Vol. 59 No. 1

Washington State BarNews

The Official Publication of the Washington State Bar • JANUARY 2005

Casemaker®: Free Online Legal Research System Coming Soon to WSBA Members — p.39

Washington gave us their stamp of approval.

LexisNexis™ is the Official Publisher of the **Washington Reports.**

Our appointment as the Official Publisher of the **Washington Reports** is part of the broader perspective LexisNexis provides in Washington. You only have to look as far as the LexisNexis™ Total Research System to find the **Annotated Revised Code of Washington**, the **Washington Advance Code Service and Court Rules,** as well as an expansive library of Washington titles by practice area. Dig deeper into your research by accessing our broad collection of public records, analytical materials from Matthew Bender® and court records on LexisNexis™ CourtLink®. We even make managing your practice easier when you use the LexisNexis™ version of **Time Matters®** and **Billing Matters™ 5.0.** To use the preferred choice of the State of Washington, make LexisNexis your official resource for legal research.

For a FREE* gift and demonstration of the LexisNexis Total Research System, please contact one of your local LexisNexis sales representatives at 800.344.3730:

Megan Brown, *Greater Seattle Area:* x4077
Michael Campbell, *Olympia & Tacoma:* x4079
Leticia Perez, *Greater Seattle Area:* x4067
Mark DeMaine, *Spokane:* x4074

OFFICIAL

LEXIS.COM® • MATTHEW BENDER® • COURTLINK® • *SHEPARD'S®* • MICHIE™ • MEALEY'S
MARTINDALE-HUBBELL® • LAWYER'S.COM℠ • TIME MATTERS® & BILLING MATTERS™

AL6639

*Some restrictions may apply. While supplies last
LexisNexis, the Knowledge Burst logo, and Michie are trademarks, *lexis.com*, Martindale-Hubbell and *Shepard's* are registered trademarks, and lawyers.com is a service mark of Reed Elsevier Properties Inc., used under license. It's How You Know is a trademark of LexisNexis, a division of Reed Elsevier Inc. Matthew Bender is a registered trademark of Matthew Bender Properties Inc. CourtLink is a registered trademark of LexisNexis CourtLink Inc. Billing Matters is a trademark and Time Matters is a registered trademark of DATA.TXT Corporation. Other products or services may be trademarks or registered trademarks of their respective companies.
© 2003 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Today's Choice...
To Insure Tomorrow's Profits

HALL-CONWAY-JACKSON, Inc.

INSURANCE BROKERS

Serving the Washington Legal Community for over 40 years

Our Professional Liability Program is underwritten by a highly rated insurer who has insured lawyers for over 30 years. As a full-service Broker, **Hall-Conway-Jackson** offers a variety of programs including:

- Lawyers Professional Liability for full-time firms
- Part-time and Moonlighting Practices
- Intellectual Property and Class Action Practices
- Employment Practices Liability
- Director's and Officers Liability
- Employee Benefits: Health, Disability, and Life Insurance
- Business Owners: Building and Offices
- Surety and Bonding Services
- Personal Lines: Homeowner's, Auto, Boat, and Specialty Coverages

We Welcome Broker Inquiries.
For a Quote or to Learn More, Contact:

(800) 877-8024
(425) 368-1200

Spencer Ehrman
sehrman@hallcj.com
21540 30th Drive S.E.
Bothell, WA 98021

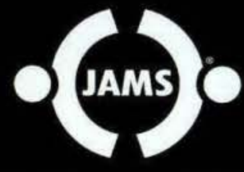
The JAMS Mediation Advantages

Unparalleled Performance

Masterful Resolution
Our exclusive full-time mediators have years of experience and success in resolving the most complex cases where the stakes are high and the parties appear unyielding.

Harmonious Arrangements
We are focused on providing our clients with personalized and exceptional service within a uniquely facilitative environment.

Uncompromising Integrity
In all of our actions, we hold ourselves to uncompromising neutrality and the highest ethical standards.



Resolution Centers Nationwide. 1-800-352-JAMS or www.jamsadr.com

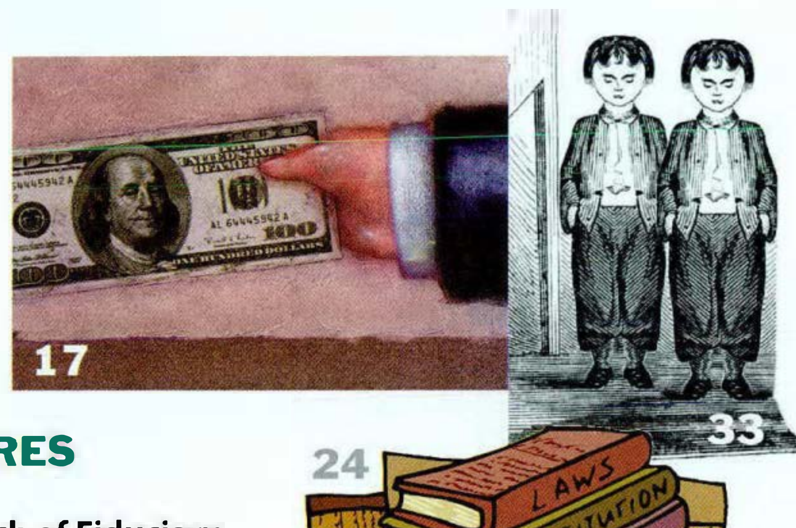
THE RESOLUTION EXPERTS®

Washington State

BarNews

The Official Publication of the Washington State Bar

JANUARY 2005



FEATURES

17 **Breach of Fiduciary Duty: The Nuclear Weapon of Fee Disputes**
by Michael R. Caryl

24 **Five Years of Progress: Reinventing the Republic with the Council on Public Legal Education**
by Judge Marlin Appelwick and Judith Billings

29 **Working and Improving GR 31**
by Walt Krueger

33 **Those Troublesome Twins**
by Robert C. Cumbow

COLUMNS

9 **President's Corner**
Access to Justice for Civil Legal Services
by Ron Ward

15 **Executive's Report**
New Year, New Positions, New People
by Jan Michels

64 **Editor's Page**
Democracy is all the rage these days
by Lindsay Thompson

DEPARTMENTS

7 **Letters to the Editor**

39 **Member Services**
Casemaker® — *Free Online Legal Research System Coming Soon to All WSBA Members*

40 **Ethics and the Law**
A Second Look at Nonrefundable Fees and the Ethical Requirement that Fees Be Reasonable

41 **In Memoriam**

42 **FYI**

49 **The Board's Work**

51 **Disciplinary Notices**

LISTINGS

50 **Announcements**

53 **Professionals**

55 **Calendar**

56 **Classifieds**

60 **Index to 2004 *Bar News***

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

The Law Firm of **Stephen Hayne**

the DUI firm

Refer with Confidence:

Stephen W. Hayne

2003 recipient of the Washington Association of Criminal Defense Lawyers' **William O. Douglas Award**; named one of "**Seattle's Best Lawyers**" by *Seattle Magazine*; one of "**Washington's Ten Best Trial Lawyers**" by the *Washington Law Journal*; a "**Super Lawyer**" multiple times by *Washington Law & Politics*; past **President** of the Washington Association of Criminal Defense Lawyers; past **Chair** of the Criminal Law Sections of WSBA, WSTLA and KCBA; Trial Practice **Instructor** at the National Institute of Trial Advocacy, the Trial Masters Program, and the University of Washington and Seattle University Schools of Law; **Published** in the *Bar News, Trial News, Defense* and *Overruled* magazines; featured speaker at over 80 CLE programs; **Founder**, National College of DUI Defense; **Lead Counsel/of Counsel**: State v. Straka, State v. Brayman, State v. Scott, State v. Ford, State v. Franco, Seattle v. Box, Seattle v. Allison.

Aaron J. Wolff

B.A., Emory University, Atlanta, Georgia; J.D., Seattle University School of Law (with honors); former **DUI Prosecutor** for the cities of Kirkland and Tukwila; **Graduate**, National College for DUI Defense; DRE Drug Evaluation and Classification Program Overview Course; **NHTSA-Qualified Administrator** of the Standardized Field Sobriety Tests; member, Washington Association of Criminal Defense Lawyers and Washington State Trial Lawyers Association.

theDUIfirm.com

425.450.6800

11225 SE 6th Street, Suite 230 • Bellevue, Washington 98004

BarNews

Published by the

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Ave., Ste.400
Seattle, WA 98121-2330

M. Janice Michels
Executive Director
206-727-8244; janm@wsba.org

Lindsay T. Thompson
Editor
206-285-4130; tradelaw@thompson-law.com

Judith M. Berrett
Director of Member and Community Relations
206-727-8212; judithb@wsba.org

Todd W. Timmcke
Managing Editor
206-727-8214; toddt@wsba.org

Jack Young
Advertising Manager
206-727-8260; jacky@wsba.org

Kathy Henning
Communications Specialist/Website Editor
206-733-5932; kathyh@wsba.org

Amy O'Donnell
Classifieds and Subscriptions / Bar New Online
206-727-8213; amyo@wsba.org

Communications Division E-mail:
comm@wsba.org

© 2005 by
Washington State Bar Association

All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. $8.19 of an active member's dues is used for a one-year subscription. For inactive and emeritus members, a free subscription is available upon request (contact Amy O'Donnell at amyo@wsba.org or 206-727-8213). For honorary members, the annual subscription rate is $15. For nonmembers, the subscription rate is $36 a year. Washington residents add 8.8 percent sales tax.

Postmaster: Send changes of address to:

Washington State Bar News
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

Printed by Cenveo on recycled paper

WSBA Board of Governors

Ronald R. Ward, *President*
S. Brooke Taylor, *President-elect*
Kristin G. Olson, *First District*
Eron M. Berg, *Second District*
Joni R. Kerr, *Third District*
Stanley A. Bastian, *Fourth District*
Michael J. Pontarolo, *Fifth District*
Howard L. Graham, *Sixth District*
Andrea Brenneke, *Seventh-East District*
Lonnie G. Davis, *Seventh-Central District*
Mark A. Johnson, *Seventh-West District*
Randolph I. Gordon, *Eighth District*
James E. Baker, *Ninth District*
Fawn R. Sharp, *At-large*
Marcine Anderson, *At-large*
Kathleen M. O'Sullivan, *At-large (WYLD)*

Editorial Advisory Board

Matthew D. Taylor, *Chair*
Hugh K. Birgenheier, *Sixth District*
Mike E. De Felice, *Seventh-West District*
Harold L. Federow, *First District*
Theda Braddock Fowler, *Ninth District*
Stephen W. Hayne, *Eighth District*
Claire M. Jackson, *Seventh-East District*
Jeffrey A. Lustick, *Second District*
Scott B. Osborne, *Seventh-Central District*
Stephen T. Osborne, *Fourth District*
Richard A. Paroutaud, *Third District*
Roger S. Rogoff, *Seventh-East District*
Rebecca L. Stewart, *Fifth District*
Norma L. Urena, *Seventh-East District*

Advertising

Display: Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Announcements: For WSBA members only. Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Classifieds: Advance payment required (payment may be made by credit card). Please see classified pages for rates and submission guidelines or contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org.

Professionals: The boxed ads preceding classifieds; for WSBA members only. Cost: $50/inch; advance payment required (payment may be made by credit card). Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Deadline: Copy must be received (not postmarked) by the first of each month for the issue following. No cancellations will be accepted after the deadline. Please submit typed copy with check (payable to WSBA) or credit-card information to: *Bar News*, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. No phone orders, please.

WSBA Contacts

WSBA SERVICE CENTER
800-945-WSBA / 206-443-WSBA / questions@wsba.org

- General inquiries
- Address changes
- Current WSBA CLE seminars and CLE products (information or seminar registration)
- MCLE credits and course accreditation
- Licensing
- Office of Disciplinary Counsel (complaints about lawyers)
- Order placement for all WSBA products (inquiries about pending orders: 206-733-5918)

WSBA fax: 206-727-8320
Website and *Bar News* online: www.wsba.org
Admissions: 206-727-8209
Ethics line (for lawyers only): 206-727-8284
Jobline (recording): 206-727-8261
Lawyer Services (for lawyers only): 206-727-8268

- Voluntary fee arbitration
- Mediation
- Lawyers' Assistance Program
- Law Office Management Assistance Program

Working together to champion justice

The mission of the Washington State Bar Association is to promote justice and serve its members and the public.

WE AT JDR ARE PROUD TO INTRODUCE OUR NEW COLLEAGUE

CHARLES S. BURDELL JR.

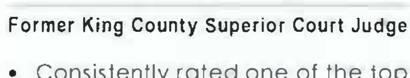
Former King County Superior Court Judge

GEORGE FINKLE

Former King County Superior Court Judge

JOANNE L. TOMPKINS

Former Washington Court of Appeals Commissioner



STEVE SCOTT

Former King County Superior Court Judge

- Consistently rated one of the top judges in King County Judicial Surveys between 1988 - 2004
- Extensive experience in a wide range of civil cases over thirty years
- An experienced settlement Judge
- Together with Judge Scott, ret., we offer timely and confidential solutions to your arbitration and mediation needs. Let our decisive and neutral panelists assist you in "The Art of Resolution"

LARRY A. JORDAN

Former King County Superior Court Judge

TERRENCE A. CARROLL

Former King County Superior Court Judge

ROSSELLE PEKELIS

Former King County, Court of Appeals & Supreme Court Judge

LET OUR EXPERIENCED PANELISTS HELP RESOLVE YOUR DISPUTE

1411 FOURTH AVENUE - SUITE 200 - SEATTLE WA 98101 - PH. 206.223.1669 - FAX. 206.223.0450 - www.JDRLLC.COM

Blaney Update

There have been further developments in the matters discussed in my recently-published article ("Strange Bedfellows: The New Washington Attorney Lien Statute and the *Blaney* Cases," *Bar News* December2004). The U.S. Supreme Court consolidated *Banaitis v. Commissioner*, 340 F.3d 1074 (9th Cir. 2003) with *Banks v. Commissioner*, 345 F. 3d 373 (6th Cir. 2003) and granted the government's petition for writ of certiorari. The case has been argued and an opinion is expected in this term. In addition, Section 703 of the American Jobs Creation Act of 2004, recently passed and, signed by President Bush, eliminated the income tax on attorney fees incurred by successful discrimination plaintiffs.

Deborah D. Brookings, Seattle

EDITOR'S NOTE: *Sometimes some months can pass between submission of articles and publication. A number of readers contacted the author and/or* Bar News *about "omissions" from the article, when in fact the events cited occurred after the issue of* Bar News *was in production. We appreciate Ms. Brookings updating the article.*

Winds of Change

In reading the *Bar News* for the first time (October 2004), I was quite impressed by Gene Oliver's Letter to the Editor entitled "Is what we are more important that who we are?" It concerned the "Around the State" section of the August 2004 *Bar News* where it was noted "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." In his Letter to the Editor, Mr. Oliver took exception to the mention of "Hispanic" as being relevant; and I said, "Right on! What do the facts of Judge Martinez' heritage have to do with anything?"

Later I went to the site index of the WSBA website to search on an unrelated matter, and there I noticed a link to the "Washington State Hispanic Bar Association." I clicked on that link to learn that the WSHBA was created "to represent the concerns and goals of Hispanic attorneys and Hispanic people of the State of Washington." "Of importance is the need to promote Hispanic judicial appointments . . . ." If being Hispanic justifies a separate bar association, then surely mentioning that Judge Martinez is Hispanic doesn't deserve a verbal handslap from Mr. Oliver. Or do we take the thought process one step further and ask, "Do we really need separate bar associations based upon ethnicity?"

Inez Petersen, Renton

Change and Decay

I am sorry to hear about Evan Loeffler's recent passing ("My death and why I still have to work so hard," *Bar News* November 2004). Not because I know him, as I don't believe I do, but because it's never easy to lose a loved one. That must be especially true when that loved one is oneself. It appears he has handled his own passing well, as he has apparently returned to full health (life).

I do think Mr. Loeffler missed out

Washington's Attorney Placement Specialists

Contract & Permanent

The Best Candidates, Rates and Service

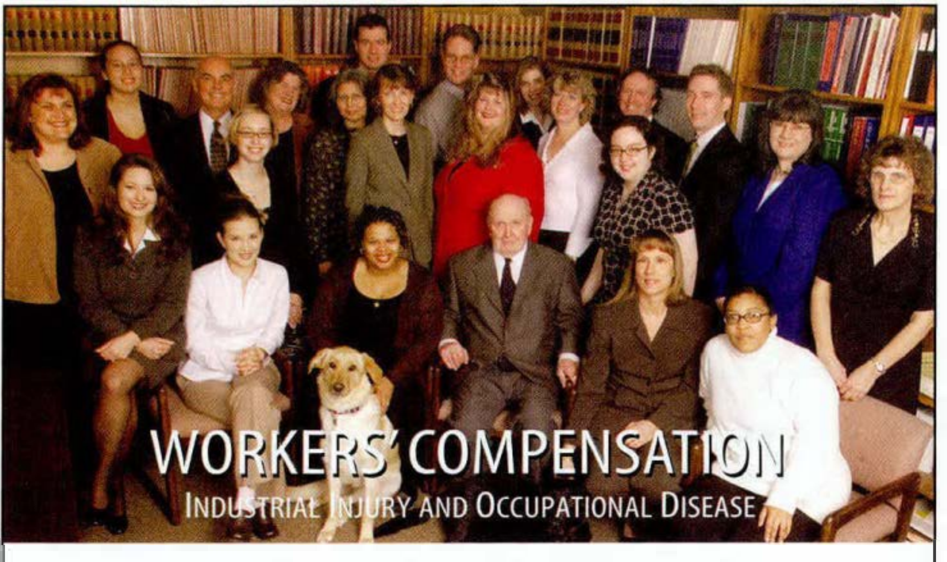
Lynda J. Jonas, Esq. — Placement Director
615 Market Street, Suite B • Kirkland, Washington 98033
Ph: 425-822-1157 • Fax: 425-889-2775
E-mail: legalease@legalease.com
See positions available at www.legalease.com

Nickerson & Associates

Economic and Statistical Consulting

- Economic Analysis and Damages Calculation
- Statistical Testing and Inference
- Wage and Hour Analysis
- Database Development and Compilation of Computerized Business Records
- Mediation Preparation and Settlement Administration

Peter H. Nickerson, Ph.D.
Phone: 206-332-0270 *520 Pike Street, Suite 1200*
Fax: 206-332-0252 *Seattle, WA 98101*



We welcome and appreciate your referrals.
"Representing Injured Workers for Over 70 Years"

WALTHEW, WARNER, THOMPSON, EAGAN, KINDRED & COSTELLO, P.S.

(206) 623-5311 • Toll-free: 1-800-824-6215
THE WALTHEW BUILDING
123 Third Avenue South (at S. Washington) • Seattle, WA 98104

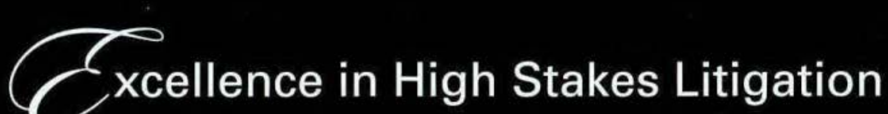
on a golden opportunity, however. My review of the state licensing regulations for attorneys shows no authority that I can find for WBSA to collect dues from an attorney who has passed away. And while it is certainly illegal to practice law without a license, I cannot see any prohibition against practicing law while deceased. Hence, if Mr. Loeffler had said nothing, it appears he could have enjoyed a career of practicing law from the great beyond, free of any dues payments.

It's just too bad he wasn't around to realize this.

Tom Pacher, Oak Harbor

BAR NEWS *welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications whose readership overlaps ours. We ask that, if possible, letters fall between 250 and 500 words in length, and that they be e-mailed to the editor at tradelaw@thompson-law.com. We reserve the right to edit letters.* Bar News *does not print anonymous letters, or more than one submission per month from the same contributor.*

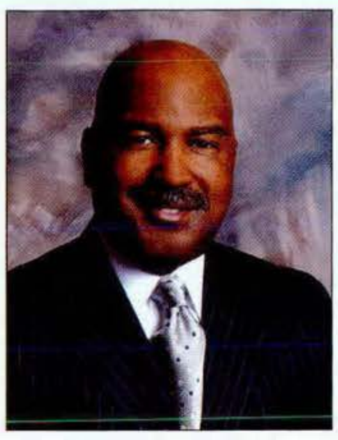
Excellence in High Stakes Litigation



is changing the law firm's name
to include each of the founding partners.
Effective immediately, the law firm's new name is

CORR CRONIN MICHELSON BAUMGARDNER & PREECE LLP

1001 FOURTH AVENUE, SUITE 3900 | SEATTLE, WASHINGTON 98154-1051
TEL (206) 625-8600 | FAX (206) 625-0900
WWW.CORRCRONIN.COM



Access to Justice for Civil Legal Services

With Liberty and Justice for All — Democratic Truism or Lip Service?

by Ron Ward, WSBA President

The Human Faces of the Crisis

An elderly woman is confined in her fourth-floor apartment for two months because her landlord won't fix the elevator. A single mother is improperly denied government medical coverage, then harassed by creditors to pay for her sick daughter's care. A woman who comes to work bruised by an abusive partner must quit or be fired, and finds herself without income, shelter, or benefits. Homeless.

These are the human faces of the grave civil legal needs crisis in Washington.

Dave Savage, WSBA's immediate past president, eloquently addressed this issue in his column in the June 2004 issue of *Bar News*. You may ask why I am revisiting this. The answer is that providing solutions to this societal problem is absolutely crucial to all of us, lawyers and nonlawyers alike.

The Washington State Supreme Court's Civil Legal Needs Study

The Washington State Supreme Court's September 2003 Civil Legal Needs Study,[1] under the leadership of co-chairs Justice Charles Johnson and Judge Mary Kay Becker of Division 1 of the Court of Appeals, convincingly documents the fact that one million poor people in Washington with civil legal causes of action go unserved every year. (A link to the report can be found on the WSBA homepage at www.wsba.org.) These causes of action involve basic human needs. Citizens are losing their houses to foreclosure, are losing their children, are discriminated against racially and in employment, and are being forced

> ***It is an undeclared crisis of epidemic proportions that cuts across all races, creeds, and classes of society. These are our mothers, grandmothers, nephews, and sisters — our families.***

to exist in the living hell of domestic violence and abuse. Eighty percent of the victims of domestic violence are women and children. It is an undeclared crisis of epidemic proportions that cuts across all races, creeds, and classes of society. These are our mothers, grandmothers, nephews, and sisters — our families. Those who are increasingly vulnerable, such as physically and mentally disabled persons and dependent and at-risk juveniles, are also excessively and disproportionately affected. Nowhere is the problem more grievous or the victims more susceptible than among the poor, because the poor are virtually bereft of recourse or redress, in the absence of legal representation.

Findings of the Civil Legal Needs Study

Access to justice in this country is not a privilege of the well to do, but a right of us all. The stability and the very existence of our system and our society are dependent on preserving that right — **FOR ALL**. Equal access to justice for everyone is a cornerstone of our democracy, yet the vast majority of Washington's poor and vulnerable residents are unable to obtain necessary legal assistance. Some of the findings of the Civil Legal Needs Study are set forth below.

- There are more than one million low-income people in Washington. Washington state ranks 22nd nationally in poverty. On a statewide basis, about 13 percent of Washington's population is low-income; in King County, slightly less than 11 percent.

- For many thousands of low-income families, basic promises guaranteed them under the laws of our state — promises to personal and family safety and security; fair treatment by landlords, employers, and creditors; and fair and proper treatment by governmental agencies — are unenforceable because these families cannot secure the legal representation needed to effectively assert, defend, or enforce these promises.

- More than three-quarters of Washington's low-income households experience a civil legal problem each year. Only 12 percent are able

to obtain assistance from a lawyer.

- Housing, family safety and security, and employment matters account for nearly half of all issues affecting low-income people.

- Women and children are disproportionately affected, especially on matters related to family law and domestic violence. Issues related to wrongful discrimination appear in more than one-quarter of all legal problems experienced by low-income people.

- Legal assistance is the key to securing effective outcomes for people whose legal rights are at stake. Nearly two-thirds of low-income people who are able to secure legal assistance obtain a fair resolution to their legal problems. On the other hand, fair outcomes are realized by less than 25 percent of those who do not secure legal assistance.

- Our state's nationally recognized civil equal justice delivery system is grossly understaffed and increasingly incapable of meeting the legal needs of those who are poor or vulnerable. Despite significant technological and related delivery efficiencies in recent years, and despite the contribution of more than 100,000 hours (valued in excess of $14 million) of volunteer legal assistance each year from Washington lawyers, the study clearly documents that more than two decades of capacity losses and office closures have left the system increasingly inaccessible to those who need it most.

. . . the study clearly documents that more than two decades of capacity losses and office closures have left the system increasingly inaccessible to those who need it most.

- It is estimated that there is a $28 million dollar shortfall, which is the additional funding needed to address the findings in the Civil Legal Needs Study. Eighteen million dollars of this amount is estimated to be the state's share. (Note: This is the figure for the coming two-year period.)

- Funding for civil legal needs is one part of our larger justice system. Stable and adequate long-term funding for our courts is also an area of grave concern. Washington ranks last among all 50 states in support of its trial courts. Less than .3 percent of the state's general fund goes to supporting our courts. And significant reforms in Washington's indigent defense system, and state funding of indigent defense, are desperately needed.

The Washington State Bar Association, the Washington State Courts, the Washington State Access to Justice Board, and the Washington Defender Association are working closely together to address this crisis facing our justice system. As I documented in my December column

Minzel & Associates, Inc.

ATTORNEYS • PARALEGALS • SUPPORT STAFF
TEMPORARY & PERMANENT

Let us help you make better hiring decisions, respond to fluctuations in workflow, cover gaps in staffing, control costs and enhance profits. Our staff of attorneys prescreens and qualifies candidates for temporary, temp-to-perm, and permanent placement with law firms and corporations throughout the Pacific Northwest.

Attorneys

Paralegals

Contract Administrators

Support Staff
- Secretaries
- Word Processors
- Document Coders
- File Clerks
- Receptionists

Tel. 206.328.5100 • Fax 206.328.5600 • www.Minzel.com • mail@Minzel.com

APPRAISERS AND VALUATION CONSULTANTS

Private Valuations, Inc.
1800 – 112th Avenue N.E.
Suite 302E
Bellevue, Washington
98004

Adrien E. Gamache, Ph. D., President
Mark H. Wellington, ASA, Technical Director

- Valuations of Businesses & Intellectual Property
- Family Limited Partnership and LLC Interests
- Experienced Litigation Support

Call for references and qualifications

425-688-1700 • 425-450-9990 FAX

AFFORDABLE PROFESSIONAL LIABILITY INSURANCE IS JUST ONE CALL AWAY.

Mainstreet® is the Nation's Small Firm Expert. Solo Practitioners and Small Law Firms deserve special attention and get it from Mainstreet®. Most small firms are actually lower in risk than larger firms and should be paying lower premiums. Now you can make one call to compare service, policy features and price. We immediately qualify your firm and provide quotes. No long delays.

