* judge in the county district courts in Ellensburg, Cle Elum, Roslyn, and Kittitas; Thurston County Superior Court; and Seattle Municipal Court. She was elected a King County Superior Court judge in 1994 and served until 2002.

Survivors include her husband, two children, and three grandchildren.

Jo Anne Burke Alumbaugh was born in Dodge City, Kansas, September 15, 1941, and died in Seattle May 29, 2003, aged 61.

#### Robert F. Ewing Jr.

*50-year Spokane resident*

Californian Bob Ewing joined the Air Force after junior college and, after serving three years, moved to Spokane to enter law school at Gonzaga. After graduation in 1959, he went into private practice and spent 30 years with Huppini Ewing Anderson & Paul.

Survivors include his wife, brother, six children, four grandchildren, and three great-grandchildren.

Robert Franklin Ewing Jr. was born in Long Beach, California, January 25, 1931, and died December 31, 2002, in Phoenix, Arizona, aged 71.

#### John A. Godfrey

*Practiced in Seattle's University District for 40 years*

Like many in his generation, John Godfrey saw his education interrupted by World War II. After graduation from law school at the University of Washington, he served as a Navy officer, then joined McCune & Godfrey. The firm was a leader

in promoting the employment of women at attorneys, giving Justice Faith Ireland her first job. He spent his career with the firm, retiring in 2000. Survivors include his sister, three children and three stepchildren, seven grandchildren, and two great-grandchildren.

John Augustus Godfrey was born in Bellevue in 1921 and died in Seattle February 24, 2003, aged 81.

#### David R. Innis

*Bar News* has learned of the death of WSBA member David R. Innis during 2002. Mr. Innis was admitted in 1977. He lived in Brenham, Texas.

#### Robert F. Manifold

*Longtime public-service lawyer lived a rich and varied life*

"Rob was a lawyer for the people," said his former chief, Attorney General Christine Gregoire, "and he worked to ensure consumers were always treated fairly and honestly." Born and raised in Indiana, Mr. Manifold was class president at Purdue University and graduated *cum laude* in industrial management and electrical engineering in 1967, then graduated with honors from Stanford Law School four years later.

After a stint with the Federal Trade Commission, Manifold moved to Seattle and joined Evergreen Legal Services in 1974. There he represented low-income clients and senior citizens in consumer-rights and utility cases for nearly a decade. In 1983 he moved to the Public Counsel Section of the state Attorney General's Office, where he represented consumers' interests in telephone, electric, and natural-gas utilities-regulation cases. He later served as chief of both the Public Counsel and the Consumer Protection divisions of the Attorney General's Office.

Manifold and his family moved to San Diego in 1998, where he went into private practice in the utility-regulation field. During the last decade of his life, Manifold fought leukemia, but friends said he never gave up his enthusiasm for music, books, and biking. Ninth Circuit Judge Margaret McKeown, a longtime friend, told *The Seattle Times* that Manifold showed up at her home a year before his death, lugging a cello. He'd always wanted to learn to play



Emory

one, she said. "In the wake of this disease, he was still expanding his horizons," McKeown said. "He was someone who was always looking beyond his horizons."

Survivors include his wife, son, mother, and two siblings.

Robert F. Manifold was born in Indiana and died in La Jolla, California, April 2, 2003, aged 58.

#### **Daniel E. McKelvey Jr.**

*Distinguished trial lawyer was Spokane resident for three decades*

Dan McKelvey graduated from Grove City College and the University of Pittsburgh School of Law. His military career brought him to Spokane's Fairchild Air Force Base as a judge advocate general, and he spent the rest of his career in the city.

A trial lawyer, McKelvey was listed in *The Best Lawyers in America* in 1987, and was named Trial Lawyer of the Year by the American Board of Trial Advocates in 1996. He was a member of WSTLA, the International Academy of Trial Lawyers, the American Society of Barristers, the American College of Trial Advocates, the American College of Trial Lawyers, and the Damage Attorneys Round Table.

McKelvey died of effects of a 1996 head injury sustained in an accident. Survivors include his mother, two daughters, and a sister.

Daniel E. McKelvey Jr. died in Spokane April 8, 2003, aged 57.

#### **Joseph C. Murphy**

*Civic leader and enduring Toppenish city attorney*

There were few aspects of community and civic life in Toppenish that didn't have Joe Murphy's fingerprints on them somewhere. Murphy took chemistry and law degrees from Gonzaga University before joining the Air Force in World War II. Discharged as a captain, Murphy moved to Toppenish and in 1946 became city attorney, a post he held until 1973. His son Bill Murphy now serves as city attorney for Toppenish and Wapato.

Known for his eye for detail, Murphy was a valued counselor to the city council and, as a special assistant attorney general, served as the first attorney for the Washington State Potato Commission. He was active in the American Legion and the

Toppenish Economic Development Council; was on the boards of directors of Central Memorial Hospital and the Providence Foundation; and served as president of the Toppenish Chamber of Commerce and the Yakima County Bar Association.

Survivors include his wife of 58 years, Muriel; 10 children; 21 grandchildren; and four great-grandchildren.

Joseph C. Murphy was born in Wallace, Idaho, July 2, 1917, and died January 15, 2003, aged 85.

#### **Luvern Rieke**

*UW law dean improved state divorce laws, mentored students, and volunteered at his church for decades*

"Old Hide-the-Ball Rieke" is how Court of Appeals Judge Marlin Appelwick remembers UW law professor and dean Vern Rieke. "He was inquisitive. He genuinely wanted to know what you thought," Appelwick, a student of Rieke's, told *The Seattle Times*. Scrupulous to a fault, he graded exam questions 10 at a time and then took a walk "to reset his mind."

Born in Lincoln County, Rieke grew up in Cashmere, where his father started the local bank. After playing high school football and debating, he entered Capital University in 1940. He left school two years later to join the Army Air Corps, after Pearl Harbor, and flew bombing runs in China and India. He left the service an officer with a Bronze Star and seven battle stars. Coming home, he married his college debate-team partner, Anna Jane Bierstadt, with whom he had corresponded through the war. They moved to Seattle, where Rieke finished his undergraduate degree at the UW in 1949.

Having made a name as a top law student and editor of the UW Law Review, Rieke was offered a teaching post upon graduating, and spent his career at the law school, teaching family law and contracts. He enjoyed mentoring minority law students, served as a special master to supervise the integration of some trade unions, and successfully advanced a proposal to ordain women in the American Lutheran Church. He was involved with the 1988 rewriting of Washington's Parenting Act, arguing that divorce should be less contentious and that parenting plans would help safeguard children. Rieke served as

acting dean of the law school between 1968 and 1970.

Survivors include his wife, two brothers, three children, and seven grandchildren.

Luvern Rieke was born in Odessa, Washington, January 16, 1922, and died in Seattle May 9, 2003, aged 81.

#### **Edwin R. Roberts**

*Texan's law career was interrupted by wartime service*

Ed Roberts grew up in Dallas and, after getting his law degree from the University of Texas in 1939, spent the next few years as a traveling insurance claims adjuster in Texas, Mississippi, and Louisiana. When World War II broke out, he joined the Army Air Corps and was commissioned a second lieutenant shortly after Pearl Harbor. Sent to Spokane's Geiger Field, he met and married his wife in 1942. Roberts spent 1943 to 1945 as an intelligence officer in England, briefing and debriefing bomber crews. He was recalled to active duty for the Korean War, serving at Fairchild Air Force Base in Spokane.

In 1953, Roberts moved to Seattle, working for the Attorney General's Office until 1957. He then returned to Spokane and spent the next 24 years with Paine Lowe Coffin Herman & O'Kelly. He practiced medical-malpractice defense and was admitted to the American College of Trial Lawyers in 1967.

Survivors include his wife of 60 years, two children, and three grandchildren.

Edwin R. Roberts was born in Dallas in 1917 and died December 26, 2002, in Spokane, aged 85.

#### **Calhoun Shorts**

*Lawyer/businessman loved gardens, boats, and teaching*

In 1947, Bellevue was considered "country," and third-generation Seattleite Calhoun Shorts and his wife, Harriet, decided to buy seven acres and move out of the city. As the town grew into a city, they gave the land for a park and contributed a substantial endowment for its upkeep. Now expanded to some 30 acres, the Bellevue Botanical Garden hosts visitors from the Shorts's former home.

Shorts graduated from Stanford University and the University of Washington

School of Law, practicing in Seattle until he enlisted in the Navy for World War II. After the war he decided his future lay in business, and he created three fiberglass companies to build boats, ducts for Boeing planes, and translucent panels. In the 1950s he sold them, and got a teaching certificate before taking a position teaching physics and chemistry at Queen Anne High School. His brother remembered him as someone who could excel at anything he turned his mind to. "We both went to Stanford, and he was *Phi Beta Kappa* simply because he decided he would get good grades."

Survivors include his son and brother.

Calhoun Shorts was born in Seattle on Valentine's Day, 1911, and died there in early March 2003, aged 92.

### Judge Peter K. Steere

*30-year veteran of King County Superior Court*

An Upper Peninsula Michigander who grew up in Canada, Peter Steere spent his teens working on Great Lakes ore boats. He played football at Haverford College and, on joining the Army in 1951, found he had an aptitude for languages. He mastered German, Czech, French, and Spanish as a military intelligence officer in Europe. His last post was at Fort Lewis, and when he left the service he stayed in Washington, enrolling at UW law school.

After graduation, Steere served as assistant corporation counsel for the City of Seattle and then as counsel for the 1962 World's Fair. A stint in private practice was followed by an appointment to King County Superior Court and five consecutive elections to the bench.

Steere married a close friend's widow near the end of his judicial career, and they enjoyed 12 years of marriage and travel.

In addition to his wife, survivors include his brother, Seattle attorney Paul Steere, and a number of nieces and nephews.

Peter Kormann Steere was born September 15, 1929, in Marquette, Michigan, and died May 31, 2003, in Seattle, aged 63.

