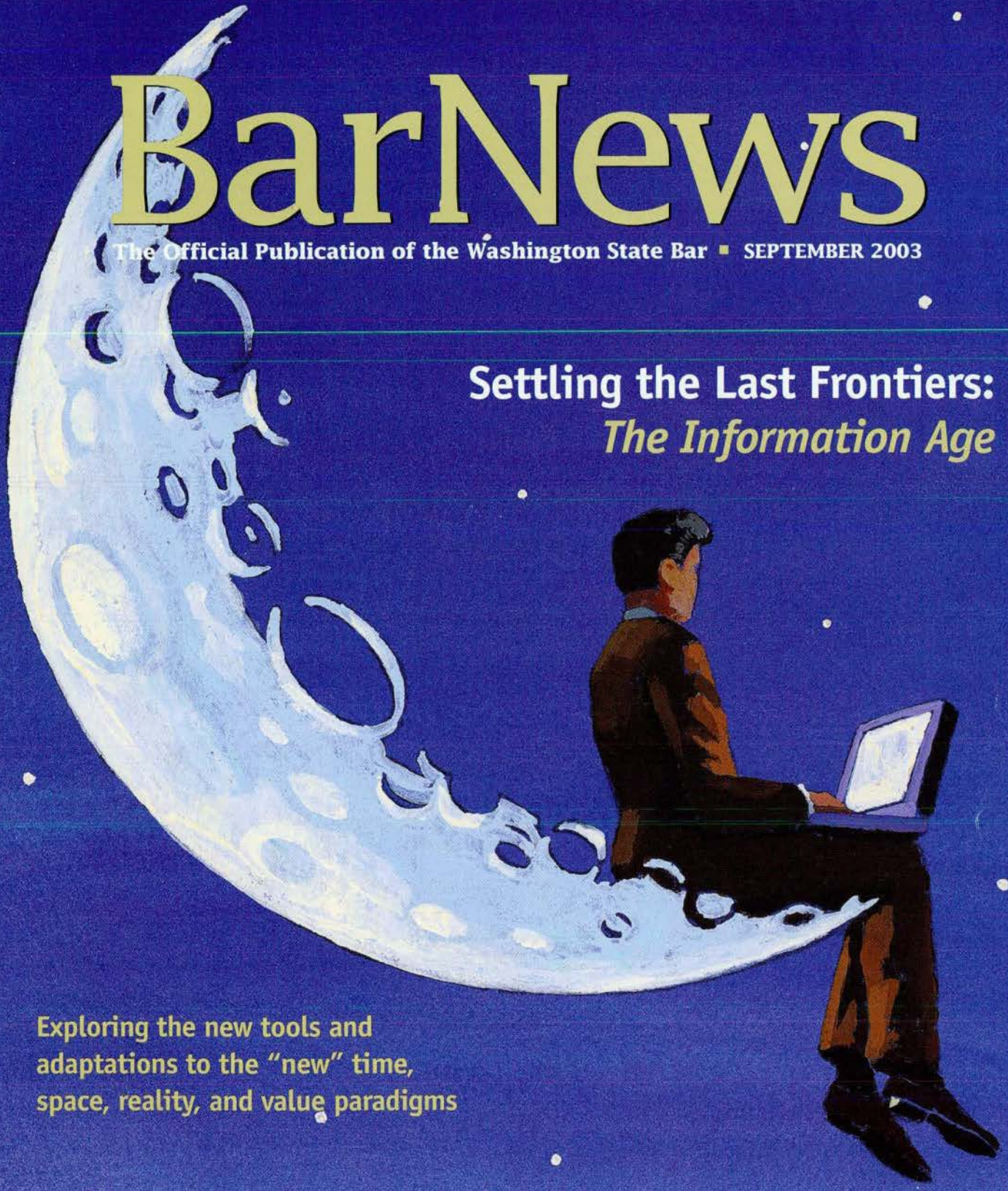
Vol. 57 No. 9

BarNews

The Official Publication of the Washington State Bar ■ SEPTEMBER 2003

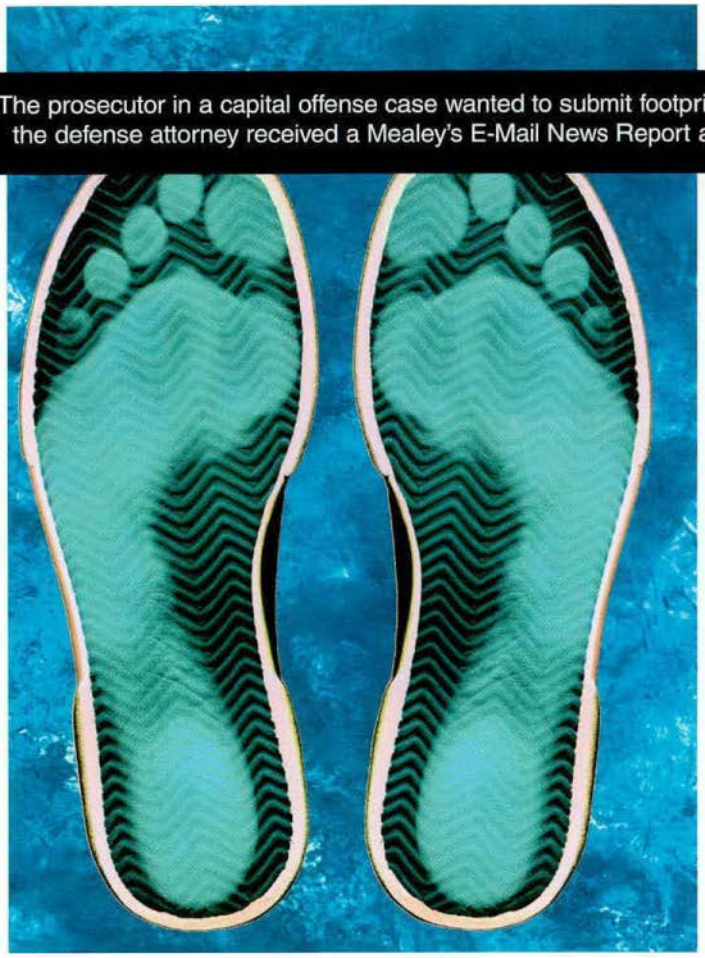
Settling the Last Frontiers: *The Information Age*



Exploring the new tools and adaptations to the "new" time, space, reality, and value paradigms

Justice at Web Speed p. 22

Are footprints as foolproof as fingerprints?



The prosecutor in a capital offense case wanted to submit footprints taken inside a shoe as evidence. Two nights before the trial, the defense attorney received a Mealey's E-Mail News Report about a case that questioned the admissibility of this evidence.

The Mealey's E-Mail News Report notified the defense attorney of a recent court decision from the highest court in a neighboring state. He was surprised to find the prosecution's expert witness had also testified in that case. But the court held that footprints from inside a shoe were not a recognized area for expert testimony under the Daubert standard. As the defense attorney continued his search of analytical sources from Matthew Bender® including *Moore's Federal Practice*® on the LexisNexis™ services, he quickly found further supportive commentary and analysis. When you need to go a step beyond cases and codes in your research, use the LexisNexis™ Total Research System—**It's how you know.**

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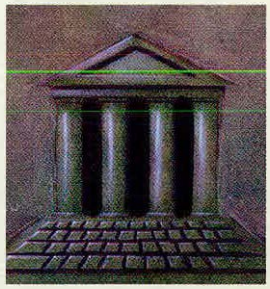

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Working together to champion justice

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

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(not pictured)

Letters to the Editor

Split decision in Olympia

You inaccurately have referred to "labor and industries" claims in the June 2003 issue (p. 49). A party appeals an order of the Department of Labor and Industries to the Board of Industrial Insurance Appeals, not the "Board of Labor Appeals." The Board is an independent agency entirely separate from the Department of Labor and Industries.

You also missed the mark as to us Board judges. By statute, we are "industrial appeals judges." Our duties differ from those of administrative law judges. For instance, we must apply the Civil Rules for Superior Court, including the rules of evidence. Please see Chapter 51 RCW.

Bruce E. Ridley
Industrial Appeals Judge
Board of Industrial Insurance Appeals
Olympia

I have been a member of the Bar Association since 1969 and have never written a letter to *Bar News* . . . until now.

However, I am writing to express my appreciation for the consistent quality of the "Editor's Page." I especially admire your recent references to Wallace Stevens—a personal hero of mine whose photo adorns my office wall. I am unable to estimate the number of times I have had to explain to well-versed coworkers that he was both an insurance executive and, arguably, the greatest American poet of the 20th century. Since most of them have never heard of him, the usual response is a blank stare reflecting a certain element of suspicion that I'm playing a practical joke—inventing a person who supposedly managed surety matters and mentally drafted obscure poetry while walking to his office in Hartford, Connecticut.

Accordingly, thank you for the Stevens citations that have enhanced your column. One of my favorite Stevens poems is "Study of Two Pears." As noted in *A Book of Luminous Things* by Czeslaw Milosz, Stevens attempts to describe two pears and "enumerates one after another of their chief qualities, making his analysis akin to a Cubist painting. But pears prove to be impossible to describe." Even the great Wallace Stevens was unequal to that challenge.

Again, thank you for each monthly "Official Publication of the Washington State Bar" that continues to be both informative and entertaining. Perhaps it is no coincidence that your April 2003 column mentions both Kim Novak—a fantasy from my boyhood—and "a flying pig." Hanging from the top of my office doorframe is a small wooden toy pig with wings. Wallace Stevens, Kim Novak, and flying pigs—consider my subscription renewed.

Ward J. Rathbone
Industrial Appeals Judge
Board of Industrial Insurance Appeals
Olympia

The editor, not the decision, was wrong

I want to comment on something Lindsay Thompson said in his report on the BOG's adoption of new guidelines for the Judicial Recommendation Board in the June 2003 "Board's Work" (p. 38): "The judicial recommendation problem is that sometimes with the best of intentions the committee that rates people for judicial appointments to superior and appellate courts gets the ratings, well, wrong." Like any human institution, the Judicial Recommendation Board occasionally makes

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a mistake; but it did not come up with a "wrong" rating in the case that triggered the BOG's recent revision of committee procedural rules.

As a member of this committee in 1999-2002, I can speak knowledgeably about it; confidentiality rules preclude a detailed discussion of any particular case, however. The committee's task is to identify persons who are "well qualified" for gubernatorial appointment to the Washington appellate courts (but not, as Lindsay said, to superior court). The BOG appoints all members of the committee, including one of its own as liaison. In 2001-02, the committee had 26 members, of whom five were non-Caucasian and five were women, including the chair.

Committee guidelines require a candidate seeking the "well qualified" rating to exhibit these qualities: integrity, courage, good character, common sense, respect for the judicial process, fairness and open-mindedness, a commitment to equal justice, excellent legal ability, relevant experience, wisdom, intellect, impartiality, judicial temperament, etc. To earn this rating, a candidate must receive two-thirds of the votes cast at the committee's rating session. The committee does not issue any other rating.

In the case that recently attracted BOG attention, the committee had before it an aspirant who was in many ways typical: intelligent, personable, politically well connected, and a successful litigator. He had submitted a detailed, written application using a standard form. Then, as usual, the committee dug deeper. Committee members called more than two dozen persons, nearly all of them lawyers and judges named by the candidate, who were familiar with the candidate and his legal work. Then the committee met to discuss the information gathered and to interview the candidate. The candidate made the customary opening statement and responded to numerous questions, some of them prompted by the telephone contacts. Then the applicant was excused so the committee could deliberate and vote.

Thus, the committee proceeded as usual. Lawyers familiar with local bar association committees that rate candidates for superior and district courts would recognize the process.

The deliberation in this case was thorough and spirited. Confidentiality precludes further description. It hardly needs saying, however, that the candidate did not receive enough votes to be rated "well qualified" because a number of committee members were not persuaded that he had all the qualities essential to the rating. In other words, the committee did its job. (Lindsay reported that the BOG wants the committee to start recording the reasons behind its votes, which won't be easy because each voter has different reasons, and some don't voice their reasons.)

Dissatisfied with the outcome, the candidate's supporters took his case to the BOG. Notwithstanding that the BOG could not possibly have reviewed all the pertinent information that the committee considered, much of it confidential, the BOG apparently concluded that the committee had erred.

This led the BOG to adopt new guidelines.

The BOG of course has authority to prescribe new rules for the Judicial Recommendation Board and should do so when warranted. What I object to is the notion

that a "wrong" rating necessitated the recent revision of committee rules.

Mark H. Adams
Gig Harbor

Who has more rights? Minors or pets?

Having read the letters in the last few issues of *Bar News*, I'm rather surprised and disappointed at the disparagement of Adam Karp's piece on animal law (February, p. 16), particularly those that poked fun at those who work for the well-being and protection of animals. It's easy to lose sight of the fact that it was the work of animal-rights folks that brought about our first child-protection laws in the 19th century. If I may cite Stephen Zawistowski, Ph.D., ASPCA senior vice president, operations/science advisor:

The Legacy of Mary Ellen

"I have now the black and blue marks on my head which were made by Mamma, and also a cut on the left side of my forehead which was made by a pair of scissors." Bruised and beaten, clad in the only ragged garment she was allowed to wear, 10-year-old Mary Ellen's tiny voice stunned the courtroom and, in the words of Jacob Riis, "roused the conscience of a world."

In the spring of 1874, just eight years after founding the ASPCA, Henry Bergh was approached by Etta Angell Wheeler with an urgent and unusual request. Wheeler, a social worker in the tenements of New York City, had been stymied in every effort to assist a young girl beaten and sorely abused by her foster parents. Finally, Wheeler's niece suggested meeting with Bergh, well known for intervening on behalf of abused animals. When Wheeler presented the evidence to him, Bergh responded by contacting his attorney, Elbridge Gerry, with the admonition, "No time is to be lost." Gerry's ingenious use of *habeas corpus* resulted in a warrant, which Bergh used to remove the child from the home and bring the case before the court. Bergh himself testified at the trial. Despite his own disclaimer during testimony, a myth arose that Bergh and the ASPCA had interceded on behalf of Mary Ellen because, if nothing else, she deserved the same protection as an animal. Bergh had in fact acted as a humane citizen in this case and not in his official capacity as President of the ASPCA. Regardless, his notoriety for advancing causes of a humane nature attracted substantial public attention to the case.

Mary Ellen was removed from her pitiful condition and eventually came to live with Etta Wheeler's sister in upstate New York. Gerry and Bergh would establish the Society for the Prevention of Cruelty to Children in 1874.

While I hesitate to suggest that those who work to protect animals from neglect and abuse have a greater degree of sensitivity to suffering, it's worth noting that Ms. Wheeler had already tried every other source of assistance without success before seeking Mr. Bergh's aid. It took an animal-rights activist of that time to get us past the notion that children were chattel, to be used or abused as their custodians saw fit.

Lyle A. Rooff, Paralegal
Walla Walla

More on tort reform

I have read Lawrence Graham's first letter (*Bar News*, May 2003, p. 7) with its peculiar and inaccurate perception of medical negligence lawyers, and just read his second (*Bar News*, July 2003, p. 9). Mr. Graham obviously lives on a different planet than I do. My two partners and I handle only medical-negligence cases, and I have been involved in such cases for more than 25 years. His account of an insurance company paying money on a case where "any and all physicians who studied the case [determined] that there was absolutely no negligence" is an astounding story and, if true, should make it into the next edition of Ripley's.

In my experience over many years, no malpractice insurance company will pay money on a claim unless and until the plaintiff has convincing testimony from experts who are reputable and credible. Why in the world would an insurance company pay lots of money if no physician found negligence? Leaving aside the fact that summary judgment would be forthcoming in that situation, insurance companies know that juries are very dubious about medical negligence claims. This is shown by the fact that over the past 10 years in Washington only 10-15 percent of trials have resulted in plaintiffs' verdicts, and in 2002 there was apparently only one plaintiff's verdict in the entire state (for approximately $45,000).

The reality is that these cases are very difficult, risky, and expensive to handle. My office receives five to 10 calls a day regarding potential medical-negligence cases, and we end up taking only one out of 50-100 potential cases. Many of the cases which we spend a lot of time and money evaluating involve death or horrendous injuries, and we still turn them down if we cannot produce credible expert testimony supporting both negligence and causation.

Mr. Graham is a victim, along with many members of the public, of the malpractice insurers' propaganda that says juries throw money at injured people because they feel sorry for them, whether or not there is any negligence. That's baloney, as both plaintiff and defense attorneys practicing in the field will tell you. In fact, in my experience the most serious injury cases are met with more reluctance by a jury to rule for the plaintiff. If you are asking for a great deal of money, the jurors tend to hold the plaintiff to a very high standard of proof.

There is much room for debate about medical-malpractice lawsuits and their impact on the medical profession and the public, but the debates should be based on reality and facts, not the kind of fantasy shown in Mr. Graham's letters and reflected in the many inaccurate and false statements made by malpractice insurers in support of restrictive legislation.

Eugene M. Moen
Seattle

I am responding to an editorial in the March *Bar News* (p. 13) by Dick Manning, the president of the state bar, criticizing legislative proposals designed to improve the position of defendants in tort and medical-malpractice cases.

Mr. Manning opposes a cap on damages. We should put an end to general damages in toto. The public pays general

damages, even though usually an insurance company pays the award. The insurance company gets the money from somewhere, and that somewhere is the ratepayer, the public. Those who don't buy insurance still pay for insurance for the merchant who brings goods by motor vehicle. Insurance companies invest money, always with the intention of investing in something that people will use. Some money paid on claims is taken from these investments. This is the public too. The public gets jobs from money invested by insurance companies, and the public gets products, buildings, factories, cars, whatever, from money invested by insurance companies. The more money taken from insurance companies, the more taken from investments. Self-insured business is no different; money that a software company gives to a contingent-fee lawyer is money that could be spent on employee salaries or on inventing products, or even on consumer goods that also provide jobs for someone.

One could argue that it is good for the public to pay general damages for pain and suffering. But in most cases pain cannot be undone; if a limb is lost, no amount of general damage money will bring it back. Money does not alleviate pain. If someone came to my door to collect $100 for a neighbor's personal-injury claim for pain caused by a negligent driver, I would say no. Most people would. We pay for insurance not to help others but to protect ourselves from financial ruin. There is nothing intrinsically wrong in agreeing to be taxed for general damages, except that general damages inevitably escalate because personal-injury lawyers inevitably think of new ways to get court approval of new causes of action, but there is also nothing intrinsically good about being taxed for general damages. Usually general damages have little economic impact; if they do, they are special damages [*out of pocket damages*], which are different.

Mr. Manning argues that med mal damages don't cost much, and that the insurance companies should invest better. Whatever the companies pay in awards and settlements is a cost to the company, as the cost of paper is a cost of running a newspaper, regardless of whether the newspaper invests as well. The more insurers pay, the more they have to charge to cover their expenses. Mr. Manning argues that premiums continued to rise after caps were imposed in California. This means nothing. We have no idea whether other factors caused the alleged rise in premiums, nor do we know if premiums would have risen even more had caps not been in place. Mr. Manning criticizes the insurance companies for cutting their rates. He does not acknowledge that markets are competitive and the companies have to compete by price and product, and cannot determine with certainty any more than the rest of us what the economy will do. His proposal to control insurance rates would merely drive insurers out of town.

Mr. Manning cites statistics to show that malpractice actions are not expensive. The statistics do not include settlements (except those over $1 million) or defense costs. We don't know how big the awards over one million were, but we do know that one large verdict or settlement is likely to bring in its wake more large settlements. It would be more meaningful to know how many billions the insurance companies, that is the public, pay in total for awards and settlements. Then it would be helpful to know how much they spend on defense costs and administration, and then, beyond that, it would help to know how much court money courts spend on administering litigation for personal-injury lawyers.

Mr. Manning argues that tort damages offer incentive to "avoid malpractice." Many factors apply, but one answer is that the market system provides an incentive to provide a beneficial product. People do inquire about the quality of doctors. Courts are not a good forum for fashioning rules for doctor behavior because courts see the damages suffered by the plaintiff, not the cost suffered by society for supporting armies of insurance and plaintiff lawyers and not the direct cost to the taxpayer of applying judicial resources to endless contingent claims. Nor are they likely to see indirect costs imposed by judicial regulation of the insurance or medical industry. Courts are lobbied by two sets of lawyers, plaintiff and insurance, and not by anyone who speaks for the public. Legislatures

are lobbied by all the parties and are therefore more likely to consider all public-policy issues. A legislature, with all its faults, is better qualified to set social policy than a court.

Mr. Thompson, the editor, wants a more picaresque and lively *Bar News*. As a government publication, *Bar News* would be more lively, perhaps more picaresque, if they published both pro and con. This issue contained Mr. Manning's plaintiff-oriented criticism of the Liability Reform Coalition (which includes Boeing), actually calling the LRC proposals an attempt to dismantle the justice system a piece at a time, but nothing on behalf of the public or LRC or insurance lawyers. We would have a more lively *Bar News* if pro and con editorials were published side by side.

Roger Ley
Seattle

Editor's response: I appreciate Mr. Ley's suggestion. The president determines the subjects of the president's column. *Bar News* has no input in the matter. While a one-time, one-page counterpoint undoubtedly has its value, I prefer letting members explore the pros and cons in the *Letters* section, where more points of view can be heard, and for as long as there is member interest in the subject.

How to fix the law-school-debt crisis and the legal-services crisis at once

The legal profession should be deregulated so that prospective lawyers can sit for the bar exam without having three years of law school. Everyone complains that lawyers are too expensive. If we flooded the market with more lawyers by letting more sit for the bar exam, the price for legal services would come down and access to lawyers would go up.

Everyone complains about the high cost of lawyers. More attorneys via opening up law schools and bar exams is the solution. Requiring three years of law school only acts as what economists call a "barrier to entry." Such barriers artificially restrict the number of lawyers who enter the labor pool, thus making legal advice more costly. This is just the law of supply and demand in the legal labor market.

Law school students nowadays graduate with huge debts because of their student loans. With an $85,000 average debt, the young lawyer can't go into public-interest work or work in the nonprofit sector because she can only take the high-paying jobs with big firms.

Requiring students to do three years of law school (and four years of college before that) at government-accredited schools is supposed to ensure high standards and skilled and educated lawyers for the benefit of legal consumers. But in reality, it only restricts entry into the field hurting consumers.

I suppose as a lawyer myself, I shouldn't be arguing to open up the legal profession. After all, it'll mean more competition for me and maybe lower my earnings or even make me unemployed. I suppose all of us as "producers"—or what we do for a living—would love a monopoly in our field. I'd love to be the only lawyer, then I could bill at super high rates.

But all of us as "consumers"—or people who buy or need stuff—want competition and open labor entry in every field and

for every good and service because it will lower the prices we pay when we buy it, thus raising our standard of living by freeing up money for other things.

Granted, Washington state is legally fairly progressive in that it and about seven other states still allow apprenticeship students to sit for the bar exam. Apprenticeship is where, instead of law school, on-the-job learning and academic study are combined under a mentor attorney, monitored by the state. Tests are required, but classroom attendance isn't. And four states (California, Massachusetts, Tennessee, and Alabama) allow graduates of nonaccredited law schools to sit for the bar exam. Washington should join these states.

Washington is also progressive because in 1999, "reciprocity" with Oregon and Idaho was legalized. This means that lawyers in the three states, Washington, Oregon, and Idaho, can practice in all three without retaking each state's bar exam. This ended local protectionism.

Until about 1921, in nearly every state, there were three routes to becoming a lawyer. One could do self-study like Abe Lincoln did, or apprenticeship like famous lawyer Clarence Darrow (of Scopes Monkey trial fame) did. The third path was a one or two-year law school.

But this all changed in 1921 when the American Bar Association (ABA) sought to "professionalize" legal education. With the excuse that consumers benefit from higher standards, the ABA got states to require three years of law school. The ABA also got unauthorized practice of law criminal statutes passed. The ABA was like a guild trying to limit competition by raising the cost of becoming a lawyer and therefore confining the profession to the upper class.

Law school, and the bar exam itself, don't really establish high, professional standards more than they make becoming a lawyer expensive and restrict the labor pool. Both Abe Lincoln and Clarence Darrow would be criminals if they practiced law today with the educations they had.

Other law school requirements today also raise the cost of law school and, thus, restrict entry into the labor market. For-profit law schools are not allowed. One or two-year schools and self-study are not allowed. Except for eight states, apprenticeship is not allowed. Except for four states, non-state-accredited schools aren't allowed. Reciprocity is rare.

Law school is good, it teaches you to read a case and be able to argue either side of an issue and gives you the philosophical underpinnings of the law. But it shouldn't be the only method. And the law is so complicated that much of it is learned on the job anyway.

Washington should go beyond just allowing apprenticeship and reciprocity with two states, and allow for-profit or other nonaccredited law schools to spring up and get reciprocity with more states like Alaska. Maybe allow a two-year law school.

Requiring three years from a state sanctioned school (as well as a four-year college degree) doesn't protect consumers from incompetents and quacks, but protects current lawyers against new competitors. It is an inappropriate restriction and regulation of the labor market in legal services that works to the detriment of consumers, i.e., people who need lawyers. The argument that licensing and required schooling protect consumers and ensure high standards just isn't accurate.

In the real world, deregulating the legal profession would mean that state bar associations would have to stop prosecuting real estate agents and freelance paralegals for unauthorized practice of law.

Licensing, bar exams, requiring expensive schooling, and other regulations are the wrong approach to protecting consumers, whether it is protection from lawyers, doctors, accountants, Realtors, or mechanics. We should let private accreditation and certification along with civil consumer protection and fraud law, as well as general tort, contract, and products liability law, protect consumers and patients in a modern, decentralized civil legal system in a free market, rather than through the same old state-run licensing and schooling schemes that act as barriers to entry.

We already have a consumer protection act in Washington (RCW 19.86), and the law of professional malpractice and negligence as well as informed consent law can adequately protect consumers and patients from so-called "quacks." The free

market, in the shadow of civil liability, can protect consumers, plaintiffs, and defendants better than state-run licensing and schooling schemes. Let's open up Washington's law schools and bar exams to more people.

Jeff E. Jared
Kirkland

More on legal services

I have read the second letter of Mr. Roger B. Ley (*Bar News*, June 2003, p. 13) remonstrating against the provision of legal services to indigent persons who reside in our state. It appears to me that Mr. Ley has a fundamental misunderstanding of the intention and purpose of Columbia Legal Services.

The attorneys who work for our nonprofit corporation seek to ensure that persons who have no means to hire an attorney can obtain the rights and benefits established by the legislative branch of government and the Constitution of our state and our country. When litigation occurs, it does so because a person has a valid claim that has a legal basis authorized by the Legislature, Congress by law, or an administrative agency through regulation.

The argument that Mr. Ley offers that lawyers and judges merely substitute their judgments for that of a member of the executive branch displays a fundamental misunderstanding of the elemental purpose of the judiciary and the role that we lawyers play in that branch of government. As advocates we always reach judgments. Whether our respective judgments hold sway depends upon the rulings of the third branch of government, the judiciary.

It appears that Mr. Ley will never acknowledge that a certain portion of our society is unable to assist themselves because of their young age (think little children who don't have a home), or their old age (think how many seniors get bilked by con artists), or their disabilities (think persons who are quadriplegic, or hearing and sight impaired), or any of the other unintentional circumstances that might prevent a person from enjoying the education and benefits that Mr. Ley has achieved through his hard effort. As long as he will not acknowledge that some in our society need help just to live, he will continue to remonstrate against legal services lawyers, who advocate for those who need that help.

I respect the right of Mr. Ley to continue his campaign. I trust he will respect the fact that others do not agree with his basic assumptions and thus pursue a different means of assisting the unfortunate in our state.

Michael Hanbey
Board President, Christian Legal Society
Seattle

Readers are invited to submit letters of reasonable length to the editor via e-mail (comm@wsba.org), fax (206-727-8319), or mail. Due date is the 10th of the month for the second issue following—e.g., September 10 for publication in the November issue.

Annual Report 2003

Washington State Bar Association

by Dick Manning
WSBA President

The scorecard for the association's year October 2002 to September 2003 has some great moments and a few disappointments. We celebrate the former and do not take lightly the latter.

The many achievements are the result of a diligent Board of Governors; excellent bar staff under the guidance of Executive Director Jan Michels; WSBA committees and sections; and last, but never least, the contributions of bar leaders and members of many different associations across the state. Not to be overlooked are the justices of our Supreme Court and other judicial leaders. This collaboration has made possible much of what is set out below.

Legislative Victories

- We faced down so-called tort reform in the state Legislature and U.S. Congress, thereby preserving victims' rights and access to justice.
- We won the U.S. Supreme Court decision upholding IOLTA, once again preserving access to justice through indigent civil legal services.
- We maintained funding for basic court services in spite of severe state revenue shortfalls.

New or Enhanced Bar Programs and Services

- We set a new course for the professional development of new lawyers, emphasizing a program of skills training as pre-admission and post-admission requirements.
- Disciplinary investigations and public proceedings are now current for the first time in many years. The efforts initiated by the association beginning three years ago ensure that this currency will be maintained in the future.
- Long-term-care insurance coverage has been added to the available member insurance benefits we sponsor.
- We have invested more than a million dollars in new technology tools and software to bring state of the art to every aspect of our communications with members and the public. This has also made our website more user friendly, and expanded information to members on access to justice, Law Week, public legal education, and many other programs.
- The CLE Department is broadening its outreach to serve lawyers in less-populous communities.
- We continue to strive for inclusion and diversity, particularly among our committees and leadership, to reflect the many different cultures of our members through a variety of initiatives, events, and receptions.
- A blue-ribbon task force of broadly based representatives of the criminal-justice system is now engaged in surveying a number of issues, particularly representation of juveniles and other defendants in all courts, starting at the municipal court level.
- Another task force is examining our Rules of Professional Conduct to make them more current, and with a view to standardizing them with states with which we have reciprocity.
- We have consistently supported efforts through the state Legislature in collaboration with the Washington State Medical Association, the Washington State Pharmaceutical Association, and the King County Bar Association to emphasize treatment for drug users and education of the young about the dangers of drugs. This is being accomplished through legislative mandate to the Department of Corrections to reduce incarceration time for offenders and divert the savings to treatment and education. We do this without any suggestion of decriminalizing drug use.
- The Board of Governors has approved a recommendation of the Student Loan Task Force to create an LRAP (loan repayment assistance program) to help alleviate the heavy burden of student loans, particularly for those lawyers willing to engage in public-interest law—e.g., indigent civil legal services, prosecutors and public defenders, and so forth.

We won the U.S. Supreme Court decision upholding IOLTA, once again preserving access to justice through indigent civil legal services.

Fiscal Victories

- We have met our goal of restoring a full eight percent reserve for contingencies and emergencies, keeping spending within budget while at the same time maintaining a member license-fee structure that has increased less than the inflationary increases in the cost of living.
- We have begun a modest savings program for facilities as the lease of our present staff office expires in 2006.

Bar Relations and Image

- We continue to be involved in mutually supportive efforts with our colleagues on the judicial side of the bench in resolving issues and problems through the Board of Judicial Administration and in meetings with representatives of all court levels.
- We have successfully met the challenge of providing quick response to the media when charges of judicial bias have been made by a public official. Through our Member and Community Relations Department, we continue to build respectful relationships with the media.
- We have approved an increase of staffing for our Ethics Line to lawyers with ethical dilemmas.
- Pride in our profession is a theme we continue to promote through various media, including our website at www.wsba.org (click on "Proud to Be a Lawyer").

The Future and Long-Range Strategic Planning

- The goals and action plans of the association are under continual review to ensure relevance to our members and the public, now and in the future.
- The Board of Governors will be considering vastly improved online case-reporting and legal-research services to be provided to all members at little or no cost.
- Bar leadership is currently studying the benefits of including on the Board of Governors one or more nonlawyer members, following the lead of 11 other states that have already done so with great results.
- Planning will begin soon for a joint meeting of members of our association in Vancouver, B.C., in August 2005, contemporaneous with the annual meeting of the Canadian Bar Association.
- Planning by bench and bar to better our relationships with legislative leaders is under way. Without accomplishing this, we cannot enact a filing-fee increase to restore funding for indigent civil legal services to the 1999 level.
- The use of the emerging concept of *collaborative law* to salve some of the sting of litigation, especially in the family and employment law arenas, will be developed at a symposium in March 2004.
- The association has become a critical partner with the courts in working toward stable and adequate court funding.

Conclusion

We are more diverse and more in touch with our members; and we have expanded our interests and sphere of influence into the areas of professional development, criminal defense, support of the judiciary, responsibility to the public (including legal education), and multistate cooperation. This has been a year that our Board of Governors and members can be proud of.

Thanks to All of You

My term as president of the Washington State Bar Association ends this month. During the last year, many lawyers have approached me to offer sympathy for the amount of time the job demands (somewhere between 100 and 125 hours a month). I cannot tell you how many times I've responded to my colleagues by revealing how satisfying and rewarding it has been to have the privilege of this office. Long ago, I learned that the glass can be half full or half empty; that problems can instead be challenges; and that problem-solving is its own reward. Not all problems lend themselves to solutions that make everybody happy, but facing each one now, the best way we know how, makes for decision-making that puts the problem behind us. So to all of you—this job is the most fun I've ever had professionally. I'm grateful to you and our profession. I am especially thankful to my colleagues on the Board of Governors, and to our staff and our wonderful executive director, Jan Michels.

Sic transit gloria mundi!

Settling the Last Frontiers

by Jan Michels
WSBA Executive Director

This issue of *Bar News* explores some of the new tools and adaptations to the "new" time, space, reality, and value paradigms. The information age has altered these paradigms in both predictable and unintended ways.

Time

Twenty years ago I read an article about globalization and how the only remaining "frontier" was the time between 2 a.m and 5 a.m. The hallmarks of this unsettled frontier included few inhabitants; lack of agreed protocols and conventions; quiet, even silence; and rugged self-sufficiency. The early settlers of this frontier were airline and janitorial staff, and truck drivers. But the old paradigm of doing business only during "working hours" has now transformed to 7x24 availability. There is no "dark" anymore; all hours are game for industry, internationalism, teleworking, and net commerce.

You can shop stores around the globe, participate in eBay auctions, watch wars being fought in real time, and conduct live sessions with clients and customers across the continent.

The other shift in the time paradigm is the speed of connections and responses. In "Internet time"—a common idiom for this new speed—everything is speeded up. The time it would take the human mind to process and decipher the genetic code, for example, is hundreds of thousands of hours. In Internet time, and with massive computing power, this processing time can be shrunk to minutes. We have come to expect shorter time for responses to e-mail; we get impatient if it takes us more than three clicks to mine information from websites; and we carry cell phones to stay connected at all times.

Space/Place

You no longer have to travel there to be there. You can shop stores around the globe, participate in eBay auctions, watch wars being fought in real time, and conduct live sessions with clients and customers across the continent.

Blurring the space paradigm raises new concerns. Previously, the inherent privacy protections related to having to go to the record at specified work hours posed an access barrier to otherwise public documents. When public documents such as courtcase filings, tax records, and land-use records can be accessed as readily as late-night entertainment from the couch, our perception of privacy alters. But there are good sides to this shift, too. Many lawyers have begun to practice from remote locations, clients don't necessarily have to "come to the office," and business doesn't have to wait until all parties can be in the same place at the same time.

Reality

In a fantastic story of the future by William Gibson, *Idoru*, a rock star falls in love with an idoru—a computer-generated virtual person. My favorite line from this 1997 book is said by an incredulous friend of the rock star, who observes, "She was so comely, so complete, and so beautiful that it was hard to believe that she was simply a data set." A recent issue of *Scientific American* magazine carried an article about the movie industry's ability to computer-generate an actor, a synthespian, to complete a movie scene when the "real" actor met an untimely demise.

The July 2003 issue of *Discover* described how to create an avatar, an electronic representation of oneself suitable for communication on the Internet. Avatars can meet other avatars in virtual space and be programmed to express a wide variety of expression and emotion. Virtual-reality glasses allow life-like, three-dimensional exploration of houses, race courses, vacation spots, and technical designs which really exist only as date files, without any existence in reality!

Value

Raw information is everywhere for the finding. Anyone sitting at a terminal can learn how to book airline reservations, preliminarily diagnose medical conditions, check relevant regulations, read laws, and troubleshoot mechanical failures. Parroting facts and information has decreased in value, similar to how calculators replaced the need to add and subtract by hand. Electronic "thinkers" such as decision grids, search

engines, and neural networks can walk nonmedical persons through sets of symptoms and point to potential medical conditions. New public legal education websites walk nonlegal persons through raw-data choices that lead them to possible legal-problem diagnosis.

These tools saturate us with a calculus for determining how raw data fits together to pose conclusions. We used to require middle-persons/interventionists, interpreters, and information compilers to get us information relevant to our situation—now all we require are telephone trees, search engines, and decision grids. "Value," which once meant personal service and information brokering, has been replaced by the attitude of "help yourself," and the ease of convenience, availability, and "anywhere/anytime." Value now resides in judgment, imagination, creativity, and intuition.

Parroting facts and information has decreased in value, similar to how calculators replaced the need to add and subtract by hand.

Conclusion

Intuition and judgment are now a lawyer's commodity, and this commodity is traded in the new time, space, reality, and value paradigms. Clients come in with increased information and their own research about their situation, often gleaned from the Internet and considered by them to be fact. They want Internet-time response and want it at all hours. They often don't want to come to the office. The legal practice of the future will likely need to be much more nimble, accessible, and responsive.

Futurists suggest that the revolution from the service age to the information age started in the late 1980s and will continue through the early decades of the 21st century. Most Americans are halfway there. Resisting the change is futile. Understanding the fundamental shifts may help us adapt to these changes and understand the 90s generation's ideas of time, space, reality, and value. Adapting is a sign of survival!

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Washington state courts are rapidly moving toward doing much of their business online, a trend that will impact lawyers in a big way. Though electronic services may be somewhere in the future in many counties, attorneys can begin preparing now for what lies ahead.

Justice at Web Speed

by Tom Clarke

No traffic, no parking, no waiting.

In July, Pierce County attorneys were greeted by the opportunity to do business with the county courthouse in a new way: by accessing many court documents and filing notices online, instead of in person or through messengers.

Pierce County's new E-Access service provides attorneys with PINs (personal identification numbers) and the ability to view all publicly filed documents (the county started scanning documents about 20 months ago) through its website, as well as the ability to view confidential documents for attorneys of record, to strike or confirm proceedings, to download document images to an office computer, and to e-file notices of appearances and other notes.

Attorneys have first access to the system—they'll be surveyed over the next few months on what they think of it—then other businesses and the public will be offered some of the services.

"Our plan is to launch this to anyone who feels they would have a business use for it," said Pierce County Superior Court Clerk Kevin Stock. "We are looking at title companies, the media, investigation firms, and others as main users of the system along with attorneys. Public data will be available free on the county's website, while access to document images and other online services will come at a fee," Stock said.

The project is one of several pilots statewide, as Pierce joins Chelan County (which hired a vendor to manage online justice services), Yakima County (which allows drivers to argue traffic-citation mitigation online), and King County (which is developing a pilot program now; see article on page 26) in stepping into the new realm of electronic justice.

In coming years, courts will rapidly move toward doing much of their business online, leading attorneys to ask, "What's on the horizon?"

How Far Ahead?

For lawyers, the most obvious change will be "electronic filing," shorthand for a full range of electronic services related to case filings. Imagine being able to log onto a site and not only originate a case in any state court, but submit filings and motions, service parties, retrieve data or documents, and receive judicial orders.

In addition to the pilot projects under way in some Washington counties, well over a hundred pilot e-filing projects are now in progress across the country. California, Colorado, Nebraska, and Texas are working on statewide projects, with several other states close behind them in the planning phases.

In Yakima County, the ability to submit and argue motions online is also close to reality. Yakima allows traffic mitigation arguments online. Expanding this capability as part of the electronic-filing system will not be technically difficult, but it does propose a very different method of interaction between lawyers and judges.

The advent of electronic filing has already raised the issue of what litigants and the public may see over the Internet.

The Council of State Court Administrators (COSCA) and the Council of Chief Justices (CCJ) jointly issued national guidelines on public access that can be viewed at the National Center for State Courts' website (www.ncsconline.org). They decided to issue "guidelines" instead of a "model rule" or "standard," because several areas were quite controversial and consensus proved impossible.

In fact, the proposed Washington state court rule on access to court records (GR 31) diverges from the national guidelines in several key areas. For example, the Washington rule removes any distinctions between modes of delivery (paper or electronic, courthouse, or remote access) in favor of completely consistent business rules on what is accessible or confidential. That proposed rule is open for public comment until November 5, 2003.

In addition, the state's new general court rule on electronic filing (GR 30), adopted in July, is designed to provide the minimum authorization and control necessary to begin experimenting with pilot projects.

The rule intentionally leaves unchanged as much of the current business rules as possible. It also authorizes the Administrative Office of the Courts (AOC) to create technical standards intended to enforce a consistent experience for e-filers and interoperability across courts. Since many lawyers do business across court levels and with many courts, this consistency is critical to the success of e-filing.

Washington's federal district and bankruptcy courts have been putting standardized e-filing systems into production for several years now. Their PACER (Public Access to Court Electronic Records) system supports all types of filings as long as they are submitted in PDF format. Filings are now considered "signed" when an authorized user logs on with his password and files documents into PACER. If the current pace of adoption continues, the federal courts will be doing most of their filing online in a few more years.

What Will It Mean?

Underlying almost all of what the courts are trying to do on the Internet is a simple but powerful vision: Customers should be able to carry out all their court business from one place.

So-called "one-stop shopping" is a significant departure from the current way of doing business. The courts have been moving in this direction internally, where a court "extranet" called Inside Washington Courts provides a complete array of services and information for judges and court administrators statewide.

Some changes that attorneys can expect to see in the future:

- Online data warehouses will support real-time queries for data and documents related to court cases.
- Litigants will be able to use the electronic filing system to freely access documents and information, such as hearing dates and times related to their cases.
- Citizens and groups interested in cases to which they are not a party will be able to access nonconfidential data and documents online from a public data warehouse. They may have to pay for certified

What You Can Do to Get Ready:

1. Visit these websites for more information on electronic filing and online access to court documents across the U.S., in Washington, and in some counties:
   - The National Center for State Courts' clearinghouse site for news and reports on state and federal programs regarding online privacy and access, at www.courtaccess.org. This site includes the CCJ/COSCA model guidelines for policies governing access to court records.
   - Washington state court rule on electronic filing (GR 30) and proposed rule on access to court records (GR 31), at www.courts.wa.gov/court_rules (Select "Rules of General Application" and then "GR").
   - Pierce County Superior Court's enhanced electronic access site, at www.co.pierce.wa.us/cfapps/linx/main.cfm.
   - King County's report on its "Electronic Court Records Program," at www.metrokc.gov/kcscc/ecr/ecrsum.html.
   - Chelan County's FAQs and other information about electronic filing, at www.co.chelan.wa.us/scc/scc7.htm.
   - Yakima County's online traffic-mitigation program, at www.co.yakima.wa.us/courts.
2. Read national and state standards, rules, and guidelines. These include the national functional standard and access guidelines (NCSC), the national technical standards (OASIS Legal XML), and the state rule and technical standards (WA Courts).
3. Invest in technology. To file electronically, all you really need is a PC, a word processor, a web browser, and an Internet provider. Most law firms already have this technology.
4. Talk to colleagues who are doing it. Some local law firms are already filing electronically with several federal courts in Washington. Early adopters are participating in the Chelan, Pierce, and King pilots. In addition, personnel at the participating courts are often active in national forums for sharing experiences with e-filing.

copies of case documents, just as they do now (although they may be able to view them free online).

- Electronic service will be a key feature for lawyers. Although the ability to electronically file anytime and anywhere is useful and potentially saves money, lawyers often report that the really attractive feature of e-filing is electronic service. Most pilot projects have supported this feature using standard Internet e-mail, but some commercial vendors have opted for more robust solutions like hosted websites.
- Perhaps the biggest change is the use of the electronically submitted and stored document as the official record. GR 30 does not require the physical signature of the affiant, declarant, or attorney. Instead, the rule requires that the person responsible for signing the document "authorize" the document with an assigned password and PIN. This requirement will assure the court and the parties that there has been no fraud or tampering with the authenticated document. Only the person authenticating the document will know the password and PIN, which will have been issued by the AOC prior to the authentication. No paper need be retained either by the court or by the lawyer. Some superior courts already scan paper documents upon submission and destroy the paper original. If the document begins its life as a word-processing file, it merely completes the last step in a trend toward exclusively using electronic document processing.

Self-represented litigants are not forgotten in this vision of the future. Easy-to-use court-filing software will lower the barriers for citizens. This approach is most appropriate for causes of action, such as domestic violence protection orders and simple divorces, that involve a high proportion of *pro se* filers.

How's It Going So Far?

"Chelan County already has a law firm that files almost everything electronically," said County Clerk Siri A. Woods. "I don't think the change is all that different." Attorneys are accustomed to e-mail for informal communications, and they will just move to electronic mailing of official court records."

The county has contracted with E-Filing.com, a California company that provides electronic-filing services to jurisdictions and law firms. Electronic filing reduces paper handling and filing costs, and allows documents to be filed 24 hours a day (they are credited the next business day if filed after closing hours) from any location, the company says.

In Chelan County, an attorney or individual filing a document fills out an online information form—county staff members call it an "electronic envelope"—and sends it to the county. After the clerk files the document, it is moved to the imaging system, where the document is transferred into SCOMIS (Supreme Court Management Information System) without clerks needing to retype the information. Because the court still uses hard files, a print copy is made of the document.

Domestic filers can now also use a similar system to fill out all necessary forms and merge them.

"It's really slick," Woods said. "You can go back numerous times; the profile is still there and you can file your documents using the electronic profile. It saves the filer hours of typing."

She believes new court rules and new technology will change court operations in the very near future.

"I think electronic service and PINs for signatures will bring the legal group along

quickly," Woods said. "The new court rule has us on the e-road."

Yakima County's online traffic-citation mitigation has been so popular that drivers have called from other jurisdictions asking to mitigate their citations online.

"We have to say, 'No, this is district court.' I have a friend in the municipal court who says we're making them look bad," said Yakima County District Court Manager Norma Hernandez. "People like it, especially college kids, because they don't have to come back (to go to court)." We got so much publicity that people from all over, even Canada, were calling us and saying this would be a timesaver for them."

The project was the brainchild of a former judge who asked the county's technology staff to construct a method for online mitigation. This is how it works:

A driver receives a traffic citation, and must initially respond in writing on the green copy of the citation. The county mails a written response and gives the driver an option of arguing for mitigation of the citation online.

GR 30 does not require the physical signature of the affiant, declarant, or attorney.

The county's website now sports an online "mitigation form," which a driver can fill out with all the pertinent information, including ticket number and a mitigation statement, and then transmit online. On that driver's hearing date, the mitigation form is printed and brought to a commissioner or judge, who reviews the information and statement, and renders a decision. The driver is then notified by e-mail of the decision.

"It's great. People do like it," Hernandez said. The online option is new enough, however, that we're still getting the word out that it's available. "Yakima is also starting to scan documents so the county can someday go paperless," she said. "I've been working in courts for 32 years, and I didn't think I'd ever see this."

Electronic filing is coming soon in King County—the county is working on its pilot program—and Seattle attorney J. Mark Weiss is eager to try it.

"I'd like to see what the pilot looks like," said Weiss, who is on a steering committee working with county officials to construct the pilot.

Weiss said electronic filing will allow attorneys to "work closer to deadline before filing things"; will allow attorneys to file 24 hours a day and save on copying expenses; and will provide immediate confirmation that a filing was either received and recorded, or was rejected.

"That's a big plus," said Weiss, who has received notices from the county days, weeks, and even months later that a filing was rejected, sometimes for something as simple as a typo in a case number.

"That kind of delay can cause huge problems in court cases, and electronic filing should help eliminate much of that," he said.

Though Weiss wishes that the pilot projects would allow attorneys to submit scanned documents electronically as well, he is ready to work electronically as much as he can. "It's a huge change in how the clerk's office does business."

Tom Clarke is information services director for the Administrative Office of the Courts in Olympia.

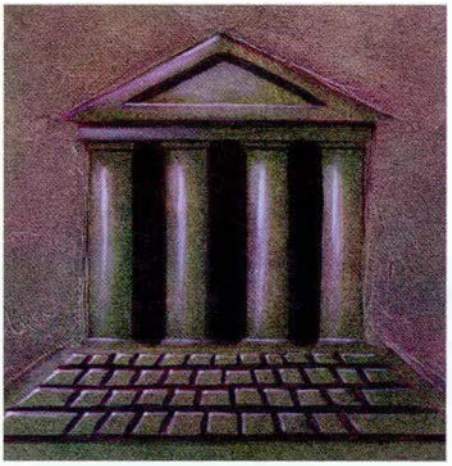
Plans for Electronic Filing in King County

by Paul Sherfey, Barbara Miner, and Catherine Krause

King County Superior Court has been working for several years on its Electronic Court Records (ECR) Program, which replaces the cumbersome, labor-intensive, paper-based case-file system previously used, with electronic records. In its simplest form, the King County ECR Program was one of the first efforts in the country to move to fully electronic records. The official court record in King County is now maintained in electronic form (with limited exceptions) and is accessed by attorneys and the public by using terminals located in each of the clerk's office locations. Judicial officers access the electronic court record from PCs on the bench and in chambers. Documents are processed by the clerk's office staff by routing through electronic "workflows" instead of passing paper documents throughout the office.

The final phase of the ECR Program, electronic filing (e-filing), will have the most impact on the court's biggest customer group: attorneys and their staff. E-filing is the electronic delivery of court filings to the clerk via the Internet. For attorneys and staff who prepare their court documents in electronic form with e-filing, documents can be delivered to the court without the need to travel or send a courier to the courthouse.

Even in its current electronic form, the filing routine for documents submitted to a superior court case file is time-consuming and somewhat redundant. The document to be submitted is generally created on a personal computer at your firm, using Word or some other common word-processing software. The document is printed and signed, copies are made, and the original is delivered to the courthouse either by a firm employee or by a contracted service provider, such as a legal messenger. At the clerk's office, staff check the document for a case number, caption, and GR 14 compliance, and then disassemble the document, run it through a scanner, review the newly recreated electronic document (.tiff file) for quality control, and associate the imaged document with the correct electronic file. Once linked to the correct case file, the document is publicly accessible and ready for docketing and internal-workflow processing within the clerk's office.



You can easily imagine the benefits that electronic filing will bring to this routine. Following preparation of the document in your office, it will be sent electronically to the clerk's office, eliminating the delivery steps by your office and the scanning and docketing steps by the clerk's office.

E-Filing Plans in King County

Preliminary operating rules for e-filing are under discussion by the E-Filing Steering Committee, made up of representatives from the King County Superior Court, Washington State Bar Association, King County Bar Association, King County Information Technology Department, King County Clerk's Office, Washington State Supreme Court Clerk, and Administrative Office of the Courts. These rules take into account new state court Rule GR 30---Electronic Filing—recently adopted by the Supreme Court. The operating rules, upon which tentative agreement has been reached, include the following:

- Documents will be submitted electronically for filing via a website.
- The filer will apply to receive a password and personal identification number (PIN).
- The password and PIN will be used to identify the filer, and will act as an electronic authentication for electronically filed documents.
- Documents for e-filing must be in PDF format. This is the same format required by federal courts. The clerk's office will also be developing XML-based "forms" that are filled out on the filing website; it is anticipated that these forms will be primarily used by *pro se* filers for internal clerk's office filings such as clerk's minutes, and for specific documents filed by county criminal-justice agencies such as the prosecutor's office.
- All documents submitted for filing via the e-filing website will be transmitted using a secure transmission. When appropriate, these documents should be marked as "sealed" by the filer, using the same methods as those used for paper documents.
- Filers will receive an electronic submission "receipt" via the e-filing website. This is the equivalent of the "received" stamp filers can use to stamp their copies of documents in the clerk's office. The clerk's office will *not* keep an electronic record of

the "receipt." It will be the filer's responsibility to keep a copy (electronic or paper) for their records.

- Filers will be able to correct online a document that has been e-filed with an invalid cause number, without being charged a faulty-document fee. Filers will also be able to fill in any missing information required for submitting a filing electronically, such as a missing case number or document title. If, during subsequent processing by the clerk's office, other errors are found, the document will be returned to the filer using the same processes used today. The filer will have the option of having the document returned via e-mail or U.S. mail.
- The clerk's office hours (8:30 a.m. to 4:30 p.m.) will continue to be used for electronically filed documents in order to address access-to-justice issues that might be raised by extending those hours only for e-filing. Filers will be allowed a short amount of time to correct errors and still get "credit" for submitting their filing when they first press the "submit" button on the website. After that, their submission will be considered received at the time the errors were corrected.
- The e-filing website will be available at all times, including when the clerk's office is closed. The only exception will be for scheduled maintenance (scheduled in advance and communicated via the website to filers). The other exception will be if the filing website goes down due to a technical error that occurs outside of business hours; in such case, the problem will be fixed as quickly as possible during clerk's office hours. This is not anticipated to be a frequent occurrence, but does emphasize the importance of not using e-filing as a way of submitting documents at the last possible moment.
- There are plans to allow for a direct interface so that a firm could submit a batch of a large number of documents for filing directly from their document-management system. This interface will be based on the standards being developed by the OASIS Legal XML Electronic Court Filing Technical Committee. For more information, see www.oasis-open.org/committees/tc_home.php?wg_abbrev=legalxml-courtfiling. This same interface would also allow an electronic-filing service provider (EFSP) to submit filings on behalf of an attorney.

E-Filing Availability in King County

King County restarted the e-filing project with a new vendor in July 2003, with an e-filing pilot project planned for summer 2004. Although specific plans for pilots have not been finalized, it is anticipated that there may be several concurrent pilots—private bar, *pro se*, internal clerk's filings, and a county criminal justice partner agency. The private-bar pilot will include attorneys from small, medium, and large firms. Pleadings in existing active litigation cases will be filed by those firms for several months, allowing for helpful feedback prior to broader expansion of the pilot. During the pilot phase, only registered pilot participants will be allowed to e-file.

Lessons learned through the pilot projects will be used to modify the e-filing system as needed before making it available to all filers. It is anticipated that our e-filing system will be available to all filers in fall 2004.

Part of this last phase of the ECR Program is providing access to electronic court-case files via the Internet. This remote access to ECR will allow attorneys and their staff to view case records from the convenience of their office, without a trip to the courthouse. This is a feature of our court's ECR Program that has been anxiously awaited by attorneys for several years. Stay tuned for more information on this part of the project.

Paul Sherfey is chief administrative officer for King County Superior Court. Barbara Miner is director of judicial administration and superior court clerk. Catherine Krause is the court's e-filing project manager.

Definitions

.tff file: A TIFF (Tagged Image File Format) file, commonly used for images of paper documents created through scanning. This file format is created when paper filings are scanned into the ECR system.

PDF: Portable Document Format, a widely used format, developed by Adobe Systems, Inc., that preserves the look and page structure of documents in paper form. Software tools are available from Adobe and other companies to convert documents from word-processing or image-file formats into PDF form. Costs range from $0 to $500, depending on the program and source.

XML: Extensible Markup Language, a metalanguage for designing a markup language that "tags" information in documents to identify information types and relationships for automated processing by computer-software programs. The "tags" are not visible to the person using an XML-based form—they are used by the software programs that create and process the form. King County expects to process standardized XML-formatted filings with a greater degree of efficiency and speed, thanks to automation that XML enables.

OASIS: Organization for the Advancement of Standardized Information Systems, a workgroup that includes members of the legal, court, vendor, and academic communities. The technical committee is developing specifications for the use of XML to create legal documents and transmit them from an attorney, a party, or a self-represented litigant to a court; from a court to an attorney, a party, a self-represented litigant, or another court; and from an attorney or other user to another attorney or other user of legal documents. The work of this group is reviewed by the National Consortium for State Court Automation Standards (includes a public comment period), and COSCA (Conference of State Court Administrators)/NACM (National Association for Court Managers) (includes a second public comment period). COSCA/NACM then recommends the standards for approval by the Conference of Chief Justices (CCJ). It is anticipated that the CCJ will then direct the state courts to use the standards.

OASIS Legal XML Electronic Court Filing Technical Committee: The electronic court-filing technical committee of the legal XML member section of the Organization for OASIS.

A Fresh Look at Attorney-Client Fee Disputes

by Michael R. Caryl

You've just hung up the telephone. Your client is angry, upset, disappointed, unreasonable, confused. You are left with his words buzzing in your ear: He is not going to pay your last bill, or thinks your fee is too high for the result achieved, or has decided to replace you with another lawyer. What once seemed like a good relationship and fee prospect is suddenly in jeopardy. You have answered his questions honestly and tried to soothe him, but you're still powerless to prevent your client from becoming your adversary.

This unfortunate circumstance confronts all of us at least once in our careers. Before you take action, you need to know what the client's rights are, as well as your own.

This article offers some commonsense advice on how to get paid, using a positive, cooperative attitude toward your client. It is based on 25 years of experience extracting fees from more than a few disgruntled and recalcitrant clients. Included are some suggestions on how to put your best foot forward in court or arbitration. In this client-friendly environment, a positive strategy can help you recover a fee you can live with.

Build Your Record Before the Termination or Fee Dispute Begins

Not all problem clients terminate their lawyers, but the client who fires you is likely to send early signals of disgruntlement. Similar warning signs tend to predate a fee dispute. Engaging the grievances expressed by the problem client with professional concern can civilize the ordeal and even preempt a termination or dispute.

Every act, omission, and communication with or about the client will enter the lore of the dispute. Your client's next lawyer may use any phone call, letter, memo, or meeting as an exhibit or subject of testimony for deciding your entitlement to a fee. A nasty letter responding to verbal accusations will reflect poorly on you a year later, in court or arbitration, when stripped of its context. Draft every communication with the assumption that it will be an exhibit in a later fee-dispute forum. Deprive your disgruntled client of the centerpiece of his case against you.

You have the opportunity to create documents that reflect well on your character and the value of your services to the client. Your client's first expression of doubt about your tactics or judgment is a red flag calling for a clear, cordial communication expressing your position. I usually use letters that delineate my advice in a polite and professional tone to foreclose suggestions of inappropriate behavior in a later dispute. If the client's questioning continues, your vested interest in exhibiting your professionalism only escalates.

When to Get Out First

During my early years in practice, I almost never fired a client. I fought to keep unfriendly and unworkable relationships just so I would not lose the fee. In the past five years, I have fired twice as many clients as I did in the first 15. Nonetheless, I have hung on too long to a few clients when I should have known better.

Many lawyers are loath to drop a case, even if the client's conduct or attitude spells trouble. A lawyer working on a contingent-fee basis may have to eat her startup fees if she fires a client. Even lawyers who work on an hourly basis may be reluctant to turn away a paying client, especially when trying to build a client base. Some lawyers worry that firing clients may hurt their reputation or reduce chances for referrals.

Taking control and terminating a relationship that is going awry may end up

saving you heartache and headache. Withdrawal is cheaper and easier than dealing with bar complaints, fee disputes, and malpractice allegations of a problem client gone bad. Even if the client does not threaten your professional practice, a toxic relationship can assault your dignity, distract you from other clients, and deplete your work of pride and pleasure. Exorcising these specters can be worth losing a fee.

Learning to read the telltale signs of a problem client will help you trust your instincts to walk away early. If you have a busy practice, politely withdrawing your representation can lighten your load. Although withdrawing usually eliminates entitlement to a contingent fee, you still may recover in *quantum meruit* under a theory of constructive termination, if the client's conduct has made a productive attorneyclient relationship impossible.

So You're Going to Be Fired

Termination isn't likely to happen often. Our behavior and practice can influence how often it occurs, but even the best lawyers cannot prevent it completely. The law does not discourage the client from firing you. It has happened to me a half-dozen times.

A client has an unmitigated right to fire the attorney at any time "either for good or fancied cause, . . . or wantonly and without cause whatever." *Kimball v. P.U.D.*, 64 Wn.2d 252, 257, 391 P.2d 205 (1964). Even a contingent-fee arrangement does not stand in the way of an untimely discharge by the client. Counsel can do absolutely nothing to prevent the termination, nor should he try. A client hellbent on firing you either knows he can, or can easily learn that he can, merely by calling any other lawyer. In this arena, the law tilts in favor of the client.

Treat the client who fires you with the same courtesy and cooperation you would show if withdrawing voluntarily from the representation. Assume that the client is right in firing you. While you don't have to take abuse, this is not the time to counterattack. Assure the client that you will fully cooperate in transitioning to her new lawyer. You may suggest that she ask the new lawyer to counsel her about a stipulation to the amount of your fee, so you can avoid filing an attorney's lien. If you must file an attorney's lien to protect your fee entitlement, let her know beforehand so she does not end up feeling ambushed.

Being fired by a client gets easier with experience. It teaches you how to preempt a future untimely termination and when to get out first. Learning how to take termination gracefully improves your chances at a positive fee recovery.

Walking Away from Your Fee

The paramount question is whether to pursue your fee at all. Your errors-and-omissions insurer has probably warned you that suing your client for a fee may well result in a counterclaim for malpractice. Walking away from your fee is an option worth considering any time you anticipate a contentious fee dispute.

First, how much is at stake? The size of your potential loss will depend on how far you were into the representation when it ended. If you have wholly accomplished what you were hired to do, then giving up your fee entirely makes no sense and only encourages future abuse by clients. If there is actual or apparent validity to the client's complaints, though, you may want to walk away from even a substantial fee. Reflect honestly on whether the relationship with this client had been good until recently. Was there any disagreement with your client that opposing counsel could portray

as a rift? Any cross words with the client or legal advice that she did not appreciate may return to embarrass you or, worse, serve as the basis for a complaint. If there are any problems that you would rather not confront—for example, you actually did make a mistake that has harmed the client—you should consider walking away from the fee.

Informal Fee Resolution

I urge a face-to-face meeting with the client as soon as he raises any questions about your fee. Listening to the client's side, and expressing concern for the client's views, may mollify a hostile client. Plain talk can iron out misunderstandings.

An early meeting may set the stage for an amicable compromise in which your fee is reduced in exchange for prompt and certain payment—an optimal solution. It preserves the good will you have with the client and locks out additional costs or risks. The high price of litigation doesn't just buy you a chance at recovering some of your fees; it also results in a client with hard feelings who may file a bar complaint against you or badmouth you to other clients and business referral sources.

As long as this window to dialogue is open, don't dig in your heels. As an arbitrator, I have seen lawyers act like stereotypically greedy attorneys. Stridency corners the client into a more hostile stance over fees. Courtesy, restraint, and a reasonable demeanor go a long way to facilitate an amicable resolution.

When All Else Fails—Fee-Determination Forums

Because of the fiduciary aspects of the attorney-client relationship, collecting attorneys' fees from a client is unlike any other collection activity. The fiduciary duty is, by and large, a one-way street. The attorney must respect and observe all aspects of his fiduciary duty, while at the same time the client is seeking to eliminate any fee entitlement. The lawyer's single greatest temptation is to engage in the same tactics as the soon-to-be ex-client, and in so doing, risking the breach of that fiduciary duty.

Interfering with the client's ability to obtain a new lawyer, charging unreasonable fees, or using unfair means to get paid gives rise to fiduciary-breach claims. A lawyer's breach of a fiduciary duty to a client may result in partial or total denial, if the lawyer has already been paid, or disgorgement of attorneys' fees. *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992). In *Cotton v. Kronenbury*, 111 Wn. App. 258, 44 P.3d 878 (2002), Division 1 upheld the entire forfeiture of an attorney's fee where the terms of his fee agreement breached fiduciary duties to the client.

No matter which forum is chosen in a fee dispute, you are much more likely to receive the fee you have earned through an attitude of reasonable generosity than through adversary litigiousness. Wearing the white hat puts you in the position of avoiding the kind of "compromises" in a fee-dispute resolution that we all dread. Reasoned professionalism rises above the level of a petty or vindictive client and puts you in a position to point out the client's extremism. A record favorable to the lawyer leverages a favorable fee result.

The attorney must respect and observe all aspects of his fiduciary duty, while at the same time the client is seeking to eliminate any fee entitlement.

Civil Action on the Contract

The fiduciary duties of the attorney-client

relationship alter the lawyer's common-law rights in the underlying contract. Most courts will give the client the benefit of the doubt unless he comes across as dishonest or unreasonable. Judges tend to find a basis for compromise, even if the fee claimed was earned. The outcome is not easy to predict.

While the hourly rate constitutes an enforceable basis for collection in an hourly fee agreement, the fiduciary nature of the attorney-client relationship and RPC 1.5 require the total charge to be reasonable. The reasonableness of the charge depends on the hourly rate and the number of hours, given the undertaking—if in fact those hours were incurred at all. RPC 1.5(a) and (b). RPC 1.5 contains a list of eight considerations the court must assess.

Your rights to your contingent fee under a written contract change dramatically upon the rendering of substantial performance.

In contingent-fee arrangements, the client who terminates an agreement before the attorney renders substantial performance is not technically in breach of contract and cannot be compelled to pay damages. *Barr v. Day*, 124 Wn.2d 318, 979 P.2d 912 (1994); *Ross v. Scannell*, 97 Wn.2d 598, 647 P.2d 1004 (1982). The attorney and client cannot contract around this rule. *Hamlin v. Case and Case*, 188 Wn. 150, 161 P.2d 1287 (1936). If you are fired short of substantial performance, there is no entitlement to the contingent fee.

The contingent-fee attorney still has an equitable remedy in *quantum meruit* for the reasonable value of the services. *Ramey v. Graves*, 112 Wn. 88, 91, 191 Pac. 801 (1920). The attorney seeking fees has the burden of proving what is reasonable compensation, based on equitable considerations such as the amount of the client's recovery, the number of hours spent, and the risks involved. The lawyer's normal hourly rate (the rate he gets on the open market) may not be determined to be the reasonable rate, although it is certainly evidence. Nor will the total number of hours expended be binding as far as this determination. The services must be shown to be appropriate and reasonable in extent.

Kimball v. P.U.D. says the absence of time records is not fatal to a *quantum meruit* recovery. The attorney may rely on circumstantial evidence tending to show time and effort expended, including the state of the file, settlement offers made, and the extent of trial preparation. However, the trial court will certainly give the client the benefit of the doubt in totaling hours where there are no time records.

Your rights to your contingent fee under a written contract change dramatically upon the rendering of substantial performance. Substantial performance ripens the client's duty to pay the agreed contingent; nonpayment gives rise to damages measured by the contingent agreement. *Taylor v. Shigaki*, 84 Wn. App. 723, 729-30, 930 P.2d 340 (1997). Substantial performance usually means obtaining a settlement offer which is within the client's stated goals, or obtaining a policy-limits offer. *Taylor* also demonstrates that obtaining a very substantial offer of settlement may constitute substantial performance, such that the contingent fee is determined

to have been earned. Prevailing under the substantial-performance exception appears to require that the attorney obtain a firm settlement offer *and* that the client have a bad-faith motive in discharging his attorney to cheat him of his contingent fee. The purpose of awarding the expectation interest to an attorney discharged after substantial performance "is to prevent clients from firing their attorneys immediately prior to the occurrence of the contingent in order to avoid the contingent fee." *Barr*, 128 Wn.2d at 328.

Statutory Resolution Under RCW 2.44.040

A littleknown statute, RCW 2.44.040 *et seq.*, provides another remedy. Upon motion by a terminated attorney, the trial court shall compel the party to pay the attorney before allowing that party to substitute counsel. In *State v. Moore*, 34 Wn.2d 351, 208 P.2d 1207 (1949), the court held that where the client seeks to remove an attorney and substitute another under this statute, the court may determine the appropriate fee for the withdrawing attorney. If you are fired in litigation, you should ask the court for a summary determination on the issue of fees whenever the client terminates you or forces you to withdraw before entry of judgment. *Moore* indicates that the court can even enter judgment in favor of the lawyer against the client for the fees determined.

Voluntary WSBA Fee Arbitration

The WSBA has a fee-arbitration panel for the voluntary resolution of fee disputes, but I have not had experience with this procedure. A proposed court rule circulated several years ago would have made this process mandatory. That proposed court rule was abandoned in the face of significant member opposition. (See below for information about the fee-arbitration panel.)

Voluntary arbitration has no procedural rules to my knowledge, other than the right of either side to veto the procedure. But if the client does agree to this form of arbitration under Chapter 7.04 RCW, the award is binding, except in cases of fraud, statutorily recognized bias, or other very limited grounds. Compromise is the likely resolution. For smaller fee disputes, it may well be the forum of choice.

Filing and Foreclosing an Attorney's Lien

The attorney's lien is a right of action under RCW 60.40.010 *et seq.* that protects a lawyer's fee entitlement. The attorney's lien attaches to a *res* that your services were intended to bring about—money in the hands of the adverse party to the suit, money in your hands belonging to the client, or a portion of the judgment. If there is no *res* to which the fee can attach, there is really no place for the lien. The requirement of a *res* generally limits the use of a lien to plaintiffs' lawyers involved in litigation. An attorney's lien never attaches to real property. *Ross v. Scannell.*

Though there are no legal formalities to an attorney's lien, in your lien you should identify the following: yourself as counsel, the client, the agreement under which your client accrued the fee obligation, the *res* or fund to which the lien attaches and in whose hands the fund resides, and the amount claimed. Prepare the lien in the pleadings format for the court that has jurisdiction over the *res*. A copy should be served not only on the client, but on the owners or holder of the ultimate obligation or indebtedness to the client. If an insurer is involved, the insurer should be given notice. Proof of service is essential.

Even if you filed your lien with the court, you still may prefer to instigate a lawsuit on the contract instead of foreclosing the lien. A common-law contract action will allow you to submit testimony on the quality of the services performed, or present an expert on legal ethics and fee agreements. Discovery is available. Another alternative to foreclosure is to send the client a final bill or accounting, which triggers the client's rights to an RCW 4.24.005 hearing, if the matter is a tort action.

Foreclosure of your lien is the better route of choice if your goal is to obtain a quick and summary determination, or if

WSBA alternative dispute resolution (ADR) includes two voluntary and confidential programs:

1. Fee Arbitration
   Purpose—to determine the fair and reasonable value of a lawyer's legal services for a client.

- If both parties agree to participate, the award is binding.
- Fee to participate is $75 per party; neither party may seek fees for participating in arbitration.
- Disputed funds may be deposited in the non–interest-bearing WSBA Fee Arbitration Trust Account, to be dispersed directly upon receiving the award.
- One lawyer-arbitrator participates in all disputes; two nonlawyer arbitrators are included for amounts in dispute over $5,000. Both lawyers and nonlawyers are approved by the BOG and have appropriate training and experience.
- In 2002, 86 petitions for fee arbitration were filed, and 28 proceeded to an arbitration hearing.
- Of the cases heard in arbitration, 54 percent were for amounts over $5,000 (these are heard by a three-person panel). Amounts have ranged from $200 to $50,000.

2. Mediation
   Purpose—to resolve fee disputes, communication problems, or other issues between a client and a lawyer, a lawyer and another lawyer, or a lawyer and others, including professionals such as court reporters and expert witnesses.

- Mediators assist parties in negotiations and facilitate settlement. The result is a structured discussion of the dispute and a mutually agreed-upon outcome.
- Fee to participate is $75 per party.
- In 2002 there were 69 requests for mediation, and in 29 cases the respondent agreed to participate.
- Mediators are approved by the WSBA Board of Governors and have the appropriate training and experience to serve effectively in a facilitative role. Lawyers assigned as mediators are required to have been active members of the WSBA for at least seven years.

you have accomplished what you were hired to do and the client is simply trying to defeat part or all of your fee. Moving to foreclose your lien creates no new cause of action, and there are no filing and service fees or specific discovery rights. Nonetheless, the court may grant some discovery.

To foreclose the lien, prepare a short motion, an argument of the law, and an affidavit summarizing all the pertinent facts, including your fee agreement, any estimates or other fee-related correspondence with the client, an itemized summary of your services and results, and the client's explanation for refusing to pay or demanding a fee reduction. If the client challenges your hourly or contingent-fee rate or the number of hours, you should consider obtaining an affidavit from an expert to establish that your fee is reasonable and appropriate. The final fee award will probably derive from conflicting affidavits rather than a full adversarial trial.

Upon motion of either party, the court may either summarily determine the facts on which the claim of lien is founded upon affidavits and briefing alone, or refer the case out for a factual determination. RCW 60.40.030. If your local rules permit, you would probably prefer that the court resolve the fee dispute on the affidavits alone. Oral argument gives the client an opportunity to criticize you in open court, and to invoke concepts of "equity."

In a Tort Action, an RCW 4.24.005 Hearing

RCW 4.24.005 enables a tort claimant charged with a final billing or accounting of attorney's fees to petition the court to determine whether the fees are reasonable. To trigger the inquiry, the client must file a petition no later than 45 days after the client receives a final billing or accounting. The lawyer cannot veto this remedy.

Although one can imagine clients exploiting this statute to unilaterally abrogate the contract and evade the bargained-for fee as soon as the lawyer has performed, I am the only Washington lawyer I know of who has ever litigated an RCW 4.24.005 motion. In fact, I have tried two of them. I know of only a few other lawyers where the client even made the petition, and those cases all settled. Still, every contingent-fee tort lawyer should be aware of this statute.

Upon a timely petition, the statute directs the court to weigh 10 factors in determining reasonableness. Only one of these considerations is the terms of the fee agreement. The statute does not prioritize any of the factors, giving the judge wide latitude in determining what is fair and reasonable. It is advisable to put a paragraph in your contingent-fee agreement informing the client of this remedy, because the ninth factor under this statute is whether the client was aware of his right to make an RCW 4.24.005 petition.

You are in a better position if you can change the issue from whether the fee was excessive to what was bargained for and whether it was earned. Argue that the only reasonable fee under all the circumstances is the contingent fee. If you have several hundred hours in the case, it is a compelling argument; if you have only 10 hours, it will be an uphill battle.

Choosing a Forum

A prompt hearing almost always benefits the lawyer. Whenever possible, the lawyer should push for quick remedies rather than the unlimited discovery and slow resolution of a common-law contract suit. If the case is not over and the client has new counsel, then the quickest and simplest route to the fee may be an RCW 2.44.040 motion. If there is a *res* such as insurance coverage or a bond, attaching and foreclosing a lien will enable a prompt hearing and a quick determination. You may also benefit if your client pursues an RCW 4.24.005 hearing with its summary procedures. However, if you are defense counsel or are not involved in litigation for the client at all, you are probably relegated to an action on the contract.

Seeking the client's agreement to a voluntary WSBA-sponsored arbitration may be wise if the amount in controversy is very small, or if a fee determination is simple, or if you want to handle the matter *pro se*.

Conclusion

Termination of the relationship and/or fee disputes can be avoided by better client relations, fuller communication, and the obvious—treating the client with dignity and fairness—even when his own conduct might not otherwise warrant it. Answer all questions, even accusatory or sarcastic ones. Treat each communication as if it will be evidence later. If the relationship has badly deteriorated, consider withdrawing first. If the client beats you to the punch, deal with termination gracefully.

Cooperate with the client and new counsel. Determine how best to protect your fee, if possible; then seek an amicable compromise, and file your lien only if nothing amicable can be arranged. Choose the forum that is best suited to your immediate needs; then move ahead promptly toward a resolution. At all times, be courteous and cooperative, while giving your former client the smallest possible target. At all times, wear the white hat. In so doing, you will position yourself for the best possible outcome in this client-friendly environment.

Michael R. Caryl joined the WSBA in 1977. He is a member of the Seattle firm Mikkelborg, Broz, Wells and Fryer PLLC. Caryl took Taylor v. Shigaki *through trial and appeal. You can contact him at mcaryl@mbwf.com.*

Pet Peeves

by Robert C. Cumbow

This issue, I have a grab-bag of pet peeves—annoying little misuses that every day remind us how easily the richness and precision of our language can be eroded into meaninglessness.

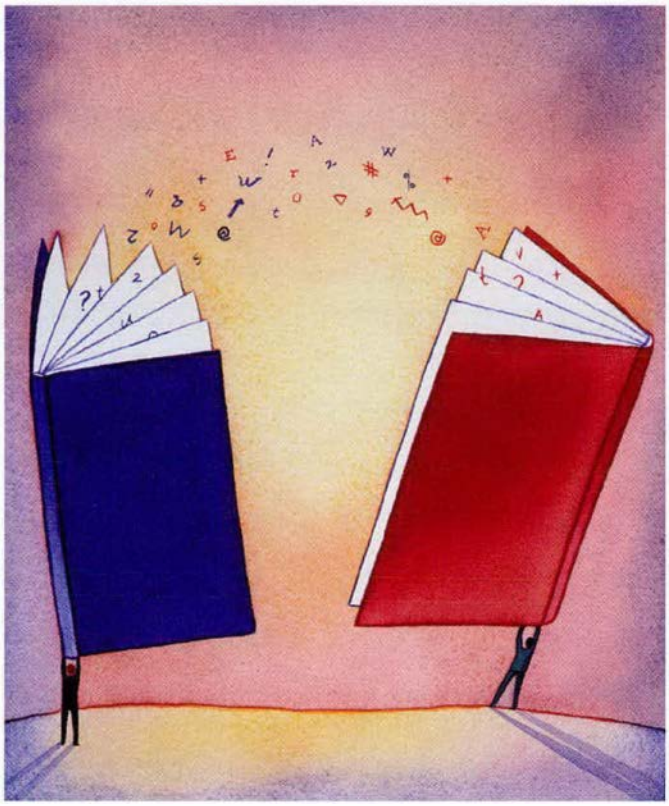
1. That Is, For Example

No one ever seems to get confused about when to use "etc." or what it means (though it is, alarmingly, sometimes misrendered "ect."). But two other simple Latin abbreviations seem to get confused all the time, and they're not really that difficult to keep straight. I refer, of course, to our friends "i.e." and "e.g." The one that means "that is" is "i.e."—an abbreviation for the Latin "*id est*," which literally means "that is." It is used to introduce an explanation, definition, or clarification of what one has just said. Example: "Sherry is a partner at her firm; i.e., she is an owner of the firm."

By contrast, the abbreviation "e.g." stands for "*exempli gratia*," a Latin phrase meaning "for the sake of example" or "by way of example"; thus "e.g." means "for example," and is used when introducing an open-ended list of one or more specific illustrations of what you have just said. Example: "Sherry is experienced in several areas of law, e.g., tax, estate planning, and business-entity formation." I had a sophomore high-school English teacher who used to pun on the "*gratia*" portion of "*exempli gratia*" by mock-translating the phrase as "no charge for these examples." Sadly, I think high-school English teachers like that are now as gone as the study of Latin.

2. Slaughtered Sayings

It's nice to liven up your rhetoric with colorful expressions, but it's so much better if you use them properly. Many people use the term "lion's share" to mean the biggest share or the first choice; very few who use this term understand that the "lion's share" of something traditionally means *all* of it—or at least all of it that's worth having. When the lion is finished, there's still a little left for the hyena. But if you and I are dividing something 70-30, it's not correct to say that you are getting the lion's share.



Another much-abused term is "Hobson's choice," which most speakers and writers who use it seem to think means a difficult choice or a tough decision. When someone is in a tricky situation, we might say that person is on the horns of a dilemma—either choice has undesirable consequences—but it is not correct to say he faces a Hobson's choice. Thomas Hobson operated a livery stable in 16th-17th century England. ("Livery" comes from the French verb *livrer*, to "deliver," and is not, as is widely believed, a reference to *live*stock.) It was Hobson's custom to require that each customer take only the horse nearest the door. Thus a Hobson's choice is not a tough choice; it's no choice at all. An excellent example of a Hobson's choice is the legendary—and probably apocryphal—story that Henry Ford's stated policy regarding his Model T automobiles was that customers could buy the cars in any color they wanted, "as long as it's black."

Another widely misunderstood term that seems to be on everyone's lips these days, and nearly always wrongly, is "track record." It's odd that this term should be so commonly misused, since it's not difficult to understand at all. It comes from horse racing, and it refers to the best performance in a particular event at a particular racetrack. Thus you might ask at Emerald Downs, "What's the track record for the four-and-a-half furlong?" meaning the best time in which any horse has ever run that distance at that track. (For the answer, and other Emerald Downs track records, see www.emdowns.com/default.asp?cat=6&id=139.) People who use the term "track record" simply to refer to a particular person's or organization's past performance betray the fact that

they don't know much about either horse racing or their own language.

And can anybody tell me why so many speakers and writers have started using "step up to the plate" as if it meant "take responsibility for past mistakes" rather than "get ready to perform"?

3. Fractured Foreignisms

Similarly, it doesn't help your image or your rhetoric to use foreign words if you don't do it correctly. When the U.S. Army was looking for stored weapons of mass destruction in Iraq a few weeks back, it was common to hear military authorities pronounce the word "cache" as "kashay." That may have been the U.S. military's way of getting back at the French for criticizing the U.S. posture on Iraq; but it seems more likely that the speakers just didn't know any better. (By the way, there is a French word "cachet," but it has an entirely different meaning.)

Sadly, in the United States today, it often doesn't make you look like an idiot to mispronounce foreign words, because *everyone* mispronounces them. People who know even a little about French should know that "lingerie" is not pronounced "lawn-zheray," but most Americans continue to embarrass themselves and the rest of us by insisting on that pronunciation.

Somehow, a lot of us seem to think that using an "-ay" sound at the end of a French word, even if it's dead wrong, makes us sound high-class. (If you like, you can pronounce that last compound word HOY-class, with a Joisey accent.)

Some fractured French has been around so long it's become thoroughly embedded into American English. There's really no such thing as a "chaise lounge," for example. The term is "chaise longue," and it's French for "long chair." But the battle's long since lost on that one.

In addition to mispronouncing foreign words, Americans also have a way of using them incorrectly—trying to make themselves sound smart but betraying the fact that they don't actually understand the meaning of what they're saying. For example, most people who use the Greek phrase "hoi polloi" ("the people," in the sense of "common folks") precede it with the word "the." But "hoi" *means* "the," making a second "the" redundant. A similar usage is the even more common "please RSVP"—which announces that its user has no idea that the "SVP" portion of the phrase is an abbreviation for "please" in French.

4. Back-Formations

Back-formations are new words that are formed as a result of an initial misunderstanding of the origin or meaning of an existing word. These can be useful and enrich the language.

The now commonly accepted English verb "edit" is a back-formation from the word "editor," a Latin noun for "publisher" first used in English in 1649 for one who oversees the preparation of materials for publication. The verb "edit" came much later, coined in 1791 to mean "what an editor does," and it was a useful addition to the language because, before that, there wasn't a single word that stood for an editor's activities.

A little less enriching is the back-formation "hardball," which, once colorful, has become an annoying cliché. The word "hardball" is a back-formation from "softball," a variant version of baseball. Somewhere along the line, someone assumed that if softball was played with a softball, then baseball—presumably the "real thing" and not just an easier imitation—must be played with a hardball, and thus people began to speak of "playing hardball"

to mean "getting serious." This is a misnomer in more ways than one, because not only is there no such game as "hardball," and no kind of ball called a "hardball," but also the game of softball, properly played, is no easier or more lightweight than baseball. Just maybe a little less dangerous.

But although back-formations can make the language more colorful, they can also create cloying, annoying effects. The neologism "mentee" for one who receives the benefits of a mentor is one of the more obnoxious back-formations of the last couple of decades. A "mentor" is not someone who "ments," and we don't need the word "mentee" for someone who is taken under the wing of a mentor. If you need a word for that, "protégé" will do nicely.

Because in English we frequently add "er" or "or" to a verb to create a noun for the doer of the action, many speakers of

A little less enriching is the back-formation "hardball," which, once colorful, has become an annoying cliché.

English incorrectly assume that *any* noun ending in "er" or "or" indicates that the root preceding it is a verb form. That's how, through a two-step process of misunderstanding, we get words like "mentee." But although an actor is one who acts, and an editor is now one who edits, a mentor doesn't ment, a laser doesn't lase, a rector doesn't rect, a lector doesn't lect, a motor doesn't mot, and a rotor doesn't rot (at least not if it's properly cared for).

5. Doublespeak and Nospeak

George Orwell in *1984* coined the term "newspeak" for a government's deceptive use of words and phrases to hide truth. The word "doublespeak" refers to a use (usually by a politician) of words that mean one thing to signify another—e.g., "Homeland Security Act" or "I did not have sex with that woman."

I use the term "nospeak" for coinages in which people think they're adding meaning when in fact they are subtracting it. For example, the growing use over the past decade of the term "content" suggests a verbal and cultural bankruptcy. The word "content" might be appropriately

used in the limited context of contrasting something meaningful with mere form or style. But frequent references to "website content" and "content developers" imply that online communication is driven first by the need to have a web presence and only secondarily by the need to have something useful to say. Of course, I suppose that all too often that is truly the case. For what we now call "content" we used to use such words as "art," "entertainment," "information," "humor," "comment," "education," "literature," "news," and many others. I don't know anyone who went to college to major in "content," and I don't like that word used to lump into some amorphous mass the creative work of good people.

Another recent coinage that is driving me crazy is "identity theft." Theft is what occurs when someone steals your property, i.e., takes it away from you. When a car theft occurs, the car's rightful owner no longer has the car; the thief does. If you were truly a victim of identity theft, neither you nor anyone else would know who you were. This side of science fiction, there is no such thing as identity "theft." There is a perfectly good word for what happens when someone who is not you pretends to be you. That word is "infringement." When someone copies an author's original work without permission, the copier isn't *stealing* the work from the author, because the author still has the work and his rights in it, even after the act has occurred. That's why we say the copyright has been "infringed," not "stolen." The same thing is true when your identity is mimicked by someone else. Maybe your credit cards and your money have been stolen, but your identity hasn't been—it's been infringed.

And while we're on the subject, one of my biggest pet peeves is hearing people use the terms "copyright" and "trademark" as verbs.

And while we're on the subject, one of my biggest pet peeves is hearing people use the terms "copyright" and "trademark" as verbs. The word "copyright" is a noun referring to the group of rights an author owns in an original work he has created and fixed in a tangible medium. You can *register* a copyright, but there is no such thing as "copyrighting" a work. The copyright exists when the work is created. There is also no such thing as "trademarking" a name. The word "trademark" may be used as a verb when one speaks of "trademarked goods," in the sense of putting one's trademark on the goods (or "branding"). But one doesn't "trademark" a name. One chooses a name and uses it as a trademark, and by virtue of that use one acquires trademark rights. You can *register* your trademark, but it's redundant to say you are "trademarking" it.

As a matter of fact, too many people don't even understand the difference between "copyright" and "trademark." But now we are getting to things that peeve me because of my area of law practice. So I'd better sign off before I get accused of becoming esoteric. Got any pet language peeves of your own? Send them in and we'll look at them in a future column. Meanwhile . . . watch your tongue.

Robert C. Cumbow is a shareholder with Graham & Dunn, Seattle, where he counsels clients in beverage, food, communications, entertainment, and other businesses on trademark, copyright, advertising, and media law. He teaches at Seattle University Law School and has written widely on law, film, food, and language.

The Board's Work

by Lindsay Thompson

Bellingham, July 24-26

July's always a crowded month for the Board of Governors. It's their last meeting till the annual meeting in September, so there's a lot of clearing the decks going on.

The board holds a one-day retreat every July, the day before the regular meeting. It's partly an orientation for new governors, and partly a midcourse correction as the WSBA moves ahead on its long-range plan. So that's what happened Thursday.

Friday, Court of Appeals Judge **Marlin Appelwick** and WSBA Public Legal Education Manager Pam **Inglesby** proposed a charter and a set of bylaws for the Council on Public Legal Education. Established in 2000, the CPLE has tried to assemble a cadre of groups and individuals—including the WSBA, the UW, the Attorney General's Office, and the Administrative Office of the Courts—to do useful things. Chief among the useful things is a website, soon to be unveiled and chock-a-block with information for the public. The WSBA has mainly staffed the CPLE effort.

Appelwick wanted to formalize how the CPLE operates, and its relationship to its various parent bodies with the charter and bylaws. He wanted to keep it an unincorporated association for various administrative conveniences, but still kinda sorta under the WSBA's umbrella. The governors tend not to like kinda sorta relationships because they kinda sorta lead to potential liability claims. So they created a group composed of WSBA Exec **Jan Michels**, General Counsel **Bob Welden**, Governors **Howard Graham** and **Paul Lehto**, and Appelwick, to go away and sort something out. They'll report back in December.

Spokane lawyer **Jerry Boyd** presented the annual report of the Court Rules Committee, which devotes itself to updating and improving the morass of court rules Washington has. This year he proposed creation of a new CrR and CrRLJ 4.11, and amendments to CrR and CrRLJ 4.6, to allow interviewing with a tape recorder potential witnesses in criminal cases. He also proposed amendments to ER 405, 407, 608, and 701, and technical corrections to some RAP, RALJ, and CRLJ rules. The board recommends rule changes from the committee to the Supreme Court, which adopts such of them as they see fit.

Most of the changes were easy. ER 405 and 608 were amended to conform to the federal rule allowing opinion testimony concerning character or a trait of character in addition to testimony as to reputation, since the former often gets in as the latter anyway. ER 407 would be amended to make evidence of subsequent measures inadmissible to show that a product or design was defective. This will codify *Hyjek v. Anthony Industries*, 133 Wn.2d 414 (1997).

All of these changes the board approved unanimously. They did the same for correction of errors and anomalies (like subsections that skip from "a" to "c") in RAP 15.4, RALJ 9.3 and 10.2, and CRLJ 6.3.

More troublesome was the tape-recording rule change. As is, people interviewing potential witnesses in criminal cases have to take notes. The proposed rules would allow tape recording in certain circumstances.

The discussion quickly turned into what I call a Cat v. Dog dispute: everyone arrives with an opinion, they all take sides, and then talk past each other for a long time, changing no one's mind in the process. Victim advocates and defense lawyers had one point of view, prosecutors another. After a while the board sent the matter back to the Rules Committee and told them to talk with the cats and dogs to see if they can sort something out. They'll report back in December.

Well behind schedule, the board recessed to lunch with the Whatcom County Bar Association. WSBA President **Dick Manning** gave Local Hero Awards to husband-and-wife lawyers **Breean Beggs** and **Laurie Powers** for a remarkable array of volunteer services they provide in their community, in addition to doing their day jobs and raising three kids.

After lunch, **Brooke Taylor** of Port Angeles updated the board on efforts to see if there will be suitable office space for the WSBA to consider when its current lease ends in 2006. The work goes apace. Several buildings are interested and are in discussions about what the WSBA's needs will be if it decides to move.

Presidents, presidents! The ground is thick with them this time of year. There's President Dick Manning and President-elect **David Savage**, and now President-elect-elect **Ron Ward** (the heir and the spare). The surfeit will wane in September when Manning leaves office, Savage ascends, and Ward becomes ascendant-in-waiting. But because Ward is a sitting governor, he has to give up his seat in September, and someone has to serve the remaining two years of his term for the 8th District.

Three lawyers threw their hats into the ring: **Richard Holt** from Issaquah, and Bellevue attorneys **Randy Gordon** and **Zachary Mosner**. Each made a pitch to the board, and all did well by their cases; Gordon got the appointment. Governors **Fawn Sharp** and **Zulema Hinojos-Fall** took part in the interviews by telephone, but were otherwise absent on other business.

Until 1989 or so, you could bring resolutions on anything to the WSBA's annual meeting, but after a fight nearly broke out over one to condemn the mining of Nicaraguan harbors, GR 12 was adopted by the Supreme Court to suggest that as a mandatory membership group, the WSBA stick to legal issues. After Alva Long's death in the mid-90s, members of the Resolutions Committee have been as lonely as the Maytag repairman. But lo—along came a resolution for this year, asking the WSBA to condemn U.S. government actions that the resolution says detains citizens without access to counsel or meaningful judicial review. WSBA General Counsel Bob Welden said the resolution raised issues within the scope of GR 12 and so could be certified to the Resolutions Committee for a hearing and action at the annual meeting. So the board certified it.

Along came another Cat v. Dog issue. Governor **Ken Davidson** has been active in King County Bar Association efforts to reform drug-sentencing laws, and proposed a resolution under which the board would urge Washington's congressional delegation to support legislation to make state medical-marijuana laws enforceable, and thereby benefit chronically ill patients who find physician-prescribed marijuana eases pain.

After introductory comments, Davidson turned the discussion over to defense

attorney **Doug Hiatt**; a past client of Hiatt's in a medical-marijuana case involving this state's law allowing medical use; and **Jeff Sullivan**, who heads the criminal division of the U.S. Attorney's Office in Seattle. They talked past each other for an hour or so. After some efforts to table the whole business, the board voted 7-5 to support Davidson's resolution.

Saturday morning, **Peter Ehrlichman** and **Ellen Dial**, who work on the WSBA's task force updating the ethics rules, arrived bearing an "interim formal opinion" on how Securities and Exchange Commission regulations enforcing the Sarbanes Oxley ("no more Enrons") law affect Washington lawyers' ethical obligations under our court rules. This item wasn't so much a Dog v. Cat discussion as it was a Silent Dog Whistle discussion, intelligible to lawyers who represent publicly traded companies or practice before the SEC. The rest of us will live our lives cheerfully oblivious to whether we have to make a "noisy withdrawal." The opinion gets its "interim" tag because the SEC rules may change some more, but as they were set to go into effect in August, the task force wanted to give affected lawyers some guidance.

The board gnawed on the text for a while and then adopted it as presented. You can read it on the WSBA website at www.wsba.org/formalopinion.doc.

Dwight Williams presented the report of his task force on the law-student loan crisis. For those out of law school a while, the cost of law school is generally so high now you can't get through without borrowing sacksful of money, and then when you get out you have a monthly loan repayment the size of a mortgage. So lots of lawyers are opting out of public-service work because they can't afford the low salaries such work pays.

Williams said a number of states are looking at or have created funds to help public-service lawyers with grants from a loan-repayment fund. Trouble is, such funds need huge sums of cash to make a real dent in their beneficiaries' loan payments. The board thanked Williams for the report and asked his committee to come back with ideas on how such a program might be set up, run, and funded in Washington.

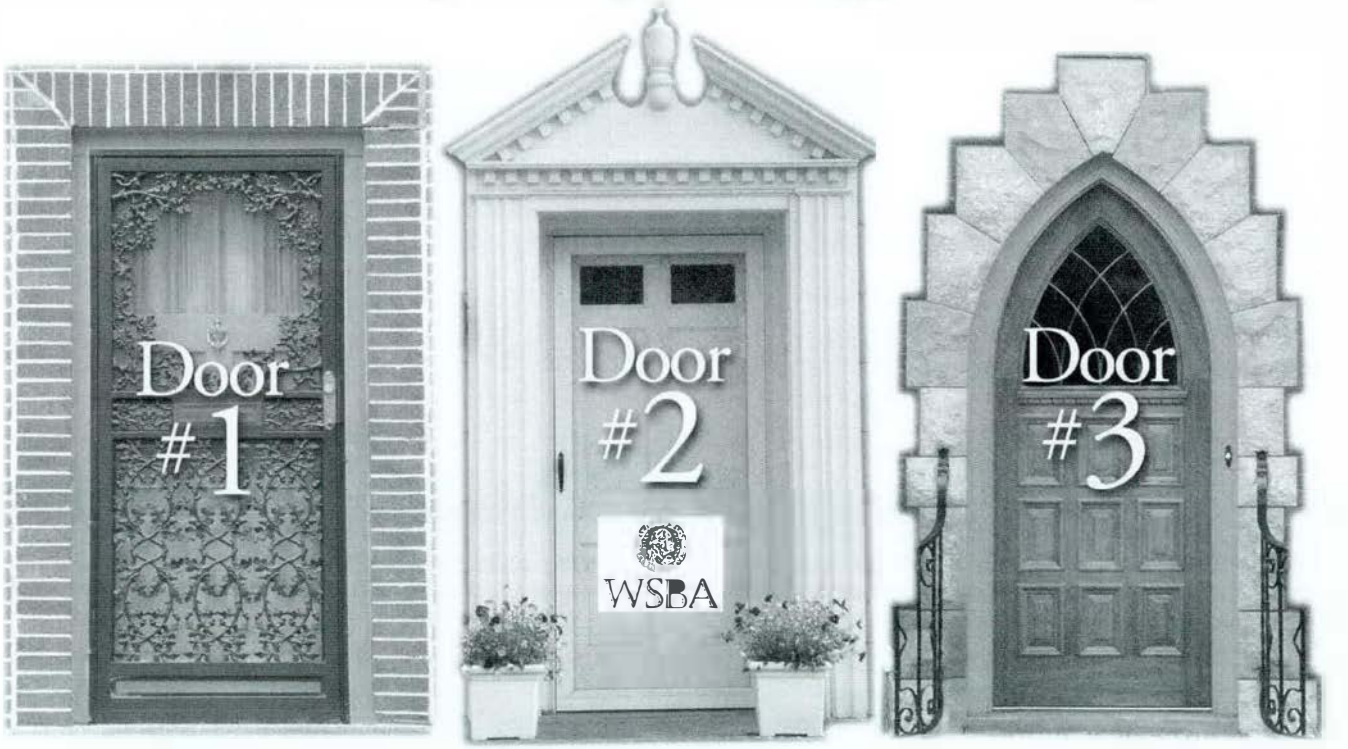
Governor Davidson, who is also WSBA treasurer, presented the 2003-04 budget. It's a steady-as-you-go affair, bearing no big increases in things, so the board approved it.

Board meeting dates and locations are listed on the WSBA website (www.wsba.org). You can attend and see the sausage being made for you. As always, this report is not the official minutes of the meeting, just what I saw.

Keep in Touch via E-mail

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. Representatives are available Monday through Friday, 8 a.m. to 5 p.m.

Not sure which malpractice insurance policy is right for you?



Malpractice insurance premiums have been rising. Shouldn't you get the best value for your money?

You shouldn't judge your malpractice insurance coverage by the premium alone. Paying rock-bottom rates too often means the quality and service of the plan were sacrificed along the way.

And then you pay—literally—when a claim is filed against you. But what if you could choose a policy that has competitive rates *and* suits all of your needs?

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Your PDA: The Indispensable Law Office

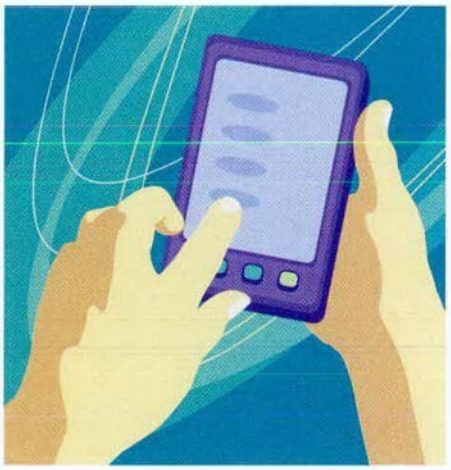
by Drake Mesenbrink

I began using PDAs (personal digital assistants) in 1994 and have found them to be indispensable in my law practice and daily activities, helping to coordinate my activities and those of my family. Today's Windows CE devices can do the same tasks as the desktop computer, including calendaring, messaging, tasks, contacts, web browsing, e-mail, word processing, entertainment, and self-improvement.

The Basics

My current PDA, the HP iPAQ 5455 CE handheld computer, is my eighth handheld device. The iPAQ 5455 has an Intel 400 MHz StrongARM processor, is full color, and comes with 64 MB of RAM. My iPAQ is configured with over 300 MB of storage space for programs and data, with the use of one secure digital card. It can be expanded by using additional storage cards or microdrives. The iPAQ 5455 is Bluetooth-enabled for wireless communication with other devices and peripherals. One of the new features I really like on the iPAQ 5455 is the fingerprint passcode system. To access the unit, it can be configured to accept a password and/or your fingerprint.

I chose a CE device over the Palm, because I like the Windows environment and



the large number of programs available for the CE devices. The LCD screen on the iPAQ is so bright it can easily be used in full sunlight. Some PDAs are difficult to read in bright light, and impossible in sunlight. There are hundreds of programs for CE devises. I receive e-mails on new programs and hardware for PDAs almost daily from companies like PC Connection (www.pcconnection.com), MobilePlanet (www.mplanet.com), and Handandgo (www.handandgo.com). Microsoft has a site dedicated to handheld PCs which posts the most recent developments in PDA software and accessories (www.microsoft.com/mobile/pocketpc).

Glossary

Bluetooth: Refers to a short-range radio technology aimed at simplifying communications among Net devices and between devices and the Internet. It also aims to simplify data synchronization between Net devices and other computers.

GPS: Global Positioning System. It is a system of 24 satellites for identifying earth locations, launched by the U.S. Department of Defense. By triangulation of signals from three of the satellites, a receiving unit can pinpoint its current location anywhere on earth to a few meters.

Palm: A PDA made by Palm, Inc. (www.palm.com).

Serial or USB port: A serial or USB (Universal Serial Bus) port is a way for handheld computers to connect with desktop computers.

Windows CE: The original name for Microsoft's mobile operating system, designed for PDAs. Microsoft subsequently renamed the Windows CE platform to Pocket PC.

Calendaring

Calendaring is one of the most basic functions built into PDAs. Most CE and Palm devices will automatically synchronize with a desktop computer via a serial or USB port. I have a cradle attached to my desktop computer via a USB port that connects my PDA to my desktop and charges the PDA at the same time. I slip my PDA into the cradle when I arrive at the office, and a number of programs and files automatically synchronize with my computer throughout the day.

With the calendaring programs, I can add appointments either on my PDA or at my desktop. When the unit is placed in the cradle, Microsoft ActiveSync automatically syncs my Outlook and Amicus Attorney calendars, as well as my assistant's calendar. Having complete access to my calendar when away from the office allows me to check for conflicts, set dates, and have the dates automatically added to my office calendar when I return. My office keeps our tracking and file-tickling information on the calendar, so I never have to worry about missing an important date.

While the iPAQ comes with a great calendar program, I have added Pocket Informant (www.pocketinformant.com) to my PDA. This is a more comprehensive calendar, task, message, and e-mail program. Pocket Informant fully integrates with my desktop, Outlook, and Amicus programs.

Maintaining Case Information

I keep a file that has the current case information for my open cases. Information kept in these files includes the names of all parties, addresses and phone numbers, witnesses and attorneys, case numbers, notes, and the status of each case. When I am out of the office, I use this file to talk to opposing parties about cases, or to review cases and set tasks.

I organize each day to be productive. When I have free time, I work on my case

task lists. The Microsoft ActiveSync software adds the task lists to both my computer and my assistant's. I also keep a complete list on my handheld of all attorneys practicing in Kitsap County.

The iPAQ comes with Pocket Word embedded in the memory. I use the word processing capabilities of my handheld primarily for taking quick notes about my cases. While I do not find a handheld a particularly good device for long word-processing projects, it works in a pinch and is great for short notes. A folding keyboard can be used with the PDA to increase its word-processing usability. When folded, the keyboard is about the same size as the handheld unit and folds out to about three-quarters the size of a desktop keyboard.

Data-Storing Software

Most of the newer CE devices have built-in handwriting recognition software that will translate handwriting into typed text. I can testify that this software works very well—my handwriting is terrible, yet the program translates it accurately, making it great for taking notes. I keep the unit by my bedside, as I often have thoughts I want to jot down before I go to sleep.

Ink Link is a program that can be used in conjunction with the handwriting software. An ink pen with a built-in computer chip tracks the movements of the pen (similar to a GPS system for a pen). When the receiver unit is plugged into a handheld device, the notes taken on paper also download to the PDA. By using Ink Link, I am not limited to the small screen as the note-taking platform. I also use Ink Link with my desktop, so that all my notes are stored in my computer.

The iPAQ comes with Pocket Excel embedded in its memory. This spreadsheet program works just like the desktop version for creating databases to categorize everything from travel to exhibits to timelines.

Phone, E-mail, and Internet Compatibility

The PDA can be used to track billable hours, expenses, and travel while I am away from the office. Since I started using the PDA for these purposes, I find I track my time more efficiently. Phone messages in our office are entered into our local network and delivered to recipients' desktop computers. These messages automatically

sync with my PDA, which allows me to return my messages when I am out of the office. E-mail messages are also synced with my PDA, so I can respond to them whether I am in or out of the office.

When connected to a cell phone, the iPAQ can be connected to the Internet to receive and send e-mail or browse the web with the PDA's Microsoft Explorer. I find this very useful when I am on vacation or traveling. News and other Internet content can be downloaded automatically when the PDA is synced for review offline. When the PDA is connected to the Internet, via either its own modem or the desktop active sync software, news can be downloaded from several different sources, such as CNN or *The Wall Street Journal*. I also download the advance sheets that I receive each day from Lexis. Waiting in court for my case to be called is a great time to read them.

Other Useful Functions

With Microsoft Reader or Adobe Reader, books can be downloaded from the Internet and read on the PDA. (Being an avid reader, I have downloaded hundreds of books over the last three years.) There are several sources, such as Project Gutenberg and Cornell University, that have free books to download. E-books can be purchased and downloaded from bookstores like Amazon, and Barnes and Noble. Downloaded books have several advantages: There is no need to travel to the bookstore, they can be downloaded immediately, and they are generally less expensive than paper books, as there are no production costs and little delivery cost. (I keep a number of books on my handheld for my children and me—then, when we are away from home, I always have a book to read to my daughters.) Microsoft Reader can also read the book to you if you like books on tape. Some good sites for downloading books are 1stBooks (www.1stbooks.com), Audible (www.audible.com), DotLit (www.dotlit.com), the University of Virginia Library's Etext Center (http://etext.virginia.edu/ebooks), Fictionwise (www.fictionwise.com), PocketPCpress (www.pocketpcpress.com), Project Gutenberg (http://gutenberg.net), Amazon (www.amazon.com), and Barnes & Noble (www.bn.com).

When I am working on a research project, I often download the cases I want to read when away from the office. I especially like to download cases cited by opposing counsel, so I can fully review them when I find I have time in the evenings. The iPAQ displays downloaded material either as a Microsoft Word document or as a text file.

Maps and directions can be downloaded from the Internet to the PDA, from map programs or from GPS map systems connected to the PDA. MSN, Mapquest, and Switchboard.com all provide downloadable maps. The GPS systems will even read the directions to you as you drive.

Need to do a presentation? You can connect the PDA to a digital projector and, with Pocket PowerPoint, use it for presentations. This works very well for the odd rotary or roundtable speech. I keep pictures of my children on my PDA, which can be displayed with PowerPoint, just in case anyone asks. PDAs can also be used to create graphics with programs such as Pocket AutoCAD and Pocket Paint.

All PDAs come with a basic calculator. There are a number of powerful calculator programs available, which can be downloaded with a variety of enhanced functions. I use CalcNOW and Financial Calculator, which not only calculate but also provide a host of financial calculations, such as amortization, investment functions, and annuity calculations.

The sound system in new-generation CE devices is quite impressive. The iPAQ has a built-in digital recorder and speaker system. This works well for taking dictation; jotting down notes while on the road; recording a piano recital; or playing music, CDs, or tapes with the embedded Windows Media Player. The Windows Media Player can also be used to play movies, which can be downloaded from the Internet, a camcorder, a CD, or a tape player. A camera can also be connected directly into the PDA for taking still pictures.

I have a number of organizational and tracking programs on my PDA. Nevo, a program embedded in the iPAQ, is a fun software application that allows a person to control numerous remote devices, such as stereos or TVs, from the PDA.

Power Store (www.handandgo.com) is a handy accessory program that tracks battery life and storage space. The iPAQ5455 has a removable battery, which provides a great advantage over units with built-in batteries, since spare battery packs can be substituted when the battery gets low. When traveling, I use an extended battery pack, which supplies more than 10 hours of continuous use and has room for additional memory storage cards and PMCI cards.

Games are always handy to have on hand when your six-year-old gets bored. The Microsoft Entertainment PocketPak (www.microsoft.com/mobile/pocketpc) includes a number of classic games such as Taipei, Chess, Solitaire, Hearts, and FreeCell.

Recently I have been experimenting with Dragon Dictate's software for PDAs called Dragon PDsay (www.dragon.com). It will not translate dictation into a document like Dragon Dictate will, but it is voice activated and will find a name in your contacts list and read back the telephone number or address.

Conclusion

The PDA should be an integral part of any attorney's law practice. My malpractice insurance provider has opined that the failure to use a PDA for calendaring may amount to malpractice if a deadline is missed.

I carry my PDA with me all the time. I find it an invaluable aid in staying organized; getting my messages and e-mail; and keeping abreast of the latest news, advance sheets, and research—and a great source of entertainment in books, music, and pictures. From communication to organization, the PDA is an indispensable law office tool.

Drake Mesenbrink practices law in Poulsbo and is a member of the WSBA Electronic Communications Committee (EC2). He may be reached at drakemesenbrink@earthlink.net.

"May I Please Take a Copy of *Bar News*?"

Seattle University Law Students and the Committee for Diversity Get an Inside Look at the WSBA

by Erika Wilson • *Lawyer Services Coordinator*

The words "sunny Friday evening in July" conjure up wonderful thoughts: picnics in the park, cruising around town with the top down, taking the kids out for ice cream, or just relaxing on the porch with a good book after a long week. On July 11, however, those summer pleasures were willingly postponed just a little bit longer in favor of a unique event at the WSBA: The Committee for Diversity and Seattle University School of Law Academic Resource Center (ARC) reception. This event was something new for the WSBA in that it brought together two groups of people who might not otherwise cross paths: experienced bar leaders at the top of their profession and first-year law students just embarking on their legal education. The reception was the result of a collaboration between Professor Paula Lustbader, ARC director, and the members of the WSBA Committee for Diversity.

The ARC is an innovative program that has been in place for 15 years. Before entering their first year of law school, students in the ARC take part in a summer program in which they take a course in criminal law and participate in various group activities outside the classroom. Students in the program form friendships that endure well past graduation to become a strong core of professional contacts and collegiality. According to Professor Lustbader, the purpose of the Academic Resource Center is to facilitate the learning experience of students so they can adjust, succeed, and excel in law school. Its primary focus is supporting diverse and nontraditional students who entered through the Seattle University alternative-admissions program. Much of the center's work involves acculturating and empowering those who may, or do, feel disenfranchised by the law school experience. The success of the program in meeting that objective was demonstrated at the reception by ARC alumni who are now in practice and who enthusiastically credit their professional success to the program.

Given the goals of the ARC, a collaboration with the Committee for Diversity was an excellent way to establish ties between the law school and the WSBA.

Given the goals of the ARC, a collaboration with the Committee for Diversity was an excellent way to establish ties between the law school and the WSBA. The committee (formerly Opportunities for Minorities in the Legal Profession) was established by the Board of Governors in 1990, and has been instrumental in keeping the issue of diversity in the legal profession an item of focus in bar governance and with members of the bar. The primary goals of the committee are to increase diversity within the membership and leadership of the WSBA; promote opportunities for appointment or election of members to the bench; support and encourage opportunities for minority attorneys; aggressively pursue employment opportunities for minorities; and raise awareness of the benefits of diversity.

The July 11 reception was therefore a chance to introduce the ARC students to the WSBA and give them an opportunity to meet and talk with accomplished attorneys and diversity leaders. The reception featured President-elect Ron Ward as keynote speaker. Mr. Ward gave an inspiring talk, recounting his own experience of growing up in a family of 10 children, in urban poverty. In law school, he too faced more barriers to success than many of his peers, and he reminded the students that he is living proof that each of them has the potential to succeed in law. The presentations were rounded out with additional remarks by WSBA Executive Director Jan Michels, Professor Lustbader, and Diversity Committee co-chairs Leona Colegrove and B. Michael Schestopol. Members of the WSBA Lawyer Services Department staff gave introductions to various services provided to members by the WSBA, including CLE, the Law Office Management Assistance Program, the Lawyer-to-Lawyer mentoring program, the Ethics Line, and the counseling services of the Lawyers' Assistance Program. After the presentations, guests enjoyed refreshments, and staff led small group tours around the bar offices—literally an inside look at the WSBA. New-practice packets were handed out, and copies of the July *Bar News* gladly were provided at the students' request. The students were very engaged by the whole experience, asking questions and talking with the other guests. Their own impressions are therefore the most fitting evaluation of the reception that kept them indoors on a sunny Friday evening in July:

"For the first time since I started the study of *mens rea* and causation, I felt there was more to becoming a lawyer than the law school aspect of it all. I got the feeling that there is a lot waiting after the next grueling three years that would make them more bearable—a sort of light at the end of the tunnel. I'd like to thank the WSBA for the warm welcome."

"The visit to the WSBA was both ful-

filling and informative. I had the good fortune to talk to Ron Ward . . . and was encouraged and exhorted to keep plodding on. He is truly a man of vision and service."

"The [reception was] a great way to start 'thinking like a lawyer,' and for acclimating students into the profession. I really felt welcomed by the board members. Feeling half like a student and nothing like a lawyer, it helps to be in an environment and be treated like you belong there."

"My apprehension about law school was diffused by words of encouragement from the seasoned professionals. I am looking forward to joining the company of such esteemed ladies and gentlemen in the near future."

"The WSBA reception illustrates that while other people in the legal profession make general commitments toward fostering diversity, Seattle University's ARC program and the Washington State Bar Association walk the walk and talk the talk."

"I truly feel that the WSBA, in working with Seattle U, has helped make victors out of underdogs. Thank you for giving us the opportunity to make a future for ourselves."

The success of the July 11 reception has prompted the Committee for Diversity to plan for similar receptions in the future. These events will be posted on the WSBA legal calendar (www.wsba.org/calendar). If you are interested in learning more about the committee and its work, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

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.

Time-for-Trial Rules Amended

The Washington State Supreme Court adopted significant changes to the state's "time-for-trial" rules when it ordered changes to criminal rules CrR 3.3 and CrRLJ 3.3, and related rules regulating the time for arraignments and trials for criminal defendants in Washington state.

The changes were proposed by the 18-member Time-for-Trial Task Force, appointed by the Supreme Court in March 2002. Chaired by Seattle University Professor David Boerner, the task force included members of the judicial and legislative branches of government, as well as prosecutors, criminal defense attorneys, and representatives of crime victims.

"The new rules are reflective of the important work of this task force," said Supreme Court Chief Justice Gerry Alexander in announcing the changes. "Our state's time-for-trial rules will preserve citizens' constitutional right to a speedy trial, while providing additional flexibility to trial court judges in handling their congested dockets."

Highlights of the changes include the following:

- Reducing the likelihood that criminal cases will need to be dismissed with prejudice.
- Providing courts with more flexibility for getting cases heard, including flexibility in addressing court congestion.
- Clarifying the complicated provisions of these rules.
- Improving the process for ensuring that law-enforcement agencies locate defendants and notify them of pending criminal charges.
- Increasing accountability of the courts.
- Providing for the collection of data that will lead to better-informed decisions on policy and resource allocation.
- Eliminating the need for judicial expansion of the rule in appellate opinions.

The right to a speedy trial is guaranteed by the Sixth Amendment to the U.S. Constitution and Article 1, Section 22, of the Washington Constitution. Further information on the Time-for-Trial Task Force can be found online at www.courts.wa.gov/committee/?fa=committee.home&committee_id=78.

Around the State

Business Law Section Report

The WSBA Business Law Section elected officers and Executive Committee members for 2003-2004 at its recent annual meeting. **Al Falk**, of Harlowe & Hitt LLP in Tacoma, was elected chair. **Dori Brewer**, of Perkins Coie in Seattle, was named chair-elect. **Daren Nitz**, of Graham & Dunn PC in Seattle, was elected vice chair, and **Pamela Grinter**, of Riddell Williams PS in Seattle, was elected recorder. Also elected as at-large members of the section's Executive Committee were **Paul M. Davis**, of Lukins & Annis, PS in Spokane, and **Jason Farber**, of Davis Wright Tremaine LLP in Seattle.

Clark County Report

Marilyn K. Reynolds, LL.M., has joined Pabst & Holland, PLLC in Vancouver, Washington. Marilyn concentrates her practice in the areas of estate planning, trusts, probate and trust administration, gift and estate-tax planning, charitable giving, nonprofit organizations, and trust planning for pets. She is licensed in Washington and Oregon.

Cowlitz County Report

by Our Local Correspondent

The inaugural bar association fishing derby was held at **Bill Faubion**'s fishpond. About 25 bar members and family attended and, all in all, things went swimmingly. Alexandra and Chloe, daughters of bar president **Michael Evans**, landed six "fishes" apiece, despite their ill-prepared father's coming equipped with only cream cheese for bait. **Cory Larson** brought five of his eight children and took the award for most prolific fishing family. **Kurt Anagnostou**, who does double duty serving as vice-president of the bar and as Longview city councilman, was deemed "shortest cast."

Melanie Romo is retiring after over 20 years of bar membership, including 11 years of service to the people of Cowlitz County at the prosecutor's office. Melanie will be sorely missed. **Tierra Busby** will be moving to the support enforcement department of the prosecutor's office.

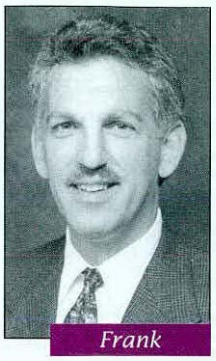
Tom O'Neill, **Gary Bashor**, **Michael Evans**, and the Honorable **Stephen Warning** were among the lawyers-turned-homebuilders at the Habitat for Humanity Build Day. As they gathered for instructions on the build, Tom predicted there might be bloodletting. Sure enough, by 10:30 a.m. Tom had bloodied himself and required a small bandage on the back of his hand. Gary demonstrated cat like abilities as he scampered across the framed walls—pulling, hefting, and lifting the trusses into position.

(Information for the November issue of Bar News *must be received by September 15 at CWBAnews@hotmail.com.)*


Gittleman


Fox


Blackburn


Frank

The Judiciary

by Lindsay Thompson

Odessa native and former Yakima U.S. Magistrate Judge **Lonny Suko** has been confirmed by the U.S. Senate as U.S. district judge in the Eastern District of Washington. Suko replaces Judge **Frem Nielsen** of Spokane, who took senior status. Suko's nomination won bipartisan support and was approved 94-0. He was appointed a magistrate judge in 1991.

King County Report

by Jim Varnell

The Sound of Music

Local law firms put their talents on display in front of 500 adoring fans at LawyerPalooza 2003, a "battle of the bands" to benefit elementary-school music programs. **Mark Asplund** is credited with originating the idea, and Lane Powell Spears Lubersky took it and ran. The evening was a rousing success, with the following bands participating. (In true "American Idol" fashion, editorial comments à la Simon Cowell follow the listings of bands.) Co-winners were the Perkins Coie Band (hey guys, you are not at a Boeing deposition—lose the suits and ties); and The Big Lubersky from Lane Powell and the Law Office of David Huber. (To Mike **Nesteroff**: You have the pose; can you really play that guitar?) From Preston Gates & Ellis and Davis Wright Tremaine was Fall City. (Someone please tell **Athan Tramountanas** that his t-shirt might look good on the stage of the Grand Ole Opry in Nashville, but this city has some class.)

Morris Can Fly, made up of Riddell Williams and McNaul Ebel, et al. employees, must have some Springsteen-E St. followers. (Why else would **Barry Allan** wear that ridiculous headband (à la Stevie Van Zandt) and **Steve Winters** wear that beret?) The Wonderdogs comprised would-be rockers from Karr Tuttle Campbell and Groff Murphy, et al. (Hint to **Doug Lilliman**: you are not at Safeco Field; lose the baseball cap.) Neon Lips (clever, right?), comprising "musicians" from Williams Kastner & Gibbs, Perkins Coie, and Nintendo, looks like it could give Keith Richards of the Rolling Stones a walk for his money. (*Looks* like; not *plays* like.) Nevertheless, LawyerPalooza 2003 was a huge success and raised more than $30,000 to help keep some elementary school music programs going. Good work, all. For more information, visit www.lawyerpalooza.com.

Honors

The King County Bar Association honored the following at its annual awards dinner: **Jeff Robinson** as Outstanding Lawyer; the **Northwest Women's Law Center** as Friend of the Legal Profession; **Steve DeForest**, the Helen Geisness Award, which recognizes contributions to the King County Bar Association; **Jennifer Johnson Grant** as Outstanding Young Lawyer; Honorable **Wesley Saint Clair** as Outstanding Judge. Honorable **Carolyn R. Dimmick** received the William L. Dwyer

Outstanding Jurist award. *Pro Bono* awards were given to the Starbucks Coffee Company legal department, and Hartly Newsum. The President's Award was presented to the IOLTA Litigation Team, including **David Burman**, **Nick Gellert** and **Katie O'Sullivan** of Perkins Coie, for their work in *Brown v. Legal Foundation of Washington*. (**Kay Frank** is president of the Legal Foundation of Washington.)

Kathleen Keenan Kindred has been selected for inclusion in *The Best Lawyers in America*. **Douglas S. Tingvall** was elected "Instructor of the Year" by the Washington Association of Realtors. **Gayle Bush** has become a member of the American College of Bankruptcy. When not displaying his keen knowledge of the law and dry wit in bankruptcy court, Gayle can usually be found at Safeco Field contemplating his next legal strategy.

Changing Venues

Helsell Fetterman has moved to 1001 Fourth Avenue, its first move in 42 years. The firm is the home of Phil "I-5" **Noble**, who, upon graduating from UW School of Law in 1971, traversed Interstate 5 tirelessly as a law clerk (simultaneously) for the Honorable **Morell Sharp** and/or the Honorable **Walter McGovern** in Olympia and Seattle. **Felicia L. Gittleman** has been named managing director of MacDonald, Hoague & Bayless; and **Maria C. Fox** has been named a director of the firm. **Gavin M. Parr** has joined Song Mondress as an associate. The Visomark Law Group merged its operations with Black, Lowe & Graham; **Michael Barber** is of counsel there. **Caroline Davis** has closed her private practice and has become the executive director of the Family Law CASA of King County Program.

Mary Alice Theiler has been appointed magistrate judge for the Western District of Washington. **David A. Strickland** has become a member of The Johnson Law Group. **John C. Gibson** has become a shareholder of Kingman Peabody Pierson & Fitzharris. **Ruth A. Holmes** has joined Johannessen & Associates.

Kitsap County Report

J. Michael Liebert and **John D. Morgan** are pleased to announce that **Lynn K. Fleischbein** has joined them as partner, and they have changed their firm name to Liebert Morgan & Fleischbein, PS. They are located in Silverdale and are a full-scale civil law firm.

LASER Project Report

The LASER Project (Lawyers and Students Engaged in Resolution), formed in 1995, is the joint effort of the Attorney General's Office, the Superintendent of Public Instruction, and the WSBA, to provide peer-mediation training in schools. LASER will hold its annual training on October 3 and 4 at the Attorney General's Office in Tacoma. Since 1995, 130 attorneys have taken the training so they can then teach peer-mediation skills to middle and high-school students. The attorneys have teamed up to start peer-mediation programs in more than 30 schools throughout Washington. This free training has been approved for CLE credit in the past, and MCLE approval has been requested. For more information or to sign up for the training, contact Barbara Peterson at barbarapeterson@nlagroup.com or 509 8779906.


Felice

Washington Defense Trial Lawyers Report

The WDTL elected **Joanne Thomas Blackburn** their new president at their annual convention in Coeur d'Alene in July. Blackburn, an owner at Garvey Schubert Barer in Seattle, focuses her practice on insurance coverage and defense, construction, product liability, and environmental litigation.

Other elected officers include **Jeffrey Frank**, Bullivant Houser Bailey, Seattle, president elect; **Michelle Menely**, Gordon Thomas Honeywell, Seattle, secretary; and **Jill Haavig Stone**, Burgess Fitzer, Tacoma, treasurer.

The board of trustees includes **James Berg**, Yakima; **Anne Bremner**, **Jesse Franklin**, **Sue Holm**, **Yemi Fleming Jackson**, **Steve Jager**, **Ken Karlberg**, **Grant Lingg**, **Rick Roberts**, and **Mike Runyan**, of Seattle; **Rod Hollenbeck**, Bellevue; and **Michele Sales**, Issaquah.

The Washington Defense Trial Lawyers is a 750-member statewide organization of lawyers who are in engaged in civil defense litigation and trial work.

Washington State Trial Lawyers Report

The Washington State Trial Lawyers Association elected Seattle attorney **Judy Massong** as president at its annual convention in Bend, Oregon.

WSTLA also presented several prestigious awards recognizing the talents among the trial lawyer community.

Spokane attorney **Roger Felice** was presented with the coveted Trial Lawyer of the Year award for his work on highway-design safety and jury instructions.

Virginia DeCosta, an employment attorney from Tacoma, received WSTLA's Professionalism Award for her contributions to educating plaintiff attorneys in Washington.

Bellevue attorney **Karen Koehler** received WSTLA's President's Award from outgoing President Steve **Toole**. Koehler was selected for her commitment to assisting her peers professionally, mentoring young law students, and educating the public on the importance of the civil justice system.

WSTLA has more than 3,500 plaintiff attorney members.

Around the State reports are welcome from county and specialty bar associations. There are no rules for writing them, except to mention lots of your members. We leave it up to each organization to decide who does it and to the correspondent to decide how often. Many counties are still available. Contact the editor at tradelaw@thompsonlaw.com for more information.

Opportunities for Service

Judicial Recommendation Committee

Application deadline: October 15, 2003

The WSBA Judicial Recommendation Committee is accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate-court vacancies. Interested candidates will be interviewed by the committee at its December 5, 2003, meeting.

When appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court, the committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the governor of Washington for review.

If you are interested in scheduling an interview, please contact the WSBA at 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-727-8239; or e-mail barleaders@wsba.org to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

Legal Foundation of Washington Board of Trustees

Application deadline: November 7, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Legal Foundation of Washington board of trustees (two positions). Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit a letter of interest and résumé.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge of the need for legal services and how these services are provided in Washington. Further information about trustee responsibilities is available upon request by e-mailing bcclark@legalfoundation.org.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Limited Practice Officer Board

Application deadline: November 15, 2003

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a four-year term on the Limited Practice Officer Board, which will commence on January 1, 2004. Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit letters of interest and résumés. The board oversees administration of and compliance with the Limited Practice Officer Rule (APR 12) and meets every other month.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Northwest Justice Project Board of Directors

Application deadline: October 1, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Northwest Justice Project board of directors (two positions). The three-year term will commence on January 1, 2004. A written expression of interest and résumé are also required in the event that an incumbent seeks reappointment.

The Northwest Justice Project is a not-for-profit organization that receives funding through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members must have a demonstrated interest in and knowledge of the delivery of high-quality civil legal services to the poor. Further information about board member responsibilities is available on request by e-mail to mac@nwjustice.org.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Office of Public Defense Advisory Committee

Application deadline: October 1, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Office of Public Defense Advisory Committee. The three-year term will commence on January 1, 2004. A written expression of interest and résumé are also required in the event that an incumbent seeks reappointment.

The Office of Public Defense Advisory Committee meets quarterly to set policies for appellate indigent-defense funding, approve legislative and rule requests, review budgetary matters, oversee new programs, and consider appeals of billing decisions. During the term of appointment, no appointee may: (a) provide indigent defense services except on a *pro bono* basis; (b) serve as an appellate judge or an appellate court employee; or (c) serve as a prosecutor or prosecutor employee. Committee members receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by the Office of Financial Management.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Supreme Court Ethics Advisory Committee

Application deadline: October 1, 2003

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a two-year term on the Supreme Court Ethics Advisory Committee commencing November 1, 2003. The incumbent is eligible for reappointment and must also submit a letter of interest.

The committee is designated as the body that gives advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch, as defined in article 4 of the Washington Constitution, and shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes to the Code of Judicial Conduct (GR 10).

WSBA 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.

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-C●MM: date _____ check no. _____ amount _____

Please submit a letter of interest and résumé to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 981212330; or e-mail barleaders@wsba.org.

Washington Defender Association

Application deadline: November 7, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Washington Defender Association board of directors. A written expression of interest and a résumé are also required in the event that the incumbent seeks reappointment. The three-year term will commence on January 1, 2004.

The board generally meets 10 times per year. Individual members, particularly the president, assist in meetings with government officials and in advising management of the Washington Defender Association on a wide range of issues. The board has hiring and firing authority over the director; and approves the annual budget, contracts with King County, and bargaining agreements with the union. It also has a mediation and review role in disputes with union members.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Washington Defense Trial Lawyers Seeks Award Nominations

The Washington Defense Trial Lawyers (WDTL) is accepting nominations for Outstanding Defense Trial Lawyer, Outstanding Litigation Associate Award, and Outstanding Plaintiffs' Trial Lawyer. All three awards recognize individuals who uphold the highest professional and ethical standards for Washington attorneys. Nominees for the Outstanding Defense Trial Lawyer and Outstanding Litigation Associate must be members of the WDTL. Nominees for the Outstanding Plaintiffs' Trial Lawyer do not have to be members of the WDTL. The awards will be presented at the WDTL Judges Reception and Awards Ceremony on October 23. Letters of nomination should include the name and contact information for the individual you are nominating, the reason you are nominating the individual, and any other relevant information. Nominations must be received by September 26, 2003, and should be sent to Andrea Ballard, Executive Director, WDTL, 601 Union St., Ste. 4100, Seattle WA 98103; or andrea@wdtl.org. For more information, visit www.wdtl.org.

Board of Governors Adopts Interim Formal Ethics Opinion

At its July 25-26 board meeting, the WSBA Board of Governors adopted an interim formal ethics opinion relating to the effect of the Securities and Exchange Commission's (SEC) Sarbanes Oxley regulations on Washington attorneys' obligations under the Rules of Professional Conduct (RPCs). Earlier this year, the SEC issued final rules under the Sarbanes-Oxley Act governing the conduct of attorneys appearing and practicing before the SEC. Effective August 2003, the SEC rules permit lawyers in certain circumstances to reveal information that could constitute client confidences or secrets under the RPCs. The formal opinion concludes that a Washington lawyer's RPC obligations have not been affected by the SEC rules; that even if the SEC rules authorize revelation, a Washington lawyer should not reveal confidences and secrets unless authorized to do so by the RPC; and that a Washington lawyer cannot raise the "good faith" provisions of the SEC rules as a defense to an RPC violation if the lawyer took action contrary to the formal opinion.

The opinion was proposed jointly by the WSBA Special Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee) and the WSBA RPC Committee. It was approved and adopted by an 11-0-1 vote of the Board of Governors. The complete text of the opinion is available on the WSBA website at www.wsba.org/formalopinion.doc.

New and Improved! Extended CLE Online Calendar

You can now see upcoming seminar listings months in advance with our extended CLE online calendar, located at www.wsba.org/cle/seminars/default1.htm. In response to many requests for advance information on future CLE programs, this electronic online seminar calendar is provided as a supplement to printed brochures.

MCLE Credits for Group 3 Due at Year End

Active WSBA members in MCLE Reporting Group 3 will be required to report compliance with MCLE credit requirements for 2001-2003 at the end of this year. Members in Group 3 include those who were admitted to the WSBA in 1984 through 1990, or in 1993, 1996, or 1999. Members admitted in 2002 are also in Group 3 but will not be due to report until 2006.

Group 3 members will need to complete the following by December 31, 2003 to meet the MCLE credit requirements for 2001-2003:

- At least 30 live credits
- At least six ethics credits
- At least 45 credits total

If Group 3 members do not meet the credit requirements by December 31, 2003, an automatic extension is granted until May 1, 2004; however, a late fee will be imposed. If this is the first period in which a member is late, the late fee is $150. The late fee increases by $300 for each consecutive reporting period that the member is late in meeting MCLE requirements.

Members may use the online MCLE system at http://pro.wsba.org to:

- Review courses taken and credits earned.
- Apply for course approval.
- Apply for writing credit or prep-time credit.
- Search for approved courses being presented in the future.

To use the MCLE system, go to http://pro.wsba.org, click the "Member" tab, then select "Member Login." The online instructions lead you through setting up a confidential password and beginning to use the system. If you have questions, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

Speaking of MCLE Reporting Time

July's Member-Appreciation Summer Sale was a tremendous success, with great deals on CLE deskbooks, coursebooks, and tapes. If you are still in need of more MCLE credits by the end of the year, don't forget December's Annual WSBA-CLE Bookstore. Stop in and browse in person, or conveniently shop online. Watch the WSBA home page (www.wsba.org) and your mailbox in the coming weeks for details.

2003 WSBA Annual Awards Recipients

Congratulations to this year's Washington State Bar Association annual awards recipients. With the exception of the *Pro Bono* Award and the Outstanding Judge Award, the awards will be presented at the Annual Awards dinner in Seattle on September 11, 2003. Recipients are:

- ***Pro Bono* Award:** The Spokane County Bar Association Volunteer Lawyers Program and the Tacoma-Pierce County Bar Association Volunteer Legal Services Program. (This award was presented June 7 at the ATJ Conference.)
- **Award of Merit:** David Burman, Nicholas Gellert, and

Katie O'Sullivan of Perkins Coie LLP; and Maureen Hart of the Attorney General's office, for their work on the U.S. Supreme Court IOLTA case.

- **Board of Governors Award for Professionalism:** The Honorable Harry J. McCarthy.
- **Angelo Petruss Award for Lawyers in Public Service:** Rochelle Kleinberg Goffe.
- **Outstanding Judge Award:** The Honorable Stephen J. Dwyer. (This award will be presented at the 46th Washington Judicial Conference in Spokane on September 22.)
- **Excellence in Diversity Award:** Perkins Coie LLP and the Glass Ceiling Task Force.

Breean Beggs and Laurie Powers Receive Local Hero Awards

Congratulations to Bellingham attorneys Breean Beggs and Laurie Powers, husband and wife, who on July 25 were both presented WSBA Local Hero Awards by WSBA President Dick Manning at the Board of Governors meeting. The Local Hero Award is presented to lawyers who have made noteworthy contributions to their communities.

Mr. Beggs, who received his J.D. in 1991 from the University of Washington School of Law, is a partner at Brett & Daugert and an adjunct professor at Fairhaven College. He has volunteered tremendous amounts of time to such projects as Legal Assistance by Whatcom (LAW) Advocates, which provides legal assistance and access to justice for low-income Whatcom County residents; the Street Law Program, a LAW Advocates program he started in 1994 in which local attorneys provide free legal advice every Saturday afternoon during the summer at a downtown street corner; and the Whatcom Civil Rights Project, which he co-founded in 2001 to provide legal assistance and advocacy to victims of discrimination and civil-rights abuse in Whatcom County. In addition, Mr. Beggs volunteers for Law Day each year. As a volunteer, he was instrumental in obtaining $4 million from criminal fines in the Olympic Pipeline case to fund a nonprofit pipeline-safety and educational trust.

He is co-founder of and a volunteer for Excellence Northwest, a nonprofit group focusing on personal and professional development; a frequent speaker at local high schools and colleges about constitutional rights; a mentor to pre-law students and new attorneys; a youth soccer coach; and a volunteer in his church nursery.

Ms. Powers, who received her J.D. in 1991 from the University of Washington School of Law, is the interim executive director of LAW Advocates. Appointed by the Whatcom County executive as a citizen member of Whatcom County's Law & Justice Council, she serves on the Executive Committee and the Juvenile Justice Committee.

In addition, Ms. Powers is a former president of the board of directors of Domestic Violence & Sexual Assault Services (formerly Whatcom Crisis Services) and former chair of the Family Law Committee, which pioneered a family law "re-envisioning" process for Whatcom County that resulted in new local rules requiring mediation in family law cases, adoption of residential guidelines for parenting plans, and increased access to legal services for domestic violence victims. She is a citizen volunteer for both the Domestic Violence Task Force Civil Court Work Group and the Work Group on Coordinated Judicial Response to Domestic Violence. A former part-time staff attorney and volunteer attorney for Project SAFER (Stop Abuse and Fear by Exercising Rights, a LAW Advocates program that provides direct representation for domestic-violence victims), Ms. Powers currently serves on the board of trustees of First Congregational Church and is a volunteer food server at Maple Alley Inn and the Community Meals program.

Congratulations to New Eighth District Governor-elect Randy Gordon

At its July 25 board meeting, the WSBA Board of Governors elected Bellevue attorney Randolph I. (Randy) Gordon as governor-elect for the 8th District, to serve a two-year term (vacancy) created by the board's election of Ronald Ward as president-elect effective September 11, 2003. Mr. Gordon's term runs from October 2003 to September 2005.

Address Update Reminder

Now is the ideal time to check that the WSBA has your correct contact information in its database for the 2004 license-fee renewal packets scheduled to be mailed in early December. You can check your listing by going to the online lawyer directory at http://pro.wsba.org. If any of your contact information (name, address, phone number, or e-mail address) has changed, please update the information by contacting the WSBA Service Center (e-mail questions@wsba.org; fax 206-727-8319; or call 800-945-WSBA or 206-443-WSBA).

Supreme Court Amends *Pro Bono Publico* Rule 6.1

On July 15, the Washington State Supreme Court amended RPC 6.1. The amendment is designed to encourage lawyers to perform *pro bono* services. It sets a 30-hour-per-year aspirational goal and provides for WSBA awards to those who perform and voluntarily report 50 or more *pro bono* service hours in any given year. The amended rule is shown below:

Rule 6.1 Pro Bono Publico Service. Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility the lawyer should:

(a) provide legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide pro bono publico service through: (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civil, community, governmental and educational organizations in furtherance of their organizational purposes, where the payment of standard legal fees would sig-

nificantly deplete the organization's economic resources or would otherwise be inappropriate, (2) delivery of legal services at a substantially reduced fee to persons of limited means, or, (3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported on the annual fee statement furnished to the WSBA. Lawyers rendering a minimum of fifty (50) hours of pro bono publico service shall receive a recognition award for such service from the WSBA.

New Third-Party Liability Website

The Department of Social and Health Services (DSHS) has just created a website that provides information on the process used by DSHS to recover the costs of Medicaid payments expended on behalf of a recipient who has been injured by the actions of a third party. 42 U.S.C. 1396(a)(25) and RCW 43.20B.060 require DSHS to recover those Medicaid moneys from any settlement or judgment received by the medical assistance recipient. This website provides statutory references and a copy of the worksheet for determining how much of the settlement or judgment is owed to DSHS. It also includes frequently asked questions regarding the process used by DSHS to determine the amount owed to the state of Washington. The website is found at http://fortress.wa.gov/dshs/maa/ltpr.

Notice of Public Meeting: Legal Foundation of Washington

September 12, 2003

The trustees of the Legal Foundation of Washington will meet on September 12, 2003, at the foundation's office, 500 Union St., Ste. 545, Seattle. From 9-9:30 a.m., the public may appear in order to comment on the foundation's activities. This opportunity is made pursuant to Article I, Section 1.7, of the Legal Foundation of Washington bylaws.

WSBA 50-Year Member Tribute Luncheon

This year, the WSBA will be honoring its 50-year members at a luncheon on Thursday, September 25, in the Fifth Avenue Room of the Westin Hotel, 1900 Fifth Ave., Seattle. Registration and reception begin at 11 a.m. (no-host bar), and the luncheon and program begin at noon. The cost of the luncheon is $45 per person. All members of the legal community are invited to attend. The registration form can be found on page 55.

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 committee is on the WSBA website at www.wsba.org/lawyers/groups/ethics2003. Please direct questions or comments to Committee Reporter Douglas Ende at 206-733-5917 or ethics2003committee@wsba.org.

Upcoming Ethics 2003 Committee meetings:

October 8—WSBA office
November 12—WSBA office

Mentors Needed for Lawyer-to-Lawyer Program

The WSBA Lawyer-to-Lawyer Program needs experienced attorneys to serve as informal mentors, especially in King County. Interested members may contact Pete Roberts or Allison Durazzi in the Law Office Management Assistance Program. Pete Roberts can be reached at 206-727-8237 or peter@wsba.org; Allison Durazzi can be reached at 206-733-5914 or allisond@wsba.org. Program guidelines and sign-up forms are online at www.wsba.org/lawyers/services/lawyertolawyer.htm.

Bankruptcy Case Law Digest for Washington State—Third Edition

The third edition of the *Bankruptcy Case Law Digest for Washington State* is a two-volume set with a searchable CD, and contains bankruptcy cases dating from 1996 through 2002, with a linked topical index, case list, code, and rules. Bankruptcy cases included are from the U.S. Supreme Court, the 9th Circuit Court of Appeals, the 9th Circuit Bankruptcy Appellate Panel, the 9th Circuit District Courts, and Washington bankruptcy courts.

Cost for both volumes and the searchable CD is $90. Members of the WSBA Creditor-Debtor Section and the Idaho Commercial Law and Bankruptcy Section receive a $15 discount. For ordering information, go to www.wsba.org/lawyers/groups/creditordebtor/bankruptcy_digest.htm.

Washington Legal Ethics Deskbook (2003) Available Fall 2003

Edited by Gail McMonagle, Perkins Coie professional standards counsel, and written by members of the WSBA Rules of Professional Conduct Committee, including the former WSBA chief disciplinary counsel, the *Washington Legal Ethics Deskbook (2003)* provides practical advice on all aspects of client representation, from formation of the attorney-client relationship to withdrawal from employment. The deskbook includes comprehensive coverage of advertising and solicitation (including Internet issues), attorney fees and fee agreements (with sample agreements), multistate practice and collection issues, special ethical concerns in mediation and negotiation, and attorney malpractice and disciplinary procedures, including the new Rules for the Enforcement of Lawyer Conduct (ELCs). The price of the deskbook is $150, plus shipping and handling, and tax. For more information, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail orders@wsba.org.

David Burman to Receive Charles A. Goldmark Distinguished Service Award

The Legal Foundation of Washington will present the 2004 Charles A. Goldmark Distinguished Service Award to David J. Burman at the 18th Annual Goldmark Award Luncheon, to be held Friday, February 20, 2004, at the Red Lion Hotel in Seattle from noon to 1:30 p.m. The luncheon is open to the public.

Mr. Burman, a partner with Perkins Coie, will receive the award in recognition of his *pro bono* representation before the U.S. Supreme Court in *Brown v. Legal Foundation of Washington*. The Court upheld the constitutionality of Washington's IOLTA program. Nationally, IOLTA programs provide over one-third of civil legal-aid funding to the poor.

The Goldmark Award honors the memory of Charles A. Goldmark, Seattle attorney, community leader, and ardent supporter of access to justice, who was serving as the Legal Foundation's president at the time of his death in 1986. For more information about the Legal Foundation of Washington, the Goldmark Award, or the IOLTA program, visit www.legalfoundation.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in August 2003 was 1.047 percent. The maximum allowable interest rate for September is there

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.

Thursday
September 25, 2003

■

The Westin Hotel
Fifth Avenue Room
1900 Fifth Avenue
Seattle

■

Registration & Reception 11:00 a.m. (no-host bar)

Luncheon/Program 12:00 noon

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.)

❑ MasterCard ❑ Visa No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

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

TOTAL $ _____

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

_____

_____

_____

WSBA office use only:

Date _____

Check No. _____

Amount _____

No. MTL903

fore 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.

Upcoming Board of Governors Meetings

September 11-12—Seattle
October 17-18—Portland
December 5-6—Leavenworth

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. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

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 for the first year 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.

Consumer-Information Pamphlets Available

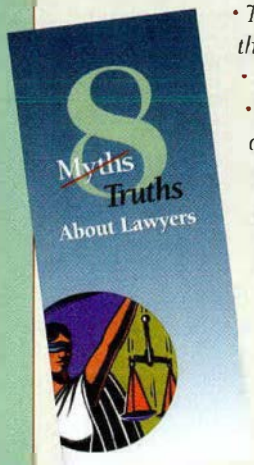
Provide a valuable service to your clients by offering them consumer-information pamphlets! Published by the WSBA as a public service, these pamphlets educate consumers about their legal rights and responsibilities, answer frequently asked questions, and explain basic aspects of Washington law. The information,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

For a complete list of pamphlets and pricing information, contact the WSBA Service Center at 800-945 WSBA or 206-443-WSBA, or go to www.wsba.org/consumer-information.

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

8 Myths Truths About Lawyers

Help us stamp out some of those myths about lawyers! The *8 ~~Myths~~ Truths About Lawyers* brochure, developed by the Proud to Be a Lawyer Task Force, is available for purchase. The brochure tackles the following myths:



- *The United States has more lawyers than any other country.*
- *Lawyers are selfish and greedy.*
- *Lawyers stir up litigation for their own personal profit.*
- *Huge punitive damage awards are frequent and on the rise.*
- *The McDonald's verdict shows how foolish juries are.*
- *Lawyers who defend criminals are just promoting crime.*
- *When there's an accident, lawyers are among the first on the scene, soliciting business.*
- *The jury system is not worth keeping.*

The cost is $35 per 100 (price includes shipping and handling).

Yes! I would like to order ____ packets @ $35 per packet (100)
$ ____

If in Washington, please add WA 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:

Washington State Bar Association, Order Fullment
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: 40800-COMM

date _____ check no. _____ amount _____

Professionals

For information about advertising in the Professionals, please call Jack Young at 206-727-8260, or e-mail jacky@wsba.org.

LEGAL MALPRACTICE and DISCIPLINARY ISSUES

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

2101 Fourth Ave., Ste. 2100
Seattle, WA 98121
206-448-2100
E-mail: jganzesq@aol.com

INSURANCE

Richard Gemson,
former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association, or referral in matters involving all types of insurance coverage.

1001 Fourth Ave., Ste. 3278
Seattle, WA 98154
206-467-7075
Fax: 206-342-9650

APPEALS

Michael T. Schein
and
Douglas W. Ahrens
are available for referral, consultation or association on all issues relating to appeals and the appellate process.

REED, LONGYEAR, MALNATI & AHRENS PS
801 Second Ave., Ste. 1415
Seattle, WA 98104
206-624-6271
E-mail: mschein@reedlongyearlaw.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

206-223-1922
206-907-9066
www.margaretdore.com

MEDICAL or DENTAL MALPRACTICE

John J. Greaney
is available for consultation and referral of plaintiffs' claims of medical or dental malpractice against healthcare providers and hospitals.

BELLEVUE
425-451-1202
E-mail: john@greaneylaw.com

ETHICS and LAWYER DISCIPLINE

25 Years' Experience

Leland G. Ripley,
former WSBA chief disciplinary counsel (1987-94), represents and advises lawyers in all aspects of legal ethics and lawyer discipline.

866-890-3525
E-mail: leland.ripley@verizon.net

FORENSIC TITLE RESEARCH

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Land Use • Real Estate Disputes
Boundaries • Easements
Roads • Adverse Possession

Title Abstraction
Legal Research and Analysis
Certificates of Title
Real Estate Mediation

360-352-7965
E-mail: lexlux@earthlink.net

APPEALS

James E. Lobsenz
handles both civil and criminal appeals in state and federal courts. He has argued over 25 cases in the Washington State Supreme Court, including *Washington State v. Stein*, 144 Wn.2d 236, 27 P.3d 184 (2001).

CARNEY BADLEY SPELLMAN PS
700 Fifth Ave., Ste. 5800
Seattle, WA 98104
206-622-8020
E-mail: lobsenz@carneylaw.com

APPEALS

Philip A. Talmadge
Former justice,
Washington State Supreme Court;
fellow, American Academy of Appellate Lawyers

Anne Watson
Former law clerk,
Washington State Supreme Court

Available for consultation or referral on state and federal briefs and arguments.

TALMADGE LAW GROUP PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397
E-mail: christine@talmadgelg.com

DISCIPLINARY INVESTIGATION and PROCEEDINGS

Patrick C. Sheldon,
former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

FAIN SHELDON ANDERSON & VANDERHOEF PLLC
Wells Fargo Center
999 Third Ave., Ste. 3610
Seattle, WA 98104
206-749-2371
E-mail: patrick@fsav.com

Calendar

ADR

Professional Mediation Skills-Training Program
October 3-5 and 18-19—Seattle. CLE credits pending. By UW-CLE; 800-CLE-UNIV.

ANIMAL LAW

11th Annual Animal Law Conference: Building Animal Friendly Communities through Legislation, Community Action, and Legal Advocacy
October 25-26—Portland. CLE credits TBD. By Student Animal Legal Defense Fund and National Center for Animal Law; 503-768-6849.

COMPUTER SKILLS

Computer Camp
October 9 & 16—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CORPORATE LAW

Corporate Counsel Institute
October 3—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

Criminal Justice Institute
September 9-10—Seattle. 14.75 CLE credits, including 1.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Sex-Offender Changes
October 16—tele-seminar. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Elder Law Annual Meeting and CLE
September 19—SeaTac. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Vulnerable-Adult Statute
October 15—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL & LAND USE LAW

The Future of Land Use and Environmental Regulation
October 23—Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate and Tax Planning in a Changing Environment from a State and Federal Perspective
September 24—Seattle; September 25—Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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.

How to Draft Wills and Other Estate-Planning Documents
October 16—Seattle; October 17—Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Probate an Estate and Handle Post-Mortem Matters
October 17—Seattle; October 24—Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics, Professionalism and Civility: The Hard Questions
September 19—Seattle. 3 ethics credits. By WSBA Professionalism Committee; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 15—Kennewick; October 22—Tacoma; October 29 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Issues—Office of Disciplinary Counsel
October 21—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

The Family Law Seminar
October 24—Tacoma. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FISHERY LAW

National Fishery Law Symposium
October 23-24—Seattle. CLE credits pending. By UW-CLE; 800-CLE-UNIV.

GENERAL

Transform Your Legal Career *(with Irene Leonard, LLB)*
September 13—Seattle. 3 CLE credits. By Discover U; 206-365-0400.

Gain the Edge! Negotiation Strategies for Lawyers
September 19—Seattle. 6.5 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Transfer-Pricing Conference
September 19-20—Seattle. 10 CLE credits pending. By UW-CLE; 800-CLE-UNIV.

Professional Legal Contracting
October 2—Seattle; October 9—Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

INDIAN LAW

16th Annual Indian Law Symposium
September 18-19—Seattle. 11.5 CLE credits, including 1 ethics pending. By UW-CLE; 800-CLE-UNIV.

INTELLECTUAL PROPERTY/LITIGATION

Look Before You License: Handling Intellectual-Property Licensing and Related Rights
September 10—Seattle. 6.25 CLE credits. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

LABOR & EMPLOYMENT LAW

Labor and Employment Law Section Meeting
October 10—Seattle. CLE credits pending. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT AND TECHNOLOGY

Winning Strategies
September 17—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Essentials of Risk Management and Loss Prevention
October 7—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Time Mastery for Lawyers
October 15—Seattle. CLE credits pending. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Breakfast with the Judges
September 9, 16, 30—Kent. 1.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Motions Practice
September 26—Seattle. 5.25 CLE credits. By WSTLA; 206-464-1011.

The Essentials of Document Collection, Production and Discovery
September 30—Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Civil Settlement Strategies
October 8—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Nurses Law School
October 8—Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Tort Law Update
October 22—Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Federal Practice: Start to Finish
October 29—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Direct and Cross-Examination
October 30—Spokane; October 31—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

WSBA CIVIL RIGHTS COMMITTEE

So You Think You Have a Federal Case? Nuts and Bolts of 1983 Civil Rights Litigation
September 10—Seattle. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Announcements

GARDNER BOND TRABOLSI ST. LOUIS & CLEMENT PLLC

is pleased to announce that

Creighton S. Hutchins,
formerly of Lee, Smart, Cook, Martin & Patterson, PLLC, Inc.,

and

Raymond V. Bottomly,
admitted in Washington, Montana, and the Blackfeet Indian Nation Tribal Court,

have joined the firm as "of counsel."

John E. Drotz,
admitted in Washington and Hawaii;

David D. Mordekhov,
admitted in Washington, and also a graduate of Peoples' Friendship Russian University Law School;

Flint W. Murfitt,
admitted in Washington, California, and Montana;

and

Phillip B. Navarro,
former clerk to Justice Charles Z. Smith, and admitted in Washington and U.S. District Court, Western District of Washington,

have joined the firm as associates.

We are pleased to add these lawyers to our growing litigation practice as we continue our commitment to providing excellence in client representation.

Denny Building, Suite 600
2200 Sixth Avenue
Seattle, Washington 98121
www.gardnerbond.com
Telephone: 206-256-6309
Fax: 206-256-6318

ROMERO MONTAGUE P.S.,

a boutique law firm focusing on commercial litigation and business law matters for emerging companies, is pleased to announce the August 2003 opening of its San Diego, California, office.

Romero Montague is available for consultation, referral, and association in California cases involving intellectual property, construction, real estate, and general business and commercial disputes.

ROMERO MONTAGUE P.S.
155 - 108th Avenue NE, Suite 202
Bellevue, Washington 98004
Telephone: 425-450-5000
Fax: 425-450-0728

520 West Ash Street, Suite 202
San Diego, California 92101
Telephone: 760-788-0965
www.romeromontague.com

SCOTT ♦ HOOKLAND LLP

announces with pleasure that

Kevin T. Christiansen
joined the firm as an associate on July 1, 2003.

Mr. Christiansen is licensed in Oregon and Washington, and he will emphasize construction law and creditors' rights advice to firm clients in both states.

SCOTT ♦ HOOKLAND LLP

Kevin T. Christiansen*	Alan L. Mitchell
Douglas L. Gallagher	Thomas J. Murphy
Douglas R. Hookland*	Michael J. Scott

*Admitted in Oregon and Washington

9185 SW Burnham St.; Tigard, Oregon 97223
PO Box 23414; Tigard, Oregon 97281
Telephone: 503-620-4540
Fax: 503-620-4315
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Classifieds

Reply to WSBA *Bar News* Box Numbers at:
WSBA *Bar News* Job Code ____
***Bar News* Classifieds**
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

Positions available are also posted by telephone at:
206-727-8261
and online at www.wsba.org/jobs

FOR SALE

Save 50 percent on law books: Call National Law Resource, America's largest law-book dealer. We buy and sell. Visa/AX accepted. Excellent condition. Your satisfaction guaranteed. 800-886-1800; www.nationallaw.com.

Washington estate-tax preparation software: Calculate Washington estate taxes and generate Department of Revenue REV 850046, estate, and transfer tax returns. Free trial use. www.wilsonsoftware.net.

SPACE AVAILABLE

Attorney offices available: Downtown Edmonds shared law office has two spaces currently available in attractive street-level location. Office and staff expenses are shared to maintain low overhead. Great opportunity for developing practice or for practitioner seeking to escape larger firm environment. Immediate availability. Contact Jonathan Hatch at 153 3rd Ave. S., Ste. 101, Edmonds, WA 98020; 425-771-4846.

Downtown Bellevue office-sharing in class-A building. $300 per month. Telephone and other services available. E-mail alan@asdlaw.com.

Pike Street Market area: Three offices in six attorney office space. One large office with veranda, two smaller offices; all ample, all with water views. Salutary proximity to market, waterfront, and other indulgences. Conference room, receptionist, and amenities provided. Available for occupancy after April 30, 2003. Contact Charles Hamilton or Nicole Calvert at 2066236619 or cshamiltoniii@qwest.net.

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WILL SEARCH

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MISCELLANEOUS

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The Internet:
Changing Professionals' Lives

by Jeff Tolman
Guest Editor

In the glory days of our profession, clients and attorneys felt part of a team—working together to resolve the legal issue in the client's life. The attorney's advice was respected. After all, the attorney had been through the rigors of college, law school, and the bar exam, and had practiced for several years. The client was simply a citizen caught in the middle of a legal battlefield. There was little debate about who had the most information on which to base the next move.

The same was true in other areas of life. Patients seldom argued with their physicians about which medication should be prescribed, realizing that the doctor knew pharmacology better than the patient. School boards and other public decision makers set most policy without much citizen objection, due to the great information advantage they had. If patients didn't like the decisions their physicians made, they switched doctors. Citizens elected new decision-makers if they felt the board was racing down the wrong policy road.

Then the Internet was born.

From any computer a person could make travel arrangements, send an instant communication, see fake pictures of nearly every moment in Pamela Anderson's life, and research any topic. Suddenly a person unable to sleep from the stress of a legal problem could spend the night researching the case. The attorney's information advantage changed. Now clients, it seemed, could gather the same information as their lawyers. The team relationship changed to one of competitors. Was the attorney aware of the recent clip in *The Weekly World News* that seems related? How did the half-sentence in the fourth page of the 1997 Wisconsin decision found on Who Needs-Lawyers.com affect the next strategic move? Why hadn't the attorney mentioned the University of Sligo Law Review article on a similar-sounding topic? Attorney-client meetings became debates, often cross examinations of the attorney about topics that had minimal impact on the straightforward case at issue.

Lawyers are not alone in the Internet dilemma. My pal Dr. Cureusall tells the same tales.

Public-policy boards now have citizen input on virtually every issue. There are no "gimmes" anymore. Attorneys and clients, doctors and patients, decision-makers and constituents are now as often adversaries as teammates due to the availability and accessibility of information.

So how do we deal with the changed relationships this information backwash has caused?

First, I always give clients the option of representing themselves. If the Internet information is as clear, concise, and persuasive as they think it is, they don't need me.

At the same time, I need to understand that some of the information may be helpful. Once in a while a client actually finds a case or an article that supports my legal position. Don't immediately scorn the Internet information.

Clients should be reminded, however, that not everything they read on the Internet is true. Ask Pierre Salinger, who stated, after reading it online, that a Navy missile had downed TWA Flight 800, and was very publicly shown to be incorrect. As I tell clients, I can say I'm tall a hundred times. I'm still not.

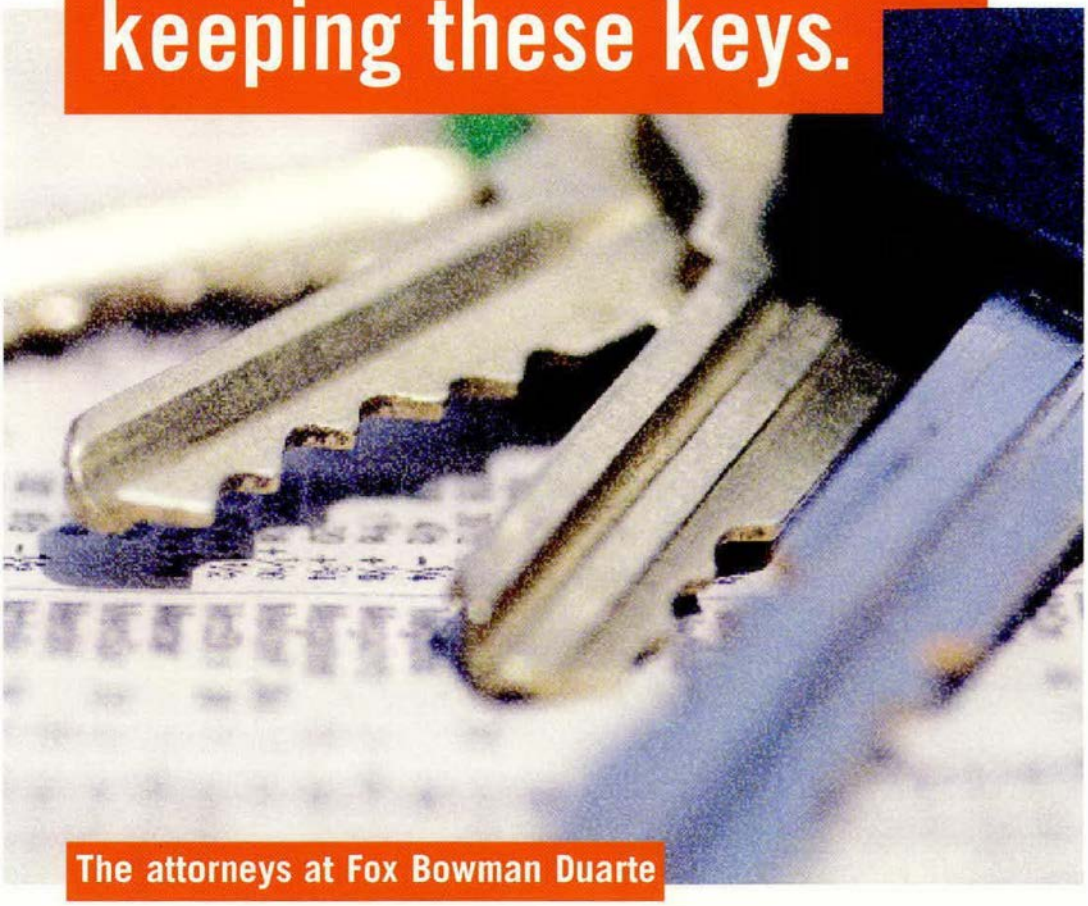
In addition, clients must be educated as to how judges decide cases. Judges are constantly busy. Each case gets their full attention and best effort—for a short period of time. Lawyers must convey to their clients that the judge will weigh the quality of the information, not the quantity.

It should be pointed out to clients that, often, Internet information is "a mile wide and an inch deep." Sure, you can download will forms from the Internet, but are they valid? Depends on the nuances of the law. Did testators acknowledge they were over the age of 18 before the will was witnessed? Did they tell you they understood that wills governed their estates and were made at their free will? In a nutshell, even if a will form is OK, it must be properly witnessed. And if it wasn't, how do you sue the Internet for malpractice for not telling you how to do it right? When clients start debating the value of Internet information with me, I ask them why they think law school takes so long. "Why, if I could learn the law overnight on a laptop, was I required to spend a fortune and be tortured by the Socratic Method for three years?" This inquiry usually brings home that practicing law is more than spending time on Google, and changes the dialogue into why my client is better off with me than acting *pro se*. The Internet has given attorneys a wonderful opportunity to describe what we do; how we help clients; what experience and expertise we have in the area of law concerning our client; what our value is to them.

Finally, clients need beremindedthat their interests and their lawyers' interests are similar. I almost always talk to new clients about my goals in their case: to make wages and be their lawyer forever. How I will do that, I tell them, is to return their calls, work hard for them, and send a fair bill. What I'm after is a long-term attorney-client relationship, where we both like and trust each other. Where we're on the same team. Like things used to be in the glory days of my profession before the Internet.

Editor's note: Jeff Tolman is a past member of the WSBA Board of Governors who practices law and writes better than I do. I thought you'd enjoy one of his pieces this month. I'll be back mumbling something in October.

Good counsel is key to keeping these keys.



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