800-817-6333 ext. #502

MAINSTREET INSURANCE PURCHASING GROUP

1402 Third Avenue, Suite 520, Seattle WA 98101-2118

www.EZlawquote.com

on court funding (*Bar News*, December 2004, p. 9), we will be going to the state Legislature in January to ask for help.

What Is the Value of Civil Legal Services?

Legal aid promotes fairness and justice; helps families in crisis return to safe, productive lives; and saves dollars for taxpayers by preempting a spiral of costly social problems and ensuring a well-ordered society.

The independence of the judiciary as a separate, co-equal branch of government; the justice system; and Washington society will be the victims of our failure to make good on the Constitutional promise of adequate representation and justice for all.

I am proud that my first legal job while a law student was clerking at the San Francisco Neighborhood Legal Assistance Foundation. It gave me perspective and purpose, and allowed me to pass on that sense of hope that has been so important to my family and me.

What We Can Do to Help

This is a multifaceted societal problem, and it requires a multifaceted societal solution, which inevitably must include an apportionment from the state budget's General Fund, for both civil legal services and indigent defense. But we as lawyers are also an essential facet, and we have the ability to effect change in two important ways: we can contribute our time and we can contribute financially.

My perception is that mandatory *pro bono* legal services (such as have been promulgated in some states) are not a viable option in Washington at this time, so I won't go there. As a bar association, Washington has an *aspirational* goal of 30 hours of *pro bono* work for every lawyer.[2] Despite the substantial efforts of some, it's not enough. There is still no civil *Gideon*.[3]

Lawyers are society's advocates. We must advocate and we must educate to a far greater degree than we do now — in our daily lives, in our practices, and in the halls of the Legislature.

As a natural outgrowth of our aspirational goal for Washington lawyers, the WSBA should launch a *pro bono* initiative encouraging Washington law firms to commit a specific number of hours to *pro bono* work, create *pro bono* budgets, and establish volunteer projects. WSBA would partner with the Access to Justice Board, Northwest Justice Project, and others, to offer the law firms *pro bono* opportunities through legal clinics that will address client issues such as elder law, basic tax law, and family law issues.

In addition to making the commitment to *pro bono* service, the funding environment today requires an infusion of private capital if there is to be a stable base of support for legal aid. Making a meaningful contribution to legal-aid programs is becoming much easier, thanks to efforts across the state to create a unified Campaign for Equal Justice. The campaign is a joint fundraising effort between legal-aid programs and local bar associations that will allow attorneys, law firms, corporations, and others to make a single annual gift that will help fund every legal aid and *pro bono* program in the state. In King

AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

THE WASHINGTON CHAPTER PRESENTS ITS
ELEVENTH ANNUAL CONFERENCE
THE "ABCs" OF ADVANCED DISSOLUTION PRACTICE
LAWRENCE R. BESK, CHAIR

Friday, March 25, 2005
Washington Athletic Club — Seattle
6.5 CLE Credits (pending approval)

REGISTER TODAY
(seminar is limited to 120 participants)

REGISTRATION FEE: $225

Contact: Harriet Fong, Seminar Director
206-903-1820 Ext. 206

A FAMILY LAW CLE SEMINAR WITH TIPS THAT YOU CAN USE IN YOUR EVERYDAY PRACTICE

PRESENTATIONS BY TOP ATTORNEYS AND EXPERTS ON EVERYDAY PRACTICE ISSUES

- Characterization and tracing
- Extrapolated child support — inside the numbers
- Maintenance in high income cases
- Tax issues for unmarried cohabitants
- Motions and Trial Practice
- And much more!

County this past fall, the Eastside Legal Assistance Program, the King County Bar Association, and LAW Fund kicked off the campaign by approaching King County law firms jointly in asking for support for legal aid. Law firms are stepping up their support for legal aid as a result. It is now time for individual attorneys to follow suit.

As Dave Savage suggested in his *Bar News* column last June:

> It may also be time for us to consider making a financial contribution. While I am convinced that any thoughtful analysis must conclude that meeting the legal needs of the indigent and the vulnerable is an obligation that must be publicly funded, we would certainly do ourselves no harm by contributing . . . . It would certainly give us the high ground in any discussion with our Legislature, and it would serve as concrete evidence of our commitment to ensure a democratic system that delivers on its promise to provide justice for all.

Oregon has proven the substantial difference individual attorneys can make to legal aid through financial participation in their own unified Campaign for Equal Justice. With approximately half the number of attorneys of Washington, Oregon raises almost twice the amount of money we raise from attorneys here. We can do better. Every attorney should consider making a contribution to the Campaign for Equal Justice. For more information about the campaign, or to make contribution, you can write, call, or find the campaign online: LAW Fund and the Campaign for Equal Justice, 1325 Fourth Ave., Ste. 1335, Seattle, WA 98101; 206-623-5261; www.lawfund.com.

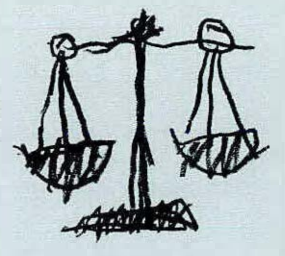
Lawyers are society's advocates. We must advocate and we must educate to a far greater degree than we do now — in our daily lives, in our practices, and in the halls of the Legislature. In my December column on court funding, I noted that we can get involved personally with the legislators who represent our communities, for the purpose of educating them about the justice system and about the importance and appropriate priority that adequate court funding should have in the legislative process.

Child Abuse Cases

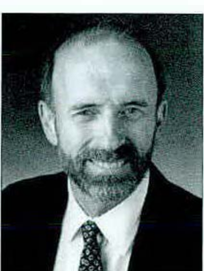
I work on them every day.

Child abuse litigation is tough. But it's a little less tough if you do it daily.

For nine years I have been committed to providing superior representation in child abuse cases.



Please call me for referral, association, or consultation. Or go to www.childabuselaw.info to receive free email updates on child abuse law and science.



David S. Marshall
206.382.0000

New postings include...

Criminal Depositions in the Crawford Era

CORPORATION KITS
FOR
WASHINGTON
$55.95

Binder & slipcase, index tab set, printed stock certificates w/full page stubs & gold foil starbursts, transfer ledger, embossing seal & pouch,30 sheets of blank 25% cotton bond paper.

Same kit with By-Laws, minutes & resolutions package and 6 sheets of blank 25% cotton bond paper plus tax forms for EIN and "S" corporation election.

$58.95
Kit without seal $10.00 less than regular price

OTHER PRODUCTS

LTD. LIA. CO. OUTFIT	$59.95
NON-PROFIT OUTFIT	$59.95
LTD. PARTNERSHIP	$59.95
FAMILY. LTD. PART.	$59.95
SEAL W/POUCH	$25.00
STOCK CERTS (20)	$25.00
FORMS ON CD OR DISK	$29.95

Shipping & Handling additional

NEW!
RUBBER STAMPS
for
Corporate/LLC seals, notarial/notary public, deposit, address, signature, etc.
Self-inking
SAME DAY SERVICE

ASK ABOUT
WILL & TRUST STATIONERY
***
REGISTERED AGENCY SERVICES FOR MONTANA

ORDER TOLL FREE !
PHONE 1-800-874-6570
FAX 1-800-874-6568
E-MAIL : corpkit@corpkitnw.com
Web: www.corpkitnw.com

ORDERS IN BY 2:00 PM SHIPPED SAME DAY.
$6.00 PER KIT UPS GROUND CHARGE.
(Rural and/or residential, AK & HI higher)
LAW FIRMS. WE WILL BILL WITH YOUR ORDER OAC
SATISFACTION GUARANTEED !!!
Prices subject to change without notice.

CORP-KIT NORTHWEST, INC.
P.O. BOX 697
LANGLEY, WA 98260

TRADEMARK
& COPYRIGHT SEARCHES
TRADEMARK-Supply word and/or design plus goods or services.
SEARCH FEES:
COMBINED SEARCH - $315
(U.S., State, Expanded Common Law and Internet)
TRADEMARK OFFICE - $135
STATE TRADEMARK - $140
EXPANDED COMMON LAW - $165
DESIGNS - $210 per International class
COPYRIGHT - $180
PATENT SEARCH - $450 (minimum)
INTERNATIONAL SEARCHING
DOCUMENT PREPARATION
(for attorneys only - applications, Section 8 & 15, Assignments, renewals.)
RESEARCH- (SEC - 10K's, ICC, FCC, COURT RECORDS, CONGRESS.)
APPROVED- Our services meet standards set for us by a D.C. Court of Appeals Committee.
Over 100 years total staff experience - not connected with the Federal Government.
GOVERNMENT LIAISON SERVICES, INC.
200 North Glebe Rd., Suite 321
Arlington, VA 22203
Phone: (703) 524-8200
FAX: (703) 525-8451
Major credit cards accepted
TOLL FREE: 1-800-642-6564
WWW.TRADEMARKINFO.COM
SINCE 1957

Plaudits and Kudos to the Access to Justice Movement
As you are aware, the theme of my presidential year is "Lawyers Render Service." Legal-services attorneys and those who serve people in need of indigent defense are outstanding examples of the great generosity of the thousands of lawyers who faithfully render service on a daily basis to their clients, to the public, and to the profession.

To the many dedicated legal-services attorneys, to those who are committed to helping people who are less fortunate by providing legal assistance on a *pro bono* basis, to those in public-service work, and to those who provide critical social services, I commend your dedication and your fine work. You are making a difference in your communities, and in the lives of those you serve. We all need to join together in helping you, in providing *pro bono*, in convincing our fellow citizens and our legislators of the critical role legal services plays in our society, and of the primacy of values and funding priority which it so richly deserves.

The question is not whether we can; it is whether we will. We can and we will, because working together there is nothing we cannot change for the better.

Ron Ward may be reached at rrw@admiralty.com or 206-624-8844.

NOTES

[1] More than 2,100 face-to-face and phone interviews were conducted. The Court wanted to learn who had experienced civil legal problems, what the nature and substance of these problems were, how they affected people, the degree to which people understood their problems had a legal dimension, the degree to which they were able to secure legal assistance, and the consequences experienced when they were unable to get necessary legal assistance.

[2] RPC 6.1. The American Bar Association urges all lawyers to provide a minimum of 50 hours of *pro bono* service annually.

[3] *Gideon v. Wainwright*, 372 US 335 (1963), a U.S. Supreme Court decision that established that anyone who is charged with a crime is entitled to legal representation. The right to counsel of anyone charged with a crime was deemed fundamental and essential to fair trials.

Talk, Talk, Talk.
Listen, Listen, Listen.

With decades of combined mediation and arbitration experience, our panel is committed to resolving disputes in a fast, fair and affordable fashion.

For more information about how we can assist you, take a moment to call, and talk to us.

• Albert R. Malanca • Thomas "Jerry" Greenan • Dale L. Carlisle • Joe Gordon Jr. •
• James C. Waldo • Donald H. Thompson • Elizabeth Pike Martin • Mark G. Honeywell • J. D. Smith •

TACOMA (253) 620-6500 SEATTLE (206) 676-7500 1 (800) 240-5051 WWW.GTH-LAW.COM

New Year, New Positions, New People

by WSBA Executive Director Jan Michels

In the 2004-2005 fiscal year (October 1, 2004, to September 30, 2005), the Board of Governors created two new positions in response to the changing needs of the WSBA — Director of Regulatory Services and Diversity Advocate. After broad recruitment and interviewing, I am pleased to introduce the two persons selected for these positions.

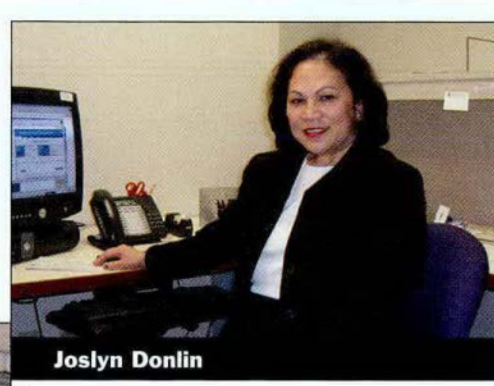
Jean McElroy
Regulatory Services Director

Over the years, the processes of admissions, licensing, and MCLE compliance have grown to include managing the Law Clerk Program and Rule 9 interns, regulating limited practice officers, overseeing the Lawyers' Fund for Client Protection, and considering possible other nonlawyer practice-of-law activities. It became increasingly evident that managing these functions within the overall goal of convenient and responsive member services required the focus of a single person at the director level. These functions had previously been fragmented among WSBA departments with most being part of the Finance and Administration Department. The easiest way to envision the new Regulatory Services Department is to see it as responsible for the functions described in the Admission to Practice Rules (APRs).

Jean McElroy

Jean McElroy was chosen from a broad-ranging field of more than 25 candidates. She was the first choice of the directors, staff groups, Paula Littlewood, and me for this important position. Jean has been disciplinary counsel and a team lead in the WSBA Office of Disciplinary Counsel for the last 15 years. Prior to that, she was a deputy prosecuting attorney for King County for five years, staff counsel with the Office of Program Research in Olympia for a session, and a contract lawyer. Jean brings her experience with the regulation of the practice of law, team management, and understanding of the role of the WSBA with members to this new position. Our goal is to raise the visibility and importance of all WSBA APR functions, and to ensure their farsighted and comprehensive coordination in serving the interests of members and the public. Jean can be reached at jeanm@wsba.org or 206-727-8277.

Joslyn Donlin
Diversity Advocate


Joslyn Donlin

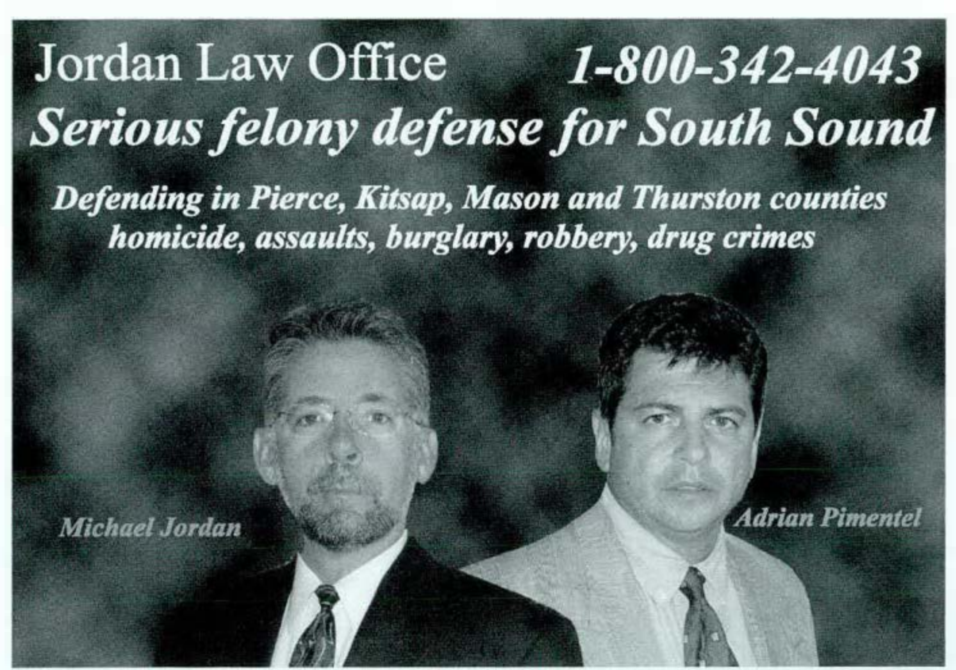
The position of diversity advocate was envisioned by President Ron Ward and immediate Past-president Dave Savage to help our Association institutionalize and facilitate our commitment to diversity. This commitment is embodied in one of our current strategic goals: "The WSBA will promote diversity, equality, and cultural competence in the courts, legal profession, and the Bar." We are proud to be one of a handful of bar associations throughout the country with such a staff position. As President Ron Ward wrote in his October *Bar News* column: "Diversity is a touchstone, a connection to let us know our possibilities. It is the visible, tangible actualization of not just our American commitment, but our very presence — and the conviction that we all matter; that we all have a say; that we are a community." The diversity advocate position has two primary functions: managing the WSBA's diversity efforts and initiatives, and managing the new WSBA Leadership Institute. The WSBA's diversity efforts and initiatives include projects to increase involvement by persons of diverse backgrounds within the WSBA, and providing a proactive resource and advocate for outreach and involvement with the minority bar

associations and to people from diverse backgrounds who may be interested in entering the profession.

Joslyn K.N. Donlin, an attorney in private practice, was selected to be the first diversity advocate for the WSBA. Joslyn brings to this position a background in both education and law, as well as in diversity training. Prior to joining the legal profession, Joslyn worked for the Northwest Regional Educational Laboratory in Portland, Oregon; the University of Washington School of Education; and the Washington State Office of the Superintendent of Public Instruction. In her roles with these institutions, she provided teacher training, technical assistance, testing, and evaluation in civil-rights compliance and equal-education opportunities to bilingual and ESL programs. As an attorney, Joslyn has been a city prosecutor. In private practice, she provided legal assistance to Japanese-speaking clients and has worked as software-licensing-technology specialist for a large software company. For the past three years, Joslyn has been involved with the WSBA Committee for Diversity, helping to lead efforts to promote and increase diversity within the Bar. Joslyn looks forward to working with the various minority bar associations and underrepresented groups in this state to increase diversity within the legal profession. She can be reached at joslynd@wsba.org or 206-727-8216.

Please join me in welcoming Jean McElroy and Joslyn Donlin in their important new roles. ✍

Executive Director Jan Michels can be reached at janm@wsba.org.



The WSBA Service Center is available to serve the WSBA's more than 28,400 members, as well as the public, from 8 a.m. to 5 p.m. weekdays, and can be reached at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org.

DANIELS-HEAD INSURANCE AGENCY, INC

BY MICHAEL R. CARYL

Breach of Fiduciary Duty: The Nuclear Weapon of Fee Disputes

We all know that we are entitled to a reasonable fee, whether under RPC 1.5, RCW 4.24.005, or even the old rule of *quantum meruit*. Right? That's never really been challenged, you say. Well, not so fast.

Clients will be clients! When you handle serious problems for them, they tend to get stressed out, angry, frustrated, hurt, confused, and mistaken. For most of them, they are caught in an alien world replete with its own peculiar rules and jargon, and the process often leads to results or simply a process that the client simply cannot fathom or accept. Naturally, this often in turn causes suspicion, misunderstanding, and more anger, which boils over into the client relationship. This almost always ends up with severe griping about attorney's fees charged. This is the breeding ground for the attorney-client fee dispute.

If there is one thing that you learn by the time you have handled your second litigated fee dispute with a client, it is that clients get the benefit of almost every doubt. Despite the fact that judges under those robes are just lawyers like us, this fact looms small when the robe faces a client complaining about his or her former lawyer. Even the absurd contention seems to get a real hearing when the contender is an angry client complaining about that unscrupulous shyster who used to be his or her lawyer. It is for this reason that I have advocated above that in any post-termination relations with ex-clients, you are always on your best behavior. This extends beyond not writing nastigrams or acting like a horse's a** with your ex-client. It even extends backwards into the attorney-client relationship itself. For those reasons, in several earlier articles, I have urged an enormous amount of restraint, candor, and patience in dealing with unhappy clients.

WMDs (weapons of mass destruction, for those not really current) are a hot political topic today. What's that got to do with unhappy clients who terminate you, while owing a lot in back lawyers' fees? Do we really have something to worry about when our client flies off the handle and fires us? Well, depending on your pre-discharge conduct with your client, the answer is, "Well, just maybe." The client has his own WMD in any fee dispute with you. A client today is more likely to "go nuclear" in the post-termination dispute than at any prior time. And by "go nuclear" I mean, plainly and simply, to accuse the lawyer of breach of fiduciary duty. A discharged lawyer, whether on a contingency fee or on an hourly basis, is entitled to be paid his or her attorney's fee, regardless of who terminates. We all know that we are entitled to a reasonable fee, whether under RPC 1.5, RCW 4.24.005, or even the old rule of *quantum meruit*. Right? That's never really been challenged, you say. Well, not so fast. There is a strain of old law that seems to have gotten a shot of adrenaline in the past 15 years that threatens the discharged lawyer with losing most or all of the unpaid attorney's fee, or worse, disgorgement of paid fees. And that old strain of law with a new lease on life is the newly evolved breach of fiduciary duty rule.

If there is one thing that you learn by the time you have handled your second litigated fee dispute with a client, it is that clients get the benefit of almost every doubt.

The case law is there, and angry clients and their new lawyers are only too happy to use it to stuff your *quantum meruit* argument back into your mouth. Breach of fiduciary duty gives the client the ability to obtain a forfeiture of some or all of the fees that were otherwise wholly earned and reasonable. The tactical nuke is partial forfeiture; the strategic weapon is total forfeiture or disgorgement.

I have seen lawyers in the past five years make these fiduciary breach arguments where I have served as the arbitrator, when I was called as an expert witness for the hapless lawyer whose fees were threatened, or in several other cases where I represented the terminated lawyer, trying to save his fees. Some of the client's arguments can be ridiculous, while others can be made quite respectable. One excellent lawyer recently made such a fiduciary breach argument successfully in a King County case, one in which the unfortunate lawyer had his entire fee forfeited as a result. I have used breach of fiduciary duty arguments successfully to alleviate a client's burden from post-trial litigation billings where I thought the lawyer had crossed the fiduciary duty line. There are real lessons to be learned here.

The Humble Beginnings of the Fiduciary Duty Defense

Dailey v. Testone, 72 Wn. 2d 662, 435 P.2d 24 (1967), is one of the earliest fiduciary duty cases. Dailey, the wife's attorney in a divorce, had to sue his client for payment of his attorney's fees at the end of the case when she refused to pay. In the trial court's decision, neither party was awarded fees against the other. The trial court determined the reasonable amount of the wife's fees (at $1,750), but the court did not provide for an attorney's lien. Lawyer Dailey filed a lien anyway and encumbered his client's real property and bank account in his efforts to get paid. His former client countersued for fraud and improper attachment. The Washington State Supreme Court weighed the evidence and tested it against a standard of fraudulent acts or gross misconduct and, in so doing, discussed cases that dealt largely with attorneys performing illegal acts, or lawyers entering into illegal contracts.[1] The Court in *Testone* upheld the attorney's conduct as not "fraudulent or malicious" but rather just simply improper. The Court then weighed this impropriety against the fee originally allowed by the trial court and determined on *quantum meruit* grounds that Dailey would get only $750, not $1,750, awarded by the trial court in fees. The words "breach of fiduciary duty" or forfeiture are not found in the *Dailey* opinion anywhere. Nonetheless, *Dailey* opened the door.

A decade later, in *In re Loomos*, 90 Wn.2d 98, 579 P.2d 350 (1978), a disciplinary matter, the Washington State Supreme Court was faced with a lawyer handling a probate who had completely neglected his engagement and client. The lawyer was disciplined for not cooperating with the Bar investigation and not closing the estate as he had been ordered by the Disciplinary Board. When Loomos ignored the Board's orders, the Court suspended Loomos, and required him to disgorge an earlier fee for handling

the probate, $750, on the grounds that "an agent who willfully and deliberately breaches his contract of service is entitled to no compensation." *90 Wn.2d* at 104. The Court did not mention breach of fiduciary duty and in fact cited the *Restatement (Second) of Agency* as the basis for forfeiting the fee. No mention was made in *Loomos* of the Code of Professional Responsibility or any disciplinary rules. *Loomos* is not really a breach of fiduciary duty case but rather one where the fee had not been earned. Nonetheless, again the concept of fee forfeiture was exercised as a remedy in an egregious situation, and *Loomos* now serves as a legal precursor supporting this new weapon of clients.

The Rule Begins to Emerge — *Ross v. Scannell*

Ross v. Scannell, 97 Wn.2d 598, 647 P.2d 1004 (1982), again presented the Washington State Supreme Court with egregious facts. Attorney Ross was hired by client Scannell originally to assist in the purchase of a parcel of real property. Ross became a joint venturer in the prospective purchase with his client. The sale fell through, and Scannell, on Ross's advice, sued the sellers for specific performance and damages. The fee arrangement for this lawsuit was contingency fee. Because he was involved in the underlying transaction, Ross found himself in a position where he was both counsel and a potential witness. Yet he did not withdraw until just before trial, when he hired another lawyer to handle the trial on an hourly basis. With Ross's assistance, Scannell prevailed in the lawsuit and was awarded specific performance of the real estate deal and damages. Some additional legal work was required of Ross in order for Scannell to obtain title to the property. When Scannell went to sell the property, Ross claimed an interest in the damages obtained (to which he was clearly entitled), as well as one-third of the profits from the anticipated sale of the property (to which he was not entitled). When Ross refused to perform those legal services to clear the title, Scannell had to obtain other legal help to obtain clear title before he sold. When Scannell refused to part with a third of the profits from the sale to Ross, Ross filed an attorney's lien, which purported to lien the real property Scannell was trying to sell. Scannell's sale fell through due to Ross's attorney's lien clouding the title.

The real issues in this case were whether an attorney's lien can create a lien on real property in Washington and whether Ross was entitled to the contingency fee.[2] The Court ruled against Ross on both of these issues. However, Scannell, a client scorned, did not take Ross's legal maneuverings in the spirit of good, clean fun. He accused Ross of unethical conduct. The Court could not determine on the evidence of record whether such misconduct had in fact been proved, and remanded, although the Court stated, "the charges of unethical conduct herein are grave." 97 Wn.2d at 610. Quoting from *Dailey v. Testone*, the Court stated, "Such charges are normally heard by a disciplinary committee of the Washington State Bar Association. However, a trial court may consider such allegations in determining attorney's fees." *Id.* The Court concluded:

> Accordingly, on remand, we instruct the trial court to consider the charges of unethical conduct in relation to several principles enun-

PEREY-HARRIS

TRIAL LAWYERS

Practice Limited to Major Damage Claims for:

- Medical Malpractice
- Hospital Negligence
- Laboratory Negligence
- Automobile Accidents
- Work Place Accidents
- Catastrophic Injuries
- Birth Trauma
- Product Liability
- Death

Extensive experience in medical malpractice claims involving:
Obstetrical, gynecological, surgical, cardiac, pap smear, cancer, vascular, orthopedic, neurological, pharmaceutical and emergency room negligence

Ron Perey and **Tom Harris** have over 65 years of combined experience handling personal injury and medical malpractice claims. They are both listed in *Best Lawyers in America* and both are noted *Washington Super Lawyers*. They have tried hundreds of jury cases and settled thousands of personal injury claims.

CONTINGENCY FEE and FREE INITIAL CONSULTATION

We are available for consultation, association or referral in cases involving medical or hospital negligence and catastrophic injury. Medical malpractice cases are difficult, expensive and risky. Cases must be carefully investigated, analyzed and screened. Each prospective case is reviewed carefully by our legal and medical staff before acceptance. If a case is accepted, we will do whatever is needed to win and to maximize the monetary recovery.

Lawyers
Ron Perey, J.D.
Thomas V. Harris, J.D.
Carla Tachau Lawrence, J.D.
Douglas Weinmaster, J.D.

Medical Director
Alexandra McCafferty, M.D.

Nurse Consultant
Janice Perey, R.N.

Legal Assistants
Barbara Fletcher, L.A.
Terry Asbert, L.A.

Market Place Tower
2025 First Avenue, Suite 250, Seattle, WA 98121
Phone (206) 443-7600 • Fax (206) 443-4785 • www.pereylaw.com

(206) 443-7600

ciated by this court in determining the amount of fees due Ross. *Professional misconduct may be grounds for denying an attorney his fees.*

Id. (*emphasis added*). Bingo – there it is. The Court finally instructs the trial court on its power to punish the egregious conduct of a miscreant attorney. Again, the phrase "breach of fiduciary duty" is not mentioned in *Scannell*, but the genie is out of the bottle.

Eriks v. Denver — The Rule Is Now Out

Egregious facts usually pave the way for strong rules. Are you a believer yet? *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992), a case successfully handled by Seattle lawyers Dexter Washburn and Chris Pence, afforded truly egregious facts. Certain promoters sold allegedly tax-sheltered investments in Master Sound Recordings in the 1970s and 1980. One had to live through the days of abusive tax shelters to understand how this stuff came about. The promoters of such tax shelters advertised large tax benefits, deductions, and investment tax credits to persons with larger incomes that might be sheltered. In those days, the IRS was more active and vigilant. In 1981, the IRS began treating these Master Recordings tax shelters as "abusive" and began challenging the tax benefits to investors. The promoters created the Master Recording Trust Fund to provide a defense to both the promoters and the individual investors.

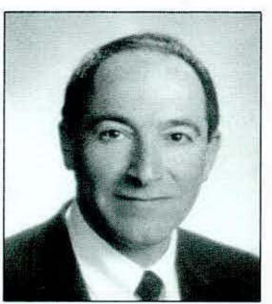
The Washington State Supreme Court affirmed, initially holding that the determination of a violation of ethical duties is a question of law, not one of fact.

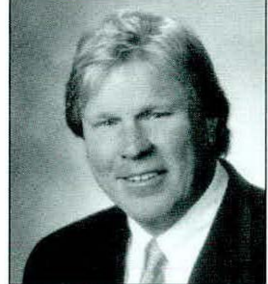
The promoters hired attorney Denver to provide joint legal defense to investors as well as these promoters before the IRS and in tax cases. The rub there should be immediately obvious. Denver already knew when he took this engagement that the IRS was disallowing the tax benefits, that every investor would be audited and that the IRS would probably disallow their tax benefits. When he undertook this joint representation, he knew that his investor clients could have civil claims against his promoter clients if the investments' tax benefits were ultimately disallowed. In fact, Denver discussed these potential conflicts of interest with the promoters but not with his investor clients. After a Tax Court determination went against the investors, Denver advised them to settle with the IRS (and pay the taxes) but did not advise them of their potential claims against the promoters. When the investors finally got independent legal counsel, some of them filed a class action against Denver for negligence and breach of fiduciary duty, for failing to advise them of the conflicts of interest and the potential claims against his investor clients.

The trial court in that lawsuit granted the investors summary judgment, holding that Denver had breached fiduciary duties to his investor clients as a matter of law, and ordered disgorgement of all attorney's fees he had been paid, along with pre-judgment interest. The Washington State Supreme Court affirmed, initially holding that the determination of a violation of ethical duties is a question of law, not one of fact. The Court then performed an analysis of the conflict of interest rules of the old Code of Professional Responsibility, and held that Denver had violated them as a matter of law.[3] In affirming the trial court's order requiring disgorgement of all attorney's fees, the Court did not mention any other previously discussed Washington cases. The Court premised its ruling as follows:

> The trial court ordered Denver to return all of the fees, plus prejudgment interest, paid by his investor clients. Denver maintains that the court's order is in error absent a finding of damages and causation. The only Washington case Denver cites for the proposition that the court must find damage and causation before ordering return of fees is *Sherry v. Diercks*, 29 Wn. App. 433, 628 P.2d 1336, *review denied*, 96 Wn.2d 1003 (1981). However, *Diercks* only holds

EXPERIENCED PERSONAL INJURY LAW FIRM
NOW ACCEPTING PROFOUND INJURY CASES
Fee Split Arrangements


Andrew M Chasan
Martindale-Hubbell AV Rated
Past President Idaho Trial Lawyers


Timothy C Walton
Martindale-Hubbell AV Rated
Past President Idaho Trial Lawyers

CHASAN & WALTON, LLC
1459 Tyrell Lane
Boise ID 83706
1 (800) 553-3760
www.chasanwalton.com

that causation and damage must be shown to establish a *legal malpractice* claim against an attorney. 29 Wn. App. at 437-38, 628 P.2d 1336.

The trial court did not decide that Denver committed malpractice. The trial court ruled as a matter of law that, because of the conflict of interest, Denver could not adequately represent both investors and promoters. The malpractice and negligence issues were reserved for phase two of the trial. Thus, Denver's reliance on malpractice cases is misplaced.

The trial court specifically relied on *Woods v. City Nat'l Bank & Trust Co.*, 312 U.S. 262, 61 S. Ct. 493, 85 L. Ed. 820 (1941), and *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir.1950), *cert. denied*, 340 U.S. 831, 71 S. Ct. 37, 95 L. Ed. 610 (1950), in ordering disgorgement. In *Woods* a unanimous Court noted:

> Where [an attorney] was serving more than one master or was subject to conflicting interests, he should be denied compensation. It is no answer to say that fraud or unfairness were not shown to have resulted ....
>
> ... A fiduciary who represents [multiple parties] may not perfect his claim to compensation by insisting that, although he had conflicting interests, he served his several masters equally well .... Only strict adherence to these equitable principles can keep the standard of conduct for fiduciaries "at a level higher than that trodden by the crowd." *See* Mr. Justice Cardozo in *Meinhard v. Salmon*, 249 N.Y. 458, 464; 164 N.E.545 [(1928)].

Woods, 312 U.S. at 268-69, 61 S.Ct. at 497. The general principle that a breach of ethical duties may result in denial or disgorgement of fees is well recognized. S. Gillers & N. Dorsen, *Regulation of Lawyers: Problems of Law and Ethics* 265 (2d ed. 1989); *Ross v. Scannell*, 97 Wash.2d 598, 610, 647 P.2d 1004 (1982) ("[p]rofessional misconduct may be grounds for denying an attorney his fees").

There it is — the rule we now live with. We will see how this rule has been used more recently in the following section.

Potential Applications of Breach of Fiduciary Duty to Defeat Attorney's Fees: My Own Experiences

In my own practice, I have seen this argument used on many occasions as a rationalization by the client to defeat or reduce attorney's fees. One creative lawyer used this argument successfully when the former lawyer, who withdrew because the client had repeatedly failed to make good on promises to pay attorney's fees relating to a purchase and sale, allegedly interfered with the client's ability to obtain another lawyer as a substitute. In that case, the withdrawing lawyer allegedly discouraged a Canadian lawyer who had been associated on the transaction by the withdrawing lawyer from taking over the representation of the client who didn't believe in paying lawyer's fees. In that case, a local trial

From individual claims on behalf of people injured or killed by exposure to smoke from grass-field burning to class action verdicts obtained on behalf of communities of homeowners exposed to contaminated drinking water, these attorneys try an unusually wide range of plaintiff environmental law cases. They're Corrie Yackulic and Adam Berger. And they're about the most potent allies an environmental law plaintiff can have. Their success is a result of their firm grasp of environmental law, honed during years of public interest work, combined with a strong desire to be advocates for injured people.

WE WELCOME YOUR REFERRAL.

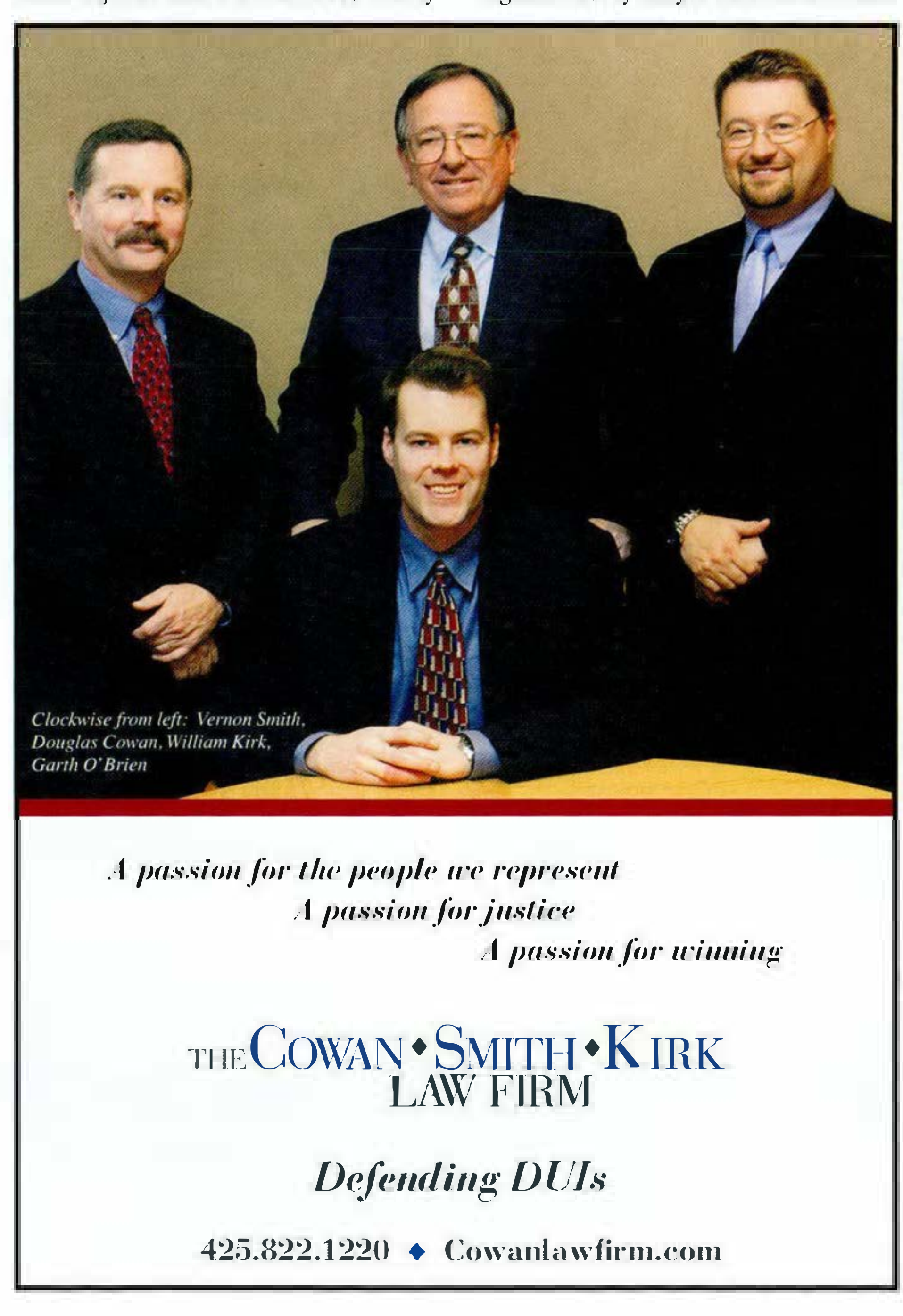
500 Central Building, 810 Third Ave., Seattle, WA 98104 | 206 622 8000, 800 809 2234 | www.sgb-law.com

SCHROETER GOLDMARK & BENDER

Class Actions
Wage & Hour
Consumer Protection
Criminal Defense
Drug Litigation
Employment & Labor
Environmental
Toxic Torts
Medical Malpractice
Product Liability
Serious Personal Injury
Wrongful Death
Serious Vehicle Accidents
Sexual Assault
Social Security

judge forfeited all of the withdrawing attorney's fees.

In my own case, *Taylor v. Shigaki, supra* at n.2, the client who fired his lawyer to defeat the contingency fee unsuccessfully and argued (not terribly articulately) that the lawyers' alleged negligent failures and tactical decisions rose to the level of fiduciary duty breaches. In a case of mine recently decided by Division 1 of the Court of Appeals, my lawyer-client was terminated in his representation after he had fully performed his contingency but the money had not yet been paid. The new lawyer for this brain-injured client contended, wholly unsuccessfully, that my client's representation of a husband and wife created a conflict of interest, that the allowance of the client to execute a durable power of attorney was improper, and that the failure of the lawyer to render "a time and billing statement" in a contingency fee case was a substantial depreciation; all of these were bootstrapped into "breach of fiduciary duty" arguments, solely aimed at a total forfeiture of all fees. The trial court brushed these arguments aside. *See Barrett v. Freise*, 119 Wn. App 823, 82 P.3d 1179 (2004). While the courts won't always buy these fiduciary duty breach arguments, my lawyer client in the latter case needed six years of litigation in order to prevail.



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

Recent Case Examples

In *Simburg, Ketter v. Olshan*, 109 Wn. App. 436, 988 P.2d. 467 (1999), the Court of Appeals reversed a summary judgment for some $102,000 in attorney's fees awarded to a lawyer on an hourly basis. In that case, the defendant client contended that the lawyer had breached fiduciary duties to him by not fully advising him of billing practices, including the hourly rates of various lawyers, a firm policy of a minimum time entry of 3/10 of an hour, and the allegation of changing hourly rates without notice to the client. The court held that there were genuine fact issues underlying the fiduciary duty breach claims, and reversed the summary judgment.

In *Perez. v. Pappas*, 98 Wn.2d 835, 659 P.2d 475 (1983), an attorney obtained a structured settlement. As a result, he should have received a fraction of the stream of payments. However, he renegotiated his fee arrangement to obtain a $350,000 cash fee, and the lawyer never disputed that he failed to give the clients a proper accounting. Later, the clients challenged the actual value of the structure, and hired accountants to value it. As a result of this valuation, Pappas offered to repay the clients $37,500, and they accepted. The clients later were dissatisfied and sued for disgorgement of the fee. The Washington State Supreme Court held that the renegotiation of the fee without full disclosure to the clients and without providing a proper accounting constituted a breach of fiduciary duty. 98 Wn2d at 842. However, the Court declined to forfeit the attorney's fee, as it felt that the repayment of $37,500 was an accord and satisfaction.

Cotton v. Kronenberg

The recent decision in *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002), makes clear how far the courts are willing to go in fee forfeitures where egregious facts are presented. *Cotton* dealt with an attorney's representation of a client in a criminal case. In refusing to enforce the attorney fee agreement and ordering disgorgement of all of the lawyer's fees, Judge Armstrong in King County determined that the attorney had committed serious ethical breaches, including keeping a

retainer where the lawyer was forced to withdraw as a result of his own misconduct, renegotiating his attorney's fee without advising the client to get independent counsel, and taking a deed to real property as security for his fee and thereafter selling the property improperly. One needs only to read this opinion to see the kind of attorney actions, when added cumulatively, and considered against the backdrop that the client gets the benefit of every doubt, will result in the total loss of fees.

Conclusions

Breach of fiduciary duty arguments today add to the client's quiver of arrows, a weapon that is the equivalent of a smart bomb, which burrows through the layers of hard work, skill, and tenacity to get to the soft underbelly of attorneys' fees. While many of the typically advanced fiduciary breach arguments border on the absurd or the comical, in my experience, they raise the risk level to lawyers enormously. As mentioned above, this fiduciary breach argument is often used as a means of extorting fee concessions from a terminated lawyer or at the end of an engagement. Unfortunately, there are those who are prepared to use this weapon where it has no application. In this client-friendly climate in which we find ourselves, breach of fiduciary duty will always get my attention. Hard-nosed tactics with clients, such as using liens improperly, as in *Ross v. Scannell*, will result in disaster. Ignoring obvious conflicts, as in *Eriks v. Denver*, will be dealt with harshly. Taking fees clearly not earned, or renegotiating fees with clients after the work is complete, is the kind of bad business that can end up costing you fees. Forewarned is forearmed!

Michael Caryl, who joined the WSBA in 1977, is a member of the Seattle firm Mikkelborg, Broz, Wells and Fryer PLLC. You can contact him at mcaryl@mbwf.com.

NOTES

[1] For instance, in *Callahan v. Jones*, 200 Wash. 241, 93 P.2d 326 (1939), the Washington State Supreme Court forfeited the attorney's fee allegedly earned by a lawyer who, while acting as a county prosecutor on theft cases, brought civil actions on behalf of the victims to recover stolen shares of stock. The Court relied on the fact that a Washington statute forbade prosecutors from receiving fees in connection with civil actins for any party in criminal proceedings arising under the same facts. The Court did not even mention fiduciary duties: rather the decision went off on the illegality of the prosecutor seeking to work related civil actions for attorney's fees while employed as a prosecuting attorney.

[2] *Ross v. Scannell* is the legal starting point in any dispute over whether an attorney is entitled to a contingency fee when the client terminates his or her services. As such, it is the precursor to *Barr v. Day*, 124 Wn.2d 318, 979 P.2d 912 (1994), and *Taylor v. Shigaki*, 84 Wn. App. 723, 930 P.2d 340 (1997), which announced the substantial performance exception to the *quantum meruit* rule in the case of termination before the full contingency has been performed.

[3] The Court stated: "Thus the evil the rules were designed to prevent actually came about in this case. Denver could not advise his clients as to an appropriate course of action. His inability to properly advise his clients violated Denver's duty of loyalty to those clients. Model Rules of Professional Conduct, RPC 1.7 comment, at 73 (1984). Both the investor and promoter clients were forced to obtain new counsel, with all the resulting hardships and expenses such actions inevitably entail." 118 Wn.2d at 460.

Patents
Trademarks
Copyrights
Technology Transfer
Litigation

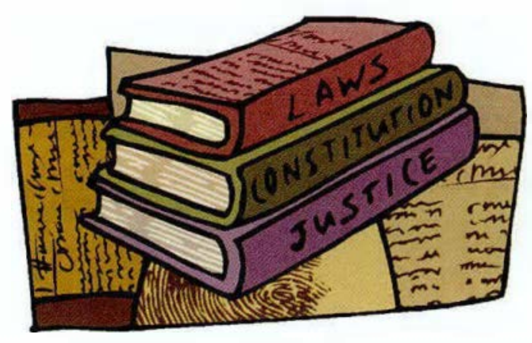
Invent. Patent. Profit.™

BLACK LOWE & GRAHAM PLLC
Intellectual Property Attorneys

701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301
blacklaw.com

Five Years of Progress:

Reinventing the Republic with the Council on Public Legal Education



BY JUDGE MARLIN APPELWICK AND JUDITH BILLINGS, CPLE CO-CHAIRS

Jay Leno asks people on the street simple civics questions and gets ridiculous answers. While these clueless answers entertain us, they highlight a tragic ignorance in this country. National test scores show this is more than anecdotal: In the 1998 National Assessment of Educational Progress, one-third of fourth-, eighth-, and twelfth-grade students could not demonstrate even a basic understanding of civics at their grade level.

This crisis in public legal education is a risk to our nation and our state. Five years ago, the Council on Public Legal Education and the Washington State Bar Association began working together to tackle this crisis. What is being done and why is it important? Read on.

What is public legal education?

Public legal education is not just education about the court system. Rather, it is the broadest awareness about the law. It encompasses constitutional rights and responsibilities. It encompasses statutes, regulations, and court rules. It encompasses how we resolve disputes, formally and informally. It encompasses civility, respect, and concern for others. It is about fairness and justice.

That is the description of public legal education given in the final report of the Public Legal Education Workgroup in 1999. This workgroup of nearly 60 lawyers, judges, educators, journalists, and community representatives was formed on recommendation from the Access to Justice Conference to "develop, oversee, and coordinate a law-related education vision for Washington state."

Why is public legal education important?

Lawyers take for granted the rule of law, the structure of our constitutional democracy, and the role of lawyers and courts in American life. Nonlawyers, however, may not understand, let alone agree with or support, basic concepts lawyers take for granted.

The truths that the Declaration of Independence deems self-evident are not so self-evident to the average person. This puts us all at risk.

> "A constitutional democracy, such as the United States of America, requires informed, effective, and responsible citizens for its maintenance and improvement. If the polity is to survive and thrive, citizens must have an adequate knowledge of its principles and institutions, skills in applying this knowledge to civic life, and dispositions that incline them to protect individual rights and promote the common good." (Civics Framework for the 1998 National Assessment of Educational Progress, p. viii). **Accordingly, each generation must reinvent the Republic for itself, internalizing and taking as its own the fundamental principles, values, and dispositions that undergird the American constitutional system.** Because the American system is a constitutional (i.e., law-based) democracy, understanding the nature of law and its role in society — past and present — is an essential part of that process.
>
> — Strategic Plan of the Division for Public Education, ABA (emphasis added).

It encompasses constitutional rights and responsibilities. It encompasses statutes, regulations, and court rules. It encompasses how we resolve disputes, formally and informally. It encompasses civility, respect, and concern for others. It is about fairness and justice.

Imagine the consequences of ignorance of or indifference to such things as the absence of Miranda warnings; the suppression of free speech; no appointed counsel for indigent persons charged with crimes; no access to civil legal assistance for the poor; rampant discrimination; refusing jury service; and no second thought to committing consumer fraud, petty theft, or domestic violence. Although it seems unthinkable, it is not impossible, perhaps not even improbable. Understanding of the rule of law and respect for the law are essential for a safe, orderly, and peaceful society.

What is the Council on Public Legal Education?

The top recommendation of the 1999 Public Legal Education Workgroup was that an entity be formed to promote, coordinate, and conduct public legal education in Washington state. Thus, the Council on Public Legal Education was formed, and began to meet regularly five years ago this month — in January 2000. Initially a semi-independent entity housed at the WSBA, the CPLE recently became a standing committee of the Access to Justice Board (also housed at the WSBA), where the whole idea was first conceived.

The CPLE is composed of volunteer representatives from the bar, the courts, the schools (K-12 and higher), the media, the general public, and specific organizations such as the Attorney General's Office and the Office of the Superintendent for Public Instruction. Its mission is to promote public understanding of the law and civic rights and responsibilities, which it pursues by conducting, coordinating, encouraging, and publicizing public legal education efforts in Washington state.

Despite being a volunteer-based organization, the CPLE cannot operate without some minimal infrastructure (staffing, facilities, and operating expenses), which is largely provided by the WSBA. Individual projects have been supported by a range of partners, including the Washington Judges Foundation, the University of Washington, the Washington State Legislature, the Administrative Office of the Courts, the U.S. Department of Justice, and the Paul G. Allen Charitable Foundation. TVW has been a valuable partner by broadcasting CPLE meetings and events, including a youth court conference, a symposium on patriotism and the law, and annual forums held at the state Access to Justice/Bar Leaders Conference.

A sampling of the CPLE's projects and initiatives follows.

Civics in public education

Changing public education is the only true chance we have of addressing the major deficiencies in civic education and awareness. Recent school reform has emphasized teaching and evaluating the "basic" subjects of reading, writing, math, and science, which leads educators to teach to the Washington Assessment of Student Learning

(WASL). Unfortunately, "non-basic" areas, including civics education (where law and government are usually taught), get relegated to the back seat. The CPLE has joined with the Washington State Council for Social Studies and other concerned groups to work with the Office of the Superintendent of Public Instruction to re-emphasize civics. In last year's legislative session, our combined efforts gained passage of 3ESHB 2195, which directed the Superintendent of Public Instruction to prepare a plan for implementing classroom-based assessment of civics. This was an important first step in regaining a civics toehold.

In addition, the CPLE has presented many teacher workshops at conferences of the Washington State Council for Social Studies; launched *Democratic Life*, an electronic newsletter for teachers interested in democratic citizenship education; encouraged civics preparation as part of teacher training in collegiate schools of education; and provided a platform for access to civics curriculum materials and general civics information on the lawforwa website (www.lawforwa.org). Many CPLE members have also taken the discussion of public legal education to the media, including Julia Gold, a Fulbright Scholar from the University of Washington School of Law, and Justice Faith Ireland of the Washington State Supreme Court.

The lawforwa website

One of the prime objectives of the CPLE is to provide ready access to information about the law, government, and civic involvement to all the people of Washington, especially in areas where libraries and other educational resources are scarce. While a great deal of this information is available on the web, most people are not aware of it or cannot locate it. The typical web search engine will retrieve large volumes of reference material; most people will

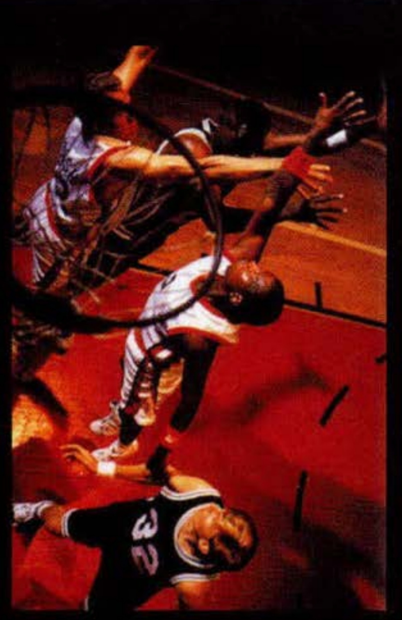
ETHICS ADVICE
DISCIPLINARY DEFENSE

Mark J. Fucile
mjfucile@stoel.com
503.294.9501
www.stoel.com

Washington
Oregon
Idaho

Lawyers help clients
avoid liabilities,
but who's helping you?

A winning team is strong on both ends of the court.



WE'VE ADDED
TO OUR TEAM!

Peter Eglick, Jane Kiker, and Josh Whited have joined Gordon, Thomas, Honeywell's Land Use and Environmental Group. Based in our Seattle office, they will continue their practice of land use, environmental, and real property law to better serve clients throughout Washington.

SEATTLE (206) 676-7500 TACOMA (253) 620-6500 1 (800) 240-5051 WWW.GTH-LAW.COM

lack either the ability or the patience to sort through this volume of entries to find what they need. To address this problem the CPLE has built the lawforwa website, which will help the public find specific information on the law, government, and civics. It also provides tools and information specifically for journalists and teachers.

The website is now open to the public, and will be expanded, refined, and evaluated during its first year of operation. Please take a look and help spread the word about this exciting new project. The website was built with funding from the Paul G. Allen Charitable Foundation and a partnership with the University of Washington's Program for Education Transformation Through Technology, which developed the technology that powers it. Current support is being provided by the Bill and Melinda Gates Foundation.

Youth courts

Youth courts are an alternative to traditional methods of juvenile justice. In youth courts, youth "juries" determine consequences for their peers who have admitted responsibility for minor crimes, traffic infractions, or school rule violations. Both offenders and volunteers in youth courts learn valuable lessons about restorative justice, rights and responsibilities, and how the legal system works first-hand. Working in partnership with the Washington Judges Foundation, the U.S. Department of Justice, and other organizations, the CPLE has helped to create several new

Youth courts are an alternative to traditional methods of juvenile justice. In youth courts, youth "juries" determine consequences for their peers who have admitted responsibility for minor crimes . . . .

youth courts in Washington and helped existing ones to improve and expand. In 2002 the CPLE lobbied for the passage of state legislation that makes it easier for new youth courts to be created by clarifying how they must operate.

The CPLE's youth-court efforts are led by member Margaret Fisher, an attorney and nationally recognized expert in law-related education for young people. Fisher was recently awarded the prestigious Isidore Starr Award by the American Bar Association for her work on youth courts, Street Law, and other programs. The award is named after "the father of law-related education," who — coincidentally — is also a member of the CPLE.

Street Law

Street Law is a curriculum to teach high school students about the law. The University of Washington and Seattle University law schools supply high schools in Seattle and Tacoma with law students to help teach the curriculum. Through a partnership with the Washington Judges Foundation (WJF), the CPLE is expanding Street Law throughout the state by supplying interested teachers with textbooks and a judge to serve as a subject matter resource. The CPLE successfully piloted the program at La Conner High School and expanded it to four more schools in 2004. Funding permitting, the WJF is committed to adding four new schools yearly for the next five years.

Law School for Legislators

New legislators do not necessarily have

8 ~~Myths~~ Truths About Lawyers

Help us stamp out some of those myths about lawyers! The 8 ~~Myths~~ Truths About Lawyers brochure, developed by the Proud to Be a Lawyer Task Force, is available for purchase. Think about displaying the brochures in your reception area, or enclosing them with your invoices. The brochure tackles the following myths:

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

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

8 ~~Myths~~ Truths About Lawyers

☐ Yes! I would like _____ packets @ $35 per packet (100)

$ ____________

If in Washington, please add WA state sales tax @8.8%

$ ____________

Total $ ____________

☐ Check enclosed (payable to WSBA) ☐ MasterCard ☐ Visa

Credit Card No. ______________________ Exp. date ________

Name as it appears on card

____

Signature ______________________________

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

Please send to:
Order Fulfillment, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330

Name ______________________________

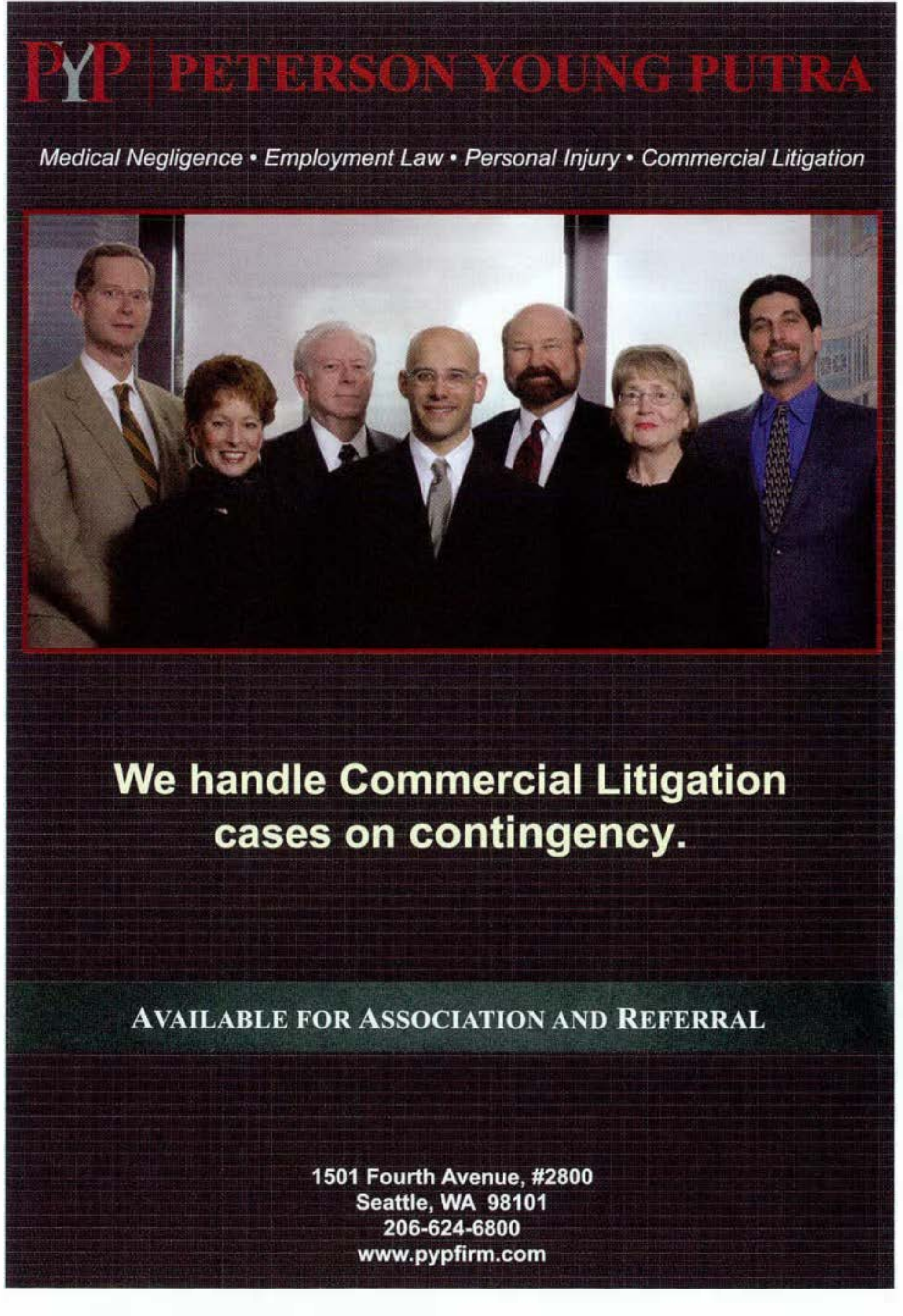
Address ______________________________

City __________________ State ______ ZIP ______

a background in law, and few attorneys currently serve in the Legislature. In partnership with the Washington State Legislature, the CPLE organizes a Law School for Legislators workshop at the start of each biennium. The program focuses on important concepts like separation of powers, judicial independence, statutory interpretation, and the role of the state constitution.

The Flame of Democracy Award

The Flame of Democracy Award is given annually to one or more individuals or organizations that has made a substantial contribution to educating the people of Washington about the law and government. The CPLE bestowed the first award posthumously to Richard "Dick" Larsen in 2002 for his long-time contributions as writer with *The Seattle Times*, his work as an author, and his service as a founding member of the CPLE. In 2004, the award was given to the Northwest Justice Project for its self-help website for *pro ses* and to the Yakima County Prosecuting Attorney's Office for its school outreach program.



Community Resource Directory and Legal Information Resource Kit

The CPLE has compiled a Community Resource Directory, which is a guide to non-web based information for the public on the law and government including brochures, videos, speakers' bureaus, workshops, and the like. The directory will be distributed to libraries, social-service agencies, community centers, and other groups serving the public, and will also be available and regularly updated on the lawforwa web site.

Out of this directory the CPLE created a Legal Information Resource Kit, containing brochures on a variety of legal topics from organizations such as the Office of the Attorney General, the League of Women Voters, and the American Civil Liberties Union. The kit will be provided to organizations that are interested in ordering some or all of the brochures to distribute to the public.

A closing thought

This article highlights the activities of the CPLE over the past five years. The CPLE is committed to increasing access to justice in Washington by providing access to information and public legal education for all. In doing so, the CPLE is attempting to engage the public in discussing and understanding the fundamental principles, values, and dispositions that undergird the American Constitutional system so this generation will claim them as their own and reinvent the Republic for itself.

The CPLE is proud of its partnership with the Washington State Bar Association and grateful to its leadership for five years of support. We hope you, as members of the WSBA, are also proud of what we have accomplished. Together, we are beginning to meet a great public need.

Hon. Marlin Appelwick serves on the state Court of Appeals. Judith Billings is a former state superintendent of public instruction. E-mail to the Council on Public Legal Education may be sent to cple@wsba.org.

Working and Improving GR 31

BY WALT KRUEGER

Over the years my practice has evolved from general practice — including dissolution, torts, estate planning, probate, and trusts — to one focused on estate planning, probate, and trusts. A user of computers since 1985, and former chair of the WSBA Court Rules and Procedures Committee and Electronic Communications Committee, I have enjoyed the increasing efficiencies and access to information that technology provides and have experience in rule adoption and amendment — i.e., correction and fine tuning.

Like many of you, after exposure to the Internet, with its ready availability of personal information, and an awareness of identity thieves and other nefarious predators, I have gradually reduced the detailed information of clients, estates, and beneficiaries in court filings. Each attorney has the duty to evaluate and protect the privacy of participants in the court record.

For example, for the court to enter an order finding the estate solvent and granting nonintervention powers, the court needs to know only that assets exceed liabilities and costs of administration, not the full value of the estate. The written numbers are driven more by the amount of liabilities and costs of administration than by the gross value of the estate. In a solvent estate, the disclosure may be as opaque as "assets exceed $75,000 and liabilities and costs of administration should be less than $20,000." I once heard a court commissioner in King County read from a petition that the estate was $10,000,000. I don't know if the attorney was acting out of ignorance or braggadocio, but the disclosure did not protect the privacy of the decedent or of the beneficiaries and could subject them to action by financial predators.

Documents filed in court have always been available to the crooks in our society as well as more legitimate business persons; it just takes a trip to the courthouse or to the recorder's office. Given the number of mailings I receive on behalf of estates from real estate professionals and buyers of notes, many people do take the time to review the probate filings (or they get them from the publication of the notice to creditors). A motivated con will not mind spending some time looking through the records, so it is incumbent on us to minimize the information available while meeting our obligations to the court, our clients, and the beneficiaries.

So now we have General Rule 31, which gives us guidance on how to protect the privacy of those we serve. In the past many of us out of a sense of tradition and completeness, and without much thought, loaded our documents with information, often exact and detailed, but unnecessary for the judge's decision. GR 31 instructs us in the use of Social Security numbers, names of minor children, financial account numbers, and driver's license numbers. Yes, it raises a number of questions and causes a certain amount of gnashing of teeth, as all change does, but this is needed change in court practices to meet a technologically changing world. We will reason through this thicket and better protect the privacy of participants. Of course, there is a special incentive in getting the answers right — for the opposing party may move the court to order redaction, and reasonable expenses may be awarded the prevailing party. GR 31(e)(2).

GR 31(e)(1) states: "Except as otherwise provided in GR 22 [Access to Family Law Records], parties shall not include, and if present shall redact *[sic]*, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court."

The questions all of us practitioners are asking ourselves are these: How does this rule affect the way I normally practice? When is the exception to the rule "necessary or otherwise ordered by the Court"? Are there any other exceptions?

In probate filings, I do not file any documents containing Social Security numbers, but if I did, the rules tells me to use only the last four digits of the number. I have heard that some attorneys place the decedent's Social Security number in the Notice to Creditors. This practice should stop immediately. We give the statutorily required notice to the Department of Social and Health Services and to the Department of Revenue in a cover letter

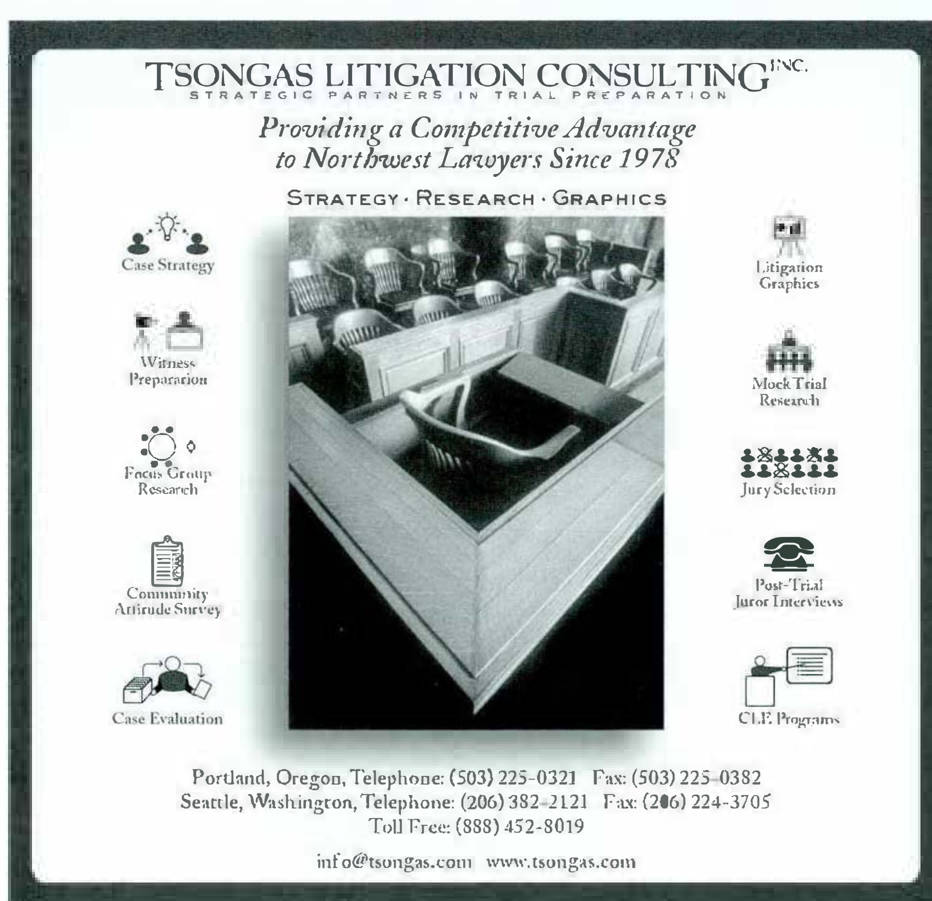
Mediation Arbitration

Construction & Real Estate Disputes
Business Divorces

Sherman L. Knight

- 17 years Practicing Construction, Real Estate and Business Law
- Licensed Architect
- Former Manager, Construction Company
- Former Quality Control Manager, Concrete Pre-cast Company
- Former Surveyor and Construction Administrator for the Washington State Department of Transportation

If you need additional information log on to
SLKNIGHTLAW.COM
or contact Mr. Knight at **425.576.4028**



stating the decedent's Social Security number and enclosing either the Notice to Creditors or the Notice of Tendency of Probate.

If we are required to file an accounting with the court, then either we should not use financial account numbers, or, if they are "relevant," then we must recite only the last four digits. In blocked accounts, the receipt typically lists the full account number. In the future I intend to list the name of the bank and the last four digits of the account, but will check with the bank beforehand to learn if there will be problems honoring orders of withdrawal from the account. In the guardianship area, the account numbers should be blacked out on bank statements filed with the annual accounting. If you file disclaimers of bank or brokerage accounts, redact the account numbers on the copy filed with the court, but keep the full number on the copy in your file.

I never have occasion to list driver's license numbers, but they are forbidden "unless necessary or otherwise ordered by the court." They may be necessary for a traffic citation, but most of us will not be affected by this portion of the rule.

The section on children, however, will give us some pause and mental machinations. GR 31(e)(1)(B) states: "If the involvement of a minor child must be mentioned, only that child's initials shall be used, unless otherwise necessary." Many estates have minor beneficiaries and we identify them by name, age, relationship to the decedent, and address in the application for probate of a will or a petition for administration. The affidavit of mailings in a probate are addressed to all beneficiaries, including minors. Do I now use initials only for minors? Or are the names permitted under the "unless necessary or otherwise ordered by the Court" language of GR 31, or otherwise permitted by statute? Must I redact the minor's name from the will? RCW 11.28.110 requires a petition for letters of administration or adjudication of intestacy and heirship without the issuance of letters of administration to set forth, among other information, "the names, ages and addresses of the heirs of the deceased." RCW 11.28.237(1) requires the Notice of Appointment to be mailed within 20 days of appoint-

ment of the personal representative and "proof of such mailing or service shall be made by affidavit and filed in the cause." Analyzed under the terms of GR 31, the use of the name of the minor is necessary because it is required by statute in the petition. Practically, I don't believe we could ensure notice for due process purposes under the statute if we were to use only initials.

In drafting wills, adequate description of beneficiaries is most important. The original will must be filed according to RCW 11.20.010. We don't even unstaple wills for copying so that the court can see the unmodified original. I doubt a court will require a minor's name be replaced in a will with his or her initials. The minor's name is necessary under GR 31.

In reference to children, GR 31 causes more gnashing of teeth in other practice areas. Effective November 5, 2004, King County adopted new local rule LGR 31, which addresses some of the need for clarification. See the rule for the specifics: http://www.metrokc.gov/kcscc/gr31.htm. The general headings are "Complete names of children, sealed case type"; "Confidential information form"; "Domestic-relations orders"; "Child who is alleged to be a victim of a crime"; "Child who is charged with a crime"; "Orders issued for the protection of a child"; "Orders restraining child from contacting or harassing others"; and "General authority."

Despite the many avenues for public input, in the case of GR 31 going back to 1999, we often pay attention only when the rule goes into effect and then complain in surprise. This rule is scheduled to be reviewed by the Supreme Court on October 6, 2005. No rule is perfect, including GR 31. In practice we will learn its strengths and weaknesses, and we will inform the court and others of our experiences (especially the bad ones) and our suggestions for improvement. If you wish to shed some light on the rule, you may write to Chief Justice Gerry Alexander with copies to the WSBA Rules and Procedures Committee and your local WSBA governor.

In addition to the practice issues, there is a basic philosophical debate between the concepts of practical privacy of paper records and of open records for transparency in judicial decision making. GR 31 permits equal access to paper and electronic records. For years the principle of open court records went unquestioned as a way to ensure that our judges based their decisions on the facts of the case and not on Chicago-style payoffs, but you had get to the courthouse to access the records. As we move into the era of electronically accessible court records, my friends for whom privacy is of paramount interest are locked in battle with my friends who believe the public will be better able to monitor the judiciary with access to records over the Internet. Section 7 of the Washington Constitution states: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Section 10 states: "Justice in all cases shall be administered openly, and without unnecessary delay." GR 31 threads the needle in attempting to protect privacy, but maintains open records, extending the status quo to electronic access.

Although I stand with my friends, being from a small town and growing up unaware of practical privacy, because it seemed that everyone in town knew about everyone else, I think greater

(800) 905-4676
Toll free
(360) 696-3437
Vancouver
(503) 222-6333
Portland (Main Office)
(541) 382-2032
Bend
Available For Referral and Association
www.damorelaw.com
e-mail: tom@damorelaw.com
Convenient Meeting Locations — Evening, Weekend and Home Visits
110 Columbia Street, Vancouver, WA 98660
506 S.W. 6th Avenue, Suite 700, Portland, OR 97204
377 SW Century Drive, Suite 201, Bend, OR 97702

access to the court records may keep people more honest. In McLuhanesque terms, we may be creating the more honest global village — or not.

My friends in the family law bar are upset with the rule because they experience the overstated claims and flammable allegations in dissolution affidavits, and are concerned that neighbors and children will gain access to these nuclear issues. Despite the fact that court cases will not be "Googleable" and that most clerks will charge for access, which should discourage access by children, family law practitioners want dissolution cases to be accessible only at the courthouse. Yet I suspect the number of cases in which such affidavits are involved is a small proportion of all dissolution cases. If a practitioner knows ballistic affidavits will be filed in a case, he or she should move to seal the file. My friends complain that court commissioners and judges are reluctant to seal the files. GR 15(c)(2)(B) authorizes the sealing of records "under compelling circumstances where justice so requires." Commissioners and judges in dissolutions should consider whether such affidavits should be sealed in the best interests of the children, certainly compelling circumstances where justice so requires.

In rulemaking and in legislating, there is a tendency for courts and the Legislature to address the exceptional and infrequent, and ignore the 99.9 percent of matters that flow through the courts with no problems. Such rules, especially in the guardianship field, increase the cost for all similar matters. The family law practitioners make the same mistake when they seek to exempt all dissolution cases from the rule and require access only at the courthouse, rather than seek to seal the records of the minority of cases. The WSBA Family Law Section now seeks legislation to exempt dissolution cases from GR 31.

There is a delicate balance in the separation of powers between the Legislature and the courts. According to Robert F. Utter and Hugh D. Spitzer, "The Legislature originally was active in court rulemaking, but the state supreme court has gradually exerted almost complete control over the judicial rules in Washington . . . ."[1] Having seen the State Bar of California practically destroyed by the California Legislature several years ago, I believe the Family Law Section is shortsighted in seeking to raise this issue in the Legislature. If you dislike rules promulgated by judges, after substantial attorney input, think how you will like rules established by the 99 percent attorney-free Legislature. Like Icarus, beware of what you seek.

Let us all work with the rule for the next year and make our recommendations for change based on actual experience. GR 31 is good for privacy and for open functioning of the courts.

Walt Krueger is a Kirkland estate-planning attorney in private practice. He is a member of the Real Property, Probate and Trust Section and the Elder Law Section of the WSBA, and serves on estate-planning-related sections of the American Bar Association, the King County Bar Association, and the East King County Bar Association. He can be reached at walt_krueger@msn.com.

NOTE

[1] *The Washington State Constitution: A Reference Guide* (Greenwood Press, 2002), at 111.

Those Troublesome Twins

By Robert C. Cumbow

Last time I promised to address a topic that many readers have been requesting for some time: how to know which word to use when two (or more) words sound and look a lot alike. Unfortunately, there's no easy way of keeping these things straight except simply knowing them. But my hope is that by running a few of them past you I can give you some tools that might help straighten out some of the confusion.

When I call these "Troublesome Twins," we're not talking identical twins here. Fraternal at best. These words don't look exactly alike — if they did, it wouldn't matter which one you chose! These are words that look and sound close enough to make you think twice — and sometimes absolutely confound you just when you want your writing to be the best and the clearest it can be.

I've tried to include the sets of twins that readers have most expressed interest in hearing about, as well as the ones that seem to be the most commonly confused. But there are *lots* of these sinister siblings, and if I haven't included the ones that trouble you the most, let me know, and I'll put them in line for a future column.

principal/principle — "Principle" is always a noun, while "principal" may be a noun or an adjective. The noun "principle" means a belief, or a fundamental truth. *It is a well-established principle that one needs to show harm in order to be entitled to a remedy.* The word "principal" is harder. To begin with, it is an adjective meaning "first" or "primary." *The plaintiff's principal argument on appeal is that the court wrongly excluded key evidence.* However, the word "principal" also functions as a noun when used as a short form for "principal officer": *I am a principal in the law firm of Coates & Buttons, LLC, and my husband is the principal of a middle school.* We are also familiar with the use of "principal" as a noun in finance, where it is a shortened form for "principal amount": *Mortgage payments consist mostly of interest, with only a small amount credited toward payment of the principal.*

capital/capitol — This one is tricky, but by remembering that "principal," ending in "-al," is originally an adjective, and used as a noun only when it is a shortened form of a phrase, we can apply the same principle to "capital." The "capital" is the *place* where a seat of government is located, and is a shortened form of the phrase "capital city," in which "capital" is an adjective. The "capitol," by contrast, is the actual building that houses it. *The Capitol is in Washington, DC, which is the capital of the United States.* Here again, of course, we have a special usage for the world of finance, where the noun "capital" means money, equipment or property used in a business, and is also used as an adjective in such constructions as "capital asset" and "capital gains." Big letters are capital letters. A great guy in the UK is a capital chap. So the "capital/capitol" rule turns out to be quite simple: It's always "capital" unless you're talking about a building.

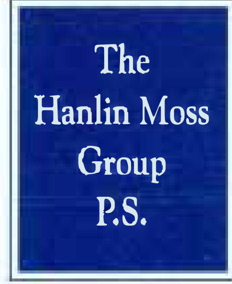
What Is Your Client's Business Worth?

QUALIFYING THE ANSWER IS CRITICAL.

IN TODAY'S CLIMATE, YOU MUST HAVE CURRENT, ACCURATE AND RELIABLE VALUATION INFORMATION AVAILABLE TO YOU AT A MOMENT'S NOTICE. SALES, SUCCESSION, ACQUISITION, BUY-SELL AGREEMENTS, DIVORCE, ESTATE PLANNING, IMPAIRMENT OF GOODWILL.

THE **IRS** —

THESE ARE REASONS WHY A THOROUGH, QUALIFIED VALUATION THAT CAN WITHSTAND CHALLENGES MAKES SENSE.



EXPERT WITNESSES

CERTIFIED PUBLIC ACCOUNTANTS ◆ VALUATION ANALYSTS

MEMBER: NATIONAL ASSOCIATION OF CERTIFIED VALUATION ANALYSTS

1411 Fourth Avenue ◆ Suite 410 ◆ Seattle, Washington 98101

(206) 623-3200 ◆ Fax (206) 623-3222

www.hanlinmoss.com

affect/effect — This is one of the most requested sets of troublesome twins, and rightly so, because each of the two words can be a noun or a verb, and each has multiple meanings. More commonly used as a verb, "affect" means to touch, relate to, or have an impact on. *I was deeply affected by the film's closing shot.* Another meaning of the verb "affect" is to imitate, pretend, or play at: *He was down and out and badly needed the role, but he affected the air of an accomplished, busy actor who was already in high demand.* The word "effect" is less often used as a verb. When it is, it means to cause: *The Supreme Court's ruling in the Victoria's Secret case effected a reexamination of the very concept of trademark dilution.* More often, though, "effect" is used as a noun, meaning result, as in the phrase "cause and effect." It's hard to keep these straight because their meanings, though distinct, are often related. "Affect" means to have an "effect" on, while "effect" as a verb means "to cause," and "effect" as a noun means the *result* of a cause. To make matters worse, "affect" is also (though seldom) used as a noun, to mean a psychological stimulus that tends to arouse emotion rather than thought or perception. Thus we may speak of the patient who laughed at images of cruelty as having an inappropriate affect, but of the psychiatrist's treatment of the patient as having had the desired effect. One is a disposition, the other a result.

imply/infer — This distinction is simple and straightforward: The speaker implies, the listener infers. Despite that simplicity, however, judges and lawyers

have gotten it exactly backward for so many years now that the battle to preserve this important distinction has been lost — at least in the language of law. When the conduct of a party suggests that the party intended to enter into a contract or to grant a license, we call that an "implied" contract or license. Sometimes a plaintiff will ask a court to find that the defendant's conduct created such an implied contract or license. Invariably, when the court does so, we find the judge writing that the court "implies" the license. Not so. The court is inferring the license. The licensor is the one who did the implying. But I think there is little hope that judges and lawyers will ever get this one right.

reluctant/reticent — These words aren't really close enough in sound or meaning to be twins, but many people have somehow got the wrong-headed notion that they are synonymous. "Reticent" means quiet or silent. A person who doesn't contribute to the conversation around her is reticent. A politician who says "No comment" is reticent. A person who is not very eager to do something is not reticent; he's reluctant. The witness wasn't "reticent to testify"; he was "reluctant to testify"; and if he was also reticent, then he wasn't of much use as a witness.

loath/loathe — While a person who is hesitant to do something might not be reticent, she may well be loath. "Loath" is an adjective meaning reluctant, hesitant, or unwilling. *I was loath to venture out into the pouring rain without hat or umbrella.* A lot of writers lately have tended to misspell this adjective "loathe," which is incorrect. "Loathe" is a verb meaning to hate. *Although I loathe his simple-minded approach, I am loath to reject his conclusions.*

incredible/incredulous — "Incredible" means "unbelievable" (probably the word Vizzini was looking for when he kept saying "inconceivable!"). "Incredulous" means "unbelieving." The thing itself is incredible; the person perceiving the thing is incredulous. What that guy does on a surfboard is incredible. I was incredulous at how easy he made it look.

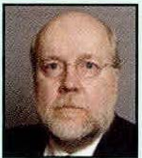
compliment/complement — A "compliment" is something nice, usually a positive, encouraging comment. A "complement" is something that accompanies another thing, usually so well as to make the combination especially effective. *I want to compliment you on how well that hat complements your dress.* Freebies are called "complimentary," or "comps," because they are given without charge, "compliments of" the giver. Since no real compliments usually accompany the free ticket, the freebie itself is now assumed to be the "comp."

flaunt/flout — To "flaunt" something is to display it ostentatiously. To "flout" is to openly disregard. A jaywalker might be said to flout the law, but to flaunt his contempt for the law. These days one frequently sees the improper construction "flaunt the law" where "flout" is meant.

enormity/enormousness — It's also become common to hear "enormity" used to express large size. If you just want a noun for the quality of being enormous, that would be the cumbersome but correct word "enormousness." The word "enormity" carries a negative connotation, and is used where a particular act is especially egregious and has dire consequences. It's correct to speak of the enormity of a serial killer's crimes, but not the enormity of a building or a

Lost Heirs
Missing & Unknown Heirs Located Worldwide
Since 1983
Fees To Suit
Josh Butler & Company, Inc.
1 (800) 567-8434
www.lostheir.com
"You will be satisfied or we are owed nothing. Period. No fine print."

Visit our website
maritimeinjury.com
injuryatsea.com
INJURY AT SEA
call us to discuss your case
1-800-SEA SALT
1-800-732-7258
A LAW FIRM REPRESENTING MARINE INJURY CLIENTS EXCLUSIVELY
NATIONAL AND INTERNATIONAL


Tom Evans
State/Fed Court

George Knowles
State/Fed Court

Eric Dickman
WA, OR, AK, NY

Eric Visser EU/ASIA
(not admitted in United States)

REFERRALS AND ASSOCIATIONS WELCOME
No-obligation initial consultation — lawyers or client
Sample: Tampa, Florida—deckhand, barge, left hand lacerations, settlement: $550,000

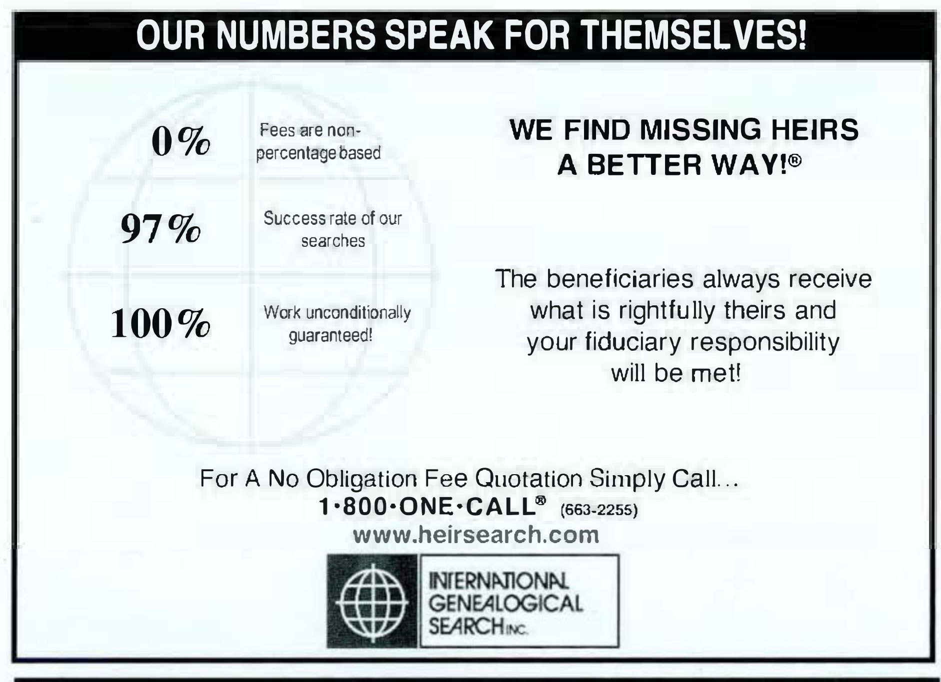
traffic jam.

disburse/disperse — "Disburse" means, literally, to take out of one's purse; so metaphorically it means to pay. "Disperse" means to spread out, or to trickle away. A funding source disburses funds; a crowd, when it thins out, disperses. Technically speaking, the only thing that can be disbursed is money; and it's not correct to speak of dispersing funds, unless you are literally throwing dollar bills every which way. If you're doing that, hey! I'm over here!

diffuse/defuse — The word "diffuse" means the same thing as "disperse." It should not be confused with "defuse," which means to remove the fuse from an explosive device, and is used metaphorically to mean easing a tense situation. *Fred and Gloria were in such disagreement that the deal might have fallen through if Leroy hadn't defused the situation through skillful mediation.*

pedal/peddle — This is an easy one, but a surprising number of people confuse these terms. A pedal (from "ped" for "foot") is where you put your foot when riding a bicycle or playing a piano. "Peddle" is a verb meaning to sell.

compose/comprise — This one's a little esoteric, but the rule is fairly simple. Whenever you're tempted to say or write "comprised of," a pistol shot should go off beside your ear. The whole *comprises* the parts; the parts *compose* the whole. So it's correct to say that the book is composed of three parts, or that it comprises three parts, but not that it "is comprised of" (bang!) three parts.



discrete/discreet — If you are exercising discretion or diplomacy, or simply keeping something on the q.t., the spelling is "discreet." *The investigator made discreet inquiries.* If you are talking of something that is separate from something else, the spelling is "discrete." *My surround-sound system has five discrete audio channels.*

your/you're — "Your" is possessive. *Don't forget your book.* "You're" is the contracted form of "you are." *You're welcome.*

its/it's — This is a golden oldie from my first column, nearly two years ago. "Its" is possessive. *The dog was chasing its tail.* "It's" is the contracted form of "it is." *It's so easy to fall in love.*

gantlet/gauntlet — Another one from way back. One is punished or tested by running the gantlet (a line of brutes with paddles); but one challenges a foe to combat by throwing down the gauntlet (an armored glove). In many dictionaries, the single spelling "gauntlet" is accepted for both words, and there may be no good reason to preserve the distinction any longer, considering that writers of English have been puzzling about the spellings and meanings of these two terms for at least five centuries.

stanch/staunch — Related to "gantlet" and "gauntlet," another exercise in what a difference a "u" makes. The word "stanch" is a verb meaning to stop the flow, usually of blood. "Staunch" is an adjective meaning strong, committed, loyal: *I am a staunch supporter of preserving useful and important distinctions in English usage.*

apprise/appraise — "Apprise" means to advise or report to someone. "Appraise" means to evaluate. *The real estate agent apprised the buyer of her wish to have the house appraised before considering the offer.*

amenable/amiable — "Amenable" means willing or welcoming. *I'd be*

amenable to any pizza topping except pineapple. "Amiable" simply means good-natured, easy to get along with. *She's an amiable co-worker.*

practical/practicable — "Practical" means making sense in the context of a variety of relevant factors. "Practicable" simply means capable of being done or put into practice. *It's certainly practicable to build a fourth runway and concourse at the airport, but in terms of our present budget it's just not practical.*

induction/deduction — "Induction" is the process of arriving at a generalized conclusion from examining specific instances. Concluding that the law of gravity is universal from observing that whenever things are held up and released they drop to the ground is an example of inductive reasoning. "Deduction," by contrast, is the process of arriving at conclusions about particulars based on general rules or first principles. Euclidean geometry is an example of deductive reasoning: It begins with definitions, assumptions, and axioms, then reasons from those to prove specific truths about particular instances, such as the Pythagorean Theorem. You may have realized by now that the famous "science of deduction" attributed to Sherlock Holmes was, in fact, inductive, not deductive: Examination of specific particular facts led to general conclusions about whodunit.

constrain/restrain — These words have closely similar meanings, and in many cases one will do as well as the other. There is a fine distinction, however: "constrain" means to force, while "restrain" means to hold back, or pen in. So one who is kept from acting may be said to be restrained, while one who is not prevented from acting but is required to act only in a certain specific way made be said to have his behavior constrained.

further/farther — One reader wrote "if it involves distance, then farther is correct." I think it's a useful distinction and worth preserving: "farther" for distance, "further" for continuation or additional quantity. However, this distinction can become tricky. We might, for example, say: "After praising Dr. Heisenberg, the professor further discussed the relativity of perception. It was going a bit far when he defended the proposition that the sky is green. But with his next statement he went even [further or farther?]." In that case, I'd say "farther," even though physical movement and distance are not involved. But there is always some flexibility in even the best rule. As Groucho Marx says in *Horse Feathers*: "Anything further, father?' That can't be right. Shouldn't it be 'Anything farther further?'"

toward/towards — There is no difference in meaning between these two words, and generally no reason to use "towards" unless you like spending

Accounts Receivable **Collection**

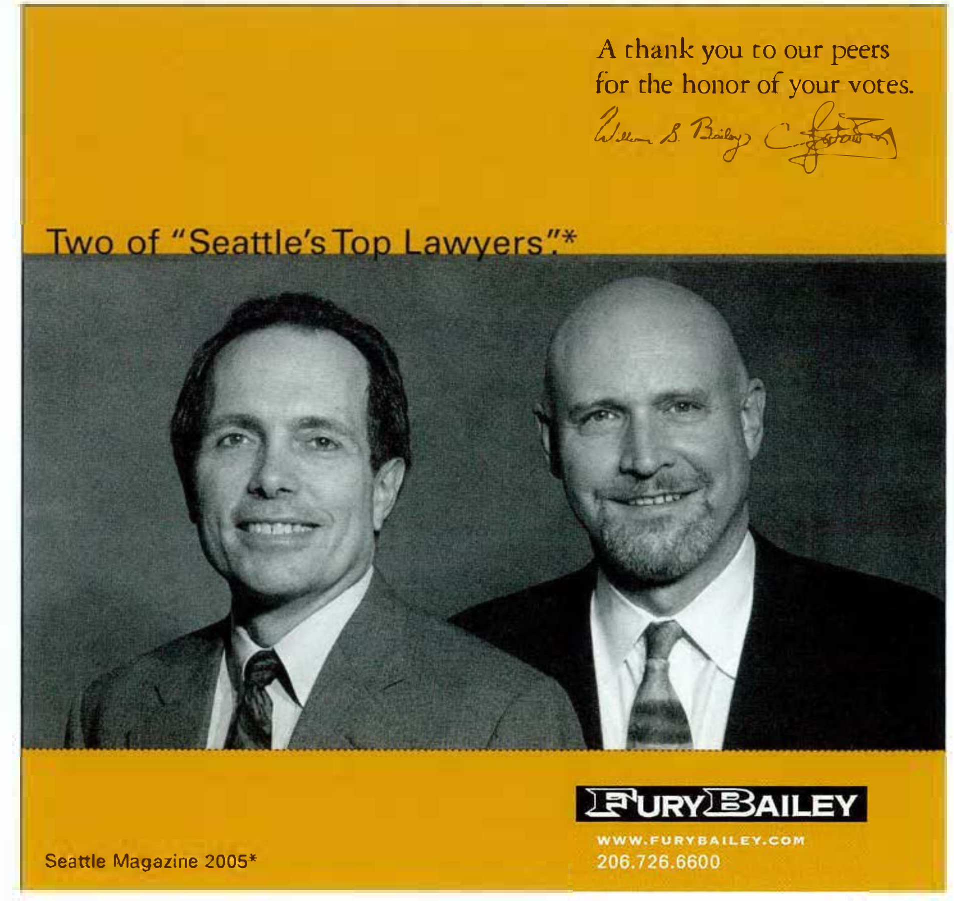
Financial Services

"Collection Services for the Legal Professional"

- Skip Tracing
- Asset Searches
- Enforcement of Judgments
- Credit Bureau Reporting
- Settlement Negotiations

Assisting Northwest Law Firms Since 1985

1425 Fourth Avenue, #820 Seattle, WA 98101 (206) 340-0883



extra letters unnecessarily. The word "toward" suffices perfectly well, and at one time "towards" was considered unacceptable; but now both are used interchangeably.

abstract/abstruse/obtuse — "Abstract" refers to discussion or argumentation that centers on the purely conceptual rather than on specific, material realities. *His plan made sense in the abstract, but he didn't show how it would work in terms of the concrete situation.* "Abstruse" is a rarer word, but much simpler: It just means hard to understand. *I found Kant challenging but just a bit abstruse.* "Obtuse," by contrast, means blunt, not sharp, and is used literally (referring to angles) and metaphorically (referring to intelligence). *It wasn't clear to me whether Kant was abstruse or I was obtuse.* (Probably a little of both.)

converse/inverse/obverse — One devilish reader asked me to include these in my "troublesome twins" column. Truth is, these are terms used in logic that are not ordinarily found in day-to-day English writing or conversation. Nevertheless, since logic is important to legal argumentation, a quick once-over: Take a direct proposition, say *All oranges are citrus fruits.* The obverse of that proposition is another way of saying the same thing in the negative: *No oranges are not citrus fruits.* The obverse always has the same truth value as the original proposition. Thus, if the proposition is true, its obverse is also true. The converse is the statement formed by exchanging the premise with the conclusion. *All citrus fruits are oranges.* The converse of a proposition does not have the same truth value as the proposition, and in fact will often be untrue if the original proposition is true. The inverse of a proposition is formed by negating the premise without negating the conclusion. *No oranges are citrus fruits.* This also does not share the same truth value as the original proposition, but is, in fact, its direct contradiction. Then there's the contrapositive, which reverses the premise and the conclusion and negates both: *That which is not a citrus fruit is not an orange.* If the proposition is true, the contrapositive is also true. And if you can master all of that, you are probably the sort of person who never gets "concave" and "convex" confused, either. My hat's off to you.

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, media, and alcoholic beverage law. He teaches at Seattle University Law School and has written extensively on law, film, food, and language.

MACDONALD HOAGUE & BAYLESS

THE IMMIGRATION GROUP WELCOMES OUR NEWEST ATTORNEY

ELIZABETH POH

Back: *Elizabeth Poh, Kevin Lederman, Bob Free, Dan Smith, Felicia Gittleman*

Front: *Frank Retman, Ester Greenfield, Kay Frank, Lourdes Fuentes*

1500 HOGE BUILDING • 705 SECOND AVENUE • SEATTLE, WA 98104-1745
206.622.1604 ENGLISH • 206.694.1685 ESPAÑOL • WWW.MHB.COM

COMMERCIAL LITIGATION

HALL ZANZIG ZULAUF
CLAFLIN MCEACHERN

Trial Lawyers

Spencer Hall • Scott Zanzig • Jay Zulauf • Art Claflin • Janet McEachern
1200 Fifth Avenue, Seattle, Washington 98101 Tel 206.292.5900

Casemaker®—

Free Online Legal Research System Coming Soon to All WSBA Members

BY RON WARD, WSBA PRESIDENT

I'm absolutely thrilled that as part of the Board of Governors' commitment to enhance member benefits, the WSBA will provide a **new free benefit** to all members this year — **Casemaker**.

Casemaker is an online legal research system providing access to state and federal materials. Launched by the Ohio State Bar Association in 1999, the system is marketed only to bar associations. There are currently 20 member state bar associations, including our neighbors Oregon and Idaho. Other members are Alabama, Colorado, Connecticut, Georgia, Indiana, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, Texas, Utah, and Vermont. Michigan case law is also available to all lawyers who are members of Casemaker Consortium states. Each member bar shares its library with all the other member bars. We believe Casemaker will fill or usefully supplement the research demands of many members.

We anticipate that Casemaker will be **available to all WSBA members** (including judicial, honorary, and inactive members) this May. We're eager to bring it to WSBA members as soon as possible, but time is needed for Casemaker to create the Washington database, and for the WSBA to develop an online application that will enable members to access Casemaker quickly and easily through the WSBA website. Casemaker will be in a password-protected section of the website, although WSBA members will be permitted to give their paralegals access to Casemaker using members' user IDs and passwords.

Through Casemaker, members will have searchable access to all Washington case law and statutes, the case law and statutes (and in some instances other information) from the other state members of the Casemaker Consortium, U.S. Supreme Court cases from 1935, 9th Circuit cases from 1990, limited coverage of other federal circuit and district court cases, and the U.S. Code. Content may expand over time, as additional states join the consortium, additional federal materials are offered, and/or specialty databases are added.

A task force under the leadership of Chair Charlie Wiggins worked diligently to thoroughly examine and evaluate the various systems that the WSBA might offer members at no or low cost. The task force recommended, and the Board of Governors approved, Casemaker based on its ability to provide basic, searchable, hyperlinked Washington state materials, access to federal materials and information from other states, and a basic cite-checking system, at a reasonable cost to the Bar. In addition to Charlie Wiggins, Governor Katie O'Sullivan; attorneys Gail Gorud, Deborah Kelly, and Robert Rembert; and WSBA staff attorney Doug Ende served on the task force. I certainly appreciate their service, and I'm sure that many WSBA members will thank them for years to come.

For additional information, including the list of materials planned to be included in the Washington state Casemaker library, please see the WSBA website (www.wsba.org), or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Casemaker is a registered trademark of Lawriter.

LAWCROSSING®
THE LARGEST COLLECTION OF LEGAL JOBS ON EARTH

The most efficient approach to finding your next job...

Use LawCrossing. Search more than 50,000 jobs spread across a variety of practice areas, to include in-house and private firms. Stop searching through county, state, and federal websites: All government jobs are located in one place! Find jobs divided by country, state, city, and practice area, allowing you to customize your search as narrowly as you wish.

LawCrossing tells you if the job is placed by a recruiter, meaning that if you want to avoid recruiter-sponsored jobs and contact an employer directly, you can. Finally, there's great content on LawCrossing – book reviews, a ticker tape that tracks in real time which practice areas are hot, plus the latest news and more. Want to conduct an efficient job search? Welcome to LawCrossing.

SIGN UP NOW AT:
www.lawcrossing.com

MEDIATION

MANSION MEDIATION
• FAMILY LAW
• PERSONAL INJURY
• REAL ESTATE
• CONSTRUCTION
• COMMERCIAL
~SPECIAL OFFER~
Celebrating 20+ years in law and as a thank you to counsel for the many referals: **only $100/hour TOTAL for BOTH parties through June 2005.** Free parking. Certified Mediator, Arbitrator, GAL, RE Agent. Voted best place to compromise anything but the view.
WILLIAM BUDIGAN
Budigan Law Firm (206) 284-5306
www.MansionMediation.com

A Second Look at Nonrefundable Fees and the Ethical Requirement that Fees Be Reasonable

BY NANCY BICKFORD MILLER, WSBA OFFICE OF DISCIPLINARY COUNSEL

Nonrefundable fees are subject to the reasonableness requirement of Rule of Professional Conduct (RPC) 1.5 and the refund requirements of RPC 1.15, as confirmed by our Supreme Court in a recent decision and by the WSBA Rules of Professional Conduct Committee in an informal opinion earlier in 2004.

The Supreme Court, in an October 21, 2004, disciplinary decision, rejected the argument that a lawyer is entitled to keep a nonrefundable fee whether or not services are performed. The Court distinguished a "retainer" to secure a lawyer's availability over a period of time, as discussed in WSBA Formal Opinion 186, from a flat fee for legal services in a specific matter. Because the lawyer failed to provide the contracted services, his failure to return unearned money violated RPCs 1.5 and 1.15(d).[1]

Informal Opinion 2034, issued on July 2, 2004,[2] states that although reasonableness is ordinarily determined when the agreement between the client and the lawyer is made, there are situations in which reconsideration may be required:

> In some circumstances, the reasonableness of a fee agreement must be re-evaluated because subsequent unforeseen events have so altered the relationship between the lawyer and the client that a fee agreement that was reasonable at the time the agreement was made is no longer reasonable. Examples of such subsequent events may include, but are not limited to, death of the client or lawyer, lawyer's loss of his license, or failure of lawyer to perform the contracted services.

The Court's decision in *DeRuiz*, together with the RPC Committee's informal opinion, confirms the understanding of the Office of Disciplinary Counsel, and most lawyers, that there may be occasions when a lawyer must refund a fee to a client notwithstanding the terms of a fee agreement that refer to the fee paid as being nonrefundable.[3] Washington thus joins the great majority of states that require — through rule, rule interpretation, or court decision — that if a "nonrefundable" fee is or becomes unreasonable, a refund should be made.

Two recent, well-reasoned Court of Appeals decisions, *Cotton v. Kronenberg*[4] and *Loveless v. Holmes & Kruger*,[5] have also considered the issue of the continuing reasonableness of a fee when circumstances change.

Kronenberg took his client's home (which he sold several months later for $42,000) as a nonrefundable fee to complete work in a criminal case through trial. Before trial, the court disqualified Kronenberg from further representation. In a lawsuit concerning fees and malpractice, the Court of Appeals held that under RPC 1.8 the transaction was not fair and reasonable, and the client was entitled to a refund under RPC 1.5.

Loveless involved a commercial matter. Referring to RPC 1.5, which sets out the factors to be considered in determining reasonableness, the court held that it would be unreasonable to continue enforcing a 1972 contingent-fee agreement. The agreement provided for a law firm to receive five percent of the cash distributions from a client joint venture indefinitely, in exchange for a discounted rate on legal fees charged for services performed. The fee discount was valued at $8,000, but the actual five-percent distributions to the law firm under the agreement totaled approximately $380,000 by 2001. Citing *Cotton v. Kronenberg*, the court held that the fee agreement should also be reviewed under RPC 1.8(a), relating to business transactions with clients. The court noted that although *Cotton* did not directly address the excessive-fee prohibition of RPC 1.5(a), "an attorney's ethical obligation to avoid charging an excessive fee is continuous throughout the life of the agreement."[6]

Both the *Loveless* and the *Cotton* decisions focus on RPC 1.8 as well as RPC 1.5, and *Loveless* addresses a contingent-fee agreement rather than a nonrefundable fee. But these decisions complement the Supreme Court's *DeRuiz* decision and WSBA Informal Opinion 2034 by recognizing that subsequent events may obligate a lawyer, in certain circumstances, to terminate a fee agreement, or refund all or part of a fee originally understood to be nonrefundable.

Nancy Bickford Miller can be reached at nancym@wsba.org or 206-733-5934.

NOTES

1. *In re Disciplinary Proceeding Against DeRuiz*, 2004 WL 2360586, 99 P. 3d 881 (2004). (The lawyer was suspended for a total of one year due to multiple violations of these and other rules.)
2. Informal Opinion #2034 is available on the WSBA website at http://pro.wsba.org/io/search.asp. Informal Opinions are provided for the education of the Bar and reflect the opinions of the RPC Committee, but are not individually approved by the WSBA Board of Governors and do not reflect the official opinion of the Bar Association.
3. WSBA Formal Opinion 186 opines that advance fee deposits must be placed in the lawyer's trust account, while nonrefundable fees are to be placed in the lawyer's general account, because they are generally earned upon receipt. Formal Opinion 186 does not, however, address RPC 1.5 and the requirement that a fee be reasonable. Informal Opinion 2034 addresses the reasonableness issue.
4. *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002).
5. *Loveless v. Holmes & Kruger*, 122 Wn. App. 470, 94 P.3d 338 (2004).
6. *Loveless*, 122 Wn. App. at 478.

Hon. James M. Dolliver

In his 1992 book, *The Washington High Bench*, the late Charles H. Sheldon commented, "James Dolliver, when viewed from a narrow professional perspective, seemed an unlikely candidate for the supreme court. His experience as a practicing attorney barely totaled four years."

But from a political perspective, however, Sheldon maintained, Dolliver was a perfect choice. He served 18 years as an aide and advisory to a congressman and a governor, and was involved in more than 100 judicial appointments. He was active in all manner of civic, educational, and religious organizations, giving him what Oliver Wendell Holmes Jr. called "the felt necessities of the time."

Dolliver was the son of a lawyer who served 12 years in the U.S. House and had a great-uncle who'd been a U.S. Senator. After high school, Dolliver joined the Navy and flew rescue patrols for the Coast Guard. When World War II ended he attended Swarthmore College, graduating with high honors in 1949. Summer employment as a ranger in Olympic National Park led Dolliver to head west for law school at UW. He clerked for Justice F.G. Hanley in Olympia, and then opened a law office in Port Angeles. Within 18 months he'd run for county prosecutor, lose, and leave for Washington, D.C., to be administrative assistant to Congressman Jack Westland. Returning home, he ran for Snohomish County Prosecutor in 1962, and lost again. Then state House Majority Leader Daniel Evans hired him as a staff attorney, forming a team that lasted decades.

Dolliver strategized Evans's campaign for governor and became the governor's chief of staff through his three terms in office. Evans put Dolliver forward for a 1970 Supreme Court vacancy and WSBA's selection committee found him qualified, but the Board of Governors differed and removed Dolliver's name from the approved list. Fearing difficulty in retaining the seat at election in the face of WSBA opposition, Dolliver withdrew his name.

By 1976, however, as Evans's final term neared an end, he put Dolliver's name up again, this time not seeking WSBA endorsement. The Board of Governors was silent, and Dolliver took office in May 1976. He served on the high court for 23 years.

Many observers considered Dolliver the intellectual heavyweight of the Court in his time, and the justice rarely left any doubt what he thought about things. Sheldon classified him as a moderate and something of a loner who juggled the Court with his many other civic and religious involvements.

A 1993 stroke left Dolliver severely disabled and unable to stand for more than a few minutes at a time, but he battled back, recovering the ability to speak, and serving six more years before retiring in 1999. Chief Justice Gerry Alexander told *The Seattle Times*, "His whole professional life was devoted to public service, yet something that would have put most people into retirement couldn't shake him of that sense of duty."

His wife, Barbara, and six children, including WSBA member Keith Dolliver of Redmond, survive him.

James Morgan Dolliver was born in Fort Dodge, Iowa, October 13, 1924, and died in Olympia November 24, 2004.

Legal Foundation of Washington

19th Annual Goldmark Awards Luncheon

Friday, February 18, 2005

12:00 p.m. – 1:30 p.m.
Red Lion Hotel on 5th Avenue in Seattle

The Charles A. Goldmark Award for Distinguished Service will be presented to Ada Shen-Jaffe during the luncheon.

Joaquin G. Avila, MacArthur Fellow and visiting professor at Seattle University School of Law, will give the keynote speech.

☐ YES, I would like to honor the work of legal services by attending the luncheon. I will bring ____ additional guests ($40/person enclosed).

☐ YES, I would like to be a Goldmark Donor ($100 enclosed). Two lunches will be provided and a contribution of $20 will help cover luncheon expenses.

☐ NO, I cannot attend the luncheon, but I would like to support the luncheon with a donation of $______.

Name(s):________________________________

____

____

Indicate next to the name if a vegetarian meal is preferred.

Show your support for access to justice by purchasing an individual ticket to the luncheon or choosing one of the other donation options. Please clip and return the coupon with your check payable to:

Legal Foundation of Washington
1325 Fourth Avenue, #1335, Seattle, WA 98101
Phone: 206-624-2536, ext. 280 Fax: 206-382-3396
Visit our website for more information: www.legalfoundation.org.

The Legal Foundation of Washington is a 501(c)(3) status institution.

OPPORTUNITIES FOR SERVICE

2005 Notice of Board of Governors Election

Nomination deadline: March 1, 2005

Four positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 3rd, 6th, 7th-East*, and 8th Congressional Districts. These positions are currently held by Joni R. Kerr (3rd District), Howard L. Graham (6th District), Andrea Brenneke (7th-East District), and Randolph I. Gordon (8th District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the Congressional District (or geographical region within the 7th District*) in which such member *is entitled to vote.* Nominations are made by filing a statement of interest and a biographical statement of no more than 100 words.

Generally, members are entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nomination forms are available from the Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; 206-727-8244; and on the WSBA website at www.wsba.org/info/bog/2005bogelections.htm. The WSBA executive director must receive nomination forms by 5:00 p.m. Tuesday, March 1, 2005. The Board of Governors determines the official dates of the election. Ballots are mailed on April 15 and counted approximately May 15.

Note: The biographical statements of nominated candidates will be published in the May issue of *Bar News.*

**The 7th Congressional District is divided into three sub-districts, East, Central, and West. These sub-districts are distinguished by zip codes and each has one elected governor. For the coming year, the east sub-district (zip codes are 98028, 98055, 98105, 98115, 98118, 98122, 98125, 98129, 98144, 98145, 98155, 98178, and 98185) will elect a new governor.*

Call for Applications for One of Two Board of Governors At-large Seats

Application deadline: March 1, 2005

To increase member representation on the Board of Governors, the WSBA Bylaws provide for two at-large seats. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of those seats is up for election to a three-year term commencing at the close of the annual meeting in September 2005.

Persons interested in filling an at-large position should submit a letter of application. The deadline for receipt of applications at the WSBA office is March 1, 2005. The Board of Governors will elect the at-large governor at its meeting on June 3, 2005. The application should include a statement addressing how the applicant feels he or she meets the intent specified in Article III, Section M. There is no intent that these seats are dedicated or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article III, Section M)

M. ELECTION OF AT-LARGE GOVERNORS. Any active member of the Bar, except a member previously elected to the Board of Governors, may apply for the office of At-Large Governor, except as provided in this Section. Filing of applications shall be in accordance with Section C of this Article.

At the regularly scheduled June meeting of the Board of Governors following the regular election of Governors from Congressional Districts, or at a special meeting called for that purpose, the Board of Governors shall elect additional Governors from the active membership at-large. Election may be by a secret written ballot. There shall be two at-large Governor positions to be filled with persons who, in the Board's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on Congressional districts may allow. Under-representation and diversity may be based upon the discretionary determination of the Board of Governors at the time of the election of any at-large Governor to include, but not be limited to, age, race, gender, sexual orientation, geography, areas and types of practice, and years of membership, provided that no single factor shall be determinative.

Members interested in an at-large position on the Board of Governors should submit a letter of application and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; oed@wsba.org.

Statute Law Committee — Two Positions

Application deadline: February 18, 2005

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a six-year term on the Statute Law Committee (which oversees the operation of the Office of the Code Reviser),

commencing April 1, 2005. A written expression of interest and résumé are also required for incumbents seeking reappointment.

This 12-member committee of lawyers seeks to foster accurate publication of laws and agency rules services in a professional and strictly nonpartisan and cost-effective manner. The primary responsibilities are to periodically codify, index, and publish the Revised Code of Washington; and to revise, correct, and harmonize the statutes of administrative or suggested legislative action as may be appropriate. The committee meets at least twice a year.

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

YMCA Mock Trial Program Seeks Volunteers

The YMCA Youth & Government Mock Trial program allows high school students to participate in a "true-to-life" courtroom drama. Each team of attorneys and witnesses prepares the case for trial before a real judge in an actual courtroom. A "jury" of attorneys rates teams on their presentations, while the presiding judge rules on the motions, objections, and ultimately the merits. Participants develop critical thinking and analytical skills, learn the art of oral advocacy, and gain a respect for the rule of law and the judiciary.

The state championship competitions will be held Friday, March 18, through Sunday, March 20, 2005, at the Thurston County Courthouse in Olympia. Attorney volunteers are needed. To volunteer, please contact Janelle Nesbit at 360-357-3475 or youthandgovexec@qwest.net. Please visit www.youthandgovernment.org for additional details.

Judicial Recommendation Interviews

Application deadline: February 11, 2005

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 in March 2005. The deadline for receipt of questionnaires by the WSBA office is 5 p.m. February 11, 2005.

The committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the Governor 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 contact the WSBA at 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, 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.

CLE Publication Going to Press this Month

Third Edition of Award-winning *Washington Appellate Practice Deskbook*

CLE-Publications proudly presents the latest edition of this popular reference tool, edited by Catherine W. Smith and Howard Goodfriend of Edwards, Sieh, Smith & Goodfriend in Seattle, and written by the state's top appellate practitioners. Even lawyers who regularly deal in litigation often have a limited understanding of appeals; this resource is guaranteed to help clarify the process. Chapters include exclusive statistical analysis of disposition rates on appeal in Washington — and how to evaluate the economic risk of appeal; how to determine the specific issues to be raised on appeal; various goals of criminal, civil, and administrative law appellants; and policy-based decision-making that is the essence of the appellate process. Get direct advice for effective appellate advocacy and oral argument, and gain practical information. Whether appeals are the focus of your practice or an occasional part of it, this two-volume resource will improve your chances for success. Order the *Washington Appellate Practice Deskbook* ($325 plus tax, S&H) online at http://store.yahoo.com/wsbastore/deskbooks.html or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA for more information.

2005 Licensing Packets

Licensing packets were mailed in early December. The packet includes your license-fee invoice, trust-account declaration form and, if applicable, MCLE certification form. If you have not received your licensing packet by now, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org, to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

If you are mailing your forms and payment. The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment.

If you are paying your fees online. To pay your fees online, go to http://pro.wsba.org, click on the "Member" tab, and sign in with your WSBA Bar # and password. Prompts will lead you through the process to pay your 2005 license fees by MasterCard or Visa. The system only allows payments for the full amount billed, e.g., no Keller deductions or status changes. Note that you do not need to return the A2 form if you pay online. Active members have other forms in their packets that must be completed and returned by the due date. There may be other voluntary forms in the packet that you may want to complete and return to the WSBA.

Payment deadline. 2005 license fees are due no later than February 1, 2005. Please note that if your payment is postmarked later than March 1, 2005, WSBA Bylaws require a 20 percent penalty to be assessed and a pre-suspension notice to be mailed. If your payment is postmarked after April 1, 2005, a 50 percent penalty will be assessed.

Important note about paying your fees. If either your license fee or, for active members, the Lawyers' Fund for Client Protection assessment remains unpaid two months after the mailing of the pre-suspension notice, the delinquency will be certified to the Supreme Court, which will enter an Order of Suspension from the practice of law.

Software Conversion. In late summer 2004, the WSBA underwent a software conversion of the membership database. It is possible that not all information converted correctly. If you believe the amount showing on your licensing form (A2) is not correct, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

MCLE Certification for Group 1 (2002-2004) Due February 1, 2005

Active WSBA members in MCLE Reporting Group 1 (2002-2004) should have received their Continuing Legal Education Certification (C2) forms in the license packets that were mailed in December. The deadline for returning the C2 forms to the WSBA is February 1, 2005. If you did not receive your packet and/or the C2 form, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

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.

The Continuing Legal Education Certification (C2/C3) form in your license packet is an affidavit that lists all the WSBA-approved courses that were in your MCLE online profile for the 2002-2004 reporting period as of mid-November. The C2/C3 form, not your online profile, is the official record of MCLE compliance. To ensure that you meet all compliance requirements, please follow the applicable instructions in the paragraphs below.

If you have taken courses since the course information on the C2/C3 form was printed, ensure that these courses have been added to your online profile, then print and attach the profile to the C2/C3 form. Indicate on your C2/C3 form that the attached profile is the true and correct record of the courses taken for the reporting period.

Alternatively, you may simply add by hand to the back of the C2/C3 form the additional WSBA-approved courses you took. Ensure that you include the Activity ID number and all other required information for each course.

The deadline for completing the C2/C3 form and returning it to the WSBA is February 1, 2005. All active members must send in a completed C2/C3 form.

If you were not able to meet the credit requirement by December 31, 2004, an automatic extension will be granted until May 1, 2005; however, a late fee will be imposed. If this is the first period in which you have not met MCLE compliance requirements, the late fee is $150. The late fee increases by $300 for each consecutive reporting period that you are late in meeting MCLE requirements.

See "MCLE Certification for Active Members — General Information" below for further information about MCLE reporting period compliance.

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*

Reporting Group	Next Reporting Period	Complete Credits By	File C2 Form By
Group 1	2002-2004	December 31, 2004	March 1, 2005
Group 2	2003-2005	December 31, 2005	March 1, 2006
Group 3	2004-2006	December 31, 2006	March 1, 2007

Credit Requirement. These 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 six ethics credits. A/V courses can be no more than five years old, except skills courses. Six *pro bono* credits can be earned per year. Two of these credits are for the annual training prior to doing the *pro bono* work. Four credits of *pro bono* credit may be earned each year if at least four hours of *pro bono* work were provided through a qualified legal services provider.

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 carry over a maximum combined total of 15 general and ethics credits. Only two ethics credits and five 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 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, sent with your Washington Continuing Legal Education Certification (C2) form, will satisfy your MCLE requirements in Washington.

MCLE System — Course Listing and Member Profiles. Members may use the online MCLE system at http://pro.wsba.org to review courses taken and credits earned, apply for course approval, apply for writing credit or 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 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 is 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.

WSBA Members on Active Military Duty

At its January 2004 meeting, the Board of Governors approved a Bylaw amendment that allows all active WSBA members who are on active duty in the military to waive WSBA license fees and remain active members for up to five years. (WSBA members on active duty whose WSBA membership status is inactive or emeritus must still pay the annual WSBA license fees.) If you are currently an active member on active military duty, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

Resources

The 2005 *Resources* Directory will print the contact information in the WSBA membership database as of February 1, 2005. Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory on the WSBA Web site at http://pro.wsba.org.

If your contact information has changed, please complete and return the Contact Information Change Form included in the license packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org. Please update your information as soon as possible, but no later than January 31, 2005, for inclusion in *Resources*.

For more information, please see the WSBA website at www.wsba.org/lawyers/licensing/annuallicensing.htm, or contact the WSBA Service Center Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org.

Books for Belarus

WSBA member Elizabeth Vasiliades is currently teaching law on a fellowship program at the Belarus State Economic University in Minsk, Belarus. She is coaching two teams of law students for moot court competitions. Access to Western legal resources is minimal to non-existent, making student preparation for classes and moot court extremely difficult.

WSBA members may be able to help these students by donating used legal books. If you have legal texts on international law, criminal law, property, commercial law, or other topics that are outdated, duplicates, or simply sitting in a dusty bin somewhere, these books would be put to good use by Ms. Vasiliades and her students. If you have texts you would like to donate, please send them to the WSBA; we will then send them on to Ms. Vasiliades in Belarus. Please send your donated books to: Member and Community Relations Dept., WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121.

WSBA Staff Auction Benefits Charities

The 7th Annual WSBA Staff Holiday Charity Auction raised $4,045. Money raised was given to two charities: the Make-A-Wish Foundation of Washington State and Treehouse. The Make-A-Wish Foundation grants the wishes of children with life-threatening illnesses. Treehouse is devoted to serving children in foster care in King County through educational and enrichment programs.

Bellevue Lawyer Kevin Jung Seriously Wounded

On November 3, Bellevue attorney Kevin Jung was shot and seriously wounded while leaving his office to attend a court hearing. Mr. Jung, a married 44-year-old father of two boys, remains in serious condition. It is uncertain whether he will be able to practice law again. A solo practitioner in business and immigration law and active within the Korean community, Mr. Jung was the sole support of his family.

The Kevin Jung Family Support Trust Fund has been set up through U.S. Bank to provide a source of ongoing financial support to the Jung family during this very difficult period. A contribution to the fund can be made at any branch of U.S. Bank.

Senior Attorneys Discussion Group: A Matter of Connection

We will meet on Thursday, January 20, 4:00-5:30 p.m., in the WSBA fourth-floor conference room, 2101 Fourth Ave., Ste. 400, Seattle. Dr. Jenny Favell will present her recent Commission on Lawyers' Assistance Programs national program, "Secondary Traumatic Stress: What You Don't Know Will Hurt You." We talk about issues important to senior attorneys who continue to be involved, creative, healthy, and active. Please join us. For more information, contact Jenny Favell, Ph.D., LAP, 206-727-8267.

Lawyers' Assistance Program Peer Counselor Statewide Network

We are attorneys who volunteer support to others who need someone to listen when times are tough. We are not professional mental-health counselors, but receive training at our statewide conference in April and regional trainings throughout the year. We seek to expand the

diversity we represent and offer to WSBA members. Would you have time and interest in listening, recognizing when a peer needs referral for additional support, attending a training, educating the legal community about the healthy practice of law, and giving of yourself as your time allows? Please call Jenny Favell, Ph.D., 206-727-8267.

Last Chance to Apply for 2005 WSBA Leadership Institute *(Deadline: January 10, 2005)*

The WSBA is still seeking applicants for its newly established Leadership Institute, which begins in February. The WSBA recognizes that many newer lawyers, particularly those of color, women, and those from traditionally underrepresented groups, have not been recruited for leadership positions or made aware of opportunities for skill development, professional growth, and leadership training that are available through the WSBA.

James Williams, Advisory Board Chair

The mission of the WSBA Leadership Institute is to recruit, train, and retain Washington attorneys who have been admitted for 10 years or less for leadership positions in the legal community and in the WSBA, with an emphasis on racial, ethnic, gender, sexual orientation, disability, cultural, and geographic diversity.

Ten fellows will be carefully selected for the first year's program, which will take place February through September 2005. Fellows will devote approximately 70 hours to the program, which includes eight professional-development seminars (on topics such as the logistics of legal practice, the judiciary, public- versus private-sector employment, and the legislative process) and participation in a group community-service project. Fellows will earn 30 CLE credits. There will be no charge to participants.

Applications will be accepted until January 10, 2005, and selected fellows will be notified by January 31, 2005. Information, including application forms and instructions, is available on the WSBA website at www.wsba.org/lawyers/leadership_institute.htm. Also see the article on page 28 of the December 2004 issue of *Bar News*.

Thinking of Changing Your WSBA Membership Status? Consider Emeritus.

As the 2005 WSBA licensing period approaches, you may be thinking of changing your membership status to more accurately reflect your current career or lifestyle. If you no longer need your active WSBA license, here's why you should consider emeritus status:

APR 8(e) creates a limited license status of emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal-services organization. A qualified legal-services organization is defined as "an organization that exists primarily for the purpose of providing legal services to low-income clients." There are no MCLE requirements (although you may attend optional CLE seminars at no cost so that you stay apprised of changes in the law). The 2005 license fee for emeritus is $117. This is a significant savings in time and money if you are paying for an active license that you no longer need. Under most circumstances, emeritus attorneys can remain in emeritus status indefinitely without having to re-take the bar exam if/when returning to active status. Volunteering for a "qualified legal services organization" allows you to control your own schedule. Most importantly, the Emeritus Program provides an opportunity for attorneys to give something back to their communities by helping those who are less fortunate.

One or more qualified legal-service organizations are present in most Washington state counties. They include Columbia Legal Services, a statewide legal services program; Northwest Justice Project, a central statewide point of access for clients; specialized legal services programs (such as Northwest Women's Law Center, Unemployment Law Project, and others); and county volunteer-attorney programs. These organizations offer a wide variety of volunteer opportunities, such as direct representation, mentoring, advice clinics, self-help clinics, board service, telephone advice, and document preparation. Emeritus also allows for pro bono services for criminal cases through some public-defender offices. Emeritus attorneys and judges are currently volunteering in many capacities, including the Northwest Justice Project's CLEAR intake line (one remotely, from home); the Northwest Women's Law Center Board of Directors; a Columbia Legal Services administrative law case; King County Bar Association Neighborhood Legal Clinics; defense services for the Associated Counsel for the Accused in the Seattle Municipal Court's Mental Health Court; and writing wills for low-income seniors in Skagit County. We do our best to find a niche to fit your legal expertise and time schedule.

An emeritus training session has been scheduled for Tuesday, January 25, 2005, at the WSBA office in Seattle. This training is a requirement for changing to emeritus status and will provide an opportunity for you to meet the providers. Travel expenses will be reimbursed. For more information about the Emeritus Program, the training session, and how to change your WSBA status to emeritus, please contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or sharlene@wsba.org.

Address Update Reminder

The 2005 licensing packets were mailed in early December. The deadline for updating your address to be included in the licensing packet mailing was October 15, so please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA to request a duplicate packet if you did not receive yours by December 31. You can check your listing by going to the online lawyer directory at http://pro.wsba.org. If any of your contact information (name, address, phone, fax, or e-mail address) has changed, please update the information by e-mailing questions@wsba.org; faxing the change to 206-727-

8319; or calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Just Released: 2005 Annual WSBA CLE Publications Catalog

The 2005 edition of the Publications Catalog from WSBA CLE Publications is now available! It's your convenient guide to outstanding products and services from the WSBA CLE, the leader in innovative legal education. Save your catalog for the coming year to order our premier deskbooks, audiotapes, coursebooks, and more — whether online, or by phone, fax, or mail. Need another one? Call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

WSBA Members Encouraged to Complete *Pro Bono* Reporting Form

Each WSBA member is encouraged to take a few minutes in January to complete the voluntary *pro bono* reporting form included in the WSBA annual licensing packet. The form asks each WSBA member to identify the number of hours spent in 2004 performing legal services for no fee or a substantially reduced fee for low-income people or organizations whose primary mission is to serve low-income people. These are, generally speaking, the services covered by RPC 6.1(a). (The text of the ethics rule is included in the reporting form.)

The form also asks each WSBA member to identify the number of hours provided at no fee or a substantially reduced fee for other matters for the public good, including legal services for religious and educational organizations, bar association activities, and efforts to improve the law. These are among the activities covered by RPC 6.1(b). Public-service time spent on non-legal civic activities (e.g., serving as a board member for an arts or music organization) is not within the scope of RPC 6.1 and should not be reported. If you have any questions on how to complete the form, contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org,

RPC 6.1's aspirational goal is a minimum of 30 *pro bono* hours per year, and those who report 50 or more hours receive a recognition certificate and publication of their names in *Bar News*. Individual lawyers' responses are not tracked. The general statistical information will be used to track overall *pro bono* activities and trends in Washington. Please complete and return the form by the March 1, 2005 deadline that applies to the entire licensing packet.

Mileage Reimbursement Rate Increased January 1, 2005

The Board of Governors recently adopted a policy to make the WSBA mileage reimbursement rate adjustment effective January 1 rather than October 1. This change is being made so that our rate adjustments will correspond with the IRS's schedule of implementing new rate changes effective January 1.

The new rate, effective January 1, 2005, is 40.5 cents per mile. The revised Expense Report Form is on the WSBA website (www.wsba.org), and hard copies are available by request from the WSBA office (call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA).

Please note that for travel that occurred between October 1, 2004, and December 31, 2004, the rate of 37.5 cents per mile applies.

Random Acts of Professionalism Program

The WSBA Professionalism Committee has created a way for lawyers and judges to recognize their colleagues who have conducted themselves in a professional manner consistent with the Creed of Professionalism. Through the Random Acts of Professionalism Program, lawyers and judges may nominate their colleagues to receive the award. Nominating a lawyer or judge for the award is very easy — simply send his or her name, along with a brief description of why you are nominating the person, to Judy Berrett, staff liaison to the Professionalism Committee, at judithb@wsba.org, or fax to 206-727-8319. That's all there is to it! The nominated person will receive a letter, a certificate, and a copy of the WSBA Creed of Professionalism.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 2004 was 2.442 percent. The maximum allowable interest rate for January 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

January 21-22 — Olympia
February 18-19 — Seattle
March 11-12 — Seattle

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

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.

19th Annual Goldmark Award Luncheon

The Legal Foundation of Washington will present the 2005 Charles A. Goldmark Distinguished Service Award to Ada Shen-Jaffe at the 19th Annual Goldmark Award Luncheon. The luncheon will be held Friday, February 18, 2005, at the Emerald Ballroom of the Red Lion Hotel on Fifth Avenue between noon and 1:30 p.m.

Ms. Shen-Jaffe receives the award in recognition of her leadership in the equal justice community both in Washington and nationally. Ms. Shen-Jaffe has played a key role in the architecture and strategy of civil legal justice since 1981, when she became Deputy Director of Evergreen Legal Services, which later became Columbia Legal Services, which she directed for the last 18 years.

Joaquin Avila, Visiting Professor at Seattle University School of Law, MacArthur Fellow, and noted authority on minority voting rights issues, will give the keynote address.

The Goldmark Award honors the memory of Charles A. Goldmark, Seattle attorney, community leader, and ardent supporter of access to justice. Mr. Goldmark served as the Legal Foundation's president at the time of the tragic assault that led to his death in 1986. The public is invited to attend the luncheon, which pays tribute to all the volunteer lawyers and legal-aid providers in Washington state.

The Legal Foundation is a not-for-profit organization that has distributed over $70 million for legal aid to the poor since 1985. Visit www.legalfoundation.org or contact Barbara C. Clark at 206-624-2536 for more information about the Goldmark Award and the IOLTA program.

Keep in Touch

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

Visit the WSBA Online Store

Go to www.wsba.org and click "WSBA Store" in the left navigation bar to purchase Cutter & Buck polo shirts, twill baseball caps, ballpoint pens, and brass luggage tags, all sporting the WSBA logo. The store offers secure online credit-card ordering. You can also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Items available include: polo shirt (pewter or white, size L or XL) — $56; baseball cap (stone) — $24; ballpoint pen — $12; luggage tag — $7. Prices include shipping and handling. Sales tax (8.8 percent) will be added to orders shipped within Washington.

Memorandum of Understanding between the American Bar Association (ABA) and the National Bar Association (NBA)

Concerning Cooperation in Facilitating Assistance for Lawyers of Color Who Have a Need to Access Established Systems of Support and Treatment for Problems Related to Stress, Depression and Addiction

This Memorandum of Understanding (MOU) dated as of July 21, 2004 between the ABA and the NBA and wherein the undersigned Associations,

Recognize that alcoholism, drug addiction, and mental health problems afflict a great number of professionals, including lawyers and judges. Reports now estimate that, while ten percent of the general population has problems with alcohol abuse, 15-18 percent of the lawyer populations battle the same problem;

Recognize that lawyers and judges are "overachievers" who carry an enormous workload, and the tendency to "escape" from daily problems through the use of drugs and alcohol is prevalent in the legal community;

Recognize that reports have shown that a majority of disciplinary problems involve chemical dependency or emotional stress.

Recognize that lawyers' assistance programs (LAPs) have been established by American Bar Association affiliates in all 50 states with well-established support programs and formal treatment systems;

Recognize that African American lawyers and judges are afflicted with work-related stress, addiction and depression at least at the same rate, if not at disproportionately higher rates, than the general population: and,

Recognize that the NBA has undertaken an initiative to develop a LAP that will utilize an NBA develop-network of support service providers for its members who have a need for such services.

NOW THEREFORE, in consideration and recognition of the aforementioned, the parties hereby agreed as follows:

(1) That the ABA will provide access to well established support networks, via a toll-free telephone number, for NBA members who have a need for intervention and support associated with stress, addiction and depression problems.

(2) That the confidences of NBA members who access the resources of the ABA will be maintained in the same manner and to the same degree as required by the existing LAP.

(3) That NBA utilization of this service may be tracked vis-à-vis users who voluntarily identify themselves as NBA members.

(4) That such tracking information may prove useful in the development of an independent support and treatment network developed by the NBA.

(5) That this MOU does not contemplate the exchange of funds between the parties during the pendency of this relationship:

(6) That this MOU shall become effective as of the date of its signing and shall remain in effect for three (3 years) or until the NBA completes and launches its LAP development, whichever comes first.

(7) That this MOU can be terminated by either party in writing with a 90-day notification given to the other party.

BY LINDSAY THOMPSON

Everett, December 10-11, 2004

As Dr. Watson might have written, this meeting presented The Case of the Disappearing Agenda. Everyone showed up, bright-eyed, ready to govern, fully apprised of the 390-page briefing book's contents, only to have several big, contentious items get pulled. The balance they could have faxed in on the consent calendar.

But there was no way to predict this, so the Board made the best of things.

After a long executive session, they convened at 11 a.m. Friday. They worked till 12:15, broke for lunch, reconvened at 1:30, then more or less ran out of things to do by 2:30 (see, the problem is when the people invited to present an item aren't there, you can't do anything about it).

So they recessed till 5:30, when there was a reception to meet the Snohomish County Bar. But it being a Friday night in the holiday season, attendance was a bit sketchy. The food was good, though.

Saturday morning the BOG reconvened at 8:30, and in a wave of unanimity, adjourned about 10:30.

Here's what got done:

A bunch of people got appointed to committees and boards. **Tom Fitzpatrick** gave an update on stuff the ABA is doing, he being one of our delegates to that august institution. One of our members, **Bill Neukom** (the snappy bow tie guy) wants to be ABA president. Apparently, the processes of the ABA are such that you have to declare a decade in advance. Tom put a resolution to the Board asking them to endorse Neukom's bid. They did, with enthusiasm, as having an ABA president is something Washington hasn't managed since the 1940s.

Governors **Mark Johnson** and **Mike Pontarolo** told the Board about investigations to find a sponsored liability insurance carrier for WSBA members. This has been a practice of WSBA for some considerable time, as it helps keep a carrier in the market when times are hard and no one wants to underwrite here.

The Legislature convenes in January and tort reform rears its tedious head again. So the Board skirmished over how to address new legislation that will repackage the old ideas in new ways. They ended up sticking to the principles they adopted last session.

Pete Karademos and **Doug Lawrence** of the Legislative Committee came in with a basket of bills asking the Board to endorse or support or sponsor them. Fortunately they were technical and housekeeping kinds of bills: service by publication in family-law cases where the parents have dropped the kids off with relatives and bolted; allowing counties to add a surcharge for county law library support; passing the Uniform Mediation and Revised Uniform Arbitration Acts; tidying up estate and trust legislation details; aligning Washington's medical records privacy laws with HIPAA; and the Uniform Estate Tax Apportionment Act put people into paroxysm.

Speaking of taxes, little did anyone know that a smoldering internecine struggle has been grinding along in the WSBA Section on Taxation for at least two years. A renegade member, finding the leadership had gotten too grand for its own good, focusing on sexy federal tax issues while practitioners of state and local tax law languished behind a veil of ignorance from a want of CLEs, brought the BOG a plan to create a Confederate Tax Section focusing on neglected state tax justice issues.

Section chair **Bob Chicoine**, as President Lincoln, argued most section members do state and federal taxes alike, and that **John Piper**, who wanted the new section, was the leader of a tiny band who shouldn't be complaining because they had been invited repeatedly into the big welcoming Tax Section tent. Besides, he said, eight of the 50 names Piper claimed support creation of the new section aren't those of WSBA members.

I think several hundred members will want to join, Piper rejoindered, but he couldn't say for sure because the section leadership denied him access to the section listserve to ask. "It's our policy," Chicoine told the Board. "We just don't give it out to anybody."

"Not even your own members?" a governor asked.

The section produced a letter from the head of the Department of Revenue saying it has been easier to work with more recent section leadership. Both claimed the support of the current chair of the section's state and local tax committee. Imprecations were cast about.

I was hoping things would go on a while. I thought the debate was taking on the look of a sort of B&O bitch-slap fest à la *Dynasty*. But the governors seemed to want to refer the whole thing to the "Can This Marriage Be Saved" columnist, and voted to deny the request for a new section.

Next month: Olympia, to see what the Westwater will be called this year. I'm outta here.

OLES MORRISON RINKER & BAKER LLP

is pleased to announce that

Allen W. Estes, III

has joined the firm as an Associate.

Oles Morrison Rinker & Baker LLP is one of Seattle's oldest law firms, dating from 1893. The firm has continued to embrace the philosophy of its founders and its significant members, finding practical approaches to its clients' legal issues. The firm has a solid base of litigation attorneys who specialize in construction, supply and service contracts; corporate practice, insurance coverage matters; commercial law; and estate and tax planning.

OLES MORRISON RINKER & BAKER LLP
701 Pike Street, Suite 1700 • Seattle, WA 98101-3930
Phone: 206-623-3427 • Fax: 206-682-6234

Gregory L. Harper

announces the opening of

THE HARPER FIRM, PLLC

Two Union Square
601 Union Street
Suite 4200
Seattle, WA 98101

Telephone: 206-652-3531
Fax: 206-260-2852
greg@theharperfirm.net

Representing property owners and commercial policy holders in property damage, building defect, and insurance coverage disputes.

www.theharperfirm.net

GROFF MURPHY TRACHTENBERG & EVERARD PLLC

is pleased to announce that

William John Crittenden

has joined the firm as Of Counsel.

Mr. Crittenden will continue his practice in the fields of Land Use Regulation, Appeals, Civil Litigation and Constitutional Law.

GROFF MURPHY TRACHTENBERG & EVERARD PLLC
300 East Pine • Seattle WA 98122
Telephone: 206-628-9500 • Fax: 206-628-9506
wjcrittenden@groffmurphy.com

OLES MORRISON RINKER & BAKER LLP

would like to congratulate associate

Heather Shand Perkins

on obtaining her Masters of Law (LL.M) graduate degree in taxation from the Graduate Tax Program at the University of Washington School of Law in June of 2004.

Ms. Heather Shand Perkins focuses her practice on estate planning, probate and estate disputes, business planning, formation and disputes, construction and construction defect litigation, and insurance issues and litigation.

Oles Morrison Rinker & Baker LLP is one of Seattle's oldest law firms, dating from 1893. The firm has continued to embrace the philosophy of its founders and its significant members, finding practical approaches to its clients' legal issues. The firm has a solid base of litigation attorneys who specialize in construction, supply and service contracts; corporate practice, insurance coverage matters; commercial law; and estate and tax planning.

OLES MORRISON RINKER & BAKER LLP
701 Pike Street, Suite 1700 • Seattle, WA 98101-3930
Phone: 206-623-3427 • Fax: 206-682-6234

Kevin D. Jablonski

and

John S. Reid

are pleased to announce the formation of

JABLONSKI AND REID, PLLC

218 Main Street, #140
Kirkland, WA 98033
206-822-3668
www.jablonskiandreid.com

The firm emphasizes patent preparation and procurement.

BADGLEY~MULLINS LAW GROUP PLLC
&
THE ISAACSON LAW FIRM PLLC
announce

THE TAX LITIGATION GROUP

— Since 1999 —

Combining accounting and tax law expertise with extensive tax litigation trial experience, The Tax Litigation Group represents clients in the pursuit of claims for refund or abatement of federal and state taxes, and in defense against the collection of taxes in the following court systems:

- United States District Court
- United States Tax Court
- United States Bankruptcy Court
- United States Court of Federal Claims
- United States Court of Appeals
- State Courts

The Tax Litigation Group members are accepting referrals and engagements in appropriate cases.

BADGLEY~MULLINS LAW GROUP PLLC
Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, WA 98104
Telephone: 206-621-6566
Fax: 206-621-9686

THE ISAACSON LAW FIRM PLLC
Bank of America Tower
701 Fifth Avenue, Suite 4770
Seattle, WA 98104
Telephone: 206-448-1011
Fax: 206-448-1022

Disciplinary Notices

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

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

Disbarred

David S. Teske (WSBA No. 14823, admitted 1984), of Edmonds, was disbarred, effective September 15, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2002 and 2003 involving settling client matters without authority, misrepresentations in legal documents, deceit of a notary public, misappropriation of client funds, and failure to cooperate with a disciplinary investigation.

Matter 1: In 2002, Mr. Teske agreed to represent two clients in a lawsuit against their former employer. Mr. Teske negotiated a settlement of both claims without adequately consulting with the clients or obtaining authorization to settle for the amounts accepted. Mr. Teske executed settlement documents in which he falsely stated that the documents had been fully reviewed by the clients. Mr. Teske deceitfully persuaded a notary public to notarize signatures purporting to be those of the clients on the settlement documents. Mr. Teske received settlement checks in both matters and deposited them into his firm's bank account, but he never paid either client any of the settlement proceeds.

Matter 2: In 2003, Mr. Teske failed to provide written responses to two grievances as required by the Rules for Enforcement of Lawyer Conduct. Mr. Teske subsequently failed to appear as commanded by a subpoena *duces tecum* issued by disciplinary counsel in connection with the investigation of the grievances.

Ms. Teske's conduct violated RPCs 1.2(a), requiring a lawyer to abide by a client's decision regarding a settlement offer; 1.4, requiring a lawyer to keep the client reasonably informed about the status of a matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions; 4.1(a), prohibiting a lawyer from knowingly making a false statement of material fact or law to a third person; 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; 8.4(d), prohibiting conduct prejudicial to the administration of justice; 1.14, requiring a lawyer to deposit client funds into a trust account and to pay to the client funds that the client is entitled to receive; and 8.4(b), prohibiting commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and ELC 5.3(e), requiring a lawyer to promptly respond to any inquiry or discovery request made in connection with a disciplinary investigation.

Sachia Stonefeld Powell represented the Bar Association. Mr. Teske represented himself. James C. Lawrie was the hearing officer.

Suspended

Hari L. Alipuria (WSBA No. 26899, admitted 1997), of Tacoma, was suspended for 90 days, effective September 15, 2004, by order of the Washington State Supreme Court following a stipulation. This discipline was based on his conduct in failing to competently and diligently represent a client and in failing to comply with the terms of a prior disciplinary stipulation.

Matter 1: Mr. Alipuria represented a client who had been charged with first-degree assault of a child for allegedly intentionally burning his infant son. Although the client's spouse was originally charged with the crime, those charges were dismissed after the client informed the spouse's lawyer that the client had accidentally burned the child. The defense theory of the case was that the spouse had burned the infant and the client had then fabricated the story of his involvement to protect her.

- Prior to trial, Mr. Alipuria moved to suppress the testimony of the spouse's lawyer. Although Mr. Alipuria knew that the issue turned on the client's subjective belief that an attorney-client relationship existed with the other lawyer, Mr. Alipuria failed to call the client to testify at the hearing and failed to offer any other evidence of the client's subjective belief. The motion was denied.
- Mr. Alipuria listed the client's seven-year-old child as a trial witness. Mr. Alipuria and the client believed that the child would testify that the spouse burned the infant. Mr. Alipuria did not interview the child prior to trial, nor did he call the child as a witness.
- Knowing that the spouse had taken a polygraph examination, Mr. Alipuria moved prior to trial to exclude any reference to the polygraph examination. Despite having been instructed not to do so, the spouse volunteered during her testimony that she had taken a polygraph examination. Mr. Alipuria did not object, ask for a curative instruction, or move for a mistrial.
- Prior to trial, the client had taken a number of polygraph examinations. He believed that the results were inconclusive. The client requested that Mr. Alipuria not disclose the results of the examinations with the prosecuting attorney. Mr. Alipuria nonetheless volunteered to the prosecuting attorney that the client had failed a polygraph examination.

The jury found the client guilty. On appeal, the conviction was reversed and remanded, in part on grounds that Mr. Alipuria had provided ineffective assistance of counsel.

Matter 2: In 2002, Mr. Alipuria entered into a disciplinary stipulation for violations of the Rules of Professional Conduct in two prior matters. The terms of the stipulation imposed a probationary period requiring, *inter alia*, that Mr. Alipuria (1) propose a practice monitor within two weeks of the commencement of probation; and (2) within 30 days, provide proof of malpractice insurance coverage or of the rejection of his applications for such coverage. Respondent did not propose a practice monitor or apply for malpractice coverage within the time frames required by the stipulation.

Mr. Alipuria's conduct violated RPCs 1.1, requiring a lawyer to provide competent representation to a client; 1.3, requiring a lawyer act with reasonable diligence and promptness in representing a client; and 1.6, prohibiting a lawyer from revealing a client's confidences or secrets unless the client consents after consultation; and former RLDs 1.1(m), subjecting a lawyer to discipline for failure to meet the conditions of probation or a stipulation; and 5.2(b), subjecting a lawyer to discipline for failure to comply with a condition of probation.

Sachia Stonefeld Powell represented the Bar Association. Leland G. Ripley represented Mr. Alipuria. David B. Condon was the hearing officer.

Suspended

Phillip E. Egger (WSBA No. 11611, admitted 1981), of Bellevue, was suspended for six months, effective September 30, 2004, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 1989 involving billing a client for work that had already been paid for by a third party and failing to obtain a client's written consent to a potential conflict of interest. For additional information please see *In re Discipline of Egger*, 152 Wn.2d 393, 98 P.3d 477 (2004).

Matter 1: In 1989, Mr. Egger assisted Client A in making a loan to a condominium development. The loan documents provided that the borrower would pay the lender's legal fees up to $15,000. Mr. Egger billed Client A $21,000 for attorney fees and costs incurred in the loan transaction. Although the borrower paid Mr. Egger's firm $15,000 for legal fees, the payment was not credited to Client A's account, and Client A also paid the full $21,000 bill.

Matter 2: In 1985, Client B contacted Mr. Egger's law firm regarding representation of her interests as an unsecured creditor in a bankruptcy proceeding filed by a third party, to whom Client B had loaned $66,000. Client B did not recover the amount of the loan. In 1989, Client B persuaded another of Mr. Egger's clients, Client A, to loan $300,000 to the third-party debtor. Mr. Egger negotiated the loan. Although Client B was listed as a client in firm records at the time, and although Mr. Egger made efforts to secure $66,000 as payment to Client B out of the loan proceeds, Mr. Egger did not obtain Client A's written consent after full disclosure of the conflict of interest.

Mr. Egger's conduct violated RPCs 1.5(a), requiring that a lawyer's fee be reasonable; and 1.7(b), prohibiting a lawyer from representing a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure.

Evan L. Schwab, Leslie C. Allen, and Scott G. Busby represented the Bar Association. Jeffrey A. Beaver and James L. Magee represented Mr. Egger. Michael V. Riggio was the hearing officer.

Reprimanded

Stuart I. Folinsky (WSBA No. 20687, admitted 1991), of Los Angeles, CA, was ordered to receive two reprimands, ef-

fective September 30, 2004, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with orders of the State Bar Court of the State of California. This discipline was based on his conduct in 2002, 2003, and 2004, involving acts of misconduct in multiple immigration matters.

Matter 1: This matter comprises misconduct in three client matters.

- In 2002, a client paid Mr. Folinsky $900 to prepare an I-360 visa petition. Mr. Folinsky failed to timely file the petition, and the client was subject to deportation proceedings.
- In September 2003, Mr. Folinsky was paid $3,000 to represent two clients in an immigration matter. In October 2003, the clients terminated the representation and hired another lawyer. Although the clients repeatedly requested that he do so, Mr. Folinsky failed to promptly refund the unearned fees.
- In 2001, Mr. Folinsky was hired to prepare an Immigrant Petition for Alien Worker, Form I-140. After numerous inquiries from the client, Mr. Folinsky discovered in February 2004 that he had never filed the petition.

Matter 2: This matter comprises misconduct in two client matters.

- In 1993, a client paid Mr. Folinsky $1,500 to represent her in connection with an application for asylum. From November 1993 through mid-1995, Mr. Folinsky took no affirmative steps to respond to an INS letter expressing an intention to deny the application for asylum, and he did not communicate with the client. In August 1995, following her marriage, the client paid Mr. Folinsky another $465 for an adjustment of status to lawful permanent resident. Mr. Folinsky did not respond to the client's numerous requests for information, and failed to file any documents on behalf of the client. The client sued Mr. Folinsky, seeking return of all fees paid to him, and a judgment was entered against him.
- In 1996, Mr. Folinsky was paid $560 to file a petition for permanent residence. Mr. Folinsky did not file the petition, nor did he respond to numerous client inquiries concerning the status of the case. Although the client terminated the representation and requested a refund, Mr. Folinsky failed to promptly refund the unearned fees.

Mr. Folinsky's conduct violated California Business and Professions Code § 6068(m), requiring a lawyer to respond promptly to reasonable status inquiries from a client; California Rules of Professional Conduct 3-700(D)(2), requiring a lawyer to promptly return unearned fees; and 3-110(a), prohibiting a lawyer from intentionally, recklessly, or repeatedly failing to perform legal services with competence.

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

Nondisciplinary Notices

Suspended Pending Outcome of Disciplinary Proceedings

John B. Jackson III (WSBA No. 5208, admitted 1973), of Bremerton, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(1), effective October 20, 2004, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Suspended Pending Outcome of Disciplinary Proceedings

Kevin M. Kopra (WSBA No. 29651, admitted 1999), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.3, effective October 11, 2004, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Suspended Pending Outcome of Disciplinary Proceedings

Phillip E. Miller (WSBA No. 7703, admitted 1977), of Bellevue, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(2), effective September 29, 2004, by an order of the Washington State Supreme Court. This is not a disciplinary action. *(Mr. Miller is to be distinguished from Phillip S. Miller of Seattle.)*

RUSSIAN MATTERS

Elena V. Yushkina

Russian licensed attorney with 15 years' experience available for referral, consultation, or association on issues and matters relating to Russian law, including corporate law, entity formation, litigation, expert testimony, and document retrieval. Washington State Bar licensed foreign law consultant on Russian law.

HARRIS & MOURE, PLLC
The International Law Firm for Small Business
720 Olive Way, Suite 1000
Seattle, WA 98101
206-224-5657
E-mail: elena@harrismoure.com
www.harrismoure.com

ETHICS and LAWYER DISCIPLINE

25 Years' Experience

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

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

MEDICAL or DENTAL MALPRACTICE

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

KENT
877-520-5252
E-mail: jgreaney@hgzlaw.com

APPEALS

Briefing and arguing appeals for over 30 years

Emphasizing cases involving difficult questions of contractual, statutory, and constitutional interpretation.

BILL BISHIN

206-323-7175

APPEALS

Charles K. Wiggins
and
Kenneth W. Masters

We handle or assist on all types of civil appeals in state and federal courts, from consulting with trial counsel to post-mandate proceedings.

WIGGINS & MASTERS PLLC
241 Madison Ave. North
Bainbridge Island, WA 98110
206-780-5033
www.appeal-law.com

ATTORNEYS' FEE DISPUTES

Michael Caryl

- Attorney-Client
- Attorney-Attorney
- Attorney Liens
- Fee-Related Ethics and Discipline
- Expert Testimony (lodestar/fee division/*quantum meruit*)
- Arbitration, Mediation
- Consultation, Representation

206-623-5890
E-mail: mcaryl@mbwf.com

APPEALS

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

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

MEXICAN MATTERS

Spanish-speaking WSBA attorneys in Seattle and Mexico work together to address real estate, business probate, litigation, and immigration matters. Affiliated offices in Chile, Colombia, and Peru.

MATTHEW N. METZ
206-583-2745
E-mail: matthew@metzlaw.net
www.metzlaw.net

BENJAMIN C. ROSEN
011-52-55-5553-5200
E-mail: brosen@cablevision.net.mx
www.solcargo.com.mx

DISCIPLINARY INVESTIGATION and PROCEEDINGS

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

FAIN SHELDON ANDERSON & VANDERHOEF PLLC
Bank of America Tower
701 Fifth Ave., Ste. 4650
Seattle, WA 98104
206-749-2371
E-mail: patrick@fsav.com

INSURANCE MEDIATION

Property • Casualty • Life
Health • Disability

William P. Hight

• 30 years litigation experience
• ADR trained

2025 First Avenue, Suite 270
Seattle, Washington 98121

206-374-3200
www.hightlaw.com

INSURANCE

Richard Gemson,
former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., available for mediation, consultation, association — casualty, life, disability, and health.

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

andiand@comcast.net

BAR NEWS
is pleased to offer advertising services in the

PROFESSIONALS SECTION.

For more information, please call Jack Young at 206-727-8260 or e-mail jacky@wsba.org.

DIRECT & INVERSE CONDEMNATION

Robert A. Wright,
former senior counsel, Attorney General of Washington, with over 35 years' experience (WSDOT and WSCTC), is available for consultation, association, or referral of direct and inverse condemnation cases.

FAUBION, JOHNSON & REEDER, PS
5920 100th St. SW, Ste. 25
Lakewood, WA 98499
253-581-0660
E-mail: RWright@FJR-Law.com

APPEALS

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

Emmelyn Hart-Biberfeld,
former law clerk, Washington State Supreme Court; invited member, the Order of Barristers

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

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

www.talmadgelg.com

The WSBA Service Center is open Monday through Friday 8:00 a.m. to 5:00 p.m.

800-945-WSBA • 206-443-WSBA
questions@wsba.org

Calendar

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

WSBA *Bar News* Calendar
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Fax: 206-727-8319
E-mail: comm@wsba.org

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

ADR

Professional Mediation Skills Training Program
January 14-16 — Seattle. 34 CLE credits, including 2 ethics. By UW-CLE; 800-CLE-UNIV.

Animal Law

Animal Law Section
January 21 — Spokane. CLE credits pending. By WSBA-CLE: 800-945-WSBA or 206-443-WSBA.

Business Law

Business at the Speed of Light — Counseling Electronic Commerce Clients
February 4 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Elder Law Issues in Estate Planning
January 28 — Seattle. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Estate Planning for Large Estates: Family Limited Partnerships and Beyond
February 17 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law

Financial Aspects of Divorce
February 16 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Practice Management

LOMI Presents: Law Office Management for the Solo and Small Firm Practitioner, Managing Partner, and Legal Administrator
February 23 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

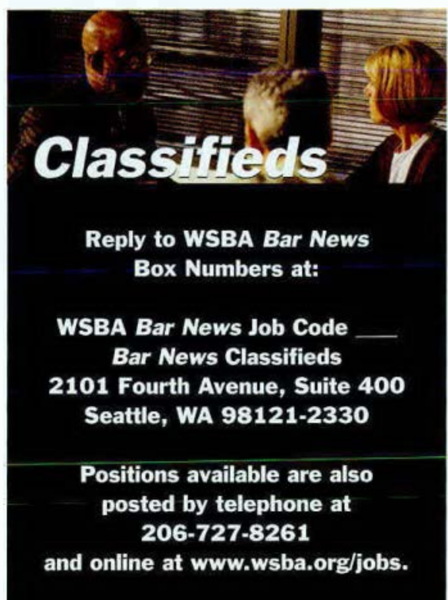
Litigation

27th Annual Insurance Law Seminar
January 20 — Spokane; January 21 — Seattle. 5.75 CLE credits. By WSTLA; 206-464-1011.

Police Misconduct Litigation
January 28 — Seattle. 5.75 CLE credits. Sponsored by Suffolk Law School and UW School of Law; 800-CLE-UNIV.

Introducing the Appellate Practice Handbook
February 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Defense Medical Exams
February 16 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.



Space Available

Four offices for sublease in Pacific Building, 3rd and Columbia. Conference rooms, receptionist, copy machine available. Call Rob Kraft at 206-624-8844.

Great Everett location: 1,200 sq. ft. office space. Ideal location and space for attorney's office. For more information, call Don Seidel at 425-334-8891.

Office space: Spacious office with view, secretarial station, reception, use of two conference rooms, copy/work room, library, and other amenities in 10-attorney suite. Potential cross-referrals. Close proximity to Pioneer Square and the Waterfront. Please call Debra for details at 206-903-6364.

Downtown Seattle office: One window office and one legal secretary station available for sublease in Two Union Square. Spectacular 180° view. Please respond to WSBA *Bar News* Code 657, 2101 4th Ave., Ste. 400, Seattle, WA 98121.

Professional office space across the street from the Pierce County Courthouse: Four offices, conference room, kitchenette, secretarial area, entry area, free parking, 2,800 sq. ft.. $2,350/mo. Call Brett Purtzer at 253-272-2157, or e-mail questions to brett@montehester.com.

Downtown Seattle office-sharing: $175. Full-time offices also available on 32nd fl., 1001 Fourth Avenue Plaza. Close to courts. Short-term/long-term lease. Conference rooms, reception, telephone answering, mail handling, legal services, and much more. 206-624-9188.

Stanwood office available: Large office and secretarial workspace available in two-attorney suite. Modern office building with quality build-out. Share conference room, copier, fax, high-speed Internet, etc. Referrals possible. Contact David A. Kohles at 360-629-4100.

Seattle: Shared space available in recently refinished lower Queen Anne plaintiff-side law firm. Rent $2,750; includes two window offices, two secretarial work stations, private small conference room, DSL network ready, filing cabinets, shared access to two additional conference rooms, kitchen, reception, phone system and voice-mail, library, mail handling, postage machine, fax, copy room with networked scanning-capable copy machine. Furnished/unfurnished. Computers available at additional cost. Capacity-dependent legal staff available at additional cost. Contact Dave Helfer, 206-285-2828.

Lindell Law Offices: One attorney office available on Mercer Island. Conveniently located to downtown, Bellevue, and RJC. DSL, copier, fax, conference room, free covered parking. Fun office mates. Contact Holly at 206-230-4922 or holly@lindelllaw.com.

Kent office space: Large, fully furnished corner office with private entrance in elegant, newly constructed small law building. All amenities included. Gated entrance with own parking lot. Highly visible location close to RJC. 206-227-8831.

Pioneer Square: Office space available ranging from 800 to 7,000 sq. ft. in beautiful, historic Mutual Life Building. Close to ferry dock. For more information, call Beverly Buswell at 206-622-7078.

Poulsbo office-sharing: Large, comfortable, and tastefully appointed executive office as well as secretarial space available. Share conference room, copier, fax, scanner, high-speed Internet, phone system, and kitchen. Contact Drake Mesenbrink at 360-697-0155 or drakemesenbrink@earthlink.net.

Mount Vernon office space available in recently remodeled suite with two other attorneys. On-site parking, walking distance to courthouse and downtown, shared Internet, fax, copier, reception area, and conference room. Contact Eron Berg at 360-336-3610 or eron@cascadelaw.com.

Edmonds — attorney office available: Space is available for one more attorney in a suite of four private offices in the former Wells Fargo Bank Building (soon to be Banner Bank Building) close to Highway 99 in the prime business area of Edmonds. Amenities include full, experienced secretarial support; reception; copier and high-speed fax; networked DSL; and billing service if needed. Parking is generous and conveniently accessible to clients, with a bank just a few steps away and another directly across the street. Join a congenial group with economical cost-sharing and some potential for referrals. Call Ralph at 425-774-6027 or John at 425-775-5551.

Positions Available

Downtown Seattle defense firm seeks associate with strong work ethic and a minimum of three years' experience in personal injury and construction defect litigation. Developed legal writing and research skills are required. Our firm offers a competitive salary, bonus program, and benefits. Mail résumé and writing sample to Fallon & McKinley, 1111 3rd Ave., Ste. 2100, Seattle, WA 98101. No phone calls accepted.

Assistant city attorney: City of Auburn, $6,250-7,423 per month DOE. Under the direction of the city attorney, provides legal counsel and expertise to the mayor, council, and all city departments. Advises elected officials and department personnel regarding legal aspects of cases, controversies, and problems, and conducts legal research. Assists the city attorney in the management of the city attorney's office, including budget development and office management. Represents the interests of the city in all courts and judicial forums, including both civil and criminal litigation. Qualifications required: graduation from a law school accredited by the American Bar Association; licensed to practice law in the state of Washington; and a minimum of four years' legal experience working for a municipality, or five years' private law practice, of which three of those years include experience working with a municipality. Management and prosecuting experience required. Visit www.ci.auburn.wa.us for more information and to download an application packet. 253-931-3077. EOE.

Disciplinary Counsel. The Washington State Bar Association Office of Disciplinary Counsel (ODC) seeks a full-time lawyer to prosecute ethical misconduct of lawyers. The ODC offers a collegial environment, an opportunity to

argue Supreme Court appeals, and a benefit package including medical/dental/vision, deferred earnings, and retirement. Candidates must currently be licensed to practice in Washington. Ten years of practice experience, some in criminal law, and management experience is preferred. The candidate must have substantial trial experience, superb writing and analytical skills, and a professional attitude toward participants in the discipline process. Submit cover letter, résumé, salary requirements, writing sample, and references to Human Resources, Washington State Bar Association, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail to hr@wsba.org, or fax HR at 206-727-8319.

Growing North Central Washington firm, with an emphasis in criminal law, seeks highly motivated associate. Salary DOQ. Send résumé and references to 330 King St., Ste. 9, Wenatchee, WA 98801; or e-mail travis@brandtlaw.net.

Attorneys: Quality attorney recruitment for contract and direct-hire placement, including lateral-hire partnership and of-counsel positions. We specialize in engagements with Puget Sound's premier law firms of large to small/solo membership, corporate legal departments, boutique practices, and governmental agencies. Please contact Law Dawgs, Inc. in confidence at 206-224-8269; e-mail seattle@lawdawgs.com; www.lawdawgs.com.

Quality attorneys sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone, 425-822-1157; fax, 425-889-2775; e-mail, legalease@legalease.com; or visit us on the web at www.legalease.com.

Minzel and Associates, Inc. is a temporary-and permanent-placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract and/or permanent basis for law firms, corporations, solo practitioners, and government agencies. If you are interested, please e-mail your résumé as a Word attachment to resumes@minzel.com. Please visit our website at www.minzel.com.

The Nature Conservancy, an international conservation organization, seeks an attorney to work in its Seattle office. Duties include legal support for real estate transactions, grants, contracts, and land use issues. Minimum five years' experience handling real estate transactions. Additional information at www.nature.org/jobs. Please e-mail cover letter and résumé to legaljobs-wa2004@tnc.org by 1-17-05. EOE.

The Gaitán Group, a Seattle, AV-rated, friendly law firm dedicated to diversity, seeks associate attorney with at least five years' litigation experience. Superior writing skills required. Please e-mail résumé to vleeper@gaitan-law.com or fax to 206-346-6019.

Associate attorney for downtown Seattle law firm: Carney Badley Spellman seeks litigation associate, minimum four years' litigation experience; products liability experience preferred. Ideal candidate will have in-depth experience with discovery, depositions, writing briefs, motion/courtroom practice, settlement negotiations, as well as trial management. Strong academics, proven communication and writing skills, leadership qualities. E-mail résumé to dillard@carneylaw.com or mail to Deborah Dillard, 700 5th Ave., Ste. 5800, Seattle, WA 98104.

The Civil Division of the Snohomish County Prosecuting Attorney's Office seeks an experienced employment law attorney for litigation and advice in a variety of labor and employment law matters, including compliance with state and federal discrimination laws, discipline and discharge, wage and hour, and grievance arbitrations. A minimum of five years' experience is desired, as well as strong writing and oral communication skills. Applicants must be members of the Washington State Bar and be able to immediately assume primary responsibility for assigned cases. Salary DOE. The County offers excellent fringe benefits, a superior leave package, and a congenial work atmosphere. To apply, please submit a cover letter, résumé, and writing sample to Thomas Fitzpatrick, Snohomish County Prosecuting Attorney's Office, 2918 Colby Ave., Ste. 203, Everett, WA 98201. Snohomish County is an equal opportunity employer.

The Civil Division of the Snohomish County Prosecuting Attorney's office seeks a land use attorney with an interest in advising clients in areas relating to land use and environmental regulation, including zoning, State Environmental Policy Act compliance, Growth Management Act compliance, and Endangered Species Act compliance. One year's experience with the Land Use Petition Act, land use damages claims, and administrative hearings board is desired. Applicant must possess excellent writing and oral-communication skills, and experience in computer-aided research and word processing is extremely desirable. Salary dependent upon qualifications. Generous fringe benefits and leave package. To apply, please submit a letter of interest, résumé, writing sample, and references to Millie Judge, Senior Deputy Prosecuting Attorney, Civil Division, Snohomish County Prosecuting Attorney's Office, 2918 Colby Avenue, Ste. 203, Everett, WA 98201; or e-mail millie.judge@co.snohomish.wa.us. Position open until filled. Snohomish County is an equal opportunity employer.

Established central Oregon law firm seeks an associate with at least three years' experience in civil litigation. Salary depends upon experience. Send references and résumé to Bryant Emerson & Fitch, PO Box 457, Redmond, OR 97756.

Law firm seeking associate attorney, at least two years' experience in estate planning, probate, business transactions, and some litigation. Send résumé to Office Manager, PO Box 2315, Tacoma, WA 98401-2315.

Trust for Public Land, a national nonprofit land-conservation organization, seeks a project manager in its Seattle office for preservation of critical open space through acquisition and conveyance into public ownership. Applicants should have experience in the following areas: real estate transactions; appraisals, environmental assessments, and title issues; government/public agency relations; and knowledge of processes for securing public funding for conservation real estate acquisitions. Fundraising and/or grassroots organizing experience a plus. Knowledge of Washington State and Northwest geography desirable. Requires strong interest/ability in marketing the Trust's services to landowners, communities, public agencies. View the complete job description at www.tpl.org. Send letter and résumé to Daniel Wilson, Trust for Public Land, 1011 Western Ave., Ste. 605, Seattle, WA 98104. Position closes January 31, 2005. EOE.

Business attorneys: Lasher Holzapfel Sperry & Ebberson PLLC has an immediate opening for two attorneys to support our diverse business department. Interesting work and a great firm atmosphere for motivated individuals who desire to build or expand a practice. We are seeking one attorney with at least six years' practice in business, real estate, and tax, with specific experience counseling private and family businesses, and a second attorney with

at least two years' experience in business, real estate, and estate planning. Candidates must have excellent academic credentials as well as strong interpersonal, writing, and research skills. LLM or comparable degree preferred. Current WSBA membership required. We offer competitive salary and benefits, and a creative, energetic workplace. Interested candidates should submit résumé and writing sample to Sonya Baker, Lasher Holzapfel Sperry & Ebberson PLLC, 601 Union St., Ste. 2600, Seattle, WA 98101; fax 206-340-2563; www.lasher.com.

Indian law attorney: Seattle law firm with a national practice representing Indian tribal governments and Alaska Native entities (www.msaj.com) seeks an associate attorney for Seattle. At least one year's sophisticated Indian or environmental law and litigation experience in federal or tribal courts required. Top academic credentials and excellent writing skills are also required. Candidates should have familiarity with the Departments of Justice and the Interior. Ability to expand the firm's practice through contacts in Indian country preferred. Native Americans are encouraged to apply. Please forward résumé and writing sample to Morisset, Schlosser, Jozwiak & McGaw, Attn: Ann Bernheisel, 801 2nd Ave., Ste. 1115, Seattle, WA 98104 or a.bernheisel@msaj.com.

Medical malpractice defense firm seeks an associate with a minimum of three years' civil litigation experience. Some medical experience is preferred, but not required. Please send a résumé to Hiring Partner, Johnson, Graffe, Keay, Moniz and Wick, 925 4th Ave., Ste. 2300, Seattle, WA 98104.

Vice-president and corporate counsel — 200458: The vice-president and corporate counsel will oversee legal matters for Corus and have primary responsibility for corporate governance. Corporate compliance responsibilities will include Sarbanes-Oxley, SEC, and commercial transaction compliance. This individual will also understand the legal risk and exposure to patent, copyright, and intellectual property matters where applicable. Reporting to the CEO, this individual will serve as a member of the executive leadership team. Primary responsibilities will include public company compliance obligations, including securities law disclosure issues, securities reporting requirements, Delaware law compliance, and general corporate governance matters. Additional responsibilities may include patent licensing, trademark matters, and general corporate transactional matters, including the management of any litigation as applicable. This individual will proactively provide Corus management legal counsel to corporate governance issues and issues which affect the conduct of the company's board of directors and its committees. Qualifications: J.D. and admission to practice in the state of Washington. 10 years' major law firm or in-house legal department experience. Experience with Sarbanes-Oxley implementation and compliance is a must. Experience in the life sciences law and/or industry. Strong verbal and written communication skills and a demonstrated ability to work in a collaborative environment. Corus Pharma, Inc. is a privately held company committed to developing and obtaining regulatory approvals of products for respiratory and infectious diseases that can help provide improved health and superior quality of life. The company's internal core competencies reside in the identification of drug candidates, clinical development, and the management of a rapid FDA approval process for the products. Target candidates are continually being identified through a combination of internal ideas, including academic research, and a search of projects from other companies. We are located in the heart of downtown Seattle, just one block from the historic Pike Place Market. We offer competitive compensation and health benefits, casual work environment, 401(k), stock options, parking, and health club subsidy. For more information, visit our website at www.coruspharma.com. Please submit your résumé directly to careers@coruspharma.com.

Southwest Washington is growing . . . and the Vancouver office of Miller Nash is looking for someone to grow with us. We are seeking a business attorney with at least five years' experience; estate planning experience is a plus. Applicants must be committed to community involvement and aspire to develop the many growth opportunities that surround us. We provide a collegial atmosphere with a sophisticated Pacific Northwest practice. Miller Nash is one of the Pacific Northwest's largest multiservice law firms, serving clients locally and throughout the world from its offices in Seattle and Vancouver, WA, and Portland, OR. Established in Oregon in 1873, the firm represents clients in nearly every industry. Please send your cover letter, résumé, transcript, and writing sample, in confidence, to Katie McCoy, Director of Legal Recruitment, Miller Nash LLP; katie.mccoy@millernash.com; or fax 503-224-5858. Visit us on the web at www.millernash.com. Equal Opportunity Employer.

Litigation attorney: The Seattle office of Eisenhower & Carlson PLLC is accepting résumés for an associate attorney with at least two years' litigation experience, preferably in areas of commercial insurance defense and other civil litigation. The firm offers competitive salaries, a generous benefits package, and the opportunity to grow and develop skills as a commercial trial lawyer and build a solid legal career with one of the most respected law firms in the Puget Sound Region. Submit résumé to Carol Nyegaard, Eisenhower & Carlson PLLC, 601 Union St., Ste. 2830, Seattle, WA 98101. All responses will be kept confidential.

Family law attorney: Mckinley & Irvin, PLLC seeks attorney with a minimum of five years' experience in complex family law litigation. Candidate must have superior oral and written communication skills, and a high degree of professional integrity. Position offers an excellent salary and benefits package. Please forward cover letter, résumé, writing sample, and three professional references to debra@mckinleyirvin.com.

Small Eastside firm seeks dynamic associate to join its litigation practice. The ideal candidate will have at least one year's experience and the ability to work independently on complex litigation matters, and possess excellent verbal and written communication skills. Please e-mail résumé to shoutstra@washlaw.

To Place a Classified Ad

Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., February 1 for the March issue. No cancellations after deadline. Mail to: WSBA Bar News Classifieds, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years").

Questions? Please contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org.

biz or fax to 425-289-6666.

Schultheis Tabler Wallace, an established AV-rated law firm located in Ephrata, WA, seeks an associate for estate planning, business formation, real estate, and commercial law. Our associate positions are "family friendly," and we offer a congenial work environment in a new building one block from the Grant County Courthouse. Only those candidates who would like to spend less than 10 minutes each day commuting to work need apply. Salary DOE. Please send a cover letter, résumé, references, transcript, and writing sample to Nicholas L. Wallace at schultab@bentonrea.com or mail to PO Box 876, Ephrata, WA 98823.

Seeking contract attorney(s) experienced in trademarks or domestic and international domain name registration, transfer and portfolio management. Great opportunity. Send letter and résumé to Managing Partner at drjimrana@yahoo.com.

Hanis Greaney PLLC invites attorneys with established practices to join us in building the largest multiservice firm in South King County. Maintain substantial independence in your practice while enjoying the shared resources and cross-referrals of a larger firm. We offer a congenial and professional work environment in a beautiful, brand-new office facility only one mile from the RJC. Please call Susan at 253-520-5000 or e-mail spaepke@hgzlaw.com for more information.

Will Search

Seeking post-1984 will or other estate planning document of Flordelinda Richmond fka Madriaga fka Eldridge, of Everett, previously South Prairie; born 8-10-42; died 4-5-04. Please contact attorney Ann T. Wilson, ann@atwlegal.com or 206-625-0990.

Seeking the will of Charles E. Fullenweider, Bellevue, WA. Please contact James D. McBride, Julin & McBride PS, at 425-885-4066.

Conferences

Traumatic Brain Injury Litigation: Seattle, WA; May 9-10, 2005. Attend this essential workshop and receive practical tips from experts on brain injury litigation and life-care planning. Offered as a special session at Contemporary Forums' annual conference on brain injuries in Seattle, take advantage of the opportunity to gain a current clinical perspective on one of these life-altering events. For more information, 800-377-7707 or www.contemporaryforums.com.

Services

Contract litigation attorney: Experienced, accomplished trial attorney; 20-plus years' experience. Summary judgment motions, writing, and trials emphasized. Substantial record of success. References available. M. Scott Dutton, 206-324-2306; fax 206-324-0435.

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.

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.

Lump-sums cash paid for remaining payments on seller-financed real estate notes and contracts, business notes, structured settlements, annuities, inheritances in probate, lottery winnings. Since 1992. Cascade Funding, 800-476-9644; www.cascadefunding.com.

Minzel and Associates, Inc. is a temporary- and permanent-placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract and/or permanent basis to law firms, corporations, solo practitioners, and government agencies. For more information, please call us at 206-328-5100 or e-mail mail@minzel.com.

Bad-faith witness/insurance consultant: Over 25 years' claims, risk management, and legal experience. JD, CPCU, and ARM. Phone 425-776-7386; www.expertwitness.com/huss.

Contract appeals: Appellate victories at all levels Washington courts and 9th Circuit (BAP). Undefeated previous six decisions. Citations and references available on request. On contract or by referral. M. Scott Dutton; 206-324-2306; fax 206-324-0435.

2,000 medical-malpractice expert witnesses, all specialties, flat-rate referrals. Your satisfaction guaranteed. Case reviews too, low flat rate. Med-mal Experts, Inc.; www.medmalexperts.com; 888-521-3601.

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.

Investigation services: Six-plus years' experience, J.D., licensed and bonded. Criminal and civil cases. Contact through website, www.drummondinvestigations.com, or call 206-313-1213.

Contract attorney at your service! Legal research and writing, medical journal searches, for Washington lawyers. Minutes from UW Law Library and Health Sciences Library. Many satisfied clients. Elizabeth Dash Bottman, 206-526-5777; e-mail bjelizabeth@qwest.net.

Inside Intelligence, Inc. offers professional services in all aspects of criminal, domestic, and corporate investigation, including internal fraud, surveillance, cctv, and executive protective services. Reasonable investigative experience and associates. Office: 206-786-3607, investigations@insideintel.net, 1325 4th Ave., Ste. 600, Seattle, WA 98101. WA PI 1748; CA PI 15592. 24 hour: 206-719-4253.

Mediation and arbitration: Experienced lawyer available for mediation and arbitration in civil cases. Reasonable rate of $150 per hour. Available location at my office or such conference room as is available, your office, or residence of parties. Member of WSBA, Tacoma-Pierce County Bar Association, Federal Bar Association, American Trial Lawyers Association, Washington State Trial Lawyers Association, American Association of Matrimonial Lawyers, and Best Lawyers in America. Edward M. Lane, 1102 Broadway Plaza, Ste. 403, Tacoma, WA 98402; Tacoma 253-627-1091; Seattle 425-251-5938.

Miscellaneous

Vacation rentals in France and Italy: For photos, details, please visit www.lawofficeofkenlawson.com, e-mail kelaw@lawofficesofkenlawson.com, voicemail 206-632-1085, representing owners of historic properties.

INDEX to 2004 *Bar News* (Volume 58)

By Author

Bank, Kevin (w/Cheryl Kringle)
An Unholy Alliance: Nonlawyers Who Mass-Market Trusts, and the Lawyers Who Assist Them
MAR p26

Becker, Judge Mary Kay (w/ Justice Charles W. Johnson)
Moving Beyond Anecdotes: The Washington State Civil Legal Needs Study
JAN p16

Boggs, Robert
A Few Minutes with Rob Boggs
JUN p36

Brookings, Deborah D.
Strange Bedfellows: The New Washington Attorney Lien Statute and the *Blaney* Cases
DEC p19

Boruchowitz, Robert C.
The Right to Counsel: *Every* Accused Person's Right
JAN p22

Butterworth, Fred R.
Preserving Mediation's Greatest Attribute: Simplicity
MAR p34

Carlson, Carl J.
The Benefits of Membership: What Can the WSBA Do for You?
MAR p38

Carroll, Catherine A.
Addressing the Civil Legal Needs of Sexual-Assault Victims
APR p21

Colard, Susan
A Primer for Attorneys: The Rules and Regulations Applicable to Washington Court Reporters and the Transcripts They Produce
JAN p30

Cumbow, Robert C.
Commonest Errors in Contract Drafting
AUG p21

"Only," the Lonely
MAY p30

This Wonderful World of Words
JAN p32

Using That Word
NOV p25

Felbeck, Rachel (w/Stefani Quane)
Collaborative Law Reaches Out
FEB p29

Fucile, Mark J.
Why Conflicts Matter
AUG p36

Garlo, Dolly M. (w/J. Kim Wright and Marty Price)
Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Goodnight, David (w/Greg Tolbert and Vanessa Power)
Leadership in Lawyering
JUN p14

Guy, Andrew A.
Pro Bono Publico Services by WSBA Members in 2003
JUL p13

Haven, Thomas A.
CounterPoint
JUN p41

Henning, Kathy
History in the Making — Ron Ward: 114th President of the Washington State Bar Association, First President of Color
OCT p24

The WSBA Honors Its 2004 50-Year Members
NOV p38

Hinojos-Fall, Zulema
Lessons Learned: Three Years on the Board of Governors
OCT p28

Hopkins, James H.
The Employer/Employee Relationship in the New Millennium
NOV p29

Johnson, Justice Charles W. (w/Judge Mary Kay Becker)
Moving Beyond Anecdotes: The Washington State Civil Legal Needs Study
JAN p16

Johnson, Mark A.
The Law of Lawyering
NOV p37

Johnson, Stephen L. (w/Pat Lantz)
New Legislation of Interest to Attorneys: 2004 Highlights
JUL p27

Jung, Kevin Y.
Opening the Legal-Services Market in Korea
AUG p18

Kim, Soojin E.
Professionalism and Mentoring: Good for Us All
MAY p37

Kirtley, Alan
The Top 10 Reasons for Adopting the New Uniform Mediation Act in Washington
NOV p18

Knapp, Dee
WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes
JUN p39

Knutson, Kristal Wiitala (w/ Greg Overstreet)
The *Hangartner* Decision: The Supreme Court Limits Access to Public Records
SEP p20

Kringle, Cheryl (w/Kevin Bank)
An Unholy Alliance: Nonlawyers Who Mass-Market Trusts, and the Lawyers Who Assist Them
MAR p26

Lantz, Pat (w/Stephen L. Johnson)
New Legislation of Interest to Attorneys: 2004 Highlights
JUL p27

Lawless, Greg
Voir Dire
JAN p38

Tie One On
JUN p64

Lehto, Paul
Respecting Lawyers
FEB p34

Li, Elizabeth
Appellate Practice Tips: The Supreme Court Visits Bellingham
FEB p37

Lim, Erika
How to Read the Modern Law Student's Résumé
MAY p33

Loeffler, Evan L.
My death and why I still have to work too hard
NOV p64

Luvera, Paul N.
The Art of Storytelling
MAR p21

Malolepsy, Terri W.
On the MCLE Front: Addressing a Troubling Increase in Attorney Requests to the MCLE Board
MAR p41

Michels, Jan
Bar Year 2004-2005: A Preview
NOV p15

Introducing Deputy Director Paula Littlewood
APR p19

Justice in Jeopardy: Inadequate Funding of Our Trial Courts
JAN p13

The View from Down Here
MAY p16

(w/J. Scott Miller)
Washington's Strong Voice in the American Bar Association
DEC p9

The WSBA Database and You
AUG p15

The WSBA Headquarters: Facilitating Facilities Decisions
FEB p15

Miller, J. Scott (w/Jan Michels)
Washington's Strong Voice in the American Bar Association
DEC p9

Nichols, Judge David A.
Random Thoughts from 20 Years on the Bench
JUN p23

Ochs, Mar Sulaika
To Be or Not to Be ... Coached: A Profile of Coach Irene Leonard
MAR p36

Overstreet, Greg (w/Kristal Wiitala Knutson)
The *Hangartner* Decision: The Supreme Court Limits Access to Public Records
SEP p20

Power, Vanessa (w/David Goodnight and Greg Tolbert)
Leadership in Lawyering
JUN p14

Price, Eric D.
Time to Untie the House?
JUN p28

Price, Marty (w/Dolly M. Garlo and J. Kim Wright)
Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Quane, Stefani (w/Rachel Felbeck)
Collaborative Law Reaches Out
FEB p29

Radosevich, Michele (w/Gail Stone)
Using the Internet to Watch a Bill Become a Law
MAR p16

Savage, David W.
Listening to Diversity Concerns
APR p13

A Profound and Grave Crisis: The pursuit of blind, affordable justice
JUN p9

The State of the Bar
SEP p9

Third-Year Governors Have Their Say
AUG p11

The Value of an Organization
MAR p13

Why Diversity Matters — Reflecting the Public We Serve
JAN p11

The WSBA: Have It Your Way — Our commitment to member benefits
JUL p11

Sharpe, Fawn R.
The Emerging Role of International Human-Rights Law in the Protection of Indigenous Peoples
FEB p13

Smith, Brett W.
Your Sale of Goods — The Law Applied May Not Be What You Expect
APR p26

Smith, J.D.
Introducing the WYLD Bridge Builders
MAY p13

Stone, Gail (w/Michele Radosevich)
Using the Internet to Watch a Bill Become a Law
MAR p16

Sumearll, Teresa
How Washington State Failed to Protect Its Police Officers and How It Can Rectify This Failure
AUG p27

Thompson, Lindsay
Change and decay, change and decay ...
FEB p64

Gandhi was right. Civilized law practice would be a good idea
MAR p64

A little summer reading
AUG p64

The man who liked dogs
DEC p64

Not exactly Sally Field at the Oscars
APR p64

On being gubernatorial
OCT p64

Plainant simple
MAY p64

Seems like just yesterday
JUL p64

Tolbert, Greg (w/David Goodnight and Vanessa Power)
Leadership in Lawyering
JUN p14

Tolman, Jeff
How to Say "No"
JAN p64

Ward, Ronald R.
Democracy by the Dozen
NOV p13

First, Let's Bless All the Lawyers: *Rendering Service and Exercising Responsibility*
OCT p13

Justice in Jeopardy: Rendering the Service of Ensuring Adequate, Independent, Stable Court Funding
DEC p9

Our Duty to Secure the Public's Right to Vote
OCT p26

WSBA Leadership Institute: Growing Lawyer Leadership for the Future
Dec p28

Weeks, D. Anthony
Volunteering for Service in Iraq
APR p36

Wetzel, Scott
Bigger than E-filing: E-service
APR p29

Wilson, David E.
Defending War Crimes Cases in The Hague
JUL p20

Wright, J. Kim (w/Dolly M. Garlo and Marty Price)
Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Zeiger, Karl
The Stressless Practice of Law
OCT p32

By Subject

Access to Justice (ATJ)

Justice in Jeopardy: Rendering the Service of Ensuring Adequate, Independent, Stable Court Funding
JAN p13

Moving Beyond Anecdotes: The Washington State Civil Legal Needs Study
JAN p16

The Right to Counsel: *Every* Accused Person's Right
JAN p22

Addressing the Civil Legal Needs of Sexual Assault Victims
APR p21

A Profound and Grave Crisis: The pursuit of blind, affordable justice
JUN p9

CounterPoint
JUN p41

Pro Bono Publico Services by WSBA Members in 2003
JUL p13

Alternative Dispute Resolution (ADR)

Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Collaborative Law Reaches Out
FEB p29

Preserving Mediation's Greatest Attribute: Simplicity
MAR p34

WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes
JUN p39

The Top 10 Reasons for Adopting the New Uniform Mediation Act in Washington
NOV p18

American Bar Association

Washington's Strong Voice in the American Bar Association
DEC p9

Around the State

JAN p47; FEB p43; MAR p42; APR p47; MAY p40; JUN p46; JUL p46; AUG p46; SEP p45; OCT p46; NOV p52; DEC p30

Attorney-Client Privilege

The *Hangartner* Decision: The Supreme Court Limits Access to Public Records
SEP p20

Awards

The WSBA Honors Its 2004 50-Year Members
NOV p38

Congratulations to the 2004 WSBA Annual Awards Recipients
NOV p39

Bar Exam Pass List

Winter
JUL p44

Summer
DEC p41

Bar News

Change and decay, change and decay ...
FEB p64

Not exactly Sally Field at the Oscars
APR p64

Plainant simple
MAY p64

Board of Governors

A Few Minutes with Rob Boggs
JUN p36

Third-Year Governors Have Their Say
AUG p11

Welcome to the WSBA's New President-elect and Governors
OCT p20

History in the Making — Ron Ward: 114th President of the Washington State Bar Association, First President of Color
OCT p24

Lessons Learned: Three Years on the Board of Governors
OCT p28

On being gubernatorial
OCT p64

Board's Work

FEB p38; MAR p40; APR p46; JUN p44; AUG p37; SEP p36; NOV p46; DEC p40

Collaborative Law

Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Collaborative Law Reaches Out
FEB p29

Preserving Mediation's Greatest Attribute: Simplicity
MAR p34

WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes
JUN p39

The Top 10 Reasons for Adopting the New Uniform Mediation Act in Washington
NOV p18

Court Reporting

A Primer for Attorneys: The Rules and Regulations Applicable to Washington Court Reporters and the Transcripts They Produce
JAN p30

Disciplinary Notices

JAN p44; FEB p45; MAR p46; APR p49; MAY p50; JUN p55; JUL p49; AUG p48; SEP p46; OCT p50; NOV p53; DEC p44

Discrimination

The View from Down Here
MAY p16

Strange Bedfellows: The New Washington Attorney Lien Statute and the *Blaney* Cases
DEC p19

Dispute Resolution

Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Collaborative Law Reaches Out
FEB p29

Preserving Mediation's Greatest Attribute: Simplicity
MAR p34

WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes
JUN p39

The Top 10 Reasons for Adopting the New Uniform Mediation Act in Washington
NOV p18

Diversity

Why Diversity Matters — Reflecting the Public We Serve
JAN p11

The Emerging Role of International Human-Rights Law in the Protection of Indigenous Peoples
FEB p13

Listening to Diversity Concerns
APR p13

The View from Down Here
MAY p16

First, Let's Bless All the Lawyers
OCT p13

Lessons Learned: Three Years on the Board of Governors
OCT p28

Washington's Strong Voice in the American Bar Association
DEC p9

Editor's Page

Change and decay, change and decay ...
FEB p64

Gandhi was right. Civilized law practice would be a good idea
MAR p64

Not exactly Sally Field at the Oscars
APR p64

Plainant simple
MAY p64

Seems like just yesterday
JUL p64

A little summer reading
AUG p64

On being gubernatorial
OCT p64

The man who liked dogs
DEC p64

Employment Law

The Employer/Employee Relationship in the New Millennium
NOV p29

English Language

This Wonderful World of Words
JAN p32

"Only," the Lonely
MAY p30

Commonest Errors in Contract Drafting
AUG p21

A little summer reading
AUG p64

Using That Word
NOV p25

The man who liked dogs
DEC p64

Ethics

An Unholy Alliance: Nonlawyers Who Mass-Market Trusts, and the Lawyers Who Assist Them
MAR p26

Report and Recommendations of the Ethics 2003 Committee
MAY p19

Why Conflicts Matter
AUG p36

The Law of Lawyering
NOV p37

Executive's Report

Justice in Jeopardy: Inadequate Funding of Our Trial Courts
JAN p13

The WSBA Headquarters: Facilitating Facilities Decisions
FEB p15

Introducing Deputy Director Paula Littlewood
APR p19

The View from Down Here
MAY p16

The WSBA Database and You
AUG p15

Bar Year 2004-2005: A Preview
NOV p15

Washington's Strong Voice in the American Bar Association
DEC p9

FYI

JAN p46; FEB p51; MAE p48; APR p38; MAY p44; JUN p49; JUL p42; AUG p39; SEP p38; OCT p40; NOV p47; DEC p46

History

Brown v. Board of Education 50th Anniversary Events and Information
MAY p36

Seems like just yesterday
JUL p64

History in the Making — Ron Ward: 114th President of the Washington State Bar Association, First President of Color
OCT p24

The WSBA Honors Its 2004 50-Year Members
NOV p38

Humor

Voir Dire
JAN p38

Tie One On
JUN p64

My death and why I still have to work too hard
NOV p64

International Issues

The Emerging Role of International Human-Rights Law in the Protection of Indigenous Peoples
FEB p13

Defending War Crimes Cases in The Hague
JUL p20

Opening the Legal-Services Market in Korea
AