Vol. 58 No.8

Washington State

Bar News

The Official Publication of the Washington State Bar • AUGUST 2004

- Cumbow on Contracts
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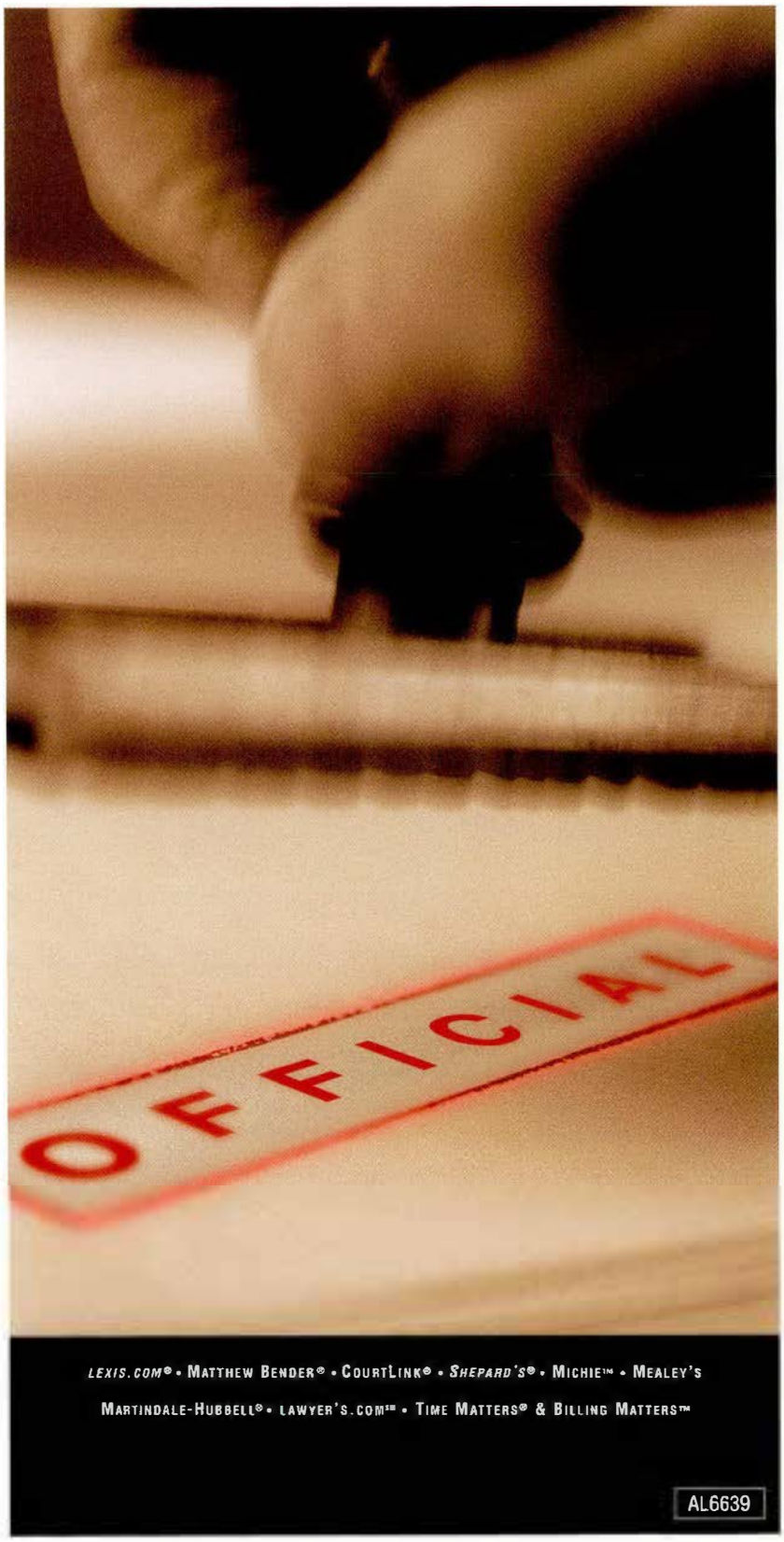

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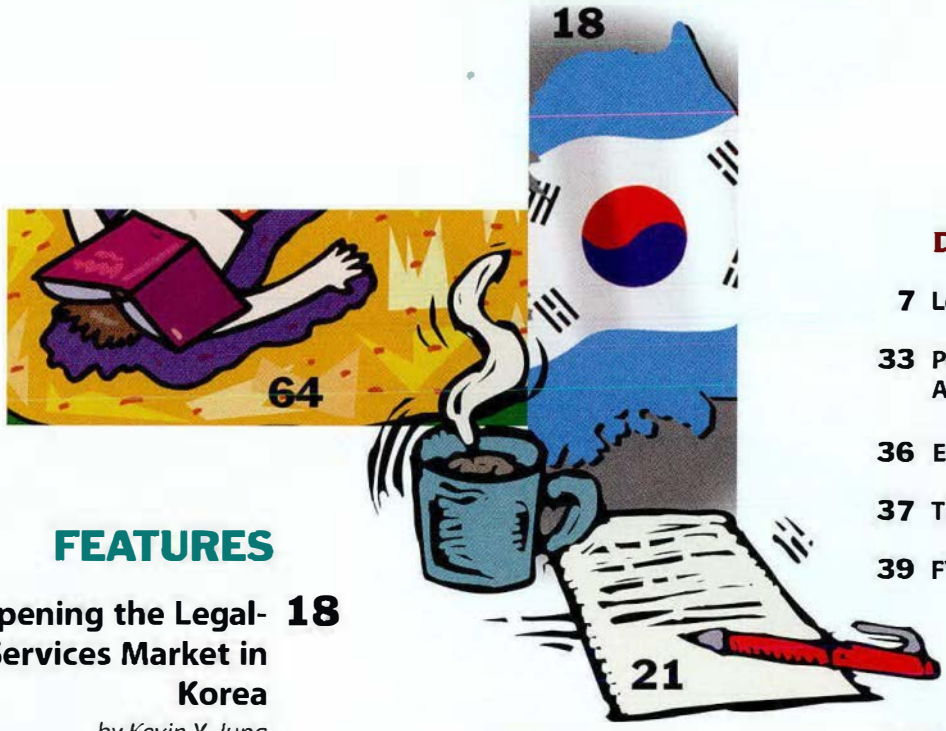

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Sometimes the system really works

Personally, and on behalf of my client, I would like to extend my sincere thanks to the members of WSBA and, in particular, the Board of Governors, for the manner in which they stepped forward and took responsibility for the criminal actions of one of our members.

Ken Schmidt was appointed trustee of funds received for an 11-year-old boy whose mother was killed by a drunk driver in 1999. Mr. Schmidt proceeded to raid the trust account for over $75,000. He admitted having substance abuse problems, let his practice deteriorate, and neglected to renew his bar license. His only apparent source of income was the trust fund. Eventually he abandoned his practice and moved to Minnesota, where he hid out in a backcountry canoe camp for several months. He then returned to Washington to face DUIs in two counties.

While I replaced Schmidt as trustee, there was no way to recover the misused funds from him. Mr. Schmidt got an exceptional sentence of two years in prison for first-degree theft and was disbarred.

The Board of Governors stood up for all of its members and authorized payment of the maximum the Lawyers' Fund for Client Protection allows. This does not fully compensate the trust fund for its loss, but the members of this Association can be proud of the efforts of our leadership and membership to take responsibility for the actions of the few bad apples that give all attorneys a bad name.

Scott A. Bruns
Yakima

Platonic guardians of the liquor trade?

"Time to Untie the House?" (*Bar News*, June 2004) has a tone of quiet impartiality, a smoothness as comforting as a single-malt scotch. Beneath its historical survey I believe I detect a set of assumptions that are both dangerous and deceptive.

No one can deny the increasing market dominance of the Costco Empire. When we hear the familiar rhetoric of efficient and cheaper distribution and antiquated three-tier marketing it may be time to pause and reflect.

Alcohol is indeed more than simply another commodity. Its use has public costs. Its regulation through any scheme to prevent vertical integration and control by private interests, let alone one as large and powerful as Wal-Mart, is a valid state interest.

That small breweries and wineries might form their own distribution companies should Wal-Mart choose to exclude any from its substantial markets is little comfort. Nor does the lethargic enforcement of our antitrust laws promise relief. So perhaps we must keep the tied house laws after all, trusting to the wisdom of those who passed them. Perhaps they knew that whatever the vacillations of relative power between producers, distributors, and retailers, separation of interests was the proper balance for the public. There are also concerns in the application process beyond simply screening for organized criminal activity. A balanced and competitive market — not as streamlined and efficient as Wal-Mart and others might wish — is essential to prevent the monopoly capitalism that would treat as archaic many regulations that interfere with its goals. The corrosive erosion that so effectively channels funds to these corporate behemoths from a captive public must somewhere find resistance. However benevolent Wal-Mart may wish to appear in providing cheaper alcohol of its choosing to a thirsty public, it may have met its match in Washington.

May Washington State not join those communities that often tumble over each other to pave the way for Wal-Mart's Trojan horse with tax breaks and other incentives as it moves with the inevitable progress of a glacier sweeping all before it. As one who remembers stores that were not stadiums, communities that supported local businesses, and sympathetic as I am to small producers, I hope that the tied house laws stand strong against this most recent assault.

Thomas Mengert
Keyport

Safe electronic filing is possible

Seattle appellate attorney Catherine Wright Smith is correct to worry about the possible effect of an e-served motion for reconsideration, and whether such a motion would extend the time for an appeal (*Bar News*, Letters, June 2004). Lawyers need to worry about this in the paper world, too!

I question, however, her assertion that Washington Court Rules need to "catch up with the technology" with re-

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spect to electronic service. GR 30.2(d) clearly provides for electronic service between the parties by agreement. What is needed to avoid the concerns she raises is a carefully drafted case management order or stipulation for electronic service. Topics such as when service is deemed effective (when received on the vendor's system, or as if served by mail?); the cut-off time for service in a day (11:59 p.m. or 5:00 p.m.?); how to handle documents that should be sealed or redacted — all these are fair topics for an e-service case management order or stipulation. The stipulation may want to include an "oops" clause that covers the possible situations of errors in transmission, or inadvertent errors in the service list. In these situations, the party may be entitled to an order extending the date for response.

The point is that Washington lawyers need not wait for courts to slowly adopt formalistic e-filing or e-service court rules that cover every possible scenario. The technology and rules are here, now. With carefully drafted case management orders and stipulations, the Washington Bar can take advantage of the many benefits of electronic service under GR 30.2(d) immediately.

Scott Wetzel
Bellevue

Legal needs' Gordian knot

Having read the Washington State Civil Legal Needs Study, I was interested to also read David Savage's "A Profound and Grave Crisis" (*Bar News*, June 2004). I finished the article with the same feeling I had after reading the study — that the focus seems off target. While both the study and the article focus on the unmet needs of one million of Washington's low-income citizens, isn't the real problem much broader?

Of specific note, the report's Findings of the Stakeholder Survey (a "stakeholder" being defined as "bench, bar, court personnel, social and human services providers and legal services providers") states "there was little or no difference between the needs of low- and moderate-income people in Washington State" (page 79). One Spokane judge stated that in his opinion "the legal world is not available to either low- or moderate-income people without pro bono volunteers, legal services, volunteers or lawyers willing to accept cases on a contingency fee basis" (page 79). So why seek to develop a system that favors low-income over moderate-income people, if the unmet needs of both are the same? The obvious answer is that if it is almost too costly to solve the problem of low-income citizens, then it must be truly impossible to solve the problem of moderate-income citizens.

When trying to help moderate-income clients, sometimes the best service you can do for them is to help them avoid the legal system. They might have suffered a clear injustice, but the costs and risks of the legal system in trying to correct this injustice would probably dwarf the problem they think they have now. If so, then the lawyer's knowledge of non-legal remedies is sometimes the difference between at least trying to give them actual assistance and just shrugging because they can't afford you.

District courts were supposedly created to give a simpler, faster and cheaper means of justice. But in our county, the criminal and infraction cases swamp their docket. And it is not too hard to make litigation in district court just as costly as litigation in superior court (and one side may always have an advantage in making it so). I have seen some excellent work done in small claims court, but the ability to appeal the majority of these judgments to superior court can radically change the cost and time for low- and moderate-income clients seeking affordable justice.

Unless we are just going to accept the Golden Rule (i.e., he who has the gold makes the rules), don't we have a deeper problem in our legal system?

Frank F. Randolph
Longview

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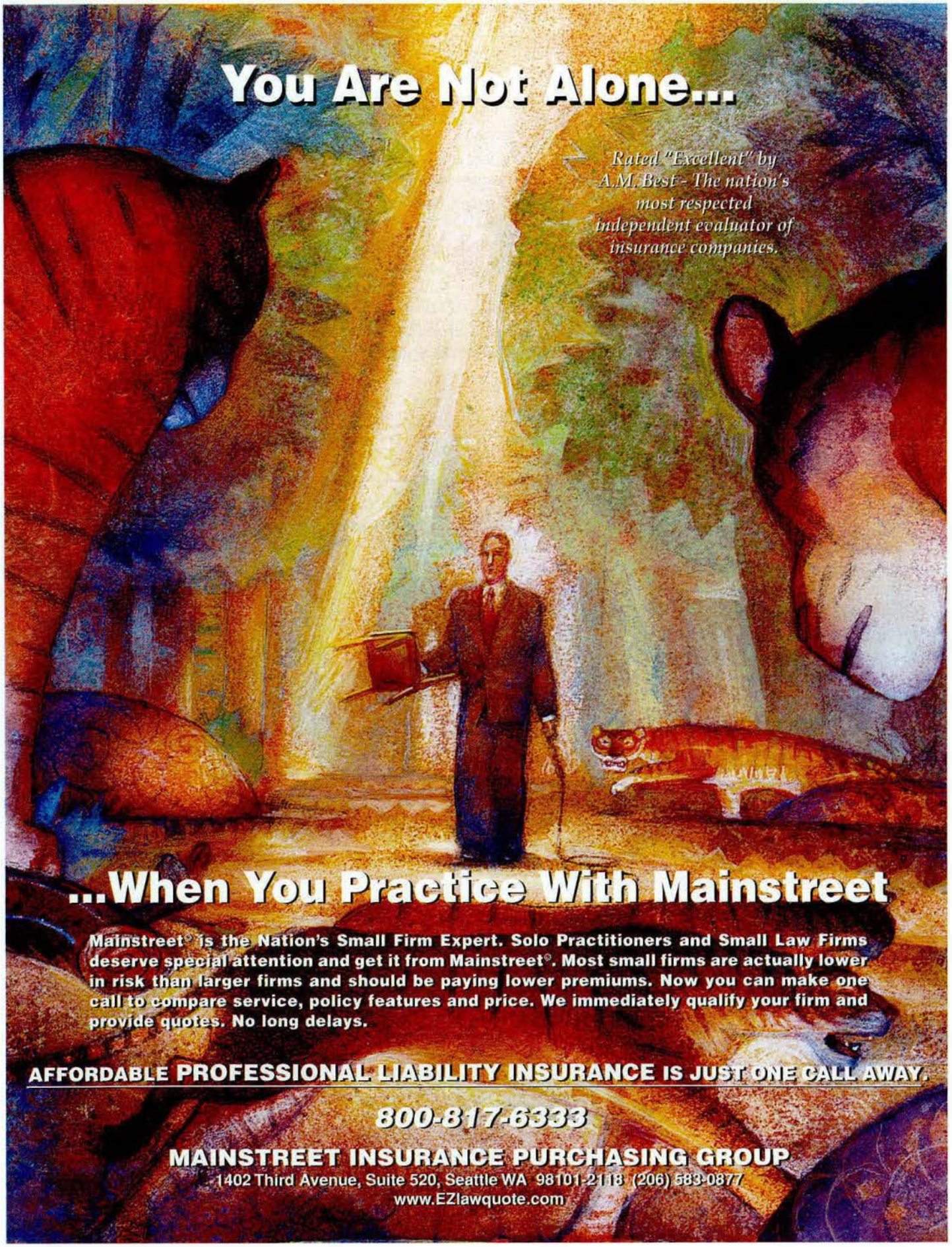
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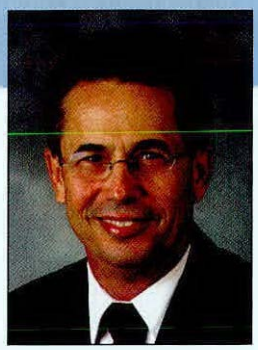
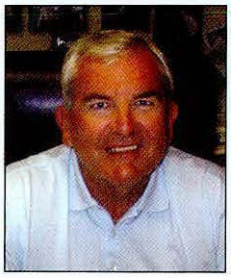


Third-year Governors Have Their Say

by David Savage, WSBA President

In my view, this column should provide an opportunity for the Board of Governors, not just the president, to communicate with members. For this month's column, I have invited the third-year governors* to offer a few words. I have served with them since joining the Board in the fall of 2001, and, while I knew none of them previously, I know them well now and can tell you with pride that they are dedicated, diligent, and conscientious persons who have volunteered a great deal of their time to make this bar association better. Their remarks provide an experienced view and a perspective different from mine. I hope there will be some among you who may be moved by their words and deeds to consider a leadership role — whether with the Board of Governors, a WSBA committee or section, a local bar association, or any other of the many fine associations that represent our diversity in gender, race, color, ethnicity, sexual orientation, national origin, economic circumstance, disability, or age. While it is fair to expect much of your bar association, it is important to remember that it is dependent on the labor of committed volunteers like those whose remarks follow.

Bryce Dille, Governor, 9th District



I practice in the "fair" town of Puyallup, and I have the luxury of practicing in a small town along with having a metropolitan practice primarily in the fields of real estate, business, estate planning, and probate. I was admitted to the Bar in 1966, which qualifies me as the "old-timer" on the Board of Governors. Prior to my service on the Board I had been active in the Tacoma-Pierce County Bar. Several years ago I received an appointment to the Disciplinary Board. That was a tremendous experience, primarily because I worked with such exceptional attorneys, including our president-elect, Brooke Taylor, and Steve Henderson, who was also a candidate for that office. This piqued my interest in Bar Association affairs. In the spring of 2001, I decided to become a candidate for the Board. At my first Board meeting after my election, we elected the first members to the two recently created diversity seats and also approved a new position for the Young Lawyers Division. At first I was somewhat ambivalent in my feelings towards those positions; however, my service on the Board has convinced me of the wisdom and foresight in creating those positions, which allow members to serve who otherwise might not be elected — such as Fawn Sharp, who represents the Quinault Indian Tribe; and David Savage, who represented the rural community of Pullman. They, together with the other members who have held these seats, have brought a breadth of experience as well as viewpoints that otherwise would have been missing.

During my term on the Board, I was elected treasurer of the Bar Association for this year, as well as president of the Washington State Bar Foundation, a position I will hold after my term on the Board has expired. Working with members of the Board in preparing the budget has been an invaluable experience, and I hope working with the Bar Foundation in the future will develop sources of funding for sorely needed Bar programs, such as assisting with law-school debt and diversity programs.

What I will miss the most in leaving the Board is the interaction, both business and social, with some of the best lawyers and nicest people I could ever hope to meet and be associated with. There have been many memorable experiences. For example, at a Board meeting in Walla Walla, we visited the Walla Walla Penitentiary and the next day were given a tour of Whitman College. Although these two institutions are only several miles apart geographically, they are worlds apart by any other measure. During my term, the Board has taken positions on such diverse issues as tort reform, court funding, legal assistance for the poor, adopting various recommendations for changes in the rules of practice and the ethics area, and establishing a WSBA diversity advocate position. In making these decisions, I have always attempted to seek the opinion of the lawyers from my district as to their concerns; however, in the final analysis, the ultimate decision for each Board member is based on what he or she believes is in the best interest of the membership as a whole.

I would like to thank those lawyers who elected me and those members, both past and present, of the Board of Governors with whom I have had the good fortune of serving. My term on the Board has been one of the most rewarding experiences I have ever had in the practice of law. I would urge every member to consider service on the Board or on any committee or section — truly the backbones of your Bar Association.

Rob Boggs, Governor, 4th District

Over the past three years I have traveled around with the BOG throughout the state of Washington. We have been from Spokane to Vancouver, Walla Walla to Bellingham, and places in between. WSBA members and the public are invited to all of the meetings. The meetings are usually attended by the BOG members and the liaisons from different groups such as the Superior Court Judges' Association, the Washington Association of Prosecuting Attorneys, and the like. I have rarely seen anyone else, meaning just John or Jane Doe Attorney, attend the meetings just to see what is going on. I would strongly urge attorneys to take the opportunity when the BOG meets in your neck of the woods to stop in and see what goes on. The calendar of meetings is posted on the WSBA website (www.wsba.org/info/bog).

Besides budget and other oversight functions, the BOG deals with serious issues that can affect one's day-to-day practice. For example, we have considered such things as new ethics rules and what can be done to increase court funding. When matters are discussed, the usual protocol is for the BOG members to comment first, and then the president asks for comments from other attendees. More times than I can remember, someone other than a BOG member comes up with a comment that changes minds. So please take the opportunity to attend.

Finally, I regularly hear people comment that they thought that the BOG only consisted of attorneys from the "big Seattle firms." Actually, that is far from the truth; in fact, the opposite is true. Since I have been on the BOG, there have been government lawyers, small-firm lawyers, solo lawyers, and so forth, with small-firm lawyers making up the bulk. So in parting I say, get involved — it is worth it.

Carl Carlson, Governor, 7th-Central District

After almost three years, I'm almost out of here. It'll be a huge relief to be able to get all those meetings and events off the calendar, and focus on my practice, but everyone I've talked to who has served as a governor (and this includes me) says that it has been one of the best experiences of their professional lives. The Bar Association staff is passionate, hardworking, and fun, and they deeply believe in the legal profession. We're lucky they work for us, and I'm going to miss them. The other governors are accomplished, selfless lawyers dedicated to the profession and the public, and it's been a rare treat to get to know them.

I report next week at the Member Benefits Task Force meeting on whether the WSBA should promote the ABA's Retirement Plan program to Washington lawyers. I've talked with the ABA folks, and it looks like a heck of a good plan. All Washington lawyers could participate — not just ABA members. Still need to read the entire contract that we would be signing. Should be able to handle that in time.

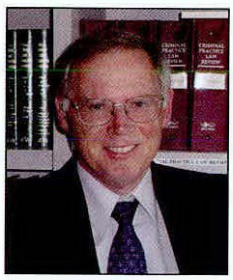
The Long-Range Planning Committee, which I chair, is in the middle of reviewing how the WSBA is doing at meeting its operational plan. Executive Director Jan Michels does a great job of focusing the governors on long-range planning. Reviewing how we're doing is a slow process — we've got another meeting next week — and we'll need to meet more often if we're going to get the job done on time.

I feel really bad that I haven't made it to any World Peace Through Law Section programs this year. As the BOG liaison to that section, I participated some last year but just haven't been able to this year. Thanks to Randy Winn's high-energy leadership, that section has had a spectacular year, with one amazing program after another. Sorry I haven't been more supportive, Randy. You have done an absolutely great job.

But I have attended, again as liaison, most of the Rules of Professional Conduct Committee meetings. If you're interested in legal ethics, you *really* want to be on this committee. These folks work hard, but it's fascinating stuff — nuts-and-bolts ethical dilemmas (do I have to give the client her file when . . .?) and cutting-edge issues (can I combine investment advice/sales with my estate planning practice?).

There's a lot more to being a WSBA governor — monthly (almost) BOG meetings, attending all sorts of law-related dinners and events, learning about the lack of legal services for the poor, the lack of funding for our courts, and more than I ever imagined about our profession. You ought to try it!

Jon Ostlund, Governor, 2nd District



I graduated from Gonzaga Law School in 1974 and have practiced law my entire career in Bellingham — the first seven years in private practice and the last 22 years as the Whatcom County Public Defender. Unfortunately, like most public defenders as well as most of my colleagues in the private criminal defense bar and in the prosecutors' offices across the state, I took very little interest in the Washington State Bar Association. I did not apply to be on any committees or boards, and, except for paying my dues and documenting my CLE credits each year, I really had very little to do with the WSBA. In 2001, it was Whatcom County's turn to have a member on the Board of Governors. Time was running short and no one had applied, so about a week before the deadline expired, the president of the Whatcom County Bar Association asked me if I would consider running for the Board of Governors. My first impulse was to say no, that I was too busy, but after thinking about it for a day, vanity got the best of me and I agreed to

do so. I came on the Board of Governors, unlike most of my fellow governors, with very little knowledge of the workings of the WSBA or the Board of Governors.

These past three years as a governor have been among the most gratifying of my career as a lawyer, and it has been fun. I have a new appreciation of our profession and of our Bar Association, and of the dedication and hard work done by the many attorneys throughout the state who volunteer their time on various boards and commissions. On a personal level, the most enjoyable aspect of my term has been the friendships I have formed with my fellow BOG members, with the Bar staff, and with other attorneys. What a wonderful and bright group of people!

When I came on the Board, I decided that one area I would like to have an impact on was in raising the awareness of the growing crises in indigent criminal defense, with crushing caseloads and inadequate resources. I am proud to say that I have had an impact in this area, which culminated in the work and report of the Blue Ribbon Panel on Criminal Defense, which was released this spring. I am very grateful for the work and dedication of all the members of that panel and especially for the leadership of its co-chairs, retired Justice Robert Utter and Marc Boman.

As with any serious endeavor, there are also frustrations and failures at times. Most of that has been trying to maintain contact with all the various constituents. For instance, in the 2nd District I represent five counties and their bar associations, as well as serve as liaison to several sections and committees. I would have liked to have done a better job of keeping in contact with and attending more meetings of these organizations.

My advice to you all is to get involved — volunteer for committees and boards, or consider running for the Board of Governors.

I am proud of the work of the BOG during these last three years; I think we have accomplished a lot and served the members of the Bar well. As governors, we have to remember that we represent the Bar as a whole as well as each of its members. There is often tension between representing the wishes of the members of the Bar and what we as individual governors feel is in the best interests of our profession or the public as a whole — those interests must be balanced.

My advice to you all is to get involved — volunteer for committees and boards, or consider running for the Board of Governors. We really cannot expect the Bar Association to continue to pay attention to us if we do not pay attention to it. I personally plan to be active in WSBA committees and to continue working on the indigent-defense issues raised by the Blue Ribbon Panel.

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*Governor Zulema Hinojos-Fall, also a third-year governor, will be contributing to an upcoming issue of *Bar News*. Readers should look for her comments at that time.

Dave Savage can be reached at savage2@imsblaw.com or 509-332-3502.

Ethics, Professionalism, and Civility: The Hard Questions

3.0 ethics credits

WSBA Professionalism Committee Chair **Soojin Kim** and members of the committee invite you to spend an enlightening and exciting morning with a top-notch panel, while you earn ethics credits. The seminar will be held:

Friday, September 10, 2004
9:00 a.m. to 12:15 p.m.
Olympic Room, Seattle Center

We are pleased to have as our facilitators **Peter R. Jarvis** and **Bradley F. Tellam**. Mr. Jarvis and Mr. Tellam are frequent writers and speakers on legal-ethics issues, and the Professionalism Committee is delighted to bring them back for the sixth time. Their lively and engaging style always brings rave reviews! Mr. Jarvis and Mr. Tellam will lead the panel and the audience through discussion of a number of hypothetical fact patterns.

Panelists will be:

- Hon. **James Hutton**, Yakima County Superior Court judge
- **Mark A. Johnson**, WSBA governor and former chair of the WSBA Character and Fitness Committee
- **Susan D. Jones**, litigation attorney whose practice emphasizes municipal, commercial, and administrative cases for public and private clients
- **Jon Ostlund**, WSBA governor and Whatcom County public defender
- Hon. **Mary Yu**, King County Superior Court judge

To register, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. You may also register at the door. The registration fee is $130.

The WSBA Database and You

by Jan Michels, WSBA Executive Director

Keeping your information current

When you first joined the Washington State Bar Association, you provided the Bar with your name, business mailing address, business telephone, business fax, and (if you joined fairly recently) e-mail address. Once you were admitted, Admission to Practice Rules 13(b) and (c) require you to notify the WSBA within 10 days whenever your business address or telephone number changes, or if your name changes. It's easy to notify the WSBA by e-mailing the change to questions@wsba.org or sending a fax to 206-727-8319. Or, you can send a letter with the change. There's also a contact-information change form sent with your licensing packet each year. Whenever you make a change, the WSBA sends you a confirming letter.

WSBA website (click on "Lawyer Directory" in the left column), or go to it directly at http://pro.wsba.org. You can search for lawyers in a number of ways (e.g., by name, Bar number, phone number, city). When an e-mail address is listed, a click on the e-mail address opens a new e-mail to that person.

Figure 1

Public information

Of the information you provide, the following is public and is provided to anyone requesting it: your name, WSBA number, membership status (current and historical), date of admission, business address, business phone, business fax, business e-mail, WSBA committee and section membership, and whether you have public discipline. This information is published annually in the *Resources* directory and is also on the WSBA's online lawyer directory (see this section which follows). (Note, however, that committee membership and public discipline information are not in *Resources*, and section membership information is not on the online lawyer directory.) All other member information is confidential.

Personal information

The WSBA also requires you to provide your home address. This information is strictly confidential and is used only for emergency contact by the WSBA, governor elections, and other regulatory service documents or WSBA business.

Online lawyer directory (see Figure 1)

If you haven't seen the WSBA online lawyer directory — check it out! It's up-to-date (updated every business day) and easy to use. You can access it from any page on the

For a small annual charge, a link to your or your firm's website can be included (see www.wsba.org/lawyers/addlink.htm, or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA for more information). Note that "Website" appears only if you have subscribed to this service. Also note that "Committee/Position" appears only if you're a member of a WSBA committee. And, as a public service, a link to public discipline also appears where applicable.

Requests for information to be confidential

In rare instances, if you have concern for your personal security or have another compelling reason to keep your contact information confidential, you may request that it not be publicly available. Such requests must be submitted in writing to the executive director, who has the authority to approve the confidentiality of contact information. Approved requests are in effect for one year.

Limited selling of member-data lists

As defined by policy approved the Board of Governors, limited sale of address lists to law-related entities, such as outside CLE vendors, trial-support services, law-service vendors, and the WSBA's sponsored insurance programs, is allowed. Lists of members' phone numbers, fax numbers, or e-mail addresses are *not* sold, with the exception that e-mail addresses may be sold to CLE providers. All lists are sold for one-time use only.

E-mail addresses

From December 2001 through August 2003, WSBA policy permitted the sale of e-mail addresses; however, despite the restrictions the WSBA put on the use of such lists, the spate of e-mail spam led to a policy change to disallow the sale and use of member e-mail lists except by the WSBA and CLE vendors (members have told us that they prefer receiving CLE notices by e-mail). WSBA use of broadcast e-mail to members follows a procedure requiring that the subject be clear (with "WSBA" the first word in the subject line), the message be brief, there be no attachments (although links to additional information may be provided), and the frequency be conservative. Every broadcast e-mail message sent by the WSBA includes an opt-out provision. You can also request that broadcast e-mails you receive from the WSBA be restricted to official information only.

The WSBA does everything possible to protect members' e-mail addresses from harvesting or scraping by tech-savvy vendors or hackers, and will follow up on leads forwarded by members who believe their e-mail address was stolen from WSBA files, although we cannot protect one-by-one duplications from our public files.

What's ahead?

***Resources* directory**

Although we had thought most members would prefer using the online lawyer directory for member-contact information, since it is more current than *Resources*, we have found that many members still find a hard-copy directory useful. Because many members appreciate this annual publication, we have no plans to discontinue its publication in the near future. (To purchase *Resources*, go to http://store.yahoo.com/wsbastore/20reslawdira.html or call the WSBA Service Center at 800-945-WSBA or 443-WSBA.)

Acquiring e-mail addresses

We currently have e-mail addresses for about 65 percent of WSBA members, and we have found communication with members via e-mail for notices, committee information, and regulatory information represents a significant financial

and staff-resource savings. The WSBA Board of Governors has proposed to the Supreme Court that e-mail addresses for members who have them be required by 2006. The Court has published the proposed amendment to APR 13 for comment (the comment period expires April 29, 2005).

Areas of practice

Starting with the 2005 license-renewal cycle, members will be encouraged to add their primary practice areas to their contact information. This information will form the basis for a search function where, by geographic area and practice area, other WSBA members or the public can locate a lawyer. A list of practice areas and instructions will be included in the 2005 license renewal packet.

Demographics

The New Admittee Licensing Form includes a voluntary demographic questionnaire, requesting gender, ethnicity, and disability information. In addition, every few years, with the licensing packet, the WSBA requests this optional identification. This information is strictly confidential and is used only in the aggregate, for demographic analysis. About 60 percent of members provide this demographic information, which allows the WSBA to examine the composition of membership and better understand the diverse needs of members. There is evidence that women and minority groups under-report these demographics.

Several months ago, at the "Celebrating Diversity" listening session sponsored by the WSBA Committee for Diversity and the Board of Governors, one of the discussions focused on whether this demographic information should be required. As expected, opinions varied, and the question of whether to require demographic information is still to be decided. Comments included: "Race is not something that should be collected; gender is another matter"; "It is an invasion of privacy"; "Create models for reporting that allow for multiple identity groups"; "Emphasize that by reporting this information, members are enhancing their membership in the WSBA"; "Gay lawyers are subject to firing in most of Washington for being gay, and therefore they will not tell; voluntary disclosure gets imperfect results but better than none"; "Right now WSBA touts its diversity initiatives but does not try to measure all its minority diversity members"; "Make it anonymous and separate from member records"; "Publicize the importance of and use of information."

Technology

This month, the WSBA will implement a new and much more robust and reliable membership-records system. With its increased functionality and enhanced capabilities, the new system should result in fewer errors and speedier processing in our regulatory matters, as well as greater convenience to members. It also includes functions not handled by our current system, such as e-commerce, in-house list serves for member groups, and broadcast e-mail. We look forward to serving our members and the public better through this enhanced technology.

For more information, see "Policies Regarding Member Data and Contact Information" at www.wsba.org/lawyers/member-data.htm.

Opening the Legal-Services Market in Korea

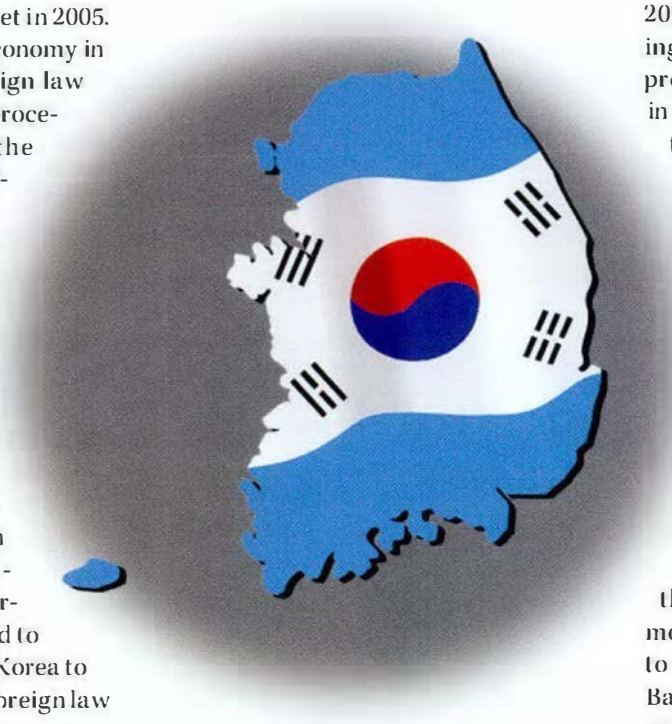
Foreign law firms may be permitted representative offices in 2005

BY KEVIN Y. JUNG

Under the terms of the Republic of Korea's protocol for acceding to the World Trade Organization (WTO), Korea has committed to opening its legal-services market in 2005. Korea is perhaps the largest economy in the world still closed to foreign law firms. In accordance with a procedural schedule adopted by the WTO, 14 countries have submitted their requests regarding the opening of the legal market in Korea. The Korean government was required to submit its response on March 31, 2003, to the WTO regarding the opening of its legal-services market, and did so.

The market-opening measures submitted by the Korean government to the WTO include, among others, that foreign law firms will be permitted to open representative offices in Korea to consult on international and foreign law problems, and to act for Korean corporations on international laws without a Korean bar license. However, foreign law firms are prohibited from forming alliances and joint ventures with Korean firms, advising clients on local Korean laws, appearing in Korean courts, and hiring Korean attorneys as members of the foreign firms. These measures are expected to be effective in early 2005, if they survive the present negotiations between the WTO member nations and Korea, which should conclude by the end of this year. This is similar to measures that Japan implemented in 1987, when it opened its legal-services market to the world.

Currently, foreign lawyers are not permitted to practice law as lawyers in Korea, and foreign law firms cannot establish any operation in Korea. To practice as a lawyer in Korea, one must pass the Korean bar examination; this has been the case since 1997 for foreign lawyers under the Korean Attorney-At-Law Act. However, the language barrier has been and is the most formidable obstacle for foreign lawyers, since the Korean bar examination is offered only in the Korean language. As such, it is a daunting task for any foreign attorney to pass the exam.



Many law firms and companies in Korea, however, employ expatriates and internationally qualified attorneys as foreign legal consultants and in-house counsel, respectively, including this author, who spent almost a year in 2001-2002 working in Seoul representing KPMG International. There is no provision for "foreign legal consultants" in Korean law, although, in practice, there are many foreign attorneys in Korea who perform a legal advisory function.

The Korean Bar Association, dominated by the older generation and litigation-based practice, wants the legal market to remain closed. In a way, Korea is an exclusive legal market comprising fewer than 8,000 lawyers in a country of over 48 million people. Due to this restrictive market condition, it is not uncommon for foreign lawyers to practice law out of their hotel rooms for months at a time, moving their hotel locations from time to time to elude policing by the Korean Bar. One western lawyer reportedly spent almost a year in a hotel, advising international clients doing business in Korea.

Many U.K. firms have been openly lobbying to open offices in Korea. For example, in February 2002, a delegation from the U.K. Law Society visited Korea to lobby for legal-market reforms. During my stint in Korea, I met with some of the largest law firms from around the globe, seeking information on the inevitable liberalization of the Korean legal market and assessing Korean law firms in case the Korean government allows any acquisition or joint venture with the

local firms. Some of the major international players that I have dealt with in connection with my work in Korea were major U.S. East Coast law firms and some of the world's largest law firms from the U.K. These law firms have built up extensive Korean practices out of their Hong Kong and Tokyo offices, perhaps in anticipation of the liberalization of the Korean legal-services market.

The group that has been the most vocal about the legal-services market in Korea consists of foreign companies and financial institutions that conduct businesses in Korea or with Korean entities, as they are not satisfied with the quality of domestically available legal services. Many Korean lawyers in Korea lack expertise on international finance and cross-border transactions, etc. Other problems are language and cultural difficulties for foreign clients with Korean law firms, and lack of fully integrated one-stop international law firms that can provide local legal services for foreign investors and global assistance.

The group that has been the most vocal about the legal-services market in Korea consists of foreign companies and financial institutions that conduct businesses in Korea or with Korean entities, as they are not satisfied with the quality of domestically available legal services.

According to a 2003 survey conducted by the *Korea Economic Daily* of 150 Korean companies, 39.5 percent of the surveyed companies responded that the greatest benefit from opening the legal-services market in Korea would be improvements in the quality of legal services, 32 percent said it would be the import of advanced legal structure, and an overwhelming 97.3 percent answered that Korean law firms fall far behind world standard in corporate law.

For foreign lawyers, the Korean prize has involved a long and sometimes frustrating waiting game. After the shock of the Korean economic crisis in 1997-1998, the Korean government sought to increase the transparency of its economy and to open its financial market to foreign investors. The recovery experienced in Korea after the 1997-1998 crisis was nothing short of a miracle. Korea has paid back loans of US$58 billion to the International Monetary Fund two years before they matured, and is one of the most attractive centers for investment in Asia, despite some economic slowdown in 2002-2003. The Korean government's open-market policy and privatization programs helped the economy fight back from the 1997-1998 financial crisis, and Korea continues to open up to the outside world. Legislative developments have improved corporate governance and transparency in business. While this new openness does not yet extend to foreign law firms, many international players have extremely active Korean practices and eagerly wait 2005, when the WTO requirements finally compel Korea to liberalize the country's legal-services market.

It remains to be seen what will finally

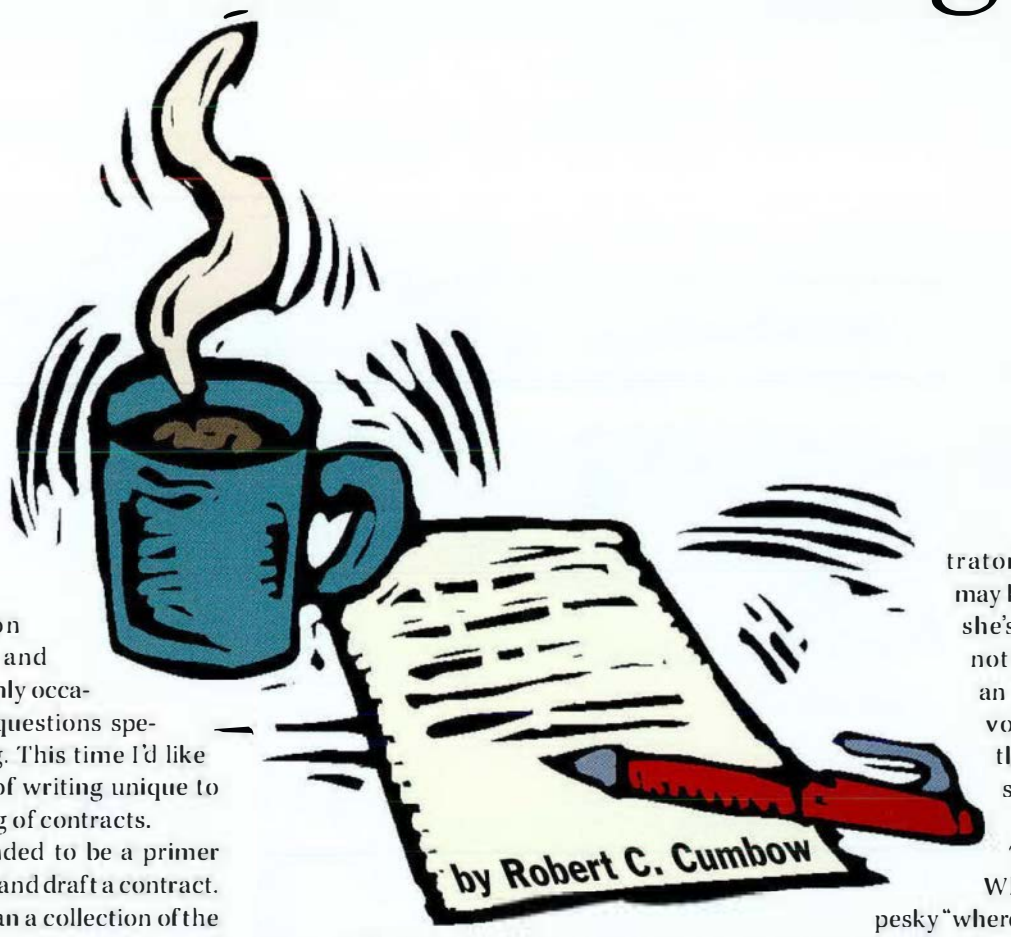
materialize from the current ongoing negotiations between Korea and the WTO, but it is just a matter of time before the opening of the Korean legal-services market. When the market opens, given the level of activity in Korea by foreign law firms from their Seoul hotels, and Hong Kong and London offices, and the level of interest demonstrated by them ahead of liberalization, the competition in Korea among the major international players will be fierce.

There are signs that some midsized to large law firms in Korea welcome the international competition, or, at least, they are preparing to meet the challenges to come in 2005. Recently there have been many consolidations or mergers among midsized law firms in Korea. Unlike in the United States or the United Kingdom, the largest law firm in Korea has fewer than 250 lawyers. When some do not consolidate or merge, they decide to diversify their practices or strengthen their niche market in litigation practice, as foreign law firms cannot compete in this market.

The Korean government's response to market-opening measures in March 2003 may or may not be enough for the WTO member countries. Nevertheless, instead of being compelled by the outside forces, the Korean government will, hopefully, recognize that increased competition will actually help its own economy in general, since the government's ambition is to be the business hub of Northeast Asia, and the closed nature of the Korean legal-services market has been an impediment to foreign direct investment, according to some experts in the financial industry. As for the Korean Bar Association, it will, hopefully, understand that increased competition will ameliorate the quality of available legal services and that Korean corporations, as they become much more sophisticated, will demand better services.

Kevin Jung practices in Bellevue, concentrating his practice on international business, corporate, real estate, and immigration laws. He regularly travels to Seoul, where he has a liaison office. He has represented some of the largest Korean multinational corporations and chaebols, including the Samsung Group.

Commonest Errors in Contract Drafting



These columns have tended to focus on general grammar and usage issues, with only occasional sorties into questions specific to legal writing. This time I'd like to focus on a kind of writing unique to lawyers: the drafting of contracts.

This is not intended to be a primer on how to structure and draft a contract. It's nothing more than a collection of the errors and usage problems I've most commonly seen in contracts.

Let's begin with the identification of the parties. A standard identification clause will read something like: "This Agreement is made and entered into by and between Joan and Francine." That structure works fine for the two-party contract, which is the most common kind. Multi-party contracts are rare. Less rare, however, are two-party contracts in which one of the two parties is a partnership or some other group of persons or entities. In this situation, it's no longer a simple matter of writing, "This Agreement is made and entered into by and between Joan and Francine and Loretta." Stated that way, it looks like a three-party contract, or a two-party contract in which it's not clear which of the two parties includes Francine. Is the contract between (1) Joan and (2) Francine and Loretta, or between (1) Joan and Francine and (2) Loretta? A good solution to this difficulty — and one that sure beats the archaic "party of the first part" and "party of the second part" — is the "two-handed" approach: "This Agreement is made and entered into by and between Joan, on the one hand, and Francine and Loretta, on the other."

This may seem like a no-brainer, but you might be surprised how common it is for a contract to list three names without clarifying which side each of the named parties is on. A not-uncommon example is "This Agreement is made and entered into by and between Joan's Publishing Company ("Publisher") and Francine ("Author") and Loretta ("Illustrator")." Each party may know which side she's on, but it will not be clear at all to an objective, uninvolved reader of the contract—such as a court.

The Recitals

What about those pesky "whereas" clauses? Actually, they're often not necessary at all. But if your agreement needs recitals, simply follow the identification of the parties with a section called "Recitals." To avoid confusion, identify the recitals with letters rather than numbers. Once you have all your recitals in, start a new section called Agreement, and number the paragraphs from there on.

However, if for some perverse reason you really need the traditional "whereas" structure, at least do it right. Remember that "whereas" is a conjunction meaning "It being the fact that" or "inasmuch as." ("Whereas" can also mean "and" or "but," as in "Morty went to the movies whereas Ferdy went to the mall," or "I think Paul Verhoeven is a great satirist, whereas most critics take him seriously.") Because "whereas" is a

conjunction, the phrase it introduces is not a complete sentence, and thus should not be followed by a period. A comma is acceptable, but for ease of reading, our old friend the semicolon works best.

It is a very common and erroneous belief that the word "whereas" should be followed by a comma. This is nonsense. You should not put a comma after the introductory word "whereas" in a recital, any more than you would put a comma after the word "because" in a structure such as "Because I do not hope to turn again."

Remember, too, that the word "and" should introduce the last item in the "whereas" series, just as the word "and" precedes the last term in any series. In traditional contract drafting, the recitals are followed by the phrase, "Now, therefore, the parties agree as follows:" — which is actually the main sentence, to which the various "whereas" recitals are qualifying dependent clauses. A properly rendered recital section in traditional "whereas" form, then, ought to look something like this:

Whereas Francine has written a children's book on the subject of bees;
Whereas Francine has a contract for the publication of said book;
Whereas Loretta is an illustrator noted for her work in drawing bees; and
Whereas Francine wishes to engage Loretta to illustrate said book;
Now, therefore, Francine and Loretta agree as follows:

The capitalization of each clause is, of course, not strictly correct, since the entire recital section as presented here is a single sentence. But in this instance, capitalizing each new clause is a harmless nod to traditional formal drafting from the quill-and-ink days. For modern audiences, however, doesn't the following look a lot friendlier?

RECITALS
A. Francine has written a children's book on the subject of bees.
B. Francine has a contract for the publication of said book.
C. Loretta is an illustrator noted for her work in drawing bees.
D. Francine wishes to engage Loretta to illustrate said book.

AGREEMENT
1. Francine and Loretta will share equally all proceeds received from the published book.
(etc.)

The Party of the Redundancy Part

I can't tell you how often I see the phrase "mutual agreement" in contracts. In fact, I'm writing this entire column just to provide myself with an opportunity to protest the use of this absurd redundancy. "The deliverables will be due according to a schedule on which the parties will mutually agree." "This agreement may be revised or modified from time to time by mutual agreement of the parties." Think, friends, for just a moment: Is there such a thing as an agreement that isn't mutual? Is it an agreement at all if only one party agrees? After you've drafted a contract, do a global search for the word "mutual." Chances are you'll be able to delete every occurrence of that word, since the concept of mutuality is necessarily contained in the concept of "agreement."

Avoiding Pitfalls

Some additional elementary grammatical or usage mistakes that I've seen in a lot of contracts are ones that I've already discussed in previous columns, so I'll just summarize them here:

- "Which" or "that"? In deciding whether to use "which" or "that," ask yourself whether the clause to be introduced by the disputed word is essential to what you have to say, or is an incidental bit of information that could just as easily be left out without harming your message. Or, if you prefer, ask yourself if you could insert the phrase "by the way" into the clause and not lose your meaning. A good test is to say the sentence to yourself both ways, using "which" and then using "that," and choose the way that sounds right. This works most of the time, because people tend to use "that" correctly when speaking. It's only when writing that many of us get overcome with attacks of stuffiness and convince ourselves that "which" is the better word because it somehow sounds more important.

- Where to put the "only": Search for every occurrence of the word "only" in your contract, and make sure that (1) it serves a useful purpose in the sentence, and (2) it is in the best possible place to make the meaning clear. To show you what a difference the placement of an "only" makes, I present three variations on a contractual sentence:

  1. Only Francine will receive royalties if Loretta agrees.
  2. Francine will receive only royalties if Loretta agrees.
  3. Francine will receive royalties only if Loretta agrees.

  If you think these three sentences all mean the same thing, you have no business drafting contracts.

- Apostrophe-s: Form the possessive of a singular noun by adding apostrophe-s. Form the possessive of a plural noun ending in "s" by adding an apostrophe only. Form the possessive of a plural noun not ending in "s" by adding an apostrophe-s. And most importantly, do not use "it's" when you mean "its." "Its" is the possessive form of "it" (as in "Dog must have its day"). "It's" is a contraction for "it is."

Taking the Wind Out

I don't pretend that any of what follows is original, but it bears repeating. The wind can be taken out of most legal contracts by writing in plain, even conversational, English, and using as few words as possible.

... when lawyers sit down to write a contract, "shall" takes over the field, sweeping every cowering "will" before it.

"Shall" is a word almost never spoken. But somehow when lawyers sit down to write a contract, "shall" takes over the field, sweeping every cowering "will" before it. Traditionally, "shall" was an imperative, signifying that a thing was required; while "will" was a simple signifier that an event would take place in the future. That distinction has been lost — thanks largely to overzealous legal writers who use "shall" for everything. Example: "As used in this contract, the word 'Author' shall be understood to refer to Francine." Better: "In this contract, the word 'Author' means Francine." Better still: "Francine ('Author')."

For today's audiences, use "will" if you mean that the thing is in the future; use the present tense as much as you can; and try not to use "shall" at all.

The passive voice is wordier, windier, and usually less clear than the active voice. Use the passive only if your point can't be made as clearly or smoothly in the active voice. On this issue, your word-processing software's spell-checking feature might actually help rather than hinder (as it usually does). Most spell-checkers are now flagging the passive

voice and "suggesting" recasting the sentence in the active voice. Consider following the advice whenever you can.

Another example of wind in a contract is the use of the phrase "to include." Put that way, it suggests that the inclusion has not yet occurred, but will in the future. If that's true, then go ahead and use it: "The illustrations, to include all drawings, maps, and charts, are due 60 days after the parties sign this contract." However, if the inclusion has already occurred, it makes no sense to use "to include." "Francine has written three books, to include one successful children's book." In that sentence, "including" makes more sense.

While we're on the subject of inclusion, let's quickly acknowledge the contract drafter's friend "including without limitation." The word "include" does not mean "limited to," or "having only these things." It means, in fact, exactly the opposite: "having these things and some others as well." Using the construction "including without limitation" or "including but not limited to" is an unnecessary device that serves no purpose. The word "including" does not mean, and never has meant, "limited to." No one ever uses it or understands it to mean that, and no court would ever interpret it to mean that; so there is no reason to add "but not limited to" when using the word "including." This is one of those belt-and-suspenders redundancies that tend to make contracts unreadable, unmeaningful — and sometimes, as a result, unenforceable.

All lawyers have an interest in making contracts — and all legal documents — clear, understandable, even engaging. Send me your suggestions on improving the drafting of legal documents, and I'll incorporate them into a future column.

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; has written widely on law, film, food, and language; and contributes this column quarterly to Bar News. *Contact him at rcumbow@grahamdunn.com.*

How Washington State Failed to Protect Its Police Officers*

*And How It Can Rectify This Failure

BY TERESA SUMEARLL

In July 2002, the Washington Legislature adopted a statute that allowed injunctions for the publication or other distribution of identifying information, such as home address and Social Security number, about law enforcement and court employees.[1] The Washington Legislature adopted the statute in direct response to the Internet publication of such information by William Sheehan,[2] a Washington citizen who constructed a website that claimed its purpose was to inform the public of police officers' personal information.[3] Upon adoption of the Washington statute, Sheehan removed the information from his website and brought an action against the state's attorney general, alleging that the Washington statute was unconstitutional under the First Amendment, both facially and as applied to his website activity.[4] Judge Coughenour of the U.S. District Court for the Western District of Washington agreed, and on May 22, 2003, issued an order granting summary judgment to Sheehan.

Several other states have adopted statutes that are similar to the Washington statute, including Arizona,[5] California,[6] and Florida.[7] Like Washington, these statutes proscribe the publication of identifying information concerning law-enforcement officers. Also like Washington, the Florida and California statutes provide that publication coupled with the intent of the publisher determines whether the person is guilty of the offense under the statute. The Arizona statute, on the other hand, provides only that a publication that "poses an imminent and serious threat to the peace officer's or prosecutor's safety" constitutes violation of the statute. The constitutionality of the statutes in Arizona, California, and Florida has not become an issue in their respective states.

This article suggests that the Washington Legislature, by modeling the Arizona statute, could achieve its goal of protecting personal information regarding the state's court and law-enforcement officials from Internet dissemination in a manner that will withstand a First Amendment challenge. The Arizona statute provides an example of a regulation that is more likely constitutional under the First Amendment, because it specifically targets true-threat speech, i.e., speech that is likely to result in violent harm. Regulations of speech that avoid the pitfalls of strict-scrutiny analysis, such as regulations of true-threat speech, are better positioned to withstand constitutional challenges.

Under the First Amendment, content-based regulations of speech are strictly scrutinized. In order to overcome strict scrutiny, the government must establish that it has a compelling interest in regulating speech. The U.S. Supreme Court has consistently held that the government does not have a compelling interest in stopping the publication of truthful information already available in the public domain. However, even when the government can justify regulation of speech on the basis of a compelling state interest, the regulation must be narrowly tailored to achieve that interest. While strict scrutiny imposes formidable barriers to governmental attempts to regulate speech, true-threat speech is properly outside the reaches of strict-scrutiny analysis.

Truthful, Already-Public Information

Over the past three decades, the U.S. Supreme Court has decided cases when allegedly private information that was both truthful and already public was published about individuals.[8] Each case illustrates the tug-of-war between free-speech rights and privacy rights. In reliance on statutory regulations, plaintiffs have brought lawsuits against newspaper publishers and broadcast companies for violations of their right to be "let alone." In each instance, the Court has held that the interests of free speech out-

weigh the privacy interests when public and truthful information is at issue, and found that the state does not have a compelling interest in stopping publication of truthful information that is already available in the public domain. In essence, the Court has acknowledged the governmental interest in protecting the individuals' information, but found that interest not compelling enough to overcome the publication of truthful and already-public information.

Publishers of truthful, public information who are not members of the press may not rely on the rationale of providing a service to the public. However, they may urge that their speech is nonetheless protected as political speech.[9] With limited exceptions, the U.S. Supreme Court has consistently protected the publication of truthful information.[10] Further, where information has been voluntarily disclosed to someone or has been legally obtained from a third party, courts have often found that the information no longer qualifies for protection as private information. The Court has repeatedly indicated its antipathy toward regulations that impose civil or criminal liability for the publication of truthful and already-public information. When truthful information has been disseminated and a compelling governmental interest promoted, the Court has consistently ruled in favor of the First Amendment rights of freedom of speech and freedom of the press.

Narrowly Tailored

Once the government has adopted a regulation of content speech and the regulation is justified under a compelling state interest, the regulation may nevertheless be struck down because it is not sufficiently narrowly tailored to achieve that state interest.[11] A regulation may not be narrowly tailored if it is overbroad or vague.[12] Both overbreadth and vagueness can create ambiguities in the way the statute is read.[13]

When a regulation of speech appears overbroad or vague on its face, it may nevertheless be saved by the adoption of a narrowing construction by a court.[14] The U.S. Supreme Court has said that "[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute."[15] Similarly, the Court will read narrowness into a statute challenged as void-for-vagueness, stating that the high court will read the statute "precisely as the highest court in the State has interpreted it."[16]

True-Threat Speech Regulations

True-threat speech regulations are excepted from the strict scrutiny applied to content-based regulations. In the few cases when the U.S. Supreme Court has ruled on the facial constitutionality of true-threat regulations, the Court has found a compelling governmental interest behind the regulation but has not considered whether the regulation is narrowly tailored to achieve that interest. The Court's failure to apply the narrowly tailored prong indicates that true-threat restrictions are "outside the First Amendment."[17]

In 2003, the U.S. Supreme Court held that true threats lie outside First Amendment protection. In *Virginia v. Black*,[18] the Court considered whether a Virginia statute that made cross-burning illegal was facially unconstitutional under the First Amendment. At issue were Ku Klux Klan activities that included cross-burning. The Court granted *certiorari* and reversed the Virginia Supreme Court's holding that the statute was facially unconstitutional under the First Amendment. The Court upheld the statute because it prohibited the unprotected speech of true threats. The *Black* opinion described at length the history of cross-burning and its use as a form of threatening speech. Echoing the Court's earlier ruling in *R.A.V. v. City of St. Paul*,[19] the *Black* Court articulated the rationale for the removal of true threats from First Amendment protection. The prohibition on true threats has three bases: (1) to protect individuals from the fear of violence, (2) to protect them from the "disruption that fear engenders," and (3) to protect them from "the possibility that the threatened violence will occur."

The *Black* Court provided a definition of true-threat speech. "True threats," said the Court, "encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[20] The *Black* Court stated that "[t]he speaker need not actually intend to carry out the threat" in order for the speech to fall outside protection of the First Amendment. The *Black* Court went on to say that "[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat."[21]

Although true-threat speech regulations are content-based, they are excepted from strict scrutiny. The U.S. Supreme Court has considered whether regulations of true-threat speech are justified by a compelling state interest. However, the Court has not applied the narrow-tailoring requirement to such regulations.

The Publication of Personal Information Regarding Public Officials

Several states, including Washington and Arizona, have enacted legislation to protect the privacy of their public officials. While protecting privacy is laudable, restrictions of speech are strictly scrutinized. The Washington statute, restricting the publication of personal information about public officials "with the intent to harm or intimidate," was found to be unconstitutional under the First Amendment. The Arizona statute, while it has not yet been challenged under the First Amendment, differs in significant ways from the Washington statute.

Washington Statute Held Unconstitutional. The tension between free speech under the First Amendment and privacy was played out in the adoption of the Washington statute.[22] Fears about Sheehan's website coupled with police officers' failure to shut it down through court action moved the Legislature to unanimously adopt the Washington statute. In response, Sheehan removed the personal information about the police officers from his website, which he had lawfully obtained through public documents and commercial services, and subsequently filed a complaint in federal district court challenging the Washington statute's constitutionality. The U.S. District Court for the Western District of Washington agreed with Sheehan, holding the Washington statute unconstitutional under the First Amendment to the U.S. Constitution.

The court in *Sheehan v. Gregoire* noted that the Washington statute failed for being both overbroad and vague, underscoring its failures to proscribe true threats or to serve a compelling state interest. The district court found the Washington statute overbroad for several reasons. Judge Coughenour observed that it was overbroad because it was not limited to a prohibition against true threats, but instead reached "pure speech."[23] Judge Coughenour discussed extensively the Washington statute's failure to proscribe true threats within the context of an overbreadth argument. This lengthy treatment indicates that the district court may have found the Washington statute to be *not* overbroad if the Washington statute had been confined to the proscription of true threats. Additionally, the Washington statute was overbroad because it proscribed information that is both truthful and publicly available. The district court noted that truthful, public information is "pure speech rather than any constitutionally proscribable *mode* of speech, such a true threats."[24]

Judge Coughenour also found the Washington statute to be vague for several reasons. Even though its intent was to stop true threats, the plain language of the Washington statute did not address true threats. Additionally, the Washington statute was vague because a prosecuting attorney requesting an injunction of the proscribable speech must "discern the subjective intent of the speaker."[25]

Arizona Statute Differs. Like the Washington statute, the Arizona statute[26] proscribes the publication of identifying information about law-enforcement officers. The Arizona statute differs in several important ways from the Washington statute. First, violation of the Arizona statute is a class 5 felony. Second, the Arizona statute specifically refers to dissemination of the prohibited information by means of publishing on the Internet. Third, it extends protection of information to the official's immediate family. Fourth and most importantly, violation is triggered only if dissemination of the information "poses an imminent and serious threat" to the safety of the people involved.

Washington Should Follow Arizona's Lead

Although the Washington and Arizona statutes are both content-based, the Arizona statute focuses on the imminence of the threat, whereas the Washington statute was focused on the speaker's intent. The district court in *Sheehan v. Gregoire* noted that the Washington statute did not demonstrate a compelling state interest in restricting already-public information. On the other hand, the Arizona statute is justified by the compelling state interest in stopping true-threat speech. The Washington statute was found to be both overbroad and vague, yet the Arizona statute is neither, because it focuses only on true-threat speech and provides an objective standard as to the intent of the speaker. Finally, the Wash-

ington statute fails to restrict true-threat speech, while the Arizona statute is aimed only at true-threat speech.

Rather than focusing on the speaker's motive in publishing the police officer's home address, the Arizona statute focuses on the likelihood of a negative result flowing from such publication. Under the Arizona statute, even if the publication of an officer's home address is laudatory in some respect, if the message "poses an imminent and serious threat" to the person's safety, such publication is proscribed and punishable. Therefore, while the Arizona statute is arguably content-based, it does not suffer from one of the flaws that defeated the Washington statute: that of proscribing the content of the speech based on the speaker's intent.

The district court dismissed the state's argument that the Washington statute asserted a compelling state interest in protecting the personal information of its officials because the government itself had placed much of the personal identifying information into the public domain. If the Arizona statute were challenged, the state could argue that it has a compelling interest in protecting the safety of its public officials. Because the Arizona statute aims only at stopping true threats to their safety, it would likely survive a constitutional challenge.

If challenged, the Arizona statute would survive the overbreadth and vagueness defects of the Washington statute. The Arizona statute cannot be said to be overbroad, because it proscribes only true threats. Further, because its plain language focuses on true threats, it avoids the vagueness trap of interpreting the speaker's intent. Although the Arizona statute provides that the threat be "reasonably apparent to the person" making it, the use of the word "reasonably" moves the standard from a subjective one, as was the case with the Washington statute, to an objective one.

While the Arizona statute succeeds as a true-threat statute, it also succeeds in another way. The legislative history of the Washington statute indicates that it was adopted for the purpose of stopping the Internet dissemination of identifying information about police officers that might be harmful to them or their families. However, the Washington statute did not restrict itself to Internet publication. Rather, it prohibited the action of anyone to "sell, trade, give, publish, distribute, or otherwise release" the identifying information "with the intent to harm or intimidate," casting a net that is arguably too broad to serve its intended purpose. The Arizona statute, by contrast, specifically targets the Internet dissemination of such information.

Conclusion

The Washington Legislature could make another attempt to protect the dissemination of the personal identifying information of its public officials. Both the opinion of the U.S. District Court in *Sheehan v. Gregoire* and the Arizona statute are instructive in this regard. Although a website like Sheehan's might still be allowed to publish personal information, websites and other publications that seriously threaten public officials could be enjoined under a revised statute.

If the Washington statute were to be revised and resubmitted to the Legislature, it would likely survive constitutional scrutiny by focusing on the imminence of a true threat. A revised

Washington statute would do well to include an objective standard by which to judge violative speech, rather than the subjective standard of considering the speaker's intent. A revised Washington statute could provide for the following:

- Language regarding the "intent to harm or intimidate" should be replaced with language regarding the prohibited speech posing a serious and imminent threat to the person's safety.
- The statute should either be confined to Internet dissemination or contain language that includes Internet publication of the identifying information.
- With respect to the speaker, the listener, and the target of the speech, a reasonable standard should be expressed in the statute.
- The statute should be expanded to include the immediate family of the public official.

While the Washington and Arizona statutes are both content-based restrictions on speech, the Washington statute failed because it focused on the speaker's intent rather than focusing, as the Arizona statute does, on the harm that might flow from that speech. Judge Coughenour did not accept the compelling state interest of protecting the officers' privacy when the state itself had already published the same information. Had the Washington statute proscribed only true threats, as does the Arizona statute, the district court suggested that it might have been found to be constitutional.

Teresa Sumeardl graduated from the University of Washington School of Law in June, and will join Preston Gates & Ellis as an associate in October.

NOTES

[1] RCW 4.24.680.

[2] *Unlawful Release of Court and Law Enforcement Employee Information: Hearing on ESSB 6700 Before The Senate Judiciary Comm.*, 2002 Leg. (Wash. Feb. 7, 2002) (Statement of Officer Goguen).

[3] Justicefiles.org, www.justicefiles.org. Sheehan's website justicefiles.org claimed its purpose was not to harass officers.

[4] Sheehan v. Gregoire, 2003 U.S. Dist. LEXIS 11098 (W.D. Wash. May 22, 2003).

[5] Ariz. Rev. Stat. § 13-2401.

[6] Cal. Penal Code § 146e.

[7] Fla. Stat. ch. 843.17.

[8] Smith v. Daily Mail Publ. Co., 443 U.S. 97 (1979); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975); Florida Star v. B.J.F., 491 U.S. 524 (1989); and Landmark Communications v. Virginia, 435 U.S. 829 (1978).

[9] *See* Boos v. Barry, 485 U.S. 312, 318 (1988); Sheehan v. Gregoire, 2003 U.S. Dist. LEXIS 11098 at *3 (W.D. Wash., May 22, 2003).

[10] *See* Near v. Minnesota, 283 U.S. 697 (1931) (citing the dates of ships' sailings and the locations of troops during wartime as valid restrictions on speech); Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977) (holding that a broadcaster's First Amendment right does not supersede a performer's right to compensation for his act).

[11] *See* Grayned v. City of Rockport, 408 U.S. 104, 116-17 (1972).

[12] RODNEY A. SMOLLA, *SMOLLA AND NIMMER ON FREEDOM OF SPEECH* § 3.06[1][b], at 3-121 ("two classic First Amendment doctrines known as 'overbreadth' and 'vagueness' are designed to vindicate the precision principle").

[13] N.A.A.C.P. v. Button, 371 U.S. 415, 438 (1963) ("Broad prophylactic rules in the area of free

expression are suspect. . . . Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.").

[14] *See* N.Y. v. Ferber, 458 U.S. 747, 769 n.24 (1982) (noting that a court should "construe the statute to avoid constitutional problems, if the statute is subject to such a limiting construction").

[15] Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973).

[16] Wainwright v. Stone, 414 U.S. 21, 23 (1973).

[17] R.A.V. v. City of St. Paul, 505 U.S. 377, 388 (1992).

[18] 123 S. Ct. 1536 (2003).

[19] R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).

[20] 123 S. Ct. at 1548.

[21] Id. at 1544-47 (quoting R.A.V., 505 U.S. at 388).

[22] The first provision of the Washington statute described the prohibited speech and the intent that must accompany the speech:

> A person or organization shall not, with the intent to harm or intimidate, sell, trade, give, publish, distribute, or otherwise release the residential address, residential telephone number, birthdate, or social security number of any law enforcement-related, corrections officer-related, or court-related employee or volunteer, or someone with a similar name, and categorize them as such, without the express written permission of the employee or volunteer unless specifically exempted by law or court order.

The second provision stated that an injunction could be brought by the prosecuting attorney or any person harmed by an alleged violation whenever it appeared that the conduct described in the first provision had been engaged in or was about to be engaged in. The term "harm," however, was not defined in the Washington statute. Under this provision, a court could issue a temporary restraining order or a permanent injunction, or grant other relief necessary to accomplish the purposes of the injunction. The final provision of the Washington statute provided for monetary damages. It allowed court or law enforcement officers to bring actions to recover actual damages sustained as a result of the dissemination of the prohibited speech. In addition, this provision gave plaintiffs the right to recover attorneys' fees and costs.

[23] Sheehan, 2003 U.S. Dist. LEXIS 11098 at *5.

[24] *Id.* at *25.

[25] *Id.* at *33-34.

[26] The Arizona statute provides:

> It is unlawful for a person to knowingly make available on the world wide web the personal information of a peace officer, justice, judge, commissioner, public defender or prosecutor if the dissemination of the personal information poses an imminent and serious threat to the peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's safety or the safety of that person's immediate family and the threat is reasonably apparent to the person making the information available on the world wide web to be serious and imminent.

The Arizona statute defines "personal information" as "home address, home telephone number, pager number, personal photograph, directions to the person's home or photographs of the person's home or vehicle."

Practice of Law Board Advisory Opinion

The Practice of Law Board is authorized by General Rule (GR) 25(c)(1) to issue advisory opinions relating to the authority of nonlawyers to perform legal and law-related services. Petitions for review from any action of the Practice of Law Board to the Supreme Court shall comply with GR 25(g).

JUNE 2004

Nonattorney Bankruptcy-Petition Preparers

Since its inception, the Practice of Law Board has received a number of complaints regarding nonattorney bankruptcy-petition preparers.

Issues

To assist the public, this advisory opinion will address the following issues:

1. May a person who is not licensed to practice law in any state assist a debtor in preparing documents for filing with a federal bankruptcy court?
2. What is the scope of services that a nonlawyer bankruptcy-petition preparer may provide to a debtor?
3. Where should complaints regarding a nonlawyer bankruptcy-petition preparer be lodged?

Brief Answer

A nonlawyer may perform those services specifically authorized by 11 U.S.C. §110 without violating RCW 2.48.180. The service that a bankruptcy-petition preparer may perform is essentially limited to acting as a typist for the debtor. Concerns regarding the scope of services being offered by a specific bankruptcy-petition preparer should be brought to the attention of the U.S. Bankruptcy Court.

Analysis

The Bankruptcy Code recognizes the reality that *pro se* debtors often turn to nonlawyers for assistance in filing bankruptcy. Rather than prohibiting such assistance and, as a realistic matter, watching it flourish more dangerously underground, Congress chose to force it into the light by defining persons who provide such assistance and regulating their conduct, in 11 U.S.C. §110. *In re Alexander*, 284 B.R. 626, 630 (Bankr. N.D. Ohio 2002); *see also Ferm v. U.S. Trustee* (*In re Crawford*), 194 F.3d 954, 960 (9th Cir. 1999), *cert. denied*, 528 U.S. 1189 (2000) ("110 was enacted to remedy what was perceived to be widespread fraud and unauthorized practice of law in the BPP industry").

Section 110 requires petition preparers to take certain actions and proscribes other conduct by petition preparers, while adding sanctions for noncompliance and mechanisms for court oversight.[1] The language of §110 actually says very little about what specific services a petition preparer can or cannot permissibly render to debtors. There is, however, oft-quoted language from the House Judiciary Committee's Report on the Bankruptcy Reform Act of 1994, which supports a narrow view of the scope of a bankruptcy-petition preparer's authority. *See* 140 Cong. Rec. H. 10752, Sec. 308 (103d Cong., 2d Sess., Oct. 4, 1993) ("while it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors").

Congress expressly provided that §110 was not to preempt state-unauthorized practice-of-law statutes. *See* 11 U.S.C. §110(k) ("Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law."). "As a result of this provision, a document preparer may not use §110 as a 'safe harbor' if a rule or certain rules prohibit the unauthorized practice of law or the document preparer's activities are otherwise prohibited by law." *In re Gabrielson*, 217 B.R. 819, 826 (Bankr. D. Ariz. 1998).

A number of U.S. Bankruptcy Court opinions establish that the following services, when provided by a nonlawyer bankruptcy-petition preparer, do not constitute the unauthorized practice of law:

- Typing or transcribing bankruptcy forms that the debtor has prepared alone without assistance. *See, e.g., In re Moore*, 283 B.R. 852, 858 (Bankr. E.D.N.C. 2002); *In re Bush*, 275 B.R. 69, 78 (Bankr. D. Idaho 2002); *In re Guttierez*, 248 B.R. 287, 297-98 (Bankr. W.D. Tex. 2000).
- Selling forms and any printed material purporting to explain bankruptcy practice and procedure to the public. *See, e.g., In re Bachmann*, 113 B.R. 769, 774 (Bankr. S.D. Fla. 1990).
- Assisting the debtor with the physical filing of the petition. *See, e.g., In re Alexander*, 284 B.R. 626 (Bankr. N.D. Ohio 2002); *but see In re Shoup*, 290 B.R. 768 (Bankr. C.D. Calif. 2003) (bankruptcy preparer may not handle the client's filing fee in any fashion).

A number of U.S. Bankruptcy Court opinions establish that the following services, when provided by a nonlawyer bankruptcy-petition preparer, constitute the unauthorized practice of law:

- Suggesting or making the exemption choice for a debtor. *See, e.g., In re Buck*, 290 B.R. 758, 760 (Bankr. C.D. Calif. 2003); *In re Pillot*, 286 B.R. 157 (Bankr. C.D. Calif. 2002); *In re Bush*, 275 B.R. 69 (Bankr. D. Idaho 2002); *In re Ellingson*, 230 B.R. 426, 433-34 (Bankr. D. Mont. 1999).
- Determining where property and debts would be scheduled. *See, e.g., In re Bush*, 275 B.R. 69 (Bankr. D. Idaho 2002); *In re Farness*, 244 B.R. 464, 471 (Bankr. D. Idaho 2000).
- Using bankruptcy software to convert a client's raw information into usable form. *See, e.g., In re Bush*, 275 B.R. 69, 77 (Bankr. D. Idaho 2002); *In re Farness*, 244 B.R. 464, 471 (Bankr. D. Idaho 2000).
- Providing documents to the debtor that explain bankruptcy or that explain how to complete the required information that the preparer is then to transfer to the official forms. *See, e.g., In re Moore*, 283 B.R. 852, 863 (Bankr. E.D.N.C. 2002) (unauthorized documents included a "Customer Information Workbook," "Bankruptcy Overview," "Step by Step Guide to the Bankruptcy Workbook," and "Tips on Filing a Chapter 7 Bankruptcy"); *In re Moffett*, 263 B.R. 805, 814 (Bankr. W.D.

Ky. 2001) (prohibited documents include a list of exemption statutes).

- Directing clients to a particular legal publication or specific pages so that they can attempt to find legal answers on their own. *See, e.g., In re Doser*, 281 B.R. 292, 307 (Bankr. D. Idaho 2002); *In re Landry*, 268 B.R. 301 (Bankr. M.D. Fla. 2001).
- Providing clients with a questionnaire that deviates in any way from the official forms. *See, e.g., In re Doser*, 281 B.R. 292, 309 (Bankr. D. Idaho 2002); *In re Moffett*, 263 B.R. 805, 815 (Bankr. W.D. Ky. 2001).
- Answering questions about post-filing aspects of the bankruptcy process. *See, e.g., In re Bush*, 275 B.R. 69 (Bankr. D. Idaho 2002).
- Improving upon a prospective debtor's answers or correcting any errors or omissions. *See, e.g., In re Bush*, 275 B.R. 69, 79 (Bankr. D. Idaho 2002); *In re Lyvers*, 179 B.R. 837, 841 (Bankr. W.D. Ky. 1995).
- Preparing post-filing motions, such as motions to dismiss the bankruptcy petition, objections to claims, or responses to the Trustee's Recommendation. *See, e.g., In re Boettcher*, 262 B.R. 94, 95 (Bankr. N.D. Calif. 2001); *In re Gabrielson*, 217 B.R. 819, 827 (Bankr. D. Ariz. 1998); *In re Lyvers*, 179 B.R. 837, 842 (Bankr. W.D. Ky. 1995).
- Advertising as a paralegal or use of the title "paralegal" in any dealings with clients. *See, e.g., In re Moffett*, 263 B.R. 805, 813 (Bankr. W.D. Ky. 2001); *In re Moore*, 232 B.R. 1, 11 (Bankr. D. Maine 1999).
- Advising clients as to which form of bankruptcy to file. *See, e.g., In re Gabrielson*, 217 B.R. 819, 826 (Bankr. D. Ariz. 1998); *In re Skobinsky, 167 B.R. 45, 50 (Bankr. E.D. Pa. 1994); In re Anderson*, 79 B.R. 482, 485 (Bankr. S.D. Cal. 1987).
- Advising clients as to the timing of an anticipated bankruptcy filing. *See, e.g., In re Herren*, 138 B.R. 989, 995 (Bankr. D. Wyo. 1992).
- Advising clients to dispose of assets prior to filing. *See, e.g., In re Moore*, 232 B.R. 1 (Bankr. D. Maine 1999).
- Advising clients regarding the tax consequences of bankruptcy. *See, e.g., In re Guttierez*, 248 B.R. 287, 294 n.15 (Bankr. W.D. Tex. 2000).
- Advising clients regarding whether a loan taken by a debtor from a 401(k) plan or other retirement account constitutes a "claim" under the code. *See, e.g., Taub v. Weber*, 2004 U.S. App. Lexis 8807, __ F. 3d ___ (9th Cir. Mar. 5, 2004).
- Advising clients regarding whether they may redeem property. *See, e.g., In re Guttierez*, 248 B.R. 287, 294 n.15 (Bankr. W.D. Tex. 2000).
- Advising clients regarding whether they should reaffirm any debts. *See, e.g., In re Guttierez*, 248 B.R. 287, 294 n.15 (Bankr. W.D. Tex. 2000).
- Advising clients regarding the effect of a bankruptcy filing upon a foreclosure and whether the clients may keep their homes. *See, e.g., In re Guttierez*, 248 B.R. 287, 294 n.15 (Bankr. W.D. Tex. 2000).

Any concerns that a nonlawyer bankruptcy-petition preparer is engag-

ing in conduct which exceeds that authorized by 11 U.S.C. §110 should be brought to the attention of the U.S. trustee. The trustee may bring the issue before the court. A bankruptcy court may impose sanctions and may issue an injunction against a bankruptcy-petition preparer in response to conduct found to violate 11 U.S.C. §110. The bankruptcy court may also, in an appropriate case, certify the matter to the district court for a determination of damages. *See generally In re Doser*, 281 B.R. 292, 312-13 (D. Idaho 2002); *Order Interpreting 11 U.S.C. §110 Which Governs Conduct of Nonlawyer Bankruptcy-Petition Preparers and Delineating the Relationship, Powers and Functions of the Bankruptcy Court and the District Court Under the Statute*, 198 B.R. 604 (C.D. Calif. 1996); 11 U.S.C. §110(i)(1). If the sanctions available to the bankruptcy court prove ineffective, a referral may be made to the Practice of Law Board or to the appropriate county prosecutor.

Conclusion

Congress's adoption of 11 U.S.C. §110 was not meant to create a new profession. *See, e.g., In re Guttierez*, 248 B.R. 287, 297 (Bankr. W.D. Tex. 2000). Bankruptcy-petition preparers must limit their services to the transcription of dictated or handwritten notes prepared by the debtor prior to the debtor's having sought out the petition preparer's service. Any concerns that a bankruptcy-petition preparer has provided services beyond those authorized by 11 U.S.C. §110 should first be brought to the attention of the U.S. Bankruptcy Court.

The Practice of Law Board is established by the Washington State Supreme Court and administered by the WSBA to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services, to enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that post a threat to the general public, and to ensure that those engaged in the delivery of legal and law-related services in the state of Washington have the requisite skill and competencies necessary to serve the public. For more information about the Practice of Law Board, visit www.wsba.org/lawyers/groups/practiceoflaw, or contact the Practice of Law Board Administrator at polb@wsba.org.

NOTES

[1]Section 110(a)(1) defines a "bankruptcy-petition preparer" as "a person, other than an attorney, who prepares for compensation a document for filing." In turn a "document for filing" means "a petition or any other document prepared for filing by a debtor in a United States Bankruptcy Court . . . in connection with a case under this title." 11 U.S.C. §110(a)(2).

Why Conflicts Matter

BY MARK J. FUCILE

EDITOR'S NOTE: *Among the findings of our winter 2003 survey of WSBA members' views of* Bar News *were requests for more coverage of ethics issues. Mark Fucile had been thinking the same thing, and when he proposed a quarterly column on the subject, we gladly welcomed him into the* Bar News *family.*

Both the current Washington Rules of Professional Conduct and the proposed amended version are prefaced with views on their role in the practice of law. The current set notes that the RPCs "point the way to the aspiring and provide standards" to judge lawyers' conduct in a disciplinary sense. The proposed amendments now under consideration echo that intent: "The Rules simply provide a framework for the ethical practice of law." Without diminishing either that aspiration or their role as a disciplinary code, the professional rules — particularly those relating to conflicts — also increasingly form the substantive law of legal malpractice, lawyer breach of fiduciary duty, disqualification, fee forfeiture, and lawyer-related Consumer Protection Act claims. In short, conflicts matter today in a very practical way.

In this inaugural edition of the quarterly Ethics page, we'll look at several Washington cases that underscore the practical importance of the conflict rules beyond the disciplinary setting. When "Ethics and the Law" returns in the fall, we'll then consider ways of managing conflicts to reduce risk.

Legal Malpractice. The Washington Supreme Court in *Hizey v. Carpenter*, 119 Wn.2d 251, 257-66, 830 P.2d 646 (1992), ruled that the RPCs themselves cannot be cited directly in establishing the standard of care for legal malpractice. At the same time, the Court in *Hizey* found that an expert could incorporate the concepts underlying the rules into an opinion on the standard of care. Because the conflict rules are grounded in a lawyer's fiduciary duty of loyalty to a client, the practical import of *Hizey*'s distinction for conflict-based malpractice claims is not as significant as it might first appear — a violation of the conflict rules will simply be recast as a corresponding violation of the legal duty of an agent (the lawyer) to the principal (the client).

Breach of Fiduciary Duty. In a parallel decision issued within months of *Hizey*, the Washington Supreme Court made explicit the link between the conflicts rules and a lawyer's fiduciary duty of loyalty. The Court in *Eriks v. Denver*, 118 Wn.2d 451, 457-61, 824 P.2d 1207 (1992), held that a lawyer with an unwaived multiple client conflict had violated both the conflicts rules and the fiduciary duty of loyalty. In doing so, *Eriks* allows the RPCs to be considered directly in assessing whether a lawyer has breached a fiduciary duty to a client.

Disqualification. Although court decisions provide the procedural law of disqualification in terms of standing and the like, the RPCs effectively supply the substantive law. A recent case from the federal district court in Seattle, *Oxford Systems, Inc. v. CellPro, Inc.*, 45 F. Supp. 2d 1055 (W.D. Wash. 1999), is an excellent example of this trend. *Oxford* turned on whether the law firm involved had a current or former client conflict. The court looked directly to the corresponding RPCs — 1.7 for current client conflicts and 1.9 for former client conflicts — in resolving those questions.

Fee Forfeiture. The Washington Supreme Court in *Eriks* also held that a lawyer's breach of fiduciary duty may result in full or partial fee forfeiture: "Disgorgement of fees is a reasonable way to 'discipline specific breaches of professional responsibility, and to deter future misconduct of a similar type.'" 118 Wn.2d at 463 (citation omitted). The Washington Court of Appeals recently reiterated that view in *Cotton v. Kronenberg*, 111 Wn. App. 258, 275, 44 P.3d 878 (2002), in affirming the complete forfeiture of a lawyer's fee in the face of a conflict and an accompanying breach of fiduciary duty.

Consumer Protection Act. Under *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984), the Washington Consumer Protection Act (CPA) applies to the "entrepreneurial aspects" of practicing law, including "the way a law firm obtains, retains, and dismisses clients." In *Eriks*, the Supreme Court found that a lawyer's conflicts might constitute a violation of the CPA if they were triggered by "entrepreneurial purposes." 118 Wn.2d at 465. The Court of Appeals in *Cotton* took that same approach. 111 Wn. App. at 273-75. The practical dimension of the CPA is that it adds an attorney-fee remedy for a successful claimant.

Although there are important professional reasons as reflected in the preamble to the RPCs to follow the rules on conflicts, there are also important practical reasons. Conflicts are no longer the exclusive province of Bar discipline. As illustrated by the cases we've just examined, the professional rules on conflicts form the essential substantive law on a spectrum from legal malpractice to disqualification. Or, put simply, conflicts matter in a very practical way.

Mark J. Fucile is a partner with Stoel Rives LLP, where he handles legal ethics, regulatory, and attorney-client privilege matters for lawyers, law firms, and legal departments throughout the Northwest. He is past chair of the WSBA's Rules of Professional Conduct Committee and co-editor of the WSBA's Legal Ethics Deskbook.

The Board's Work

BY LINDSAY THOMPSON

Ocean Shores, May 14-15; Yakima, June10, 2004

With the turnover of president and BOG members every September, late spring and summer bring a deluge of reports and recommendations from the various task forces and committees who have been beavering away since the last change of administration. Much of these two meetings was taken up with such things.

The Blue Ribbon Panel on Criminal Defense, chaired by attorney **Marc Boman** and retired Justice **Robert Utter**, presented their report. Like a number of other recent reports on the justice system, this one quantifies just how badly funded and understaffed the criminal defense system is in Washington. The panel recommended creating a standing committee on criminal defense, to marshal and rationalize resources and bodies better, and making a coordinated effort with the Court Funding Task Force to get more money. Well, that and a lot of other things. It is a good report and makes fascinating reading. You can get the full text on the WSBA website at www.wsba.org/blueribbonreport.pdf.

Brooke Taylor, a lawyer of Port Angeles and the newly elected 2004-2005 WSBA president-elect, has been toiling away with a committee to get the WSBA some new office space outside the troubled Fourth & Blanchard Building, more popularly known as the Darth Vader Complex for its wheezing ventilation and black reflective glass skin. Turns out they got a 10-year lease for three floors at Puget Sound Plaza in Seattle, effective 1/1/07. The WSBA will get more space at less cost, more parking, and the ability to develop a CLE center and other stuff members have said they wanted. The lease, with UNICO, allows for two five-year re-ups on top of the first 10.

The BOG decided to tackle the recommendations to revise the Rules of Professional Conduct in "chunks." *Bar News* outlined the gist of the recommendations in a long article recently. In May the BOG approved the preamble and Titles 1 and 2 (except for some bits they needed to edit and discuss more), and in June they added a half-day session and dealt with most of 3, 4, and 5. Titles 6, 7, and 8 came up at July's meeting, which was past press time. If you want to see the whole deal, it's at www.wsba.org/lawyers/groups/ethics2003.

Charlie Wiggins of Bainbridge Island and Governor **Katie O'Sullivan** have been chairing a group to pick out an Internet-based legal-research service to make available to all members free.

They tentatively picked one, which set off a rather odd bidding war led by one of the losers, who came back and said, OK, so we were going to charge you an arm and a leg before, but now we can give the arm and leg back and still come in under the other guy's cost. It's like asking how much a Rolls-Royce is; being told, "$100,000," and saying "No thanks," then having the salesperson grab you on the way out and reply, "All right, then, I can let you have it for $50,000." More to come.

A variety of groups have developed a Diversity Initiative to encourage law firms to voluntarily think more intentionally about looking less white and male than so many do, and to develop tools and best practices to help with adapting to a more multicultural Washington. Think it's not happening in the population? Check Census 2000. The BOG voted to be a founding member.

Appointments: **Lorraine Lee**, Olympia, to the Judicial Conduct Commission; **Josephine Townsend**, Vancouver, to be Lee's alternate; **Peter Karademos**, Spokane, to chair the Legislative Committee.

While in Ocean Shores the BOG had a number of meetings and events with Northwest Indian Bar Association members, heard a presentation on adding Indian law to the Bar exam, and were feted with a very good program by an Indian dance team.

The BOG's Yakima meeting was in conjunction with the Bar Leaders and Access to Justice Conferences, so everyone was hopping from one meeting to another. They heard reports from the Access to Justice Board and the Young Lawyers Division, as well as the Court Funding Task Force, whose recommendations and report are not yet complete. They approved two of President Dave Savage's diversity initiatives — the creation of a WSBA Leadership Institute to develop younger, minority WSBA members into a pool of future bar leaders; and the creation of a diversity-advocate staff position to coordinate, promote, and work to ensure equality, diversity, and cultural competence in the WSBA and the justice system.

Nominations: **Rebecca Roe**, Seattle, to the Supreme Court Pattern Jury Instructions Committee; **Mary Wechsler**, Seattle, to the Supreme Court Board for Judicial Education.

Elections: **Marcine Anderson**, Seattle, to the at-large BOG seat being vacated by **Zulema Hinojos-Fall**. Other BOG elections confirmed: **Eron Berg**, Mount Vernon, to replace **Jon Ostlund**, District 2; **Stanley Bastian**, Wenatchee, to replace **Robert Boggs**, District 4; **Lonnie Davis**, Seattle, to replace **Carl Carlson**, District 7-Central; **James Baker**, Seattle, to replace **Bryce Dille**, District 9; and **Brooke Taylor**, Port Angeles, WSBA president-elect for 2004-2005.

That's it. I'm outta here.

The Board's Work *is an unofficial report on meetings and actions of the WSBA's elected governing body. Official minutes, containing matters not covered here, are kept by the WSBA executive director. WSBA members are welcome to attend and speak at all Board meetings.*

You are cordially invited to attend

The Washington State Bar Association's Annual Awards Dinner *and* Business Meeting

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2004 WSBA Annual Awards recipients. All members of the legal community are invited to attend.

Thursday, September 16, 2004

•

Seattle Marriott Waterfront Hotel 2100 Alaskan Way Seattle

•

Reception 5:30 p.m. (no-host bar)

•

Dinner/program 6:30 p.m.

Name _____ WSBA No. _____

Address _____

Phone _____ E-mail _____

Affiliation/organization _____

Registration by August 20 and is $58 per person (table of 10 = $580); registration after August 20 is $65 per person (table of 10 = $650). 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 by September 10, 2004. (Refunds cannot be made after September 10.)

☐ MasterCard ☐ Visa No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

_____ (no. of persons) X $ _____ (price per person) = $ _____ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

_____ ☐ beef ☐ salmon ☐ vegetarian
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Please note that this event will not have assigned seating. However, if your organization would like to purchase a table (10 people), you may do so by listing the name of your organization here.

Table organization name _____

Send to: Washington State Bar Association
Annual Awards Dinner
2101 Fourth Avenue, Suite 400
Seattle, WA 981212330
Phone: 800-945-WSBA or 206-443-WSBA • Fax: 206-727-8320

☐ If you need special accommodations, please check here and explain below.

_____

_____

WSBA office use only:

Date _____

Check No. _____

Amount _____

No. AAD904

Opportunities for Service

Certified Professional Guardian Board

Application deadline: August 23, 2004

The WSBA Board of Governors will be nominating one member who is appointed by the Washington State Supreme Court to serve a three-year term on the Certified Professional Guardian Board commencing October 1, 2004. Incumbents must apply, if seeking reappointment.

The board establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008, and prescribes the conditions of and limitations upon their activities. (GR 23.)

See www.courts.wa.gov/programs_orgs/pos_guardian/?fa=pos_guardian.boardlst for more detailed information.

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.

Legal Foundation of Washington Board of Trustees

Application deadline: October 1, 2004

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

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.

Northwest Justice Project Board of Directors

Application Deadline: October 1, 2004

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Northwest Justice Project Board of Directors (two positions). The three-year term will commence on January 1, 2005. A written expression of interest and résumé are also required in the event that an incumbent elects to seek reappointment.

The Northwest Justice Project is a not-for-profit organization, which receives primary funding from the state and through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members, who play an active role in setting program policy and assuring adequate oversight of program operations, 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.

Limited Practice Officer Board

Application deadline: November 12, 2004

The WSBA Board of Governors will be nominating two members who are appointed by the Supreme Court to serve a four-year term on the Limited Practice Officer Board, which will commence on January 1, 2005. Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit a letter of interest and résumé. 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.

Judicial Recommendation Committee

Application deadline: September 24, 2004

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential Appellate and Supreme Court vacancies. Interested candidates will be interviewed by the committee at its October 29, 2004 meeting. The deadline for receipt of questionnaires by the WSBA offices is 5 p.m., Friday, September 24, 2004.

The committee's recommendations are reviewed by the WSBA Board of Governors and then referred to Governor Gary Locke for review when appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please write to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; call 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.

Family Law CASA of King County Call for Training-class Volunteers

The Family Law CASA Program is recruiting volunteers from the minority community for its next free four-day training class, which will be held September 23, 24, and 30, and October 1.

Opportunities for Service, continued

CASA volunteers represent the best interests of children involved in contested family-law cases in King County Superior Court. These cases typically involve allegations of substance abuse, domestic violence, mental health, and physical or sexual abuse.

Volunteers do not have to be attorneys, but need to have a strong interest in doing investigations, home visits, writing reports, and testifying in court. The program provides ongoing supervision and support following the initial training period. For more information or to request an application, call 206-748-9700 or visit www.familylawcasa.com.

MCLE Certification for Active Members — General Information

Due Date for MCLE Reporting. All WSBA members are divided into three MCLE reporting groups based upon year of admission:

Group 1: Admitted through 1975, 1991, 1994, 1997, 2000, or 2003*
Group 2: Admitted in 1976 through 1983, 1992, 1995, 1998, 2001, or 2004*
Group 3: Admitted in 1984 through 1990, 1993, 1996, 1999, or 2002*
**New admittees (exempt); see "Newly Admitted Members" below*
Group 1 will be required to report for the **2002-2004** reporting period by **March 1, 2005**.
Group 2 will be required to report for the **2003-2005** reporting period by **March 1, 2006**.
Group 3 will be required to report for the **2004-2005** reporting period by **March 1, 2007**.

Credit Requirement. The following credit requirements must be met by December 31 of the last year of an active member's reporting period: Earn at least 45 total credits of WSBA-approved CLE activities, which must include a minimum of 30 live credits and a minimum of six ethics credits. A/V courses can be no more than five years old, except skills courses. No more than four *pro bono* credits can be earned per year.

Carryover CLE Credits. Carryover credits from the previous reporting period must be used to meet the requirements of the current reporting period. If your current reporting period total credits exceed 45, you may carryover a maximum combined total of 15 general and ethics credits. Only two ethics credits and 5 A/V credits may be carried over.

MCLE Late Fees. All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2 reporting forms after March 1 of the following year, must pay a late fee of $150. The late fee increases by $300 for each consecutive three-year reporting period of noncompliance.

Newly Admitted Members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2003, you will not report this reporting period (2002-2004) even though you are in Group 1. You will first report at the end of 2007 for the 2005-2007 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

MCLE Comity. If you are an active member of the WSBA and your primary practice is in Oregon, Idaho, or Utah, you may meet your mandatory CLE requirements by providing proof of current compliance. Only a Certificate of Compliance from your state bar will satisfy your MCLE requirements in Washington.

MCLE System — Course Listing and Member Profiles. You can 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 for prep-time credit, and search for approved courses being presented in the future.

To use the MCLE system, go to http://pro.wsba.org, click on the Member tab, then select Member Login. The online instructions will lead you through the process of creating a confidential password and beginning to use the system. Online help files are available.

If you have any questions about using the MCLE system or about the MCLE compliance requirements, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

MCLE Certification for Group 1 (2002-2004) — Complete Credits by December 31, 2004

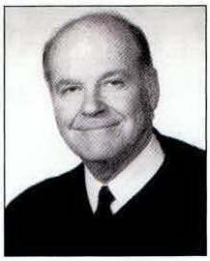
MCLE Reporting Group 1 members should be planning to complete all the credits for the 2002-2004 reporting period by December 31, 2004. A Continuing Legal Education Certification (C2) form, an affidavit that lists all the WSBA-approved courses that you took for compliance, will need to be filed. This form will be in the license packet that will be mailed to you at the beginning of December. The C2 form, not your online profile, is the official record of MCLE compliance. The C2 forms must be postmarked or delivered to the WSBA no later than March 1, 2005.

Members in Group 1 include active members who were admitted to the WSBA in all years through 1975 or in 1991, 1994, 1997, or 2000. Members admitted in 2003 are also in Group 1 but are not due to report until the end of 2007. Their first reporting period will be 2005-2007, but any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

See "MCLE Certification for Active Members — General Information" above for further information about the MCLE report.

Access to Justice Board Awards Presented June 12

At the annual Access to Justice (ATJ) Conference held in Yakima in June, the ATJ Board presented the **Washington**



State Supreme Court with its ***2004 Judicial Leadership Award***. The Court was recognized for establishing the Task Force on Civil Equal Justice Funding, providing funding for the Task Force's Civil Legal Needs Study, and championing the need to address the report's significant implications for the justice system. Chief Justice **Gerry Alexander** (pictured) accepted the award on behalf of the Court.

The ***2004 Access to Justice Leadership Award*** was given to **Columbia Legal Services**, in appreciation of the program's demonstrated history of "walking its talk" in service of the vision of equal justice for all. Pictured are **Ada Shen-Jaffe** (front row, second from left) and **Jim Bamberger** (front row, third from left), with Columbia Legal Services staff and board members. Ada and Jim, who will be leaving Columbia Legal Services this December, were honored with a special video presentation featuring, among others, Governor **Gary Locke** and Attorney General **Christine Gregoire**.

The Access to Justice (ATJ) Board recognized the **North Central Washington Equal Justice Advisory Committee** for its extraordinary ability to bring diverse interests — business, agricultural industry, legal, and social and human services — together to form a strong, sustaining, nonpartisan, and inclusive community-based commitment to justice and fairness for low-income residents. **Ty Duhamel**, staff attorney at Columbia Legal Services, accepted the ***2004 Civil Equal Justice Community Partnership Award*** from **Colleen Kinerk**, chair of the ATJ Conference Planning Committee.

Second Annual UW Law School Alumni Association Golf Tournament

The Second Annual Law School Alumni Association Golf Tournament will be held Friday, August 27, 2004, at the Washington National Golf Club, 14330 SE Husky Way, Auburn. Tee time is 1 p.m. The tournament is open to the public. The format is an 18-hole, four-person scramble, and all players tee off and the team plays the best ball on every shot. Proceeds benefit student scholarships. For more information, please contact Beverly Sanders at bsan@u.washington.edu or 206-543-8707.

WYLD Young Lawyer Express: CLE by the Sea Weekend

Don't miss this opportunity to earn free CLE credits! Join your colleagues for estate planning and probate, criminal law evidentiary and civil procedures practice tips, and more at Friday Harbor on San Juan Island September 24-26, 2004; 2.75 general CLE credits pending. Take advantage of this excellent opportunity to network with other young lawyers. Group activities include kayaking, bowling, and an island scavenger hunt. For registration and detailed event information, please visit www.wsba.org/lawyers/groups/wyld.

Mark Your Calendar: 2004 WSBA Annual Awards Dinner and Business Meeting

The WSBA Annual Awards Dinner and Business Meeting will be held Thursday, September 16, from 5:30-8:30 p.m. at the Seattle Marriott Waterfront Hotel, 2100 Alaskan Way, Seattle. All members of the legal community are invited to attend. To make your reservation, please use the form on page 38 or download the form online at www.wsba.org/aaregform.pdf.

Mark Your Calendar: 2004 50-Year Member Tribute Luncheon

The 50-Year Member Tribute Luncheon will be held Wednesday, September 29, from 11:00 a.m. to 2:00 p.m. at the Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle. All members of the legal community are invited to attend. To make your reservation, please use the form on page 44 or visit www.wsba.org/50yrregform04.pdf.

WYLD Trustees Appointed

At their June 11, 2004 meeting in Yakima, and in accordance with the WYLD Bylaws, the WYLD Board of Trustees unanimously appointed two new trustees. **Chris Bell** of Bell & Ingram PS in Everett was named the new Snohomish District trustee. **Rachelle Anderson** of Spokane was appointed to her second term as Greater Spokane District trustee. Both trustees will serve on the board October 2004 through September 2007. For more information about the WYLD, please visit www.wsba.org/lawyers/groups/wyld.

2004 WSBA Annual Award Recipients

The WSBA Board of Governors is pleased to announce the recipients of this year's awards. The following awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 16, 2004, with the following exceptions: The *Pro Bono* Award was presented at the Access to Justice Conference in Wenatchee on June 12, and the Outstanding Judge Award will be presented at the Washington Judicial Conference in Spokane in September.

Award of Merit. First given in 1957, this is the WSBA's highest honor. The Award of Merit is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals

only — both lawyers and nonlawyers. The 2004 recipients are **David Boerner** and **Ellen Dial**.

Professionalism Award. This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession. The 2004 recipients are **Robert Boruchowitz** and **Jeffrey Jahns**.

Angelo Petruss Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public. The 2004 recipients are **Sally Bagshaw** and **Rhonda Brown**.

Outstanding Judge Award. This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court. The 2004 recipient is Hon. **Richard A. Jones**.

Pro Bono *Award.* This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing *pro bono* services. This award is based on cumulative efforts, as opposed to a lawyer's or group's *pro bono* hours or financial contribution. The 2004 recipient is **Matthew Kenney**.

Courageous Award. This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. The 2004 recipient is **Ada Shen-Jaffe**.

Excellence in Diversity Award. This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession's employment of ethnic minorities, women, and disabled persons. The 2004 recipient is **Sandra Madrid**.

Excellence in Legal Journalism Award. This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting. The 2004 recipients are **Ken Armstrong**, **Florangela Davila**, and **Justin Mayo**.

Special Lifetime Service Award. This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition. The 2004 recipient is **M. Wayne Blair**.

July's Wenatchee Peer Counselor Training: "L.A.P. on the Map" Was a Success

The two-hour training, "Secondary Traumatic Stress: What You Don't Know Will Hurt You," by Barbara Harper, Lawyer Services Department director, and Jennifer L. Favell, Ph.D., was an opportunity for peer counselors on the east side of the mountains to meet these two WSBA staff members, earn two CLE credits, and enjoy reconnection. Look for information on future trainings. We hope to see you in Chelan for the statewide conference in April 2005. For more information, contact the Lawyers' Assistance Program at 206-727-8268.

Senior Attorneys' Discussion Group

We meet the third Thursday every month to talk about issues important to senior attorneys who continue to be involved, creative, healthy and active. On August 19, after time to check in with each other, we'll hear about members' travels. Join us at no cost, 4-5:30 p.m., WSBA fourth-floor conference room. Contact Jennifer Favell, Ph.D., at 206-727-8267 for more information.

Therapy Group for Attorneys Struggling with Depression

The Lawyers' Assistance Program will offer a small, confidential therapy group for active members of the WSBA. We will meet Wednesdays, 4-5:30 p.m. beginning July 21, with sessions ending October 6, 2004. Cost will be on a sliding-scale basis. If you have questions or would like further information, please call Jennifer Favell, Ph.D., 206-727-8267.

Washington Pattern Forms Committee and Administrative Office of the Courts Publish New Forms

The week of June 7, 2004, the Washington Pattern Forms Committee and the Administrative Office of the Courts published a new set of model Small Claims forms and updates to the Domestic Relations forms, the Domestic Violence forms, the Antiharassment forms, the Juvenile Court forms, the Misdemeanor Judgment and Sentencing forms, and the Felony Judgment and Sentence forms, including Certificate of Discharge forms. The forms became effective June 10, 2004. A list of the modified forms follows:

Small Claims Forms: MISC 05.0100, Notice of Small Claim, MISC 05.0200, Certificate of Service, MISC 05.0300, Small Claims/Order of Dismissal/Continuance, MISC 05.0500, Small Claims Judgment.

Domestic Relations Forms: *Child Support forms:* WSCSS-Summary Report; *Forms for Use in All Family Law Cases:* WPF DRPSCU 01.0050, WPF DRPSCU 01.0150, WPF DRPSCU 01.0250, WPF DRPSCU 01.0410, WPF DRPSCU 01.1550 (WPF DRPSCU 01.1550 is a Financial Declaration for use in all cases); *Uniform Interstate Family Support Act (new forms):* WPF DRPSCU 10.0100, Request for Support Order Registration Under UIFSA; WPF DRPSCU 10.0150, Cover Sheet for Uniform Interstate Family Support Act (UIFSA) Documents; *Chapter 26.09:* WPF DR 01.0500, WPF DR 03.0100, WPF DR 04.0150, WPF DR 04.0170, WPF DR 04.0250, WPF DR 04.0400, WPF DR 06.0100, WPF DR 06.0300, WPF DR 06.0400, WPF DR 06.0600, WPF DR 07.0300. Delete form WPF DR 01.0550; *Chapter 26.10:* WPF

CU 01.0100, WPF CU 01.0250, WPF CU 01.0255, WPF CU 01.0500, WPF CU 02.0200, WPF CU 02.0400, WPF CU 03.0150, WPF CU 03.0170, WPF CU 03.0200, WPF CU 03.0520, WPF CU 03.0540, WPF CU 03.0550; *Chapter 26.26:* WPF PS 01.0150, WPF PS 01.0155, WPF PS 01.0500, WPF PS 03.0100, WPF PS 04.0150, WPF PS 04.0170, WPF PS 04.0200, WPF PS 04.0250, WPF PS 15.0150, WPF PS 15.0650, WPF PS 15.0700 (New form: WPF PS 15.0560, Residential Schedule). Delete form WPF PS 01.0550.

Domestic Violence Forms: WPF DV-3.015.

Antiharassment Forms: WPF UH-4.0500, WPF HU-5.0500.

Juvenile Court Forms: WPF JU 02.0200, WPF JU 03.0400, WPF JU 03.0410, WPF JU 03.0500, WPF JU 03.0700, WPF JU 03.0730, WPF JU 04.0100, WPF JU 04.0110, WPF JU 05.0100, WPF JU 05.0250, WPF JU 05.0255, WPF JU 05.0300, WPF JU 05.0400, WPF JU 05.0500, WPF JU 05.0600, WPF JU 05.0700, WPF JU 05.0710, WPF JU 05.0800, WPF JU 06.0100, WPF JU 06.0150, WPF JU 07.0800, WPF JU 07.0820, WPF JU 07.1320, WPF JU 10.0300, WPF JU 12.0400, WPF JU 12.0500 (New forms: WPF JU 05.0250, Indian Child Welfare Act Notice 25 U.S.C. 1912(a), and WPF JU 05.0255, Proof of Mailing (ICWA Notice).

Misdemeanor Judgment and Sentencing Forms: CrRLJ 03.0400, CrRLJ 03.0410, CrRLJ 07.0100, CrRLJ 07.0110, CrRLJ 07.0500. Delete form CrRLJ 07.0300.

Felony Judgment and Sentence Form: WPF CR 84.0400.

Certificate of Discharge Forms (new forms): CR 08.0600, Petition for Certificate and Order of Discharge CR 08.0650, Certificate and Order of Discharge CR 08.0670, Obtaining a Certificate of Discharge.

The forms may be ordered by calling the AOC forms line, 360-705-5328, or by writing PO Box 41174, Olympia, WA 98504-1174. The forms are also available on the Internet at: www.courts.wa.gov/forms.

Business Law Section Contributes $10,000 to WAACO

The WSBA Business Law Section has contributed $10,000 to support the start-up of the Washington Attorneys Assisting Community Organizations (WAACO), a new statewide organization that matches volunteer attorneys with charitable and community-based nonprofit organizations in need of business-related legal services. "Aside from providing much-needed seed funding for WAACO's formation and initiation of its operations," said WAACO Treasurer Pamela A. Grinter, "the Business Law Section's contribution has lent credibility to this new organization. The individuals behind WAACO wish to thank the section for its contribution." This contribution is the section's second $10,000 contribution to WAACO; the first was in fall 2003.

Proposed Amendments to Regulation 110 of APR 11 Before the Supreme Court

On March 8, 2004, proposed amendments to Regulation 110 of APR 11, approved by the MCLE Board and the WSBA Board of Governors, were sent to the Washington State Supreme Court for approval. The proposed amendments to this regulation clarify the basis for the granting of exemptions, waivers, or modifications of the CLE requirements by the MCLE Board. They also include a new section (f) to specifically address the application of the requirements to active members of the Bar who are on active military duty.

Interest in Establishment of New State and Local Tax Section

This notice is posted pursuant to the WSBA Bylaws, Article IX, Sections, regarding a six-month prior notification of intent to establish a new section. There is a current effort to form a State and Local Tax Section. For additional information, please contact John Piper at 206-224-8045.

Lawyer-to-Lawyer Program: Mentors Needed for Newer Admittees

The WSBA's Lawyer-to-Lawyer Program matches newer admittees with experienced lawyers. The program is not a structured mentoring program and does not supplant any similar programs of local or specialty bars. We connect lawyers with similar practices in the same geographic area for mutual information-sharing and goodwill. We need experienced attorneys to serve as informal mentors, especially in King County. Help new lawyers get a head start on learning those lawyering skills not found in any textbook. Interested members may contact Pete Roberts (206-727-8237; peter@wsba.org) in the Law Office Management Assistance Program. Program guidelines and sign-up forms are available at www.wsba.org/lawyers/services/lawyertolawyer.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in July 2004 was 1.666 percent. The maximum allowable interest rate for August is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988 to 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 16-17 —Seattle
October 22-23 — Richland
December 10-11, 2004 — Everett

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.

Wednesday, September 29, 2004

•

Sheraton Seattle Hotel and Towers
1400 Sixth Avenue
Seattle

•

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

•

Luncheon/program
12:00 noon

WSBA office use only:

Date ____________

Check No. ____________

Amount ____________

No. MTL40929

You are cordially invited to attend

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

Please join us as we celebrate the accomplishments of the 2004 WSBA 50-year members. All members of the legal community are invited to attend.

Name ______________________________ WSBA No. ____________

Address ____

Phone ______________________________ E-mail ____________________

Affiliation/organization ______________________________________

Registration by August 20 is $40 per person (table of 10 = $400); registration after August 20 is $45 per person (table of 10 = $450). 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 by September 22, 2004. (Refunds cannot be made after September 22.)

☐ MasterCard ☐ Visa No. ____________________ Exp. date ________

Name as it appears on card ______________________________________

Signature ____

______ (no. of persons) X $ ______ (price per person) = $ __________ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian
______________________	☐ chicken	☐ salmon	☐ vegetarian

Please note that this event will not have assigned seating. However, if your organization would like to purchase a table (10 people), you may do so by listing the name of your organization here:

Organization name ______________________________________

Send to: Washington State Bar Association
50-Year Member Tribute Luncheon
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Phone: 800-945-WSBA or 206-443-WSBA • Fax: 206-727-8320

☐ If you need special accommodations, please check here and explain below.

____

____

NOTICE OF PUBLIC HEARING
Thursday September 9, 2004

The resolution set forth below has been submitted to the Board of Governors. Pursuant to Article VII, §F, of the WSBA Bylaws, the Board will determine at its July 30-31, 2004, Board meeting whether the resolution is within the purposes of the Bar as set forth in Article I of the Bylaws. If the Board so finds, the Board will refer the resolution to the Resolutions Committee, and it will be offered for membership consideration at the Annual Business Meeting of the WSBA, which will be held Thursday, September 16, 2004, beginning at 6:30 p.m. at the Seattle Marriott Waterfront Hotel, 2100 Alaskan Way, Seattle.

The WSBA Resolutions Committee will conduct a public hearing on the resolution in accordance with Article VII of the WSBA Bylaws. The public hearing will begin at 1:30 p.m. Thursday., September 9, 2004, at the offices of the WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Proponents and opponents of the resolution are urged to attend the hearing or to present their views in written form for consideration by the Resolutions Committee by sending their comments to the Executive Director at the above address.

The Resolutions Committee will recommend approval, rejection, or amendment of the resolution, which will then be debated and voted on at the annual meeting. The members of the Resolutions Committee are Mark A. Johnson (chair), Paula E. Boggs, Robert M. Boggs, Zulema Hinojos-Fall, Elizabeth Li, Fawn Sharp, Ada Shen-Jaffe, and J.D. Smith.

RESOLUTION
Indian Law on the Washington State Bar Examination

WHEREAS, we, interested members of the Washington State Bar Association (WSBA), in support of our friends and colleagues in the WSBA Indian Law Section and the Northwest Indian Bar Association, do hereby submit the following resolution; and

WHEREAS, the recent growth in tribal economic development and the resulting increase in interaction of Washington's twenty-nine (29) federally recognized Indian tribes with non-Indian entities and individuals, both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties in this state; and

WHEREAS, the citizens of Washington and their attorneys do not generally understand the sovereign legal rights of Washington Indian tribes; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Washington Indian tribes, affect and intersect Anglo-American and non-Indian legal principles; and

WHEREAS, the integrity and competence of the legal profession in this state would be enhanced if attorneys licensed by the WSBA generally understood significant federal jurisdictional Indian principles, particularly the common law doctrines of tribal sovereignty, tribal sovereign immunity, tribal subject matter jurisdiction (both criminal and civil), and the federal Indian Child Welfare Act; and

WHEREAS, in February 2002 the State Bar of New Mexico became the first state bar association to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel, and in turn the public in New Mexico, as well as federal, state and local governments, about the legal rights of sovereign Indian tribes.

NOW, THEREFORE, BE IT RESOLVED that we do hereby urge that the WSBA Board of Governors enact and carry out policy to ensure that every attorney licensed by the Washington State Supreme Court, as well as members of the tribal, state and federal judiciary in this state, better understand the sovereign legal rights of Washington Indian tribes;

BE IT FINALLY RESOLVED that we do hereby request the assistance and collaboration of the WSBA Committee of Law Examiners and Professional Development Committee to carry out the provisions of this Resolution.

STATEMENT IN SUPPORT OF RESOLUTION

The resolution endorsed by 120 WSBA members urges that federal Indian jurisdictional issues be tested on our state's bar examination, as in New Mexico.[1] Its goal is well-stated by Tim Woolsey in "Should Indian Law Be Tested on the Washington Bar Exam?" in the June 2004 *De Novo*:

> Including American Indian law on the bar exam will produce new attorneys that can spot issues and competently represent tribal and non-tribal clients in Washington. . . . [I]t is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competence . . . [and] to zealously advocate for all clients to the best of our ability.

See RPC 1.1 ("A lawyer shall provide competent representation to a client . . . [which] requires the legal knowledge . . . reasonably necessary for the representation.").

According to the National Conference of Bar Examiners and the ABA Section of Legal Education and Admission to the Bar:

> The bar examination should test the ability of an applicant to identify legal issues . . . such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles . . . . Its purpose is to protect the public . . . ."[2]

The resolution's ultimate objective is to protect the Washington public — Indian and non-Indian citizenry alike — from the unknowing or unwitting practice of Indian law.

Indian tribes are a "separate people, with the power of regulating their internal and social relations."[3] Local tribes have recently exercised their sovereignty and regulatory authority to become an influential economic force. Consider that Washington tribes:

- Annually contribute $1 billion to the state's overall economy.
- Employ nearly 15,000 Indian and non-Indian employees (by comparison, Microsoft employs 20,000 Washingtonians).
- Occupy 3.2 million acres of land in the state.[4]

A corollary to the rise in tribal economic development is the dramatic increase in non-Indian citizens seeking business, employment, or recreation on reservation lands; and in an array of en-

suing legal matters that implicate tribal jurisdiction.

Indian jurisdictional principles underlie every transaction in Indian Country. With Wal-Mart, Home Depot, and Clear Channel now developing Washington reservations, and the resulting billions of dollars in revenue and thousands of jobs, our state's corporate lawyers must understand tribal jurisdiction.

What's more, Indian jurisdictional issues extend into the domestic arena. Litigation involving the adoption of an Indian child, the probate of real property on tribal lands, an auto accident on the reservation, or a reservation-based crime, likely involve complex jurisdictional issues. Even a slip-and-fall arising in a tribal casino will implicate the threshold defense of sovereign immunity — a question of subject-matter jurisdiction.

The general practitioner or public lawyer in Washington will encounter a case implicating tribal jurisdiction. Indeed, the 120 WSBA members who believe our Bar must better understand Indian law include civil and criminal counsel for municipal, county, and federal government, state administrative-law judges, legal-aid and nonprofit lawyers, and lawyers from large firms throughout the state. WSBA President Emeritus Dick Manning, U.S. Attorneys John McKay and Jim McDevitt, and King County Prosecutor Norm Maleng also endorse the resolution. The broad showing of support evidences that Indian jurisdictional matters affect lawyers and clients of every type in Washington.

Our state's Bar exam is, by design, the best forum to instill lawyers with knowledge reasonably necessary to ensure the protection of all Washington citizens. To that end, the WSBA would be prudent to test tribal jurisdiction on our Bar exam.

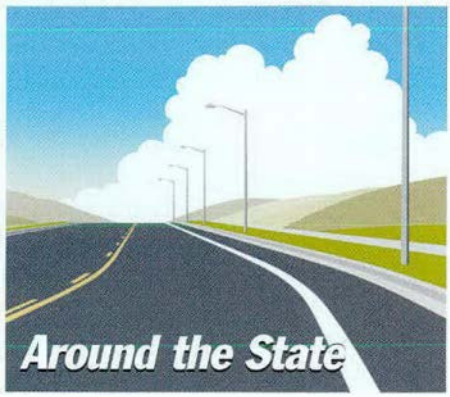
NOTES

[1] Idaho, Oregon, Montana, and Oklahoma are also considering whether to test Indian law on their bar exams.

[2] *See Comprehensive Bar Admission Requirements 2004*, at p. ix (www.ncbex.org/pub.htm).

[3] U.S. v. Kagama, 118 U.S. 375 (1886).

[4] *See* Gabriel S. Galanda, "Indian law is crucial to this state," *Seattle Post-Intelligencer*, October 7, 2003 (seattlepi.nwsource.com/opinion/142764_indianlaw07.html).



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@thompson-law.com for more information.

Appointments

Anne N. Solwick has been appointed executive director of the State Board of Tax Appeals. She succeeds **Richard Virant**, who retired after 18 years. The board adjudicates a variety of tax-related disputes, including excise taxes, public-utility valuations, exemptions, and property-assessment appeals. Solwick has practiced in the King, Pierce, and Thurston Counties area since 1992, and previously served with the Department of Revenue and the IRS.

Governor **Gary Locke** has appointed **Erika Lim** to the Legal Foundation of Washington Board of Trustees. Lim is director of career services at Seattle University School of Law, and is a part-time advisor and legal counsel in the Department of Information Services; Department of Community, Trade and Economic Development; and the state Senate.

Three Washington lawyers have been appointed to serve on the Totem Council Board of Directors of the Girl Scouts. **Laura Clinton** practices with Preston Gates & Ellis in Seattle. **Betsy Hollingsworth** teaches at Seattle University School of Law. **Marilyn Sherron** is an attorney with AT&T Wireless in Seattle. The council serves nearly 21,000 girls in northwest Washington between the ages of five and 17.

Gonzaga University has appointed associate professor **George Critchlow** interim dean of the law school as of July 1. Critchlow is a 1977 Gonzaga Law graduate and has taught at Gonzaga for 23 years. He fills the deanship while the university conducts a national search to replace **Daniel Morrissey**, who resigned effective June 30.

Island County Report

by Tom Pacher

Greetings once again from the shores of Penn Cove.

Lance Hendrix, no relation to Jimi, recently passed the Bar exam. Lance immediately took advantage of the stunned silence in Coupeville to land a job at Platt & Arndt. Moved in before anyone even noticed. All kidding aside, by the time this is printed, I'm sure Lance will already be wowing them in Island County District Court.

Nearly two decades of lawyering, including in a large upscale firm, apparently haven't rubbed off on **Cecilia Welch** quite as much as a few years out in the countryside. Cecilia, who works as a government lawyer on Whidbey, has purchased her "dream farm," complete with a barn converted into a home. She's moved onto the farm with two sheep, a goat, and cat, and a dog. She swears that after getting the 10 acres fenced, she's going to get more animals. Cecilia, you're out in the countryside . . . if you want more animals, just forgo the fence.

On a more self-serving note, I'm leaving Platt & Arndt to venture out on my own. I'll be setting up a solo shop on Whidbey Island, where I'll be spending about half of my time prosecuting cases for the city of Oak Harbor. I'm still working out what I'll do the other half of the time, but if any of you talk to my parents, please assure them I'm putting the time to productive use and contributing to society in a meaningful fashion. They probably won't believe it, but for some reason it makes them feel better anyway.

Clients of Oak Harbor attorney **Bill Daniels** can be assured that Bill never stops working for his clients. I was still

out shopping for office space, not even up and running yet, when I ran into Bill. After a pleasant exchange of greetings, Bill went right to work, twisting my arm about a case. You have to admire that kind of vigilance.

Intellectual Property News

Woodcock Washburn LLP is pleased to announce that patent attorney **N. Ari Long** has been elected secretary of the King County Bar Association Intellectual Property Section.

The Judiciary

by Lindsay Thompson

Washington's federal bench increased by two members in June.

On June 15 the Senate voted 98-0 to confirm U.S. Magistrate Judge **Ricardo S. Martinez**, 52, as the state's first Hispanic federal judge. He succeeds Judge **Barbara Rothstein**, who accepted an appointment in 2003 to direct the Federal Judicial Center. Before his confirmation, Martinez was a magistrate for six years, a King County Superior Court judge for eight, and a deputy prosecutor in King County for 10. He's a 1975 UW graduate, and received his law degree at UW in 1980.

On June 17 the Senate voted unanimously to confirm Seattle lawyer **James Robart** as a Western District judge. Robart, 56, was managing partner at Lane Powell Spears Lubersky and won fame as the lead attorney in the 2000 challenge to the Tim Eyman-led $30 car-tab initiative. A graduate of Whitman College and Georgetown Law, he practiced with his firm for some 30 years before moving to the bench. Robart succeeds Judge **Thomas Zilly**, who is taking senior status.

Washington federal judges are nominated based on recommendations by a statewide bipartisan committee.

Pierce County Superior Court Judge **Frank Cuthbertson** continues to recover from surgery in May for a blood clot in his brain. Cuthbertson was appointed to the bench in 2001 and won a full term the next year.

Governor **Gary Locke** has appointed **Cameron Mitchell** to succeed retiring Judge **Carolyn Brown** on the Benton-Franklin County Superior Court bench. Mitchell, 45, is the first African-American to serve on that bench. Brown was the first woman to serve on that bench.

Mitchell is a native of Richland and holds degrees from Washington State and Willamette Law School. He was previously a hearing judge for the Board of Industrial Insurance Appeals, has worked in the Department of Energy's legal department at Richland, and has worked in the Attorney General's Office. Mitchell was a frequent *pro tem* judge before his appointment.

Mitchell is Governor Locke's 51st appointment to the state bench.

Pierce County Superior Court Judge **Kathryn Nelson** won a Dale Chihuly Award from Stadium High School in Tacoma in June. The award was created in 2000 when the Class of 1959 donated a Chihuly glass piece to the school. The noted glass artist was a student at Stadium in the 1950s. The award honors public service by alumni, students, or volunteers at the school.

Chief Justice **Gerry Alexander** has announced the Court's appointment of **Janet McLane** as interim state court administrator. McLane will work with outgoing administrator **Mary McQueen**, who has resigned to become president of the National Center for State Courts. McLane joined AOC in 1980 and has been director of judicial services since 1986. The office was created in 1957 to provide professional and technical support to the state's 255 courts.

King County District Court Judge **Corinna Harn** has been elected chief presiding judge of the 23-member, seven-courthouse bench. Harn has been on the court since 1998 and was previously a Renton Municipal Court Judge. Judge **Barbara Linde** has been elected assistant chief presiding judge.

Our Far-flung Members

Washington, D.C., resident and Seattle native **Emelie East** was elected a trustee of Trinity College, Hartford, Connecticut, in May. East, a Funston trustee, is currently the president of the Trinity Club of Washington, D.C., and is a member of the National Alumni Association Executive Committee. East obtained her law degree at Georgetown. She has served as professional staff on the U.S. Senate Appropriations Committee, and is now a co-founder and executive vice president of McBee Strategic Consulting lobbying firm in Washington, D.C.

Latina/o Bar Association of Washington

The Washington State Hispanic Bar Association announced its change of name, to the Latina/o Bar Association of Washington, in May.

In Memoriam

Francis Jerome Diskin

Longtime assistant U.S. Attorney Jerry Diskin graduated from Catholic University and Georgetown Law Center and spent nearly 30 years in the Western District of Washington. He served variously as chief of the criminal division, senior litigation counsel, and supervisor of the office's drug unit. Late in his career, Diskin won international attention as lead prosecutor of Ahmed Ressam, who was arrested in December 2000 while trying to smuggle a trunk-load of explosives from Canada to Washington on the way to blow up Los Angeles International Airport.

After obtaining Ressam's conviction in 2001, Diskin served as interim U.S. Attorney between the resignation of Kate Pflaumer and the appointment of current U.S. Attorney John McKay.

In his spare time, Diskin was an enthusiastic baseball fan, his participation ranging from umpiring youth games to critiquing the umpires in the pros.

Survivors include his wife and two children.

A Minneola, New York, native, Francis Jerome Diskin died June 1, 2004, in Seattle, aged 57.

Hon. Walter E. Webster Jr.

Ellensburg native Walter Webster served in the U.S. Naval Air Corps in World War II, then took a business degree from Seattle University and a law degree at Georgetown. He married his college sweetheart, Frances Siemion, and they

settled in Seattle.

Webster practiced law and taught at Seattle U. and Seattle's Police Academy before being appointed to the Court of Appeals in 1984. After his 2001 retirement, Webster practiced on Mercer Island and chaired the King County Museum of Flight Authority.

Survivors include his wife, eight children, seven siblings, and nine grandchildren.

Walter E. Webster Jr. was born in Ellensburg October 30, 1926, and died in Seattle June 21, 2004, aged 77.

Osburn Kent Whiteley

A Harley rider and skiing enthusiast, Osburn Whitely held degrees from Brigham Young University and the University of Utah School of Law, where he was a member of the Order of the Coif. During his career, he practiced with Graham & Dunn and in his own Bellevue firm, Drake & Whitely, before retiring from Foster Pepper & Shefelman.

Survivors include his wife, three children, his mother, four siblings, and five grandchildren.

Osburn Kent Whiteley was born in Oakley, Idaho, August 8, 1946, and died in Sammamish May 6, 2004, aged 57.

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

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

NOTE: *In July's* Bar News, *the name of Thomas Frey, who served as special disciplinary counsel representing the WSBA at hearing in* In re Kagele, *was inadvertently omitted. We apologize for the omission.*

Resigned in Lieu of Disbarment

Charles B. Allen (WSBA No. 9193, admitted 1979), of Bellevue, resigned in lieu of disbarment effective February 6, 2004. This resignation was based on his conduct in 2002, involving assisting a California estate-planning company in the unauthorized practice of law.

In July 2002, Mr. Allen agreed to associate with a California estate-planning company. Mr. Allen reviewed estate-planning documents completed by company representatives in the clients' homes. Mr. Allen knew that the company representatives were not lawyers and were not supervised by Washington lawyers. Mr. Allen also knew that these representatives gave legal advice to, and solicited services from, the clients. When Mr. Allen reviewed the clients' documents, either he or a staff member sometimes verified factual issues with the clients by telephone. Mr. Allen did not adequately ascertain whether the clients understood the terms or legal effect of the documents they signed. Some of the clients suffered actual harm because they purchased unnecessary or inappropriate living trusts or charitable remainder trusts. Mr. Allen did not advise these clients of the legal and financial consequences of the trust documents. Mr. Allen did not advise the clients of his business relationship with the estate-planning company. Mr. Allen required each client to sign a disclaimer stating "Charles B. Allen is not responsible for any claims arising from an invalid Trust, Will or Power of Attorney." Mr. Allen shared fees with the estate-planning company.

Mr. Allen's conduct violated RPCs 1.3, 1.4(a), and 1.4(b), requiring lawyers to diligently represent clients, keep them informed of the status of their matters, and explain matters to the extent reasonably necessary for clients to make informed decisions; 1.1, requiring lawyers to competently represent clients; 5.5(b), prohibiting lawyers from assisting the unauthorized practice of law; 5.4(a), prohibiting sharing fees with nonlawyers; 1.8(h), prohibiting making agreements prospectively limiting the lawyer's malpractice liability to clients, unless permitted by law and the client is independently represented; and 1.7(b), requiring lawyers to decline client representation if the representation may be materially limited by the lawyer's own interests.

Kevin Bank represented the Bar Association. Mr. Allen represented himself.

Disbarred

John W. Alderson (WSBA No. 29479, admitted 1999), of Pasco, was disbarred effective October 29, 2003, by order of the Washington State Supreme Court approving a stipulation. This discipline was based on his criminal conduct in 2002.

Mr. Alderson's uncle and father were two of three partners in a farming business. In April and May 2002, while visiting his father's home, Mr. Alderson gained access to the business checkbook and wrote eight unauthorized checks for a total of $21,550. Mr. Alderson's father reimbursed the business account. At the time of the stipulation, Mr. Alderson had not paid his father.

Mr. Alderson's conduct violated RPCs 8.4(b), by committing a criminal act (forgery) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(i), by engaging in an act involving moral turpitude, corruption, unjustified assault, or other acts which reflect disregard for the rule of law.

Anthony Butler represented the Bar Association. Leland Ripley represented Mr. Alderson.

Disbarred

Armando R. Cobos (WSBA No. 27006, admitted 1997), of Seattle, was disbarred effective January 12, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2002 involving multiple acts of misconduct in two client matters during 2002.

Matter 1: In January 2002, Mr. Cobos agreed to represent a corporation in two pending lawsuits. Mr. Cobos did not deposit the client's payment into his trust account, bill the client, or provide an accounting for these funds. On May 23, 2002, the court issued an order compelling discovery and imposing $500 in attorney's fees on Mr. Cobos's client. Mr. Cobos did not notify his client of this order, provide the discovery, or pay the fees. In June 2002, the opposing party filed a summary judgment motion. Mr. Cobos did not tell his client about this motion, but the client's corporate counsel learned of the motion from the court file. On June 23, 2002, Mr. Cobos notified his client that the summary judgment motion had been continued and that he had completed the responsive pleadings. Mr. Cobos had not actually prepared responsive pleadings and did not contact his client after this date. Mr. Cobos did not inform his client or the court of his withdrawal from this case. In early July, the opposing party filed a motion for contempt against Mr. Cobos's client. Mr. Cobos did not tell opposing counsel that he no longer represented the company, or forward the pleadings to the corporation. At the end of July 2002, Mr. Cobos vacated his office, and, by August, his office phone number was disconnected. Mr. Cobos did not return the client file to the client or produce the file in response to the Bar Association's subpoena.

Matter 2: In March 2002, Mr. Cobos agreed to represent the wife in a marriage-dissolution action. In April 2002, Mr. Cobos submitted pleadings indicating that the husband had stocks, bonds, and a pension. The client told Mr. Cobos that the husband did not have these assets. The wife initially asked that the husband contribute to her tuition costs. Later, the wife received a tuition grant, and asked Mr. Cobos to withdraw the request for contribution. Mr. Cobos told the client to keep quiet about the grant and pocket the money from her husband. Mr. Cobos continued to ask for this tuition contribution against the client's expressed wishes. On two occasions, while discussing payment of attorney's fees, Mr. Cobos asked the client to assist him in obtaining a false Mexican birth certificate and passport. In May 2002, the husband's lawyer filed a motion to revise the temporary order, including attorney's fees and sanctions against Mr. Cobos. Prior to the date of this hearing, the client told Mr. Cobos that she and her husband were discussing reconciliation. Mr. Cobos advised the client several times not to reconcile with her husband until after the hearing, so the court could award attorney's fees to Mr. Cobos. Mr. Cobos made several verbal attempts to become intimate with the client during the representation. The client terminated the representation prior to the hearing. The parties filed a joint motion dismissing the dissolution petition. Mr. Cobos threatened to sue the husband for filing the grievance in this matter.

Mr. Cobos's conduct violated RPCs 1.2, requiring lawyers to abide by a client's decisions regarding the objectives of the representation; 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients informed about the status of their matters; 1.7(b), prohibiting lawyers from representing a client if the representation might be materially limited by the lawyer's own interests, unless the client consents in writing after a full disclosure; 1.8(k), prohibiting a lawyer from having sexual relations with a current client, unless the sexual relationship existed between them at the time the lawyer-client relationship commenced; 1.14(a) and (b), requiring lawyers to deposit client funds in a trust account, maintain records of client funds, and provide accountings of those funds; 1.15(d), requiring lawyers to take steps to the extent reasonably practicable to protect clients' interests upon withdrawal; 3.3(a), prohibiting lawyers from making false statements of material fact or law to the tribunal; 8.4(b), prohibiting committing criminal acts (attempt to violate Title 18 U.S.C. § 1028) that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and 8.4(d), prohibiting conduct prejudicial to the administration of justice; and ELC 5.3(e) (formerly RLD 2.8), requiring lawyers to promptly cooperate with disciplinary investigations.

Christine Gray represented the Bar Association. Mr. Cobos represented himself. Paul M. Larson was the hearing officer.

Disbarred

Jeffrey L. Danzig (WSBA No. 13243, admitted 1983), of Bellingham, was disbarred effective November 25, 2003, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1998 and 2001 involving theft of client funds and conflict of interest in a medical-malpractice matter.

In October 1998, Mr. Danzig agreed to represent clients in a medical-malpractice matter. The clients signed a written fee agreement for a $5,000 nonrefundable retainer and a contingency fee. Between October 1998 and November 2000, the clients paid Mr. Danzig $49,436.15 for costs, and an additional $2,700 in costs directly to third parties. Mr. Danzig deposited many of these payments into his personal checking account. By summer 2000, the clients could not afford to pay costs, so Mr. Danzig agreed to find a lawyer who could advance costs. He also prepared a new agreement stating that the clients agreed to pay fees in addition to those in the original fee agreement, and that they had no disagreement with "regard to money or preparation of our case." The clients initially refused to sign the new agreement, but did so after Mr. Danzig threatened to withdraw and make it difficult for the clients to find new counsel. Mr. Danzig did not tell the clients that they should obtain independent legal advice prior to signing the new fee agreement.

In November 2000, Mr. Danzig associated with another lawyer, who agreed to advance costs to the clients prospectively. The new agreement also provided that Mr. Danzig and the new lawyer would receive a 50 percent contingency fee. In January 2001, the clients' case settled for $600,000. After signing the settlement check, the clients asked Mr. Danzig to provide an accounting. He told them he did not have receipts, could not provide an accounting, and would not refund any money. The hearing officer found that the clients were entitled to a $35,603.76 refund of unused and unaccounted for advanced costs. Mr. Danzig did not refund any money to the clients.

Mr. Danzig's conduct violated RPCs 1.14(b)(3), 1.4, and 1.5(c), requiring lawyers to maintain complete records of client funds in their possession, and to render appropriate accountings to their clients; 1.4(b)(4) and 1.15(d), requiring lawyers to promptly refund unused advanced costs; 8.4(b), prohibiting lawyers from committing criminal acts [theft of client funds] that reflect adversely on the lawyers' honesty, trustworthiness, or fitness as lawyers in other respects; and 1.8(a) and 1.4, requiring lawyers entering business transactions with clients to provide full disclosure and a reasonable opportunity for the clients to seek independent legal advice.

Marsha Matsumoto represented the Bar Association. Mr. Danzig represented himself. Michael Lewis was the hearing officer.

Disbarred

Hollis Wayne Duncan (WSBA No. 27937, admitted 1998), of Edmonds, was disbarred effective January 23, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2001, involving willful disobedience of court orders and other acts of misconduct in litigation matters.

Matter 1: Mr. Duncan represented the plaintiff in a King County Superior Court lawsuit. Although Mr. Duncan knew that the case was assigned to Kent, he designated his pleadings as Seattle Assignment Area. The defendant filed a motion to move the case to Kent, and served the motion on Mr. Duncan by certified mail to his rented postal box. In November 2000, the postal-box operator signed the certified-mail receipt for the motion. In December, Mr. Duncan told opposing counsel that he had not received the motion and that he did not accept certified mail. In March 2001, Mr. Duncan told the judge that someone would be available at the post office box facility to accept personally delivered documents; however, he instructed the facility personnel not to accept or sign for any documents. Mr. Duncan sent responsive letters to the assigned judge, but did not file any pleadings. Mr. Duncan also failed to provide signed complete answers to interrogatories, even after a court order. In June 2001, the court awarded sanctions against Mr. Duncan, which he failed to pay.

Matter 2: In June 2001, Mr. Duncan filed a petition for a show cause order in a records disclosure matter. In July 2001, the defendant stated in a declaration that the records did not exist. About a week later, Mr. Duncan filed a second petition for a show cause order requiring disclosure of the same records. Mr. Duncan sent a fax directly to a represented party, knowing that opposing counsel was out of town during this time.

Matter 3: In June 2001, Mr. Duncan filed, but did not serve on opposing counsel, a notice of motion to change the assigned judge in a litigation matter. Mr. Duncan failed to serve four other required documents on opposing counsel. Mr. Duncan presented and obtained an *ex parte* order changing the assigned judge at a time he knew that opposing counsel was out of town, and failed to serve the order on opposing counsel. After receiving the order changing the assigned judge, Mr. Duncan intentionally presented an *ex parte* order to a commissioner *pro tem*. Mr. Duncan also intentionally misstated the date of service in his declaration filed with the court.

Matter 4: On July 24, 2001, Mr. Duncan faxed opposing counsel a notice and motion to extend time. The notice stated that the motion would be heard on July 13, 2001. The motion also stated that a judge other than the judge assigned to the case would hear the matter. Opposing counsel did not respond to the motion, because it was set for a date that had already passed. Mr. Duncan altered his motion, indicating it was to be heard July 26, 2001, and by the judge assigned to the case. He then presented the motion and obtained an order extending time for his response without allowing opposing counsel to respond.

In September 2001, the judge ordered $500 in sanctions against Mr. Duncan. Mr. Duncan willfully failed to pay the sanctions. In March 2002, the judge held Mr. Duncan in contempt of court and ordered that he forfeit $50 per day for each day the sanctions remain unpaid. The court also imposed an additional $500 in attorney's fees.

Mr. Duncan's conduct violated RPCs 3.1, prohibiting lawyers from bringing or defending a proceeding, or asserting or controverting an issue, unless there is a nonfrivolous basis for doing so; 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal; 3.4(d), requiring lawyers to make diligent efforts to comply with legally proper discovery requests by an opposing party; 4.2, prohibiting lawyers from communicating about the subject matter of the representation with represented parties without consent of the other lawyer or legal authorization; 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; 8.4(d), prohibiting conduct prejudicial to the administration of justice; and 8.4(j), prohibiting willful disobedience or violation of a court order directed to the lawyer.

Randy Beitel represented the Bar Association. Mr. Duncan represented himself. James M. Danielson was the hearing officer.

Disbarred

Thomas J. Earl (WSBA No. 10902, admitted 1980), of Moses Lake, was disbarred effective May 13, 2004, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct from 1992 through 1998, involving charging fees while representing clients as court-appointed criminal-defense counsel, failing to ex-

plain the choice between appointed counsel and retained counsel, charging unreasonable fees, and voluntarily maintaining an excessive caseload while one of the lawyers under contract to provide indigent criminal defense in Grant County.

Matter 1: In 1996, Mr. Earl was appointed to defend a client in two criminal matters. In September and October 1997, Mr. Earl was appointed to represent the same client in a sentencing violation and two new felony charges. Mr. Earl filed notices of appearance in the new cases, but not in the sentencing violation matter. The client's Determination of Indigency form was filed, but not signed by the court. Although Mr. Earl testified that he was not appointed to represent this client, the hearing officer found that he was appointed counsel. Mr. Earl charged the client $3,000 for this representation.

Matter 2: In June 1998, the court appointed Mr. Earl to represent a client on a criminal felony charge. The client wanted to retain a particular lawyer. The client only partially completed the indigency report, and the court found him not indigent. Mr. Earl did not fully explain the client's rights to seek appointed counsel and made no effort to complete the indigency report or argue that the client was actually indigent. Mr. Earl contacted the client on the day of the hearing and suggested that the client retain him. The client agreed to pay Mr. Earl $3,000, but could not meet the payment schedule. Mr. Earl withheld services pending the client's payments.

Matter 3: In September 1993, Grant County Superior Court issued an order appointing the indigent defenders to represent a defendant. Following the usual procedure, the court appointed the indigent defenders at the first hearing, prior to filing of the indigency report. Five days later, Mr. Earl filed his notice of appearance and a document identifying himself as the client's lawyer. No determination of indigency report was ever filed in this case. In October and again in November 1993, the client's mother paid Mr. Earl $1,500 for the client's representation. Mr. Earl was obligated to provide this representation without charge to the client.

Matter 4: On December 18, 1992, the court appointed the "contract defenders" to represent a criminal defendant. The defendant agreed to accept appointed counsel, but indicated he might attempt to retain counsel. Mr. Earl appeared in court with the defendant that same day. By June 1993, the client had paid Mr. Earl $2,220. Mr. Earl did not provide his client a full and fair explanation regarding the decision to retain Mr. Earl, after the court entered an order appointing counsel.

Matter 5: In April 1998, Mr. Earl was appointed to represent a criminal defendant. In May, the court found the client indigent, but able to contribute. On August 5, 1998, a jury found the client guilty. On August 10, 1998, prior to sentencing and without a determination of the client's indigency status for appeal, Mr. Earl talked to the client about the cost of retaining him for the appeal. Mr. Earl agreed to do the client's appeal for a flat fee of $5,000. By accepting the client's money during the appointed representation and prior to a determination of the client's indigency for appeal, Mr. Earl may have created a conflict between his personal interests in keeping the client's funds and the client's interests in qualifying for appointed counsel. The hearing officer found the $5,000 fee to be unreasonable based on the actual work Mr. Earl performed.

Matter 6: On August 1, 1994, Mr. Earl appeared in court as appointed counsel with an indigent criminal defendant. The next day, Mr. Earl filed a notice of appearance. The client believed he would receive better representation if he hired a lawyer rather than using appointed counsel. By January 1995, the client paid Mr. Earl $2,700. Mr. Earl did not initiate the discussion leading to the client's retaining him, but he took advantage of the client's belief that be would receive a better outcome if he retained Mr. Earl. The hearing officer found that Mr. Earl was obligated to represent the client and should have refused the payment.

Matter 7: In April 1993, Mr. Earl was assigned counsel for a criminal defendant charged with child rape and child molestation. The client and his family believed that Mr. Earl was not aggressively defending the client. During an in-chambers meeting with the judge prior to trial, Mr. Earl stated, "he [the client] believes my role is to find proof that he's innocent of this particular charge. I've explained to him the role, or my role, is to see his constitutions rights are protected." The hearing officer found that Mr. Earl fundamentally misunderstood his role as assigned counsel. The hearing officer also found that Mr. Earl's voluntarily excessive caseload was prejudicial to the administration of justice.

Matter 8: In July 1996, Mr. Earl appeared as appointed counsel for a criminal defendant on felony charges, including attempted murder. The client was acquitted by reason of insanity and committed to Eastern State Hospital. Mr. Earl's appointed representation ended. In August 2000, the client retained Mr. Earl to represent him in an attempt to modify his conditions of confinement and to explore revoking his guilty plea. The court docket reflects no work on the client's case after August 2000. In fall 2000, the client asked Mr. Earl to withdraw and refund the unused portion of his $2,500 in fees. Mr. Earl did not withdraw or refund any of the fees. A few weeks later, the client filed a grievance against Mr. Earl. Mr. Earl told the client he would take no further action on his case while the grievance was pending. In June 2001, new appointed counsel successfully withdrew the client's insanity plea and entered a guilty plea to a reduced charge with no additional confinement.

Mr. Earl's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4(b), requiring lawyers to explain client matters to the extent reasonably necessary to permit the client to make an informed decision regarding the representation; 1.5(a), requiring lawyers to charge reasonable fees; 1.7(b), prohibiting lawyers from representing a client if the representation may be materially limited by the lawyer's own interests; 7.1, prohibiting lawyers from making false or misleading statements communications about the lawyer or the lawyer's services; 8.4(c), prohibiting

lawyers from engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation; 8.4(d), prohibiting conduct prejudicial to the administration of justice; and 8.4(i), prohibiting lawyers from committing acts involving moral turpitude.

Christine Gray and Linda B. Eide represented the Bar Association. Nels Hansen represented Mr. Earl at hearing. Mr. Earl represented himself on appeal. Kenneth Fielding was the hearing officer.

Disbarred

Edward A. Judge (WSBA No. 18950, admitted 1989), of Kensington, CA, was disbarred by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of California. This discipline was based on his 1997 conviction of one count of attempted robbery, a felony. In 2001, pursuant to a plea agreement, Mr. Judge's felony conviction was reduced to a misdemeanor and then dismissed by the court.

Mr. Judge was disbarred in California based on Business and Professions Code § 6102(c), allowing summary disbarment in cases of criminal convictions involving moral turpitude.

Marsha Matsumoto represented the Bar Association. Mr. Judge represented himself.

Disbarred

Billy S. Mitchell (WSBA No. 24718, admitted 1995), of Seattle, was disbarred effective March 25, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2002 involving theft of client funds. *(Mr. Mitchell is to be distinguished from William Genther Mitchell of Lynden and William Patrick Mitchell of Seattle.)*

Mr. Mitchell represented a client in a claim for damages sustained in an automobile accident. Mr. Mitchell also agreed to represent the insurance company that had a subrogated interest in the client's claim. In March 2002, Mr. Mitchell settled the claim and deposited the funds into his trust account. Mr. Mitchell did not inform the insurance company of the settlement, and embezzled the company's funds. The insurance company learned of the settlement and made several requests that Mr. Mitchell forward the funds to them. Mr. Mitchell promised to send the funds, knowing he had already embezzled them. As of the date of the hearing, Mr. Mitchell had not paid the funds to the insurance company. Mr. Mitchell also failed to cooperate with the disciplinary investigation.

Mr. Mitchell's conduct violated RPCs 8.4(b), prohibiting committing a criminal act [RCW 9A.56.030, Theft in the First Degree] that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 8.4(i), prohibiting committing an act involving moral turpitude; 1.14(b)(1), requiring lawyers to promptly notify clients of deposit of client funds; 1.14(b)(4), requiring lawyers to promptly deliver client funds upon request; and 8.4(l) and ELC 5.3, requiring lawyers to promptly respond to requests for information during disciplinary investigations.

Randy Beitel represented the Bar Association. Mr. Mitchell represented himself. James M. Danielson was the hearing officer.

Suspended

Norman W. Cohen (WSBA No. 373, admitted 1965), of Seattle, was suspended for one year, effective January 15, 2004, by order of the Washington State Supreme Court following a hearing. For further information, please see *In re Discipline of Cohen*, 150 Wn.2d 774, 82 P.3d 224 (2004). This discipline was based on his lack of diligence, communication, and improper withdrawal in a litigation matter from 1996 through 2000.

In May 1996, Mr. Cohen agreed to represent a client in an employment dispute. Mr. Cohen obtained a continuance of the trial date without the client's knowledge, despite the client's request for a quick resolution. In July 1998, when opposing counsel hesitated to agree to a second continuance request, Mr. Cohen agreed to voluntarily dismiss the client's suit. Mr. Cohen told his client the employer had requested the second continuance. In September 1998, Mr. Cohen refiled the client's lawsuit. In April 1999, after Mr. Cohen had failed to file required pleadings and attend a status conference, the court dismissed the client's suit and imposed sanctions. In June 1999, Mr. Cohen paid the sanctions, and the court reinstated the client's case. In November, Mr. Cohen agreed, without his client's authority, to transfer the case to mandatory arbitration. At the arbitration hearing, Mr. Cohen called two witnesses and asked for $1.00 in damages. The arbitrator ruled against the client, and Mr. Cohen filed a trial *de novo* request, but failed to file a jury demand. In November 2000, after the employer filed a summary judgment motion, Mr. Cohen filed a motion to withdraw. Mr. Cohen based his motion on a letter from his physician detailing health conditions he had suffered for over a year. Mr. Cohen did not notify his client prior to filing this motion. The client was not able to obtain new counsel, and agreed to a dismissal with prejudice.

Mr. Cohen's conduct violated RPCs 1.3 and 3.2, requiring lawyers to diligently represent clients and expedite litigation; 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters; 1.4(b), requiring lawyers to explain matters to the extent necessary for clients to make informed decisions; and 1.15, requiring lawyers to take reasonable steps to protect clients' interests upon withdrawal.

Anne I. Seidel represented the Bar Association. Kurt Bulmer represented Mr. Cohen. Robert Bibb was the hearing officer.

Suspended

Bruce C. Dawson (WSBA No. 9115, admitted 1979), of Fresno, CA, was suspended for 60 days and reprimanded, by order of the Washington State Supreme Court imposing retroactive reciprocal discipline based on an order from the state of California. This discipline was based on his failure to comply with conditions ordered in a prior disciplinary proceeding.

In 1993, Mr. Dawson received a public reproval with conditions, including

that he take and pass the California Professional Responsibility Examination (exam). Mr. Dawson failed to complete this condition, and a new disciplinary proceeding was instituted. Mr. Dawson agreed, in lieu of additional disciplinary proceedings, to take and pass the exam, and attend the state bar ethics school prior to May 23, 1995. Mr. Dawson passed the exam, but failed to attend ethics school.

Mr. Dawson's conduct violated Business and Professions Code § 6068(1), requiring lawyers to keep all agreements made in lieu of disciplinary prosecution.

Felice Congalton represented the Bar Association. Mr. Dawson represented himself.

Suspended

Brett L. Francisco (WSBA No. 8427, admitted 1978), of Bellevue, was suspended for 60 days, effective December 5, 2003, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of California. This discipline was based on his conduct in 1993, involving failure to promptly deliver client settlement funds in his possession in a litigation matter.

In 1992, Mr. Francisco represented a company in a lawsuit against a builder. In July 1993, the builder issued a settlement check pursuant to a court ordered judgment. Despite the clients' requests, Mr. Francisco did not send them any part of the settlement funds until late October 1992.

Mr. Francisco's conduct violated Rule 4-100, requiring lawyers to promptly pay funds to clients, upon request.

Felice Congalton represented the Bar Association. Mr. Francisco represented himself.

Suspended

Phillip C. Gilbert (WSBA No. 21868, admitted 1992), of Gresham, OR, was suspended for 30 days effective February 17, 2004, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of Oregon. This discipline was based on his conduct involving an unauthorized settlement offer in a personal-injury matter.

Mr. Gilbert represented a client in a personal-injury matter. Days before the statute of limitations would expire, Mr. Gilbert made a settlement offer that the opposing party accepted. Mr. Gilbert made the settlement offer without his client's knowledge or authority.

Mr. Gilbert's conduct violated DR 1-102(A)(3), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation.

Felice Congalton represented the Bar Association. Mr. Gilbert represented himself.

Suspended

Linda J. Toner (WSBA No. 19521, admitted 1990), of Beaverton, OR, was suspended for 30 days by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of Oregon. The Washington order, entered November 18, 2003, imposed a retroactive suspension in Washington based on the dates in the Oregon order. This discipline was based on her assisting with the unauthorized practice of law in 1992.

In August 1992, Ms. Toner entered a retainer agreement with A, a corporation engaged in the nonlawyer sale of revocable living trusts to the public. Ms. Toner rented office space from A and accepted client referrals and fees from A. She agreed to use only forms drafted and supplied by A. The agreement increased the fees due Ms. Toner as the total number of living trusts sold increased. In December 1993, the court issued an injunction against A, enjoining it from engaging in the practice of law. Ms. Toner did not disclose the conflicts of interest to the living-trust clients.

Ms. Toner's conduct violated DR 3-101(A), by assisting in the unauthorized practice of law; DRs 5-101(A) and 5-105(E), by failing to disclose conflicts of interest to the living trust clients; and 5-108(A), by accepting compensation from a person other than the client, without full disclosure.

Felice Congalton represented the Bar Association. Ms. Toner represented herself.

Suspended

Carlos Valero (WSBA No. 29192, admitted 1999), of Spokane, was suspended for six months, effective December 1, 2003, by order of the Washington State Supreme Court approving a stipulation. This discipline was based on his knowingly disobeying court orders in 2001.

Matter 1: In July 2000, Mr. Valero filed an adversary proceeding in U.S. Bankruptcy Court. Mr. Valero named three defendants without any factual basis. The court dismissed the adversary proceeding, deeming the plaintiffs "vexatious litigants," and imposed sanctions and conditions on filing pleadings in any U.S. court. The order imposed sanctions totaling $32,500 against the plaintiffs and Mr. Valero, jointly and severally. Mr. Valero did not pay these sanctions. The order also provided that any other U.S. court could refuse to accept pleadings relating to this subject matter, unless certain conditions were satisfied. Mr. Valero filed pleadings in the 9th Circuit Court of Appeals relating to the earlier subject matter, without complying with the conditions in the bankruptcy court's order. In June 2001, the 9th Circuit Court of Appeals required Mr. Valero to show cause why sanctions should not be imposed for his failure to comply with that court's rules and orders. Mr. Valero did not promptly respond, and the court imposed sanctions. Mr. Valero paid these sanctions.

Matter 2: In March 1999, a bankruptcy judge awarded a partnership a judgment in an adversary proceeding. In late 1999 or early 2000, the partnership retained Mr. Valero. After several hearings, motions, and a premature appeal, the court entered a final order in favor of Mr. Valero's client in this matter on May 11, 2000. The defendants paid the judgment, and the payment was accepted and negotiated. Mr. Valero declined to file a satisfaction of judgment, despite repeated requests. His client refused to accept that the judgment had been satisfied. In October 2001, the court found that the judgment was satisfied and imposed sanctions of $2,909 jointly and severally against Mr. Valero and his clients. Mr. Valero did not pay these sanctions. Mr. Valero did not cooperate

with the disciplinary investigation of this matter.

Mr. Valero's conduct violated RPCs 3.4(c), by his knowingly disobeying court orders and failing to pay court-imposed sanctions; 8.4(d), by his engaging in conduct prejudicial to the administration of justice; 8.4(i), by his committing an act reflecting disregard for the rule of law; and 8.4(l), by his failing to cooperate with the disciplinary investigation.

G. Val Tollefson represented the Bar Association. Mr. Valero represented himself.

Reprimanded

Tucker F. Blair (WSBA No. 29567, admitted 1999), of Seattle, received a reprimand effective February 23, 2004, following a stipulation approved by the hearing officer. Although Mr. Blair disagreed with the violation analysis, he entered into this stipulation. This discipline is based on his unauthorized access of another lawyer's computer files in 2002.

In August 2002, after business hours, Mr. Blair accessed computer files stored on lawyer C's computer. Mr. Blair rented office space in the same building as lawyer C. Mr. Blair went to lawyer C's office at around 11 p.m., when no firm or staff members were present. Mr. Blair copied files to a diskette and downloaded them to his law firm's computer. Lawyer C had previously allowed Mr. Blair to access certain computer files upon request and with permission, but was unaware of this August 2002 access. Mr. Blair returned the diskette and deleted all of the files from his firm computer.

Mr. Blair's conduct violated RPCs 8.4(b), prohibiting lawyers from committing criminal acts [RCW 9A.52. 120(2), Computer Trespass in the Second Degree] that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and 8.4(i), prohibiting committing acts of moral turpitude.

Kevin Bank represented the Bar Association. Mr. Blair represented himself. Gayle T. McElroy was the hearing officer.

Reprimanded

Robert E. Brandt (WSBA No. 23058, admitted 1993), of Kirkland, received a reprimand effective February 17, 2004, following a stipulation approved by the hearing officer. This discipline is based on Mr. Brandt's failure to provide diligent representation and follow the client's instructions in a personal-injury matter between 1998 and 2001.

In September 1998, Mr. Brandt agreed to represent a client injured in an automobile accident. Shortly after agreeing to a contingent fee, Mr. Brandt learned that the client had pre-existing injuries. Although Mr. Brandt was concerned that the pre-existing injuries would affect the client's case, he did not communicate this concern to her. Mr. Brandt did not answer the client's phone calls or work on her case until February 2000, when he met with the client and reviewed a settlement demand letter. Mr. Brandt did not send the settlement letter or make any other attempts to communicate with the other driver's insurance company. In early 2001, in response to the client's statute of limitations concerns, Mr. Brandt drafted a complaint. Mr. Brandt did not file the complaint prior to expiration of the statute of limitations. In May 2002, the client fired Mr. Brandt and requested that he return her file. Mr. Brandt did not return the client's file. Mr. Brandt did not promptly respond to the Bar Association's requests for information about the grievance, but did appear for his deposition.

Mr. Brandt's conduct violated RPCs 1.2(a), requiring lawyers to abide by the client's decisions concerning the objectives of the representation; 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters; 1.15(d), requiring lawyers to take reasonable steps to protect clients' interests upon withdrawal from representation; and RPC 8.4(l) and ELC 5.3, requiring lawyers to promptly respond to requests for information during disciplinary investigations.

Anthony Butler represented the Bar Association. Mr. Brandt represented himself. Teena Killian was the hearing officer.

Reprimanded

Donald B. Lundahl (WSBA No. 21424, admitted 1992), of Tacoma, received a reprimand effective December 29, 2003, following a stipulation approved by the chief hearing officer. This discipline is based on his conduct in 1996, involving failure to diligently represent a criminal defendant.

In March 1996, Mr. Lundahl began representing a client in a criminal matter. In June 1996, Mr. Lundahl received an expert report stating that his client was not mentally competent to stand trial. Mr. Lundahl did not raise this issue with the court prior to going on vacation for the month of July. Mr. Lundahl arranged for another lawyer to take over his caseload during his vacation. During Mr. Lundahl's vacation, the client entered a guilty plea. In August, the client told Mr. Lundahl that the other lawyer had forced him to accept the guilty plea. Mr. Lundahl decided the client's complaints were frivolous and took no action to withdraw the plea. Mr. Lundahl withdrew from the representation, and the court appointed another lawyer. The court denied the new lawyer's motion to withdraw the plea, and sentenced the client to 176 months in prison. Later, the court granted the client's personal-restraint petition and vacated the guilty plea based on Mr. Lundahl's failure to raise the client's potential incompetency.

Mr. Lundahl's conduct violated RPCs 1.3, requiring that lawyers diligently represent their clients; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Leslie Ching Allen represented the Bar Association. Donald Lundahl represented himself. James M. Danielson was the hearing officer.

Reprimanded

Michael T. Mullen (WSBA No. 23116, admitted 1993), of Milwaukie, OR, received a reprimand effective September 8, 2003, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of Oregon. This discipline is based on his neglect of a marital-dissolution matter in 2000.

In 2000, Mr. Mullen represented a client in a dissolution-of-marriage action. After an October 2000 hearing, the court asked Mr. Mullen to prepare an order. Mr. Mullen took no action to draft an order until December 2000. Although Mr. Mullen thought he had mailed the draft order to opposing counsel, his billing records do not reflect this action. Opposing counsel did not receive a draft order, so he drafted his own. Mr. Mullen did not respond to opposing counsel's draft order. In December 2000, the court signed opposing counsel's order. The client was not aware that this order had been entered. In January 2001, Mr. Mullen's client retained new counsel. New counsel discovered that the December order was inaccurate.

Mr. Mullen's conduct violated DR 6-101(B), prohibiting lawyers from neglecting legal matters entrusted to them.

Felice Congalton represented the Bar Association. Mr. Mullen represented himself.

Reprimanded

Christopher J. Nickola (WSBA No. 6737, admitted 1976), of Richland, received a reprimand effective January 20, 2004, following a stipulation approved by the hearing officer. This discipline is based on his conduct in 2002, involving failure to competently analyze his responsibilities in a property-division matter.

In February 2002, Mr. Nickola agreed to represent a client in a proceeding to terminate a long-term nonmarital relationship. In March 2002, Mr. Nickola filed a petition for property division, and, in April, the court granted his request for temporary orders. In May 2002, Mr. Nickola requested an order of contempt and judgment against the opposing client for violation of the temporary orders. Prior to the hearing on the motion, Mr. Nickola's client committed suicide. After talking with the client's family, Mr. Nickola attended the contempt hearing and did not inform the court that his client had died. At the time of the hearing, Mr. Nickola erroneously believed he had authority to represent the client's estate, that his conduct was permitted by the RPCs, and that the client's death was not material to the outcome of the hearing.

Mr. Nickola's conduct violated RPC 1.1, requiring lawyers to competently represent their clients.

Christine Gray represented the Bar Association. Leland G. Ripley represented Mr. Nickola. Timothy Esser was the hearing officer.

Reprimanded

Mark Passannante (WSBA No. 25680, admitted 1996), of Portland, OR, received a reprimand by order of the Washington State Supreme Court order imposing reciprocal discipline based on an order from the state of Oregon. This discipline is based on his conduct between 1999 and 2001, involving neglect of a client matter and failure to protect the clients' interests upon withdrawal.

In August 1999, Mr. Passannante agreed to represent two clients in a claim for personal injuries they had sustained in a bar fight. Mr. Passannante deposited the client funds in an IOLTA account in Washington, while his office was in Oregon. In March 2000, Mr. Passannante learned that the bar's insurer denied the clients' claims. Mr. Passannante took no further action on the clients' claims until March 2001, when he determined the claims were not well founded. On March 8, 2001, Mr. Passannante notified the clients that he would not continue to represent them. He did not send an accounting, a refund of unearned fees, or a copy of the client file.

Mr. Passannante's conduct violated Oregon Code of Professional Responsibility DR 2-110(A)(2), prohibiting lawyers from withdrawing from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client; DR 6-101(B), prohibiting lawyers from neglecting legal matters entrusted to them; DR 9-101(A), requiring client funds to be deposited into lawyer trust accounts located in the state of Oregon; and DR 9-101(C)(3), requiring lawyers to maintain complete records of client funds and render appropriate accountings.

Felice Congalton represented the Bar Association. Mr. Passannante represented himself.

Reprimanded

Dana M. Ryan (WSBA No. 17418, admitted 1987), of Sumner, received a reprimand effective December 5, 2003, following a stipulation approved by the hearing officer. This discipline is based on his conduct in 1999, involving failing to diligently represent a client, failing to comply with the trust account regulations, and charging an unreasonable fee.

In 1999, Mr. Ryan agreed to represent a client in vacating a guilty plea. The client was incarcerated, and Mr. Ryan agreed to help him purchase a used car. The client paid Mr. Ryan $50 for picking up the car. Mr. Ryan, with the client's permission, withdrew $2,050 from the client's jail account. Mr. Ryan did not deposit the client's money in his trust account or maintain any records of the funds. Between March 9 and March 27, 1999, Mr. Ryan made five appointments to pick up the car. He failed to appear for any of these appointments. The seller cancelled the deal and retained $100 of the client's funds to cover collect calls. By December 10, 1999, Mr. Ryan returned all of the client's funds.

The client also paid Mr. Ryan $110 to transcribe two tapes. Mr. Ryan did not complete the transcriptions, and retained the client's funds.

Mr. Ryan's conduct violated RPCs 1.14, requiring lawyers to deposit client funds into a trust account and maintain complete records of these funds; 1.3, requiring lawyers to diligently represent clients; and 1.5(a), requiring lawyers' fees to be reasonable.

Kevin Bank represented the Bar Association. Mr. Ryan represented himself. Mary Wechsler was the hearing officer.

Reprimanded

Brian J. Sunderland (WSBA No. 22665, admitted 1993), of Clackamas, OR, received a reprimand by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of Oregon. This discipline is based on his neglect of an adoption matter between 1999 and 2001.

In August 1999, Mr. Sunderland

agreed to represent clients in a stepparent adoption. He timely filed the petition and sent the notice for publication three months later. Service by publication was completed in August 2000. In September 2001, Mr. Sunderland requested that the Department of Children and Families (Department) waive the required home study. After sending additional documents in November 2000, Mr. Sunderland had no further contact with the Department. The Department granted the waiver in May 2001. The adoption was finalized in June 2001.

Mr. Sunderland's conduct violated Oregon Code of Professional Responsibility DR 6-101(B), prohibiting lawyers from neglecting legal matters entrusted to them.

Felice Congalton represented the Bar Association. Mr. Sunderland represented himself.

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Information must be received by the first day of the month for placement in the following month's calendar.

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Bankruptcy Fundamentals
September 1 — Seattle; September 21 — Vancouver (videoconference); September 29 — Spokane (videoconference). CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Criminal Law

11th Annual Washington Criminal Justice Institute (Featuring Professor Charles H. Whitebread)
September 9-10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution

Dispute Resolution Section Meeting
September 17 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Elder Law Section Meeting
September 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics

The Essentials of Washington Civil Procedure and Ethics
Video Replay with Live Moderator
August 12 — Vancouver; August 19 — Seattle. 6.5 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics, Professionalism and Civility: The Hard Questions
September 10 — Seattle. 3 ethics credits pending. By WSBA Professionalism Committee; 800-945-WSBA or 206-443-WSBA.

General

Letters Your Client Will Appreciate
August 19 — Seattle. 2 ethics credits. By Emerald Education Group: 206-985-4351.

Indian Law

Seventeenth Annual University of Washington Indian Law Symposium
September 9-10 — Seattle. 12 CLE credits, including 1 ethics pending. By UW-CLE; 800-CLE-UNIV.

Insurance Law

Insurance and the Construction Industry Conference
August 12 — Seattle. 2.75 CLE credits. By The Seminar Group; 206-463-4400.

Intellectual Property

IP Licensing
September 21 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Labor and Employment Law

7th Annual Labor & Employment Law Conference
August 19-20 — Seattle. 12 CLE credits, including 1 ethics. By The Seminar Group; 206-463-4400.

Law Office Management

LOMAP ... On the Road, 2004 Traveling Seminar
August 17 — Vancouver; August 18 — Montesano; August 19 — Olympia; September 14 — Colville; September 15 — Pullman; September 16 — Spokane. 4 CLE credits, including 2 ethics. By WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA.

Winning Strategies
September 22 — Seattle, Spokane (videoconference), and Vancouver (videoconference). CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

Evidence (Featuring Hon. J. Dean Morgan)
August 5 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Insurance and Beyond: Subrogation, Bad Faith and Basics
September 22 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Handling Motor Vehicle Accident Cases
September 23 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Advanced Negotiation Strategies (Featuring Marty Latz)
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McIntyre & Barns, a downtown Seattle litigation firm, is seeking an associate with a minimum of two years' experience. Qualified candidates will have strong academic credentials, exceptional analytical and research skills, and demonstrate strong writing skills. Insurance defense experience helpful. Please send cover letter, résumé and writing sample to Lee

Barns, 1215 4th Ave., Ste. 920, Seattle, WA 98161.

Granz Law PC: Unique and dynamic Pacific Northwest IP firm seeking patent, trademark, and licensing attorney with at least three years of diverse IP-related experience. Send résumé to mail@ganzlaw.com and visit our website at www.ganzlaw.com.

Olympia law firm has an opening for an associate attorney. Candidates should be aggressive and self-motivated with experience in domestic, criminal, probate, and personal injury law. Good research and writing skills are required. Position provides an opportunity for growth and a chance to build own law practice within a well-established law firm. Benefits package available. Salary negotiable. Submit résumé and writing sample to WSBA, *Bar News* Job Code 649, 2101 4th Ave., Ste. 400, Seattle, WA 98121.

Criminal law attorney: Immediate position for attorney in expanding criminal law practice. Must have at least two years' experience in criminal law in either prosecution or defense. Duties include caseload management, writing briefs, arguing motions, and jury trials. EOE. Salary DOE. Benefits. Send résumé and references to Law Firm of Barbara Bowden, Attn: Barbara Bowden, 7403 Lakewood Dr, W., Ste. 9, Lakewood, WA 98499; or fax résumé and references to 253-474-1171.

Litigation attorney: Well-established boutique firm with established clientele seeks litigation attorney. Minimum five years' commercial/civil litigation experience. The position offers a unique opportunity to take advantage of an existing client base and for an entrepreneurial attorney to contribute to and enjoy the long-term benefits of an expanding and successful law firm. The applicant must have strong analytical skills and the willingness to manage significant litigation matters. Please send résumés to law applicant@hotmail.com.

Will Search

Any attorney writing a will for Dorothy J. Morriss in last 10 years please contact James Hampton at 360-642-4351 or 503-698-2967.

Services

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member; references available; see Martindale; AV-rated. Zach Zabinsky, 503-223-8517.

Contract attorney: All aspects of litigation and appeals, including research. Former name partner in boutique litigation firm. 12-plus years' experience. Have conducted numerous civil jury trials, including complex litigation. Reasonable rates; variable per type of work. Pete Fabish, 206-545-4818.

Dispute resolution: Donald G. Ryan Jr., 34 years' experience in Washington. Available for mediation or arbitration of real estate or personal injury disputes. 253-939-0811; info@rdsattys.com.

Forensic document examiner: Retired from the Eugene Police Department. Trained by the U.S. Secret Service and U.S. Postal Inspection Service. Court-qualified in state and federal courts. Contact Jim Green at 888-485-0832.

Certified fraud examiner: Specializing in fraud, ethics, criminal profiteering, liquor liability, and harassment. 30 years' experience. Licensed investigator. Expert witness. Kenneth Wilson; 360-956-1674; ken@wilsonis.com; www.wilsonis.com.

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Miscellaneous

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Wailea, Maui, rental: 1,600 square foot Ekolu townhome on Blue course with panoramic views of Pacific Ocean. Five-day minimum. $225 daily cost. Call Bill at 303-789-4424 home or 303-376-4466 office.

A little summer reading

by Lindsay Thompson, *Bar News* Editor

On June 19, 1923, *The Seattle Times*' city editor fired a reporter called Elwyn Brooks White — Andy, to his friends. The editor told White, "it was no reflection on your ability." Then, for a week in July, White subbed at the *P-I*. The gig was not extended.

He kept a journal, thinking himself "a literary man in the highest sense of the term, a poet who met every train." He swam in the Ship Canal, alone at night, and never went to bed "before two or three o'clock in the morning, on the theory that if anything of interest were to happen to a young man it would almost certainly happen late at night."

After some adventures on a steamer trip to Alaska, White returned to New York and found a place with a fledgling magazine, *The New Yorker*. He became a renowned essayist, a humorist (with James Thurber, he penned *Is Sex Necessary?*), a writer of kids' books second to none, and collaborator on a classic guide to good writing.

Every August I pull down my dog-eared 1977 *Essays of E.B. White*. Fifty years ago this summer, White published one of his best essays in the collection, a centennial appreciation of Thoreau's *Walden* called "A Slight Sound at Evening."

"On this its hundredth birthday," White wrote, "Thoreau's *Walden* is pertinent and timely. In our uneasy season, when all men unconsciously seek a retreat from a world that has got almost completely out of hand, his house in the Concord woods is a haven. In our culture of gadgetry and the multiplicity of convenience, his cry, 'Simplicity, simplicity, simplicity!' has the insistence of a fire alarm. In the brooding atmosphere of war and the gathering radioactive storm, the innocence and serenity of his summer afternoons are enough to burst the remembering heart, and one gazes back upon that pleasing interlude — its confidence, its purity, its deliberateness — with awe and wonder, as one would look upon the face of a child asleep."

White's prose is like the Maine barn he wrote in, simple, spare, and elegant in its own way. He was not one for ornament. He suggested every college senior get a copy of *Walden* for graduation. "Even if some senior were to take it literally and start felling trees, there could be worse mishaps: the ax is older than the Dictaphone and it is just as well for a young man to see what kind of chips he leaves before listening to the sound of his own voice. And even if some were to get no farther than the table of contents, they would learn how to name eighteen chapters by the use of only thirty-nine words and would see how sweet are the uses of brevity."

I've always thought lawyers could do worse than to spend a little summer hammock time with Andy White. His work is an excellent field guide to persuasive writing, and a goad to thought in a time when public discourse seems to be a relentless dive to the bottom. Consider 1949's "Here Is New York," in which White anticipated the destruction of the World Trade Center in the technologies of World War II: "The intimation of mortality is part of New York now: in the sound of jets overhead, in the black headlines of the latest edition."

Fifty years since Andy White's praise, a hundred fifty since Thoreau's publication, both writers are worth some time in the summer reading pile. As White says of *Walden*, received at the right juncture, "the book is like an invitation to life's dance, assuring the troubled recipient that no matter what befalls him in the way of success or failure he will always be welcome at the party — that the music is played for him, too, if he will but listen and move his feet." Much the same may be said of White's *Essays*. Both are "a summons to the wildest revels of them all" — life.

Lindsay Thompson grew up in North Carolina in the 1960s, when summer was lived on the screened porch, and time seemed endless. You can write him to snap out of it at tradelaw@thompson-law.com.

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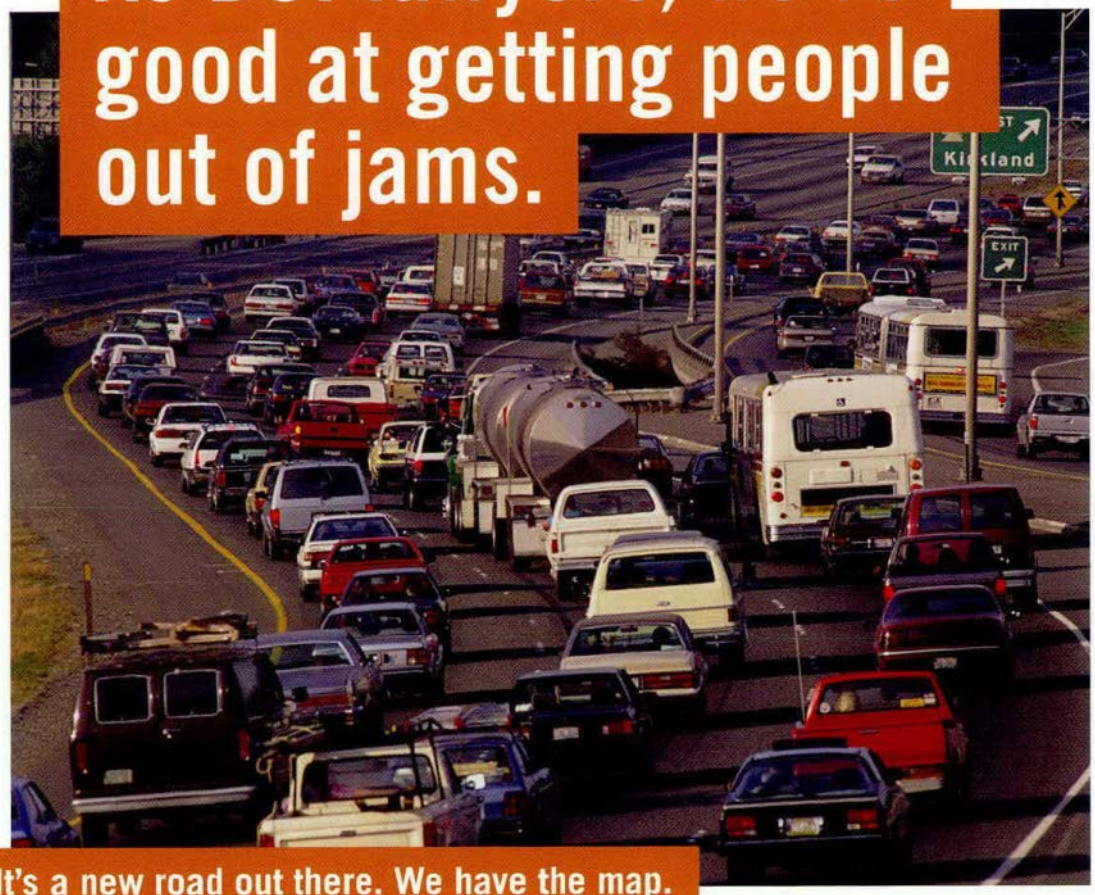

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