### Lawrence Thayer

*Lawyer practiced in Spokane*

Lawrence Thayer was a longtime Spo-

kane County Bar Association member. He graduated from the University of Washington School of Law and was admitted to practice in 1939. Survivors include his wife of 63 years, Kathleen; one daughter; and two grandchildren.

Lawrence Thayer died in Spokane January 18, 2003, aged 88.

### Judge Liem E. Tuai

*Reluctant politician was respected jurist*

Born to Chinese immigrant parents, Liem Tuai quietly expanded the possibilities for Chinese Americans in public life through a long and varied career. Dropping out of school in the ninth grade, Tuai became a machinist at Boeing and then served four years in the Air Force in Japan. Returning to Seattle, he enrolled at the University of Washington and got his bachelor's degree at 29; two years later he graduated from UW School of Law.

He worked in private practice, as a King County prosecutor, and for the U.S. General Services Administration in the early years of his career. In 1969 he won election to the Seattle City Council; four years later he failed to unseat Mayor Wes Uhlman. In 1974 he was an unsuccessful candidate for the state Supreme Court, and a year later he lost a comeback run for the city council. In 1977, Governor Dixie Lee Ray appointed him to one of five newly created King County Superior Court seats. He and his new colleagues affectionately referred to themselves as the "Gang of Five."

Tuai considered he really wasn't cut out for politics and expressed relief over his mayoral loss. "To tell you the truth, I got terribly tired of hearing myself talk," he said after the election. His family recalled, however, that he was always amazed how people who didn't even know him turned out for each of his election campaigns.

Tuai served 18 years on the bench, retiring in April 1996. Survivors include three sons and two grandchildren.

Liem E. Tuai was born in Port Townsend in 1925 and died in Seattle March 2, 2003, aged 77. ☐

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*Obituaries and remembrances of WSBA members are welcome. Please forward to the editor at the WSBA office or by e-mail to [tradelaw@thompson-law.com](mailto:tradelaw@thompson-law.com).*

*These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, 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 name and address.*

### Disbarred

**George W. Cody** (WSBA No. 6582, admitted 1976), of Lynnwood, was disbarred, following a stipulation, by order of the Supreme Court, effective May 29, 2002. Mr. Cody stipulated that these facts would likely be proven at hearing. This discipline is based on his theft of client funds in 2000 and 2001.

**Matter 1:** In September 2000, Mr. Cody agreed to represent the husband in a marital-dissolution action. During the case, the parties sold their home. Mr. Cody agreed to hold the sale proceeds in his trust account until the parties settled the property issues. In February 2001, Mr. Cody received the client's \$175,037. By this date, Mr. Cody had spent \$40,000 of the parties' money for his own purposes. In March 2001, the court issued an order freezing the funds. Later, the court ordered Mr. Cody to repay \$40,000 and transfer the remaining funds to the client's new lawyer.

**Matter 2:** In May 1991, Mr. Cody agreed to represent three clients in a lawsuit. The clients signed a written contingent-fee agreement providing a 25 percent fee for settlement prior to trial. The parties settled the suit prior to trial for \$25,000. By 1996, Mr. Cody had used all but \$506.54 of the clients' money for his own purposes. Mr. Cody suggested that the clients leave their money with him until the statute of limitations on any attorney's-fee claim from opposing counsel had expired. In June 2000, Mr. Cody told the clients that their account balance was \$26,376.

In August and October 2000, the clients provided Mr. Cody with written disbursement instructions, but Mr. Cody did not disburse their money. He provided them with false bank statements. In Janu-

ary 2001, Mr. Cody gave two of the clients a cashier's check for \$23,002 from one trust account. Later that same day, Mr. Cody gave the clients the \$554 remaining in the initial trust account. Also on this day, Mr. Cody issued a \$4,000 check to the third client from a third trust account.

Mr. Cody's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1.14(a), requiring lawyers to deposit and maintain client funds in a trust account; and 1.14(b)(3), requiring lawyers to maintain complete and accurate records of client funds and render appropriate accountings.

Marsha Matsumoto represented the Bar Association. David Allen represented Mr. Cody.

### **Disbarred**

**Michael S. McAllister** (WSBA No. 22279, admitted 1992), of Spanaway, was disbarred, following a hearing, by order of the Supreme Court, effective August 22, 2002. This discipline is based on his failure to comply with stipulated probation conditions imposed following a disciplinary matter in 1998.

On March 11, 1998, the Supreme Court approved Mr. McAllister's stipulation to an 18-month suspension, followed by two years' probation. The probation conditions included requiring Mr. McAllister to obey all laws; abstain from possession, use, or consumption of alcohol and/or controlled substances; and continue substance-abuse treatment. On February 23, 1999, Mr. McAllister entered a deferred prosecution on charges of driving under the influence of intoxicants, reckless driving, and hit and run. Mr. McAllister was reinstated to active practice on September 22, 1999.

From November 1999 through the end of the probationary period, Mr. McAllister failed to attend his treatment appointments. In May 2000, Mr. McAllister was charged with driving under the influence of intoxicants, reckless driving, and failing to obey a police officer. He entered a guilty plea on these charges in February 2001. In May 2001, Mr. McAllister's de-

ferred prosecution on the earlier charges was revoked, and the court found him guilty of those offenses.

Mr. McAllister's conduct violated RLDs 5.2, authorizing probation conditions; and 1.1(a), prohibiting committing acts evidencing disregard for the rule of law.

Kevin Bank represented the Bar Association. Mr. McAllister represented himself. The hearing officer was Thomas Cena.

### **Disbarred**

**Jeffrey R. Bunch** (WSBA No. 21790, admitted 1992), of Spokane, was disbarred, following a stipulation, by order of the Supreme Court, effective October 29, 2002. Mr. Bunch did not admit the allegations, but agreed that there is a substantial likelihood that these facts would be proven at hearing. This discipline is based on his failure to protect client funds, and engaging in criminal acts and dishonest conduct in 2000 and 2001.

Between February 29, 2000, and December 31, 2001, Mr. Bunch withdrew \$63,489.30 from his trust account to which he was not entitled. Between January 2000 and July 9, 2001, he withdrew \$16,000 from his trust account to satisfy a Department of Labor and Industries lien claim. During this time, Mr. Bunch also allowed earned fees to accumulate in his trust account and deposited his own funds into his trust account. By January 24, 2002, when the balance in Mr. Bunch's trust account was zero, \$21,359.68 in client funds was missing. Mr. Bunch did not have a meaningful system to reconcile his trust account and did not keep client ledgers.

Mr. Bunch's conduct violated RPCs 1.14, requiring lawyers to place client funds in an interest-bearing account, keep client funds separate from the lawyer's funds, and maintain complete records of these client funds; 8.4(b), prohibiting lawyers from committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation.

Leslie Allen represented the Bar Association. Mr. Bunch represented himself.

### **Disbarred**

**Terry Deglow** (WSBA No. 13357, admit-

ted 1983), of Spokane, was disbarred, following a default hearing, by order of the Supreme Court, effective September 9, 2002. This discipline is based on his failure to protect client funds, to diligently represent a client, to protect the client's interest upon withdrawal, to notify the client when his license was suspended, and committing a criminal act, from 1995 through 2000.

In 1994, Mr. Deglow agreed to represent a client in the probate of the client's brother's estate. Mr. Deglow did not fully explain his fees or prepare a written fee agreement. The client surrendered a \$5,000 life-insurance policy to Mr. Deglow to pay the estate's debts. Mr. Deglow did not work on the estate from April 1995 through 2000.

On July 10, 2000, Mr. Deglow's license to practice law was suspended. On July 14, Mr. Deglow told the client that he had paid the estate's back-due child support and was closing his practice. He did not tell the client about his license suspension. Mr. Deglow reimbursed the client for \$1,600 in burial expenses. At this time, Mr. Deglow's trust account did not contain enough funds to cover the remainder of the insurance-policy proceeds. Later in July 2000, the client retained another lawyer to close the estate. Mr. Deglow did not sign the substitution of counsel pleading or forward the remaining estate funds. Mr. Deglow failed to cooperate with disciplinary counsel's investigation of this matter.

Mr. Deglow's conduct violated RPCs 1.3, requiring lawyers to act with reasonable diligence and promptness in representing clients; 1.4, requiring lawyers to keep their clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information; 1.15(d), requiring lawyers to take reasonable steps to protect clients' interests upon withdrawal; 1.14(b)(3), requiring lawyers to maintain complete records of client trust funds; and 8.4(b), prohibiting committing criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RLD 8.1(a), requiring lawyers to notify their clients when their license to practice law is suspended.

Sachia Stonefeld Powell represented

the Bar Association. Mr. Deglow represented himself. The hearing officer was Dennis W. Morgan.

### **Suspended**

Carl J. Gaul II (WSBA No. 8341, admitted 1978), of Everett, was suspended for 60 days, following a hearing, by order of the Supreme Court, effective August 15, 2002. Mr. Gaul was reinstated to active practice on October 16, 2002. This discipline was based on a conflict of interest, and failure to properly protect and disburse client funds in 1993.

In 1993, Mr. Gaul represented Mr. and Mrs. P. The Ps wanted to sell their house, but because the house was on registered land, the sale could not close until Mr. P's first wife's estate had been probated. Some of Mr. P's sons wanted to appoint a guardian for Mr. P and replace him as personal representative of his first wife's estate. Although Mr. Gaul did not prepare a written fee agreement, he told the clients that the case would cost around \$20,000. Between July 1993 and January 1994, the clients paid Mr. Gaul \$15,600.

During this time, Mr. Gaul learned that the clients owned undeveloped property on a creek. In August 1994, the house sale closed and the clients asked Mr. Gaul to deposit their \$44,452 check into an interest-bearing account for them. Mr. Gaul misplaced the clients' check for about a month and then deposited it into his trust account with the notation "estate payment hold." From August 1993 through April 1994, Mr. Gaul did not explain that Mr. P could have immediate access to this money and that it did not need to remain in his trust account.

In spring 1994, the clients decided to move to California and asked Mr. Gaul to release their funds. Mr. Gaul stated that he would release the funds if the clients secured his fees with a deed of trust on the creek property. The clients did not authorize Mr. Gaul to use the sale proceeds for his attorney's fees, but agreed to Mr. Gaul's request for the deed of trust on their undeveloped property because they needed their money to close the sale of a house in California. Mr. Gaul prepared the deed of trust. The deed referenced the entire undivided five acres of property, and secured payment of current and future

fees. Mr. Gaul did not advise the clients to seek independent legal advice prior to signing the deed of trust. After the clients signed it, Mr. Gaul released all but \$3,000 of their funds. He retained this amount for ongoing attorney's fees.

In December 1993, Mr. Gaul filed a third-party complaint against one of the son's lawyers. The court dismissed the complaint and imposed \$2,500 in terms against Mr. Gaul personally. Mr. Gaul told the clients that they should pay the terms and that he would use the funds remaining in the trust account to make the payment. The clients objected. Mr. Gaul paid the terms with the clients' money despite their objections.

Mr. Gaul's conduct violated RPCs 1.14(a), requiring lawyers to deposit and maintain client funds in a trust account and keep complete records of client funds, and prohibiting commingling a lawyer's personal funds with client funds; 1.14(b)(2), requiring lawyers to safeguard client property; 1.14(b)(4), requiring lawyers to promptly deliver client funds to the client upon request; 1.8(a), prohibiting entering a business transaction with the client unless the transaction terms are fair, reasonable, and fully disclosed in writing to the client; the client is given a reasonable opportunity to seek independent counsel; and the client consents; and 1.4, requiring lawyers to explain matters to the extent necessary for clients to make informed decisions regarding the representation.

Marsha Matsumoto and Kevin Bank represented the Bar Association. Leland Ripley represented Mr. Gaul. The hearing officer was Mark Wheeler.

### **Suspended**

David M. Lux (WSBA No. 24581, admitted 1995), formerly of Kirkland, was suspended for 60 days, following a stipulation, by order of the Supreme Court, effective December 17, 2002. This discipline was based on his failure to diligently represent three clients, failure to refund unearned fees, and dishonest conduct, in 2000 and 2001.

*Matter 1:* In September 2000, Mr. Lux agreed to represent a client in a chapter 13 bankruptcy matter. On September 18, the client paid Mr. Lux a nonrefundable

flat fee. After September 28, Mr. Lux sent the client bankruptcy forms to complete. The client called for advice on how to fill out the form, but Mr. Lux did not return his calls.

In March 2001, the client retained substitute counsel to complete his bankruptcy. On March 26, Mr. Lux sent the client a letter informing him that Mr. Lux had transferred the client's case to another lawyer. The client responded that he had hired a different lawyer and wanted a full refund of his fees. Mr. Lux did not refund the client's fees. Mr. Lux's paralegal stated that Mr. Lux had told her to make untrue statements to disciplinary counsel during the investigation of this matter.

*Matter 2:* In October 2000, Mr. Lux agreed to handle a chapter 7 bankruptcy for a client. The client paid a nonrefundable flat fee. Mr. Lux told the client he would contact her creditors and ask them to wait for the bankruptcy; however, he did not do so. From October through December 2000, Mr. Lux took no action on the client's case and failed to answer her phone calls. In January 2001, the client was incarcerated and provided Mr. Lux with a power of attorney, authorizing her mother to work on the bankruptcy matter. Mr. Lux did not file the client's bankruptcy. On April 25, 2001, the client fired Mr. Lux and demanded a refund. Mr. Lux did not refund the client's fees.

*Matter 3:* In January 2001, Mr. Lux agreed to represent the mother in a child residential-placement matter. On January 18, the parties met for a settlement conference. The next day, the client fired Mr. Lux. Mr. Lux did not tell opposing counsel that he no longer represented the father, and she sent him final draft documents. Mr. Lux told opposing counsel that the mother was having second thoughts about the settlement. Opposing counsel set a deposition date for the mother and suggested that the case be set for trial. Mr. Lux took no further action. On September 10, 2001, the court authorized opposing counsel to contact Mr. Lux's client. The client appeared and the case was settled.

Mr. Lux's conduct violated RPCs 1.3 and 3.2, requiring lawyers to diligently represent their clients and to expedite litigation; 1.4, requiring lawyers to keep their clients reasonably informed about the status of

their matters; 1.15, requiring lawyers to withdraw from representation when asked to do so by the client; 1.5(a) and 1.15(d), requiring lawyers to charge reasonable fees and to refund unearned advance fee deposits upon withdrawal; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation.

Anthony Butler represented the Bar Association. Mr. Lux represented himself.

### **Suspended**

**James R. McLees** (WSBA No. 2785, admitted 1962), of Sumner, was suspended for two years, following a stipulation, by order of the Supreme Court, effective July 2, 2002. Mr. McLees agreed to submit his resignation to the WSBA and never apply to return to active status. This discipline is based on his failure to properly account for and deliver client funds in 1992.

In 1989, Mr. McLees agreed to represent a client in a personal-injury claim and the related Labor and Industries (L&I) matter. In June 1991, Mr. McLees filed the client's personal-injury lawsuit. He did little work on the L&I matter. L&I paid time loss to the client, and then made a partial permanent disability (PPD) payment. Between April and December 1992, Mr. McLees deposited the client's PPD payments into his trust account and withdrew the funds. Mr. McLees did not advise his client that he had received the checks or withdrawn the funds.

In December 1992, the client settled the personal-injury lawsuit. Mr. McLees paid himself more than the agreed amount in attorney's fees. In 1996, the client learned that Mr. McLees had received the client's L&I payments. The client filed a civil lawsuit and received a \$21,817.65 judgment against Mr. McLees. At the time of the stipulation, Mr. McLees had paid only \$78.83 of the judgment.

Mr. McLees's conduct violated RPCs 1.14, requiring lawyers to notify clients upon receipt of client funds, render appropriate accountings, and promptly deliver client funds upon request; 1.5, requiring lawyers to charge reasonable fees; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 1.4, requiring lawyers to keep their clients reasonably informed about the status of their matters.

Gilbert Stratton and Joanne Abelson represented the Bar Association. Kurt Bulmer represented Mr. McLees.

### **Suspended**

**John O. McLendon** (WSBA No. 1187, admitted 1969), of Spokane, was suspended for 60 days, following a stipulation, by order of the Supreme Court, effective September 9, 2002. Mr. McLendon was disbarred prior to the effective date of this suspension. This discipline was based on his failure to comply with a prior disciplinary order.

In 1993, the Supreme Court imposed restitution as part of a disciplinary sanction. The Court required Mr. McLendon to enter into a payment plan as part of his reinstatement to active status. Mr. McLendon was reinstated to active status in April 1993.

Between March and early December 1993, the Office of Disciplinary Counsel (ODC) sent Mr. McLendon several letters proposing payment plans and asking for more information. Mr. McLendon failed to respond, so ODC opened a new disciplinary proceeding based on failure to comply with the court order requiring agreement to a payment plan.

After the new disciplinary proceeding had been initiated, Mr. McLendon agreed to a payment plan requiring \$500 minimum monthly payments to the victims listed in the restitution agreement. The agreement did not indicate how the payments should be allocated among the victims. The separate criminal proceeding in Spokane Superior Court obliged Mr. McLendon to make restitution of \$101,984.27 to five victims. Additionally, some of the victims also obtained separate civil judgments against Mr. McLendon. The victims in the disciplinary proceeding, criminal proceeding, and civil proceeding were not identical. As of February 18, 1993, Mr. McLendon owed \$152,395 to the victims listed in the disciplinary proceeding.

Between January 1994 and March 2000, Mr. McLendon did not pay a minimum of \$500 each month, but the average of all payments over that time was slightly over \$500 per month. The hearing officer found that Mr. McLendon willfully failed to make the required minimum payments and pro-

vide the required periodic income reporting to ODC. Mr. McLendon intentionally handled a significant portion of his business on a cash basis and failed to keep records of this business to avoid the reporting requirements.

Mr. McLendon did not distribute the restitution payments to the victims *pro rata*. He paid the victims who had criminal or civil orders, and others who threatened litigation. Some victims received no payments.

Mr. McLendon's conduct violated RLD 5.3(c), stating that failure to make restitution payments when ordered may constitute grounds for discipline.

Christine Gray represented the Bar Association. Dustin Deissner represented Mr. McLendon at hearing. F. Lawrence Taylor Jr. represented Mr. McLendon on appeal. The hearing officer was Diehl Rettig.

### **Suspended**

**W. Russell Van Camp** (WSBA No. 5385, admitted 1973), of Spokane, was suspended for six months, following a hearing, by order of the Supreme Court, effective August 22, 2002. Mr. Van Camp was reinstated to active practice on February 24, 2003. This discipline was based on his making a false statement to the bankruptcy tribunal in 1994.

In 1994, Mr. Van Camp was involved in litigation with the Internal Revenue Service (IRS). In October 1994, the IRS threatened to levy some of Mr. Van Camp's clients. Mr. Van Camp filed a chapter 11 bankruptcy petition, to avoid the IRS levy. Although Mr. Van Camp's residence and law practice were in Spokane, he listed his address in the bankruptcy petition as Denver, Colorado. Additionally, Mr. Van Camp did not include all of his assets on the bankruptcy schedules. In October, the bankruptcy trustee's attorney filed a motion to dismiss Mr. Van Camp's bankruptcy for improper venue, and incomplete or deficient schedules.

In November 1994, Mr. Van Camp filed an objection to the motion and requested a hearing. During the February 1995 hearing, the testimony established that the Colorado address on the bankruptcy petition was for Mail Boxes, Inc., that Mr. Van Camp was married, and that both assets and debts were missing from the sched-

ules. The bankruptcy trustee agreed to a change in venue to the District of Eastern Washington. In June 1995, the bankruptcy court granted Mr. Van Camp's motion to dismiss his petition. The trustee referred the matter to the U.S. Attorney's Office in Colorado for possible "bankruptcy fraud." The U.S. attorney did not prosecute.

Mr. Van Camp's conduct violated RPCs 3.1, prohibiting lawyers from filing frivolous claims; 3.3, prohibiting lawyers from knowingly making false statements of material fact or law to the tribunal; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation.

Jean McElroy represented the Bar Association. F. Lawrence Taylor Jr. represented Mr. Van Camp. The hearing officer was Dennis W. Morgan.

#### **Reprimanded**

F. Michael Kovach (WSBA No.16788, admitted 1987), of Bellevue, received a reprimand on July 26, 2002, following a hearing. This discipline was based on revealing his client's secrets or confidences, and failing to avoid conflicts of interest in 1998.

In 1993, Mr. Kovach agreed to represent a client in a dispute with the Internal Revenue Service (IRS). Mr. Kovach negotiated a payment agreement for a portion of the client's debt, and advised the client that his remaining debt would be eligible for bankruptcy after August 15, 1997. Mr. Kovach was concerned about the client's sporadic, but substantial, real estate broker commissions, so he advised the client to quit and obtain a more traditional, lower-wage position.

On June 25, 1997, the client told Mr. Kovach that the client had already earned \$100,000 and expected another \$200,000 in real estate commissions in the next six months. On July 17, the client paid Mr. Kovach \$1,200 in fees for the bankruptcy, but still owed Mr. Kovach's firm \$9,000 that could be discharged in the bankruptcy. In January 1998, the client retained a second lawyer to assist in the representation. Mr. Kovach withdrew from the representation, asserted an attorney's lien on the client's files, and drafted a confession of judgment for the client's signature. The confession of judgment included the following paragraph: "The firm has extended

me credit based on financial statements . . . that were materially false regarding my ability to pay these fees, but on which the law firm reasonably relied. I prepared and submitted these statements to them with the intent to deceive them and to cause them to carry my account until such time as I could declare bankruptcy and discharge their debt." Mr. Kovach's statement was intended to prevent the client from discharging the firm's debt in the bankruptcy. The client refused to sign the confession of judgment.

In February 1998, Mr. Kovach filed a civil complaint against the client in the law firm's name, alleging breach of contract and fraud. The complaint included the income information the client provided Mr. Kovach during the June 25, 1997, meeting. By including this information in the complaint, Mr. Kovach revealed the client's secrets and confidences. Mr. Kovach did not file the complaint under seal.

Mr. Kovach's conduct violated RPC 1.6, prohibiting lawyers from revealing client secrets and confidences relating to representation unless the client consents after full disclosure; and 1.7(b), prohibiting a lawyer from representing a client if the representation may be materially limited by the lawyer's own interests.

Peter Ehrlichman, Andrew Carter, and Joanne Abelson represented the Bar Association. Kurt Bulmer represented Mr. Kovach. The hearing officer was Geoffrey Revelle.

#### **Censured**

Rolfy DeDamm (WSBA No. 20476, admitted 1991), of Snohomish (formerly of Bellevue), received a censure on December 18, 2002, based on a stipulation approved by the Disciplinary Board. This discipline was based on his filing, and failing to release, an inappropriate lien from 2000 through 2001.

In July 1999, a client retained the DeDamm law firm to represent him in a rape investigation. The client was engaged to the victim's mother and was purchasing a home with her. On July 27, 1999, the home purchase closed and on August 12, the client quitclaimed all interest in the property to the victim's mother. Later, the engagement was called off. On March 22, 2000, the firm filed a notice of attorney

lien against the home for the client's \$58,675.64 in unpaid attorney's fees. Mr. DeDamm believed that the client had an interest in the property, but did not confirm this prior to signing the lien. The client was convicted and sentenced to life in prison. Mr. DeDamm learned of the quitclaim deed shortly after the July 2000 sentencing hearing.

In March 2001, another lawyer wrote to Mr. DeDamm requesting that the lien be released. In April, the mother filed a grievance against Mr. DeDamm. Mr. DeDamm took no action to release the lien until after the civil suit had settled and the mother had agreed to drop the grievance. Mr. DeDamm was not aware that the attorney-lien statute does not allow liens on real property.

Mr. DeDamm's conduct violated RPCs 3.1, prohibiting lawyers from bringing a proceeding unless there is a nonfrivolous basis for doing so; 4.4, prohibiting using means that have no purpose other than to embarrass, delay, or burden a third person; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Sachia Stonefeld Powell represented the Bar Association. Mr. DeDamm represented himself. ❧


## WSBA Service Center

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800-945-WSBA  
206-443-WSBA

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E-mail:  
[questions@wsba.org](mailto:questions@wsba.org)



### Congratulations to New WSBA President-Elect

#### Ronald R. Ward

At its June 6 board meeting, the WSBA Board of Governors elected Seattle attorney Ron Ward president-elect, to serve as the WSBA's 114th president in 2004. Ron will take office as president-elect at the close of the September 2003 annual business meeting, when President Dick Manning passes the gavel to Dave Savage. For more information, go to [www.wsba.org/media/releases/2003/ron\\_ward\\_election.htm](http://www.wsba.org/media/releases/2003/ron_ward_election.htm).

### Robert Welden Appointed Chair of ABA Standing Committee

ABA President-elect Dennis Archer has appointed WSBA General Counsel Bob Welden chair of the ABA Standing Committee on Client Protection for 2003-2004. Bob, who is staff liaison for the WSBA Lawyers' Fund for Client Protection, was appointed to a one-year term commencing at the adjournment of the 2003 ABA annual meeting in August. For more information, go to [www.wsba.org/media/releases/2003/robert\\_welden\\_appointment.htm](http://www.wsba.org/media/releases/2003/robert_welden_appointment.htm).

### Seventh-West District Runoff-Election Results

Dick Manning, Ron Ward, and Jan Michels certified the 7th-West runoff election results as follows:

(2,387 eligible voters, 580 votes cast—return rate of 24.3 percent)

Ellen Conedera Dial—276 votes (47.6 percent)

Mark A. Johnson—304 votes (52.4 percent)

Mark Johnson is certified the governor-elect in the 7th-West District.

### Call for Nominations for 8th-District Governor

The election of Ron Ward creates an opening for the governor representing the 8th District. The newly elected governor's term of service will be two years, beginning in September 2003 and ending in September 2005. The WSBA bylaws specify that the Board of Governors fills the vacancy, and the Board of Governors is now calling for nominations. Active 8th-District members who are interested in serving on the Board of Governors are invited to send a letter of interest and resume to Executive Director Jan Michels, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail [oed@wsba.org](mailto:oed@wsba.org). Nominations close July 18, 2003. Interviews and the election will occur at the July 25 Board of Governors meeting in Bellingham.

### WYLD Seeks Award Nominations

The WYLD is accepting nominations for the Thomas Neville *Pro Bono* Award, the Outstanding Young Lawyer of the Year Award, and the Professionalism Award. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for Outstanding YLD Affiliate or Organization for recognition of public-service and/or member-service programs. Letters of nomination should include the nominator's complete contact information, as well as a copy of the nominee's résumé or list of ac-

complishments. Nominations must be received by July 31, 2003, and should be sent to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or [lisak@wsba.org](mailto:lisak@wsba.org). For more information, go to [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld).

### WSBA Announces 2003 Annual Awards Recipients

The Board of Governors is pleased to announce recipients of this year's WSBA awards:

*Award of Merit:* David Burman, Nicholas Gellert, and Katie O'Sullivan of Perkins Coie, and Maureen Hart of the Attorney General's Office

*Professionalism Award:* The Honorable Harry J. McCarthy

*Angelo Petruss Award for Lawyers in Public Service:* Rochelle Kleinberg-Goffe

*Outstanding Judge Award:* The Honorable Stephen J. Dwyer

The *Pro Bono Award* was presented to the Spokane County Bar Association Volunteer Lawyers Program and the Tacoma-Pierce County Bar Association Volunteer Legal Services Program June 7 at the ATJ Conference.

The Board of Governors renamed the Affirmative Action Award the *Excellence in Diversity Award*, and the Elected Official in the Legislative Branch Award simply the *Elected Official Award*.

### Annual Awards Dinner and Business Meeting

The Annual Awards Dinner and Business Meeting will be held Thursday, September 11, at Bell Harbor International Conference Center, 2211 Alaskan Way, Seattle. The reception begins at 5:30 p.m. (no-host bar), and the dinner/program begins at 6:30 p.m. Cost for the dinner is \$60 per person. All members of the legal community are invited. The registration form can be found on p. 41.

### 50-Year Member Tribute Luncheon

This year, the WSBA will be honoring its 50-year members at a separate event, on Thursday, September 25, in the Fifth Avenue Room of the Westin Hotel, 1900 Fifth Ave., Seattle. Registration and reception begin at 11:00 a.m. (no-host bar), and the luncheon and program begin at noon. Cost for the luncheon is \$45 per person. All members of the legal community are invited to attend. The registration form can be found on p. 56.

### Upcoming Board of Governors Meetings

July 25-26—Bellingham

September 11-12—Seattle

With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Donna Sato at 206-727-8244 or [donnas@wsba.org](mailto:donnas@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/info/bog/schedule.htm](http://www.wsba.org/info/bog/schedule.htm).



### Tacoma-Pierce County Judges and Court Commissioners Honored

On May 29, 2003, in a ceremony at the Pierce County Courthouse, members of the Tacoma-Pierce County Bar Association presented Creed of Professionalism plaques to judges and commissioners of the Pierce County Superior Court, Pierce County District Court, Tacoma Municipal Court, and municipal courts within Pierce County.

The Creed of Professionalism was developed by the Professionalism Committee and adopted by the WSBA Board of Governors at its July 2001 meeting. Many county bar associations have organized ceremonies where plaques have been presented to judges. For more photos, see [www.wsba.org/lawyers/groups/professionalism/professionalism+committee+presentation.htm](http://www.wsba.org/lawyers/groups/professionalism/professionalism+committee+presentation.htm).

### Professional Development Committee (PDC) Recommendations

After a year of strenuous work by the PDC Committee, Chair Jeff Tolman presented seven recommended actions to the Board of Governors. Five recommended actions were adopted. The WSBA will (1) work to strengthen mentoring programs; (2) implement skills-based testing; (3) review the Rule 9 Legal Intern Program; (4) request that Washington law schools re-examine their curriculum based on the *MacCrate* lawyering skills and values (the *MacCrate Report* was issued in July 1992 by the ABA Task Force on Law Schools and the Profession); and (5) appoint a task force to develop recommendations relating to the adoption of pre-licensure practical experience. Other committee recommendations include letters from the chief justice and WSBA president to incoming law students, modifications to the "Law School" pamphlet on the WSBA website, and a proposed court rule giving attorneys CLE credits for judging mock-trial competitions. The WYLD asked for an extended comment period on the other two recommended actions: four hours of pre-admission training and 15 MCLE credits in the first full year after admission.

### CLE Publications Group Says "Thank You" to WSBA Members

This is the sale on CLE publications you've been waiting for—the Member Appreciation Summer CLE Sale, July 14 through

July 25 at the WSBA-CLE online store. Stock up on CLE credits and shore up your practice library. A full range of valuable deskbooks and handy taped seminars with coursebooks (good for MCLE AV credits)—over 50 titles in all—are priced at 50 to 70 percent off, while supplies last. Visit [store.yahoo.com/wsbastore](http://store.yahoo.com/wsbastore) beginning July 14.

### Law Week Thank You

The Washington State Bar Association thanks the lawyers and judges who participated in Law Week 2003 (April 28-May 2).



### Ethics 2003 Committee Meetings

The WSBA Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee) was convened to review the revised ABA Model Rules of Professional Conduct; undertake a comprehensive study and evaluation of the ABA "Ethics 2000" revisions; consider the suitability of adopting the ABA revisions and commentary in Washington; and consider other appropriate changes to Washington's Rules of Professional Conduct. Ethics 2003 Committee meetings are open to the public, and interested WSBA members are encouraged to attend and/or provide input about the committee's work. Information about the Ethics 2003 Committee is on the WSBA website at [www.wsba.org/lawyers/groups/ethics2003](http://www.wsba.org/lawyers/groups/ethics2003). Please direct questions or comments to Committee Reporter Douglas Ende at 206-733-5917 or [Ethics2003Committee@wsba.org](mailto:Ethics2003Committee@wsba.org). Meetings are generally held the second Wednesday of the month.

#### Upcoming meetings:

- July 9—WSBA office
- August 13—WSBA office
- September 3—WSBA office

### Filing-Fee Notice for CLE Sponsors

Effective July 1, 2003, all CLE sponsors will be required to pay a \$50 filing fee. At the November 22, 2002, Mandatory Continuing Legal Education (MCLE) Board meeting, a motion was passed to increase a sponsor's filing fee for a Form 1 application for approval of MCLE credit to \$50. In addition, a motion was passed to increase the fee for the WSBA's processing of manually submitted CLE attendance to \$3 per name, with advance notice to providers that fees will be raised effective July 1, 2003. The fee for electronically submitted attendance will remain at \$1 per name. This increase in fees will be subject to review, to ensure that the generated income is sufficient to cover costs.

### Fulbright Scholar Grants Available for 2004-2005

The Fulbright Scholar Program is offering a number of lecturing, research, and lecturing/research awards in law for the 2004-2005 academic year. Awards range from two months to

an academic year. While many awards specify project and host institution, there are 153 open All Disciplines awards that allow candidates to propose their own project and determine their host institution affiliation. Foreign-language skills are needed in some countries, but most lecturing assignments are in English. The application deadline is August 1. For information, see [www.cies.org](http://www.cies.org) or contact the Council for International Exchange of Scholars, 3007 Tilden St. NW, Ste. 5L, Washington, DC 20008; 202-686-7877; e-mail [apprequest@cies.iie.org](mailto:apprequest@cies.iie.org).

#### Usury Rate

The average coupon equivalent yield from the first auction of 26 week treasury bills in June 2003 is 1.12 percent. The maximum allowable interest rate for July is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26 week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date is on the WSBA website at [www.wsba.org/media/publications/barnews/usury.htm](http://www.wsba.org/media/publications/barnews/usury.htm).

#### Online MCLE Credit-Tracking System

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

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

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

#### Website Links from Lawyer Directory

A link to your website can be added to your directory listing, so that 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/lawyers/addlink.htm](http://www.wsba.org/lawyers/addlink.htm).

#### Keep in Touch

The WSBA uses e-mail to communicate with members quickly, efficiently, and inexpensively, and increasingly it is becoming the preferred method of communication among committees and sections. If you haven't already, please consider providing us your e-mail address. Contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or [questions@wsba.org](mailto:questions@wsba.org). Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m.

#### Lawyer-to-Lawyer-Program Roundtable

For program participants awaiting their one-on-one matches, we offer a roundtable discussion on Monday, July 14, 2003, from 3:00 p.m.-5:00 p.m. at the WSBA office. The discussion offers an informal question and answer session, and provides opportunity to network with senior members and peers. For more information, contact Allison Durazzi at [allisond@wsba.org](mailto:allisond@wsba.org) or 206-733-5914.

#### The WSBA Store Is Open

The WSBA online store is open at [www.wsba.org](http://www.wsba.org) (click "WSBA Store" in the left navigation bar). Purchase Cutter & Buck polo shirts, twill baseball caps, ball-point pens, and brass luggage tags emblazoned with the WSBA logo. The store features secure online credit-card ordering. You may also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

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

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

#### Learn More about Case-Management Software

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

#### Consumer-Information Pamphlets Available

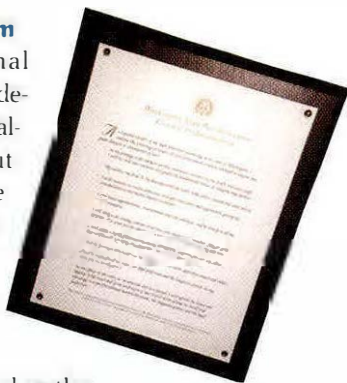
Provide a valuable service to your clients by offering them consumer-information pamphlets! Published by the WSBA as a public service, these pamphlets educate consumers about their legal rights and responsibilities, answer frequently asked questions, and explain basic aspects of Washington law. The information,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

For a complete listing of pamphlets and pricing information, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or see the WSBA website at <http://www.wsba.org/consumer-information>.

**Note:** A special discounted rate is available for qualified nonprofit organizations—contact the WSBA Service Center for details.

**Creed of Professionalism**

The WSBA's aspirational Creed of Professionalism, developed by the Professionalism Committee with input from members around the state, and approved by the Board of Governors, has as its purpose to "inspire and guide lawyers in the practice of law." The full text of the creed can be found on the WSBA website at [www.wsba.org/creed](http://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 state sales tax @ 8.8% \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Check enclosed (payable to WSBA)

MasterCard     Visa

No. \_\_\_\_\_

Exp. date \_\_\_\_\_

Name as it appears on card:

Signature \_\_\_\_\_

Please send to:

**Member and Community Relations**

**Washington State Bar Association**

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

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

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/ZIP \_\_\_\_\_

WSBA office use only: 44200-COMM

date \_\_\_\_\_ check no. \_\_\_\_\_ amount \_\_\_\_\_

**Congratulations to the New WSBA Admittees from the Winter 2003 Bar Exam**

**A**

- Adamowski, Robert E, Bellevue, WA
- Affolter, Thomas M, Seattle, WA
- Alexander, Edward S, Lynden, WA
- Amoateng, Kwame, Seattle, WA
- Anderson, Jenny Rebecca Treworgy, Bellingham, WA
- Aragon, Sofia Asuncion Anis, Issaquah, WA
- Atk atsh, Russell J, Spokane, WA
- Avantsa, Gita, Redmond, WA

**B**

- Bacon, Ellen Louise, Normandy Park, WA
- Baddour, Susan L, Everett, WA
- Ballinger, Richard S, Laguna Beach, CA
- Barclay, Elizabeth, Seattle, WA
- Barr, Lewis D, Portland, OR
- Basi, Rajpreet, Suquamish, WA
- Bayard, Tammy Lane, Redmond, WA
- Beasley, Donna Marie, Renton, WA
- Bell, Jodi Lynn, Bremerton, WA
- Belman, Roger PJ, Anchorage, AK
- Bergstedt, Kyle, Spokane, WA
- Bernheim, Heidi Stewart, Seattle, WA
- Best, Ryan, Seattle, WA
- Bhatt, Ajay, Alexandria, VA
- Bishopp, Kristen L, Lacey, WA
- Bowles, Amy R, Seattle, WA
- Boyd, Kristen Elizabeth, Seattle, WA
- Brady, Daniel J, Seattle, WA
- Bratlien, Mark E, Bellingham, WA
- Brooking, Kathleen E, Seattle, WA
- Brown, Alice, Seattle, WA
- Brown, Bronson J, Kennewick, WA
- Brown, Maureen Elizabeth, Seattle, WA
- Brown, Nicholas W, Steilacoom, WA
- Browning, Sarah E, Seattle, WA
- Brunson, Barbara E, Seattle, WA
- Burns, James D, Seattle, WA
- Buttram, Tessie Anan, Sioux City, IA
- Buzzard, James Merow Bevington, Seattle, WA
- Byers, Kelli M, Seattle, WA

**C**

- Cameron-Rulkowski, Jennifer, Seattle, WA
- Carilli, Jillian L, Oak Harbor, WA
- Carpenter, Sarah D, Lake Oswego, OR
- Carter, Glenn J, Phoenix, AZ
- Cary, Catherine Ann, Reno, NV
- Chabot, Angela Kalmer, Menlo Park, CA
- Chadwick, Kenneth W, Everett, WA
- Chew, Martin, Seattle, WA
- Chiang, Erika M, Newcastle, WA
- Chiang, Lisa Huang-Yee, Vancouver, WA
- Chicoine, Bridgette M, Seattle, WA
- Childs, Davina L, Seattle, WA
- Chin, David Kai Ming, Seattle, WA
- Christie, Thomas W, Omak, WA

Chupp, Nancy S, Seattle, WA  
Clark, Richard E, Bonney Lake, WA  
Clement, Jonathan Paul, Marysville, WA  
Coan, Lynnette Ann, Olympia, WA  
Cole, Jembaa, Seattle, WA  
Coleman, Natasha Alexandria, Seattle, WA  
Cope, Grant Allen, Seattle, WA  
Corneille, Christine Marie,  
Woodinville, WA  
Coss, Guy Otilio, Shoreline, WA  
Couey, Jason Bleu, Spokane, WA  
Cowdery, Heather Killebrew, Seattle, WA  
Crear, Ralph Eric, Shoreline, WA  
Cutler, Regina Marie, Seattle, WA

## D

Damore, Shelly McPheeters,  
Vancouver, WA  
Davidson, James B, Portland, OR  
Daw, Tracy D, Seattle, WA  
Dawson, Lori Melton,  
Bainbridge Island, WA  
Deonier, Ray Garland, Spokane, WA  
Deonier, Shannon, Spokane, WA  
Divelbiss, Mark J, Bellevue, WA  
Dombcic, Rebecca ThePenha,  
Kennewick, WA  
Dotson, Stephen Michael, Spokane, WA  
Doyle, Sheri A, Seattle, WA  
Dunn, Linda C, Lynnwood, WA  
Durr, Amy Catherine, Bluffton, IN

## E

Earle, James C, Santa Monica, CA  
Exkano, Melissa, Newport, WA  
Farrar, Robert Christopher, Issaquah, WA

## F

Farris, Craig Austin, Seattle, WA  
Fell, Elizabeth, Woodinville, WA  
Feyissa, Shakespear N, Seattle, WA  
Fitzgerald, Amy Lynn, Bellevue, WA  
Fitzpatrick, Stacey, Seattle, WA  
Flansburg III, Frank Myron, Las Vegas, NV  
Fortin, John Paul, Las Vegas, NV  
Fossum, Clifford Carl, Fountain Hills, AZ  
Foster, Steven James, Colbert, WA  
Frame, Karen Shoresman, Boulder, CO  
Fry, Marcus Jacob, Yakima, WA

## G

Galbraith, Peter Andrew, Bellingham, WA  
Gallagher, Joanne R, Seattle, WA  
Galstad, Gretchen, Everett, WA  
Gaudet Jr., Robert Joseph, Seattle, WA  
Gershaft, Olga, Sammamish, WA  
Gilbreath, Dan, Seattle, WA  
Glover, Christopher Mark, Seattle, WA  
Godfrey, Lindsey N, Seattle, WA  
Goldman, Jeffrey A, Seattle, WA

Goldschmidt, Stephen Edward,  
Snohomish, WA  
Goss, Dennis Xavier, Port Orchard, WA  
Graham, Sophie K, Tacoma, WA  
Grant, Roger J, Las Vegas, NV  
Green, John O'Neill, Spring, TX  
Green, Simone Noelle, Tacoma, WA  
Grimes, Gerald W, Sequim, WA  
Grissom, Billie L, Bothell, WA  
Guthrie, Micaela Ashe, Seattle, WA

## H

Han, Hilary Alexander, Seattle, WA  
Hanley Jr., Leo Paul, Orinda, CA  
Harer, Rachel P, Seattle, WA  
Hart, Leanora O, Edmonds, WA  
Havers, Philip J, Shoreline, WA  
Healy, Michael, Brier, WA  
Heath, Michael Richard, Arlington, VA  
Heinz, Peter D, Redmond, WA  
Henderson, Stephanie A, Tumwater, WA  
Henderson, Stephen George, Renton, WA  
Hendrick, Ellen M, Rathdrum, ID  
Henry, Laura S, Seattle, WA  
Henswood, Susan Darden, Kennewick, WA  
Herschensohn, Zachary B, Seattle, WA  
Heslep, Nacole, Anchorage, AK  
Hinds, Amanda M, Seattle, WA  
Hobbs, Britannia Ingrid, Portland, OR  
Hoerschelmann, Nathan Arend,  
Edmonds, WA  
Holland, James J, Vancouver, WA  
Holt, Douglas Christopher Shawn,  
Kent, WA  
Honea, William W, Seattle, WA  
Hong, Ellen J, Seattle, WA  
Hong, Rachel L, Seattle, WA  
Horey, Mark A, Seattle, WA  
Hovet, Regina Elizabeth, Yakima, WA  
Hughes, Todd Aaron, Fircrest, WA  
Hume, Taud Alexander, Spokane, WA  
Hundere, Nan Poret, San Antonio, TX  
Hunt, Dolly N, Ely, NV  
Hunt, Heidi L, Bothell, WA  
Hunter, Kim E, Kent, WA  
Hyde, Robert Aloysius, Irvine, CA

## I-J

Iverson, Victoria S, Spokane, WA  
Jablonski, Kevin D, Kirkland, WA  
Jackson, Sean David, Veradale, WA  
Johnson, Joshua J, Seattle, WA  
Johnson, Kimberly, Seattle, WA  
Jones, Camara, Vancouver, WA  
Jourdan, Robert Eugene, Lynnwood, WA  
Jurgens, Anna Karen, Issaquah, WA

## K

Kamimae, Katherine Shannon,  
Seattle, WA

Kane, Brad S, Los Angeles, CA  
Katayama, David, Seattle, WA  
Keane, Jane E, Clarkston, WA  
Keay, Eugene, St Louis, MO  
Kelley, Anne Murphy, Seattle, WA  
Kelley, Bryan A, Seattle, WA  
Kennedy, Megan, Reading, MA  
Khan, Ijaz Mohammad, Kent, WA  
Kim, Jeffrey Hoon, Tacoma, WA  
King, Victor Nien-Tse, Renton, WA  
Kirmer, Kristen L, Bellevue, WA  
Kling, Michael Paul, Seattle, WA  
Knifsend, Donna L, Port Angeles, WA  
Konkright, Kelly E, Spokane, WA  
Kosrovani, Emilio M, Seattle, WA  
Kraus, Charles Richard, Roseville, MN

## L

Lainhart, John B, Seattle, WA  
Langford, Steven A, Snohomish, WA  
Latham, Margaret Dawn, Mill Creek, WA  
LaPrade, Steven M, Mukilteo, WA  
La Raus, David W, Seattle, WA  
LaRose, Claudia, Kirkland, WA  
Leaming, Judy, Ferndale, WA  
Leeser, Erich A, Washington, DC  
Lefkow, David, Manchester, Chicago, IL  
Legacki, Kenneth W, Anchorage, AK  
Lemmel, Andrew L, Seattle, WA  
Lenzkes, Steven R, Vancouver, WA  
Leonard, Rebecca Helen, Seattle, WA  
Lewis, Brian L, Seattle, WA  
Lewis, Timothy Ryan, Seattle, WA  
Lewis III, Robert P, Redmond, WA  
Lewis III, Yale, Shoreline, WA  
LeClaire, Thomas L, Scottsdale, AZ  
Lingenfelter, Susan Elaine, Seattle, WA  
Lingo, Tracey Virginia,  
Denham Springs, LA  
Linville, Christian, Seattle, WA  
Ludwig, Meloni Lyn, Renton, WA  
Lufkin, John Lucky, Spokane, WA  
Lutgen, Senit M, Spokane, WA  
Lynch, Ardith, Fairbanks, AK  
Lyons, Timothy L, Seattle, WA

## M

Machin, Nathan A, Seattle  
Magaram, Teresa Rene, Mercer Island, WA  
Mandell, Christopher J, Seattle, WA  
Marlowe, Matthew Craig, Seattle, WA  
Masten-Legge, Corey, Seattle, WA  
Matto, Jagjit, Auburn, WA  
Maxwell, Jeffrey Gene, Seattle, WA  
Mayer, Michael S, Salem, OR  
Mays, Steven F, Kirkland, WA  
McAttee, Lissa Mei-lin, Seattle, WA  
McCarthy, Brie Ann, Tacoma, WA  
McGowen, Michael Edward, Bellevue, WA  
McLaughlin, Sean Thomas, Spokane, WA

McNeil, Jeanne E, Bainbridge Island, WA  
Mendoza, Miriam Susana, Seattle, WA  
Mensah, Nana Nketia, Seattle, WA  
Messinger, Scott, Gainesville, FL  
Mikel, M Scott, Issaquah, WA  
Mitalski, Lisa V, Shoreline, WA  
Miyoshi, Rachel Hintzen,  
    Mercer Island, WA  
Moberly, Eric Allen, Renton, WA  
Moore, Jessica Terese, Renton, WA  
Moore, Matthew Edward, Bremerton, WA  
Mora, Arthur R, Yakima, WA  
Morris, Richard A, Redmond, WA  
Moss, David Vincent, Bellingham, WA  
Mudd Ami, Foster City, CA  
Mulvaney, Christopher S, Henderson, NV  
Mulvihill, Patrick C, Edmonds, WA  
Mungas, Craig Mitchell, Helena, MT  
Munoz, Christopher K, Pomeroy, WA  
Murphy Jr., Daniel J, Lynnwood, WA

## N

Nagy, Alyson Leigh, Seattle, WA  
Nagy, Dale A, Carlisle, PA  
Naito, James K, Olympia, WA  
Nakkour, Ali Fayez, Seattle, WA  
Naquin, Bryan C, Fort Worth, TX  
Nealey, Kristin Rose, Edmonds, WA  
Neilson, Jessica McColl, Seattle, WA  
Nevlin, Sheri L, Tacoma, WA  
Norkus, Brian, Seattle, WA

## O

Oldham, John C, Renton, WA  
Ollis, Laura Elizabeth Meyers,  
    Bellevue, WA  
Olmstead, Kara Schilz, Liberty Lake, WA  
Osborn, Charity, Seattle, WA  
Owen, David C, Tacoma, WA  
O'Brien, Kathleen, Flagstaff, AZ  
O'Rourke, Daniel Martin, Seahurst, WA

## P-Q

Paciotti, Jeannie Marie,  
    Mount Vernon, WA  
Padgham, Kelly W, Spokane, WA  
Padilla, Anthony M, Seattle, WA  
Parker, Judith A, Mesa, AZ  
Parsons-Blankenship, Jessica L,  
    Richland, WA  
Patsula, Sarah T, Seattle, WA  
Pelka, Daniel W, Seattle, WA  
Penta, Dainen N, Longview, WA  
Perez-Venero, Marc A, Vashon Island, WA  
Perrine, Aaron Michael, Seattle, WA  
Peters, Andrew Mark, Seattle, WA  
Petersen, Chelsea Dwyer, Seattle, WA  
Peterson, Michelle, Seattle, WA  
Pias, Nicolette Lee, Seattle, WA  
Pirk, Sara L, Yakima, WA

Poland, Mary Sheila, Kennewick, WA  
Polk, John H, Houston, TX  
Potvin, Kathryn N, Las Vegas, NV  
Powell, Sharon Rose, Issaquah, WA  
Price, Mitchell Alan, Seattle, WA  
Purcell, Anne L, Seattle, WA  
Pursley, Jennifer Amy, Mercer Island, WA  
Quagliano, Mary Laura, Orting, WA

## R

Ramme, Marc M, Los Angeles, CA  
Ramos, Bradford Craig, Lakewood, WA  
Ramsay, Christopher D, Denver, CO  
Ransiear, Joseph W, Bellevue, WA  
Reay, Sean Donald, Seattle, WA  
Reese, Roland, Austin, TX  
Reiten, Mary B, Seattle, WA  
Reznik, Tamara C, Seattle, WA  
Rhodes, Gregory M, Vashon, WA  
Ricketts Jr., F Richard, Kent, WA  
Robinson, Amy Adele, Lake Oswego, OR  
Rooney, Shane Y, Sacramento, CA  
Roy, Sharon C, Huntington Beach, CA  
Royle, Mary Anne, Hamden, CT  
Ryan, Michael Patrick, Seattle, WA

## S

Saenz, Araceli, Seattle, WA  
Salomon, Jesse M, Seattle, WA  
Sambrano, Sydney Caroline,  
    North Richland Hills, TX  
Sandoval, Raymond G, Seattle, WA  
Sarathy, Rajiv Partha, Bellevue, WA  
Sawyer, Meredith Anne,  
    Bainbridge Island, WA  
Sayer, Jason C, Everett, WA  
Schoenberger Jr., James A, Lacey, WA  
Schossow, Heather L, Seattle, WA  
Schultz, David, Salem, OR  
Seeley, Tim R, Sammamish, WA  
Settles, Linda M, Seattle, WA  
Shannon, Claudia, Seattle, WA  
Short, Charles David, Wenatchee, WA  
Silber, Robert Aaron, Seattle, WA  
Simons, Samantha Crews, Seattle, WA  
Smith, Brandie R, Seattle, WA  
Smith, Rob Roy, Seattle, WA  
Smith, Sara L, Cedar Rapids, IA  
Sohng, Janene, Shoreline, WA  
Sokey, Laura L, Bellevue, WA  
Sommer, Julie R, Seattle, WA  
Sorensen, Laurene, Moscow, ID  
Souza, Aimee Elizabeth, Seattle, WA  
Spiegel, Ronnie Seidel, Sammamish, WA  
Steele Klein, Mary Humphreys,  
    Seattle, WA  
Straus, Trisha Katherine, Dupont, WA  
Studer, Larry Paul, Orlando, FL  
Suda, Yohei, Nantes, France  
Sullivan, Larisa AE, Seattle, WA

Svendsen, Chris Eric, Yakima, WA  
Swaminathan, Aravind, Somerville, MA  
Sweitzer, Graham M, Portland, OR  
Sygnatur, Joseph R, Seattle, WA

## T

Takayama, Akari Sato, Bellevue, WA  
Tellekson, David K, Seattle, WA  
Thomas, John A, Dallas, TX  
Thomas, Lisa A, Seattle, WA  
Thomas, Luke Evan, Mercer Island, WA  
Tilford, Kelly Anne, Seattle, WA  
Tracy, Christopher John, Bellevue, WA  
Tran, Linh K, Poway, CA  
Treanor, Laura Holland, Seattle, WA  
Trummel, Craig E, Hood River, OR  
Turner, Edward Harrison, Spokane, WA  
Turner, Steven Erik, Vancouver, WA  
Tuttle, Christi C, Grapeview, WA

## U

Underwood, Shannon M, Tacoma, WA  
Urioste, Mark Andrew, Seattle, WA  
Uzodike, Obioma Obianuju,  
    East Orange, NJ

## V

Van de Brake, Douglas, Seattle, WA  
Vo, Yon Anh, Bellevue, WA  
Vorel, Marketa, Seattle, WA

## W

Wade, Robert Jeffery, Syracuse, NY  
Waits, Dylan Bradley, Provo, UT  
Walker, Christopher John, Seattle, WA  
Walker, Matthew R, Everett, WA  
Walsh, Brian J, North Bend, WA  
Walsh, Kathleen M, Portland, OR  
Walter, Wendy L, Kirkland, WA  
Ward, Rebekah K, Seattle, WA  
Werner, Kjell C, Issaquah, WA  
White Jr., Daniel L, Kirkland, WA  
Wickham Jr., Richard J, Seattle, WA  
Williams, Mona Christin, Covington, WA  
Williamson, Brian E, Seattle, WA  
Wilmot, Daniel Garrett, Renton, WA  
Winkelman, Benjamin R, Hoquiam, WA  
Winkler-Boonkham, Julie,  
    Mountlake Terrace, WA  
Wood, Lisa Daniele,  
    Mountlake Terrace, WA  
Work, William Bruce, Seattle, WA  
Wyatt, Megan Anne,  
    Bainbridge Island, WA

## Y

Yee, Julie Foonmi-Kim, Seattle, WA  
Young, Thomas Blair, Seattle, WA

*You Are Cordially Invited to Attend*

**The Washington State Bar Association's  
50-Year Member Tribute Luncheon**

*This year, the WSBA will be honoring its 50-year members at a separate event. All members of the legal community are invited to attend.*

Name \_\_\_\_\_ WSBA No. \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

Affiliation/organization \_\_\_\_\_

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

\_\_\_\_\_  chicken  salmon  vegetarian

\_\_\_\_\_  chicken  salmon  vegetarian

\_\_\_\_\_  chicken  salmon  vegetarian

Cost for the luncheon is \$45 per person. To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 17, 2003. (Please note that refunds cannot be made after September 17.)

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Please send to: **Washington State Bar Association  
50-Year Member Tribute Luncheon**

2101 Fourth Avenue, Suite 400  
Seattle, WA 98121-2330

Phone: 800-945-WSBA; Fax: 206-727-8320

Check here if you require special accommodations. If checked, please explain:

\_\_\_\_\_  
\_\_\_\_\_

Thursday  
September 25, 2003

■  
The Westin Hotel  
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Seattle

■  
Registration &  
Reception 11:00 a.m.  
(no-host bar)  
Luncheon/Program  
Noon



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Date \_\_\_\_\_

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No. MTL903

## BUCKNELL STEHLIK SATO & STUBNER, LLP

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### Andrea D. Orth

has become of counsel to the firm.

Ms. Orth graduated *cum laude* from University of Puget Sound Law School, where she served as Managing Editor of the UPS Law Review in 1994. She served as a law clerk for Division II of the Washington State Court of Appeals from 1994 to 1996 before joining Garvey Schubert & Barer in 1996, where she became an owner in 2002. Ms. Orth brings to the firm her considerable experience and expertise in commercial litigation.

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Telephone: 206-587-0144

## GORDON & POLSCER, LLP

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### T. Arlen Rumsey

has become a partner in the firm.

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---

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## Charles K. Wiggins

and

## Kenneth W. Masters

are pleased to announce  
that we have changed our firm name to

## WIGGINS & MASTERS, P.L.L.C.

and that

### Shelby R. Frost

has joined us as an associate.

---

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## JANE E. CLARK

(formerly with Johnson, Graffe, Keay & Moniz of Seattle  
and a graduate of Chester College of Law, U.K.)

has become an associate of the firm.  
Ms. Clark will practice in our Portland office.

---

The firm continues to focus exclusively on civil litigation and  
appellate practice throughout the Pacific Northwest.

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JOHN E. HART  
MARK H. WAGNER  
JAMES P. MARTIN\*  
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DANA S. SCHEELE  
JANE E. CLARK\*+++

\*Admitted in Oregon and Washington

\*\*Admitted only in Washington

+Also admitted in California

++Of Counsel

+++Also admitted in England and Wales

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Fax: 509-249-8129

## 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.

### BUSINESS LAW

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August 7 – Seattle; August 21 – Mt. Vernon.  
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### COMPUTER LAW

#### Summer 2003 Computer Camp for Counselors

July 10, 17 – Seattle. 3.75 CLE credits for each session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### INDIAN LAW

#### Tribal Leaders Workshop: Indigenous Peoples' Legal Rights to Land, Self-Government and Economic Self-Sufficiency

August 5-6 – Seattle. CLE credits TBD. By UW CLE; 800-CLE-UNIV.

### INTELLECTUAL PROPERTY

#### Patent Enforcement and Defense

August 22 – Seattle. 5.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### LITIGATION

#### How to Master the Fundamentals of Effective Trial Practice

July 10 – Seattle. 6.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### WSTLA's 2003 Annual Convention

July 24-27 – Sunriver, OR. 10.5 CLE credits, including 2 ethics. By WSTLA; 206-464-1011.

#### Deposition Techniques

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**206-623-5890**

E-mail: [mcaryl@mbwf.com](mailto:mcaryl@mbwf.com)

### APPEALS

**Margaret K. Dore**

Counsel for appellant in  
*Marriage of Lawrence*, 105 Wn.  
App. 683, 20 P.3d 972 (2001)

Former law clerk to the  
Washington State Supreme Court  
and the Washington State  
Court of Appeals  
Passed CPA exam in 1982

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**Questions?** Please contact Amy O'Donnell at 206-727-8213 or [amyo@wsba.org](mailto:amyo@wsba.org).

ducts legal and social-science research; prepares memos, research papers, articles, legislation, laws, regs, surveys, policies, training, and presentations; manages assignments, programs, projects, and tasks; and pursues private-donor funding, fee-for-service, and public grants. The Women and Land Program coordinator also has expertise in gender issues related to land access, tenure, and customary and formal property rights. May perform other management and administrative tasks. Requires J.D. or equivalent. Typical travel 60 to 80 days per year. Experience required: five years' legal, three years' international development, and two years' gender issues. Must have substantive, management, admin, interpersonal, communications, and teamwork skills. Must have Bar or equivalent license. Salary DOE/DOQ. Benefits. Cover letter/résumé to 1411 4th Ave., Ste. 910, Seattle, WA 98101; or [info@rdiland.org](mailto:info@rdiland.org); [www.rdiland.org](http://www.rdiland.org).

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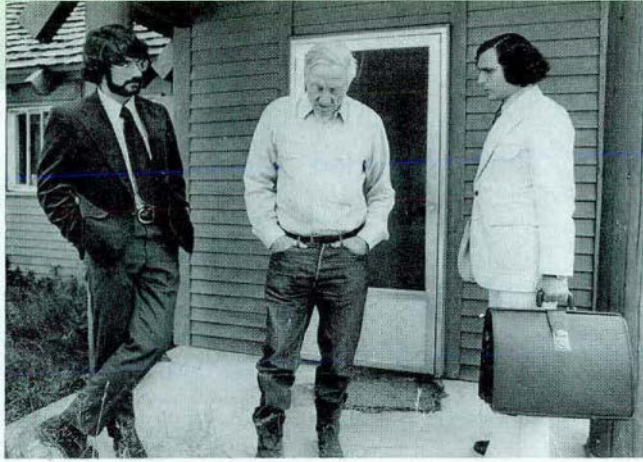
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## Breaking News from Goose Prairie

by Lindsay Thompson  
Bar News Editor

One of the wonderful things about John Rupp's stories—like "The DouglasFortas Connection" republished in the May issue—is that they always seem to generate more stories. His reminiscence about Odd John Solnordahl, a tug captain with a tendency to get crossways with the law, and published over 10 years ago, prompted a number of lawyers who'd had run-ins with Odd John to send *Bar News* their further recollections.

Members' stories are part of what makes *Bar News* the unofficial history of our profession here in the top left corner of the country. When Bob Free's letter arrived, I was still dithering over something interesting for this space. Managing Editor Amy Hines suggested running Mr. Free's letter. I happily agreed. Here is an eyewitness look back at a significant moment in Washington history.

### Editor:

I am writing concerning your interesting article "Anatomy of an Anecdote," which appeared in the May 2003 edition of *Bar News*. In your article, you recount a story of Justice Douglas's decision 30 years ago enjoining Nixon's bombing of Cambodia. Because I was involved in that case and the lore surrounding Douglas's hearing on the case in the Yakima County Courthouse, I write now to set the record straight.

You, John Rupp, and Bruce Murphy, in his new biography *Wild Bill: The Legend and Life of William O. Douglas, America's Most Controversial Supreme Court Justice*, have some of the facts from 30 years ago wrong.

According to your article and according to Murphy, someone at the ACLU telephoned Whistlin' Jack Motel, the closest phone to Justice Douglas's Goose Prairie home, to let Douglas know that the ACLU was coming to request Douglas to issue a stay of the Cambodia bombing during the Supreme Court's summer recess. You and Murphy state that Douglas, on receiving the message, drove down to the motel to use the pay phone to inform the ACLU he would rule after holding a hearing in Yakima. The lore is that Douglas believed his call to the ACLU had been tapped by the FBI, and the information passed on to Justice Marshall so that Marshall and the other justices could quickly overrule his stay of the Cambodia bombing. (The court *did* hold a telephonic hearing within a few hours of Douglas's order, and the stay was overturned.)

I was the "someone at the ACLU" who telephoned Whistlin'

Jack to urge the motel proprietor to take a message to Douglas that we were on our way to request the stay. I was working as a legal intern at the ACLU after my first year of law school at the University of Washington. The next day, I and a lawyer from the ACLU in New York arrived on Douglas's doorstep in Goose Prairie in the early a.m. to deliver the petition to Justice Douglas. We saw him, dressed in pajamas, peak out his window at us. He later met us on his porch, dressed in rugged jeans and a workshirt. He requested that we return in a couple of hours—to allow him time to review the petition. When we returned to his doorstep, he informed us that we should arrange for a hearing the next day in the Yakima County Courthouse and inform the U.S. attorney to be present to represent the government.

The fact is that Douglas never called the ACLU from Whistlin' Jack Motel, so he never could have been alarmed that his call had been tapped by the FBI. Douglas did inform us that the reason he had not invited us into his house was that he had houseguests. We later learned that his houseguests were Justice William Rehnquist and his wife, with whom Douglas surprisingly had a good friendship. Either Rehnquist or other sources could have been the source of information to get the rest of the Court to act so quickly after Douglas's order was released. The Yakima hearing was widely covered in the press, even before Douglas made his decision.

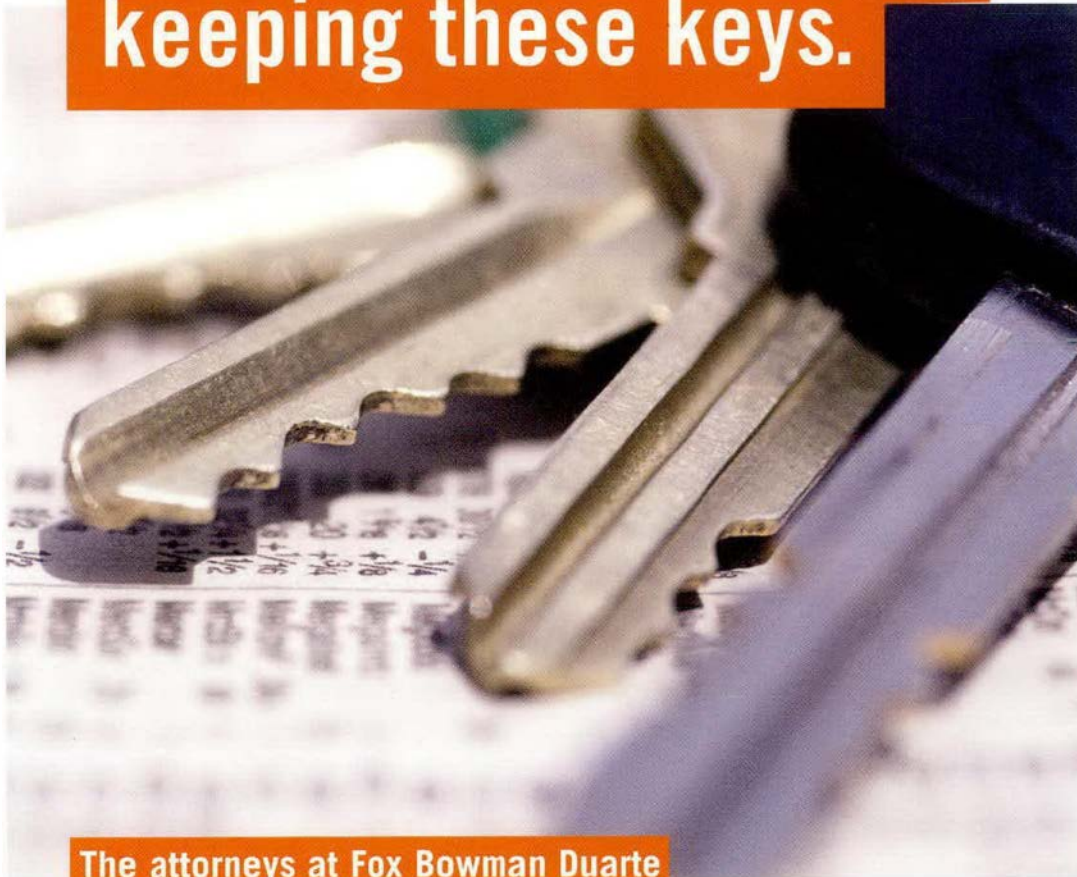
My own anecdote about this event is that I noticed an interesting book located in Douglas's dusty, old Plymouth parked in his driveway. The book was *Gilbert's on Contracts*, rather unusual reading material for a Supreme Court justice. I assume, but do not know for certain, that the *Gilbert's* belonged to Douglas's wife, Cathy, who happened to be studying for the bar exam that summer.

Working on this case 30 years ago—as a first-year law student—was in many ways the highlight of my legal career. I am sorry to say that I have never been on another Supreme Court justice's doorstep, seen another in pajamas, or had another opportunity to speak with a Supreme Court justice about a president's decision to bomb another country.

Attached is a photo of me (with longer hair and beard), Justice Douglas, and ACLU attorney Norman Siegel.

Sincerely,  
Robert A. Free, Seattle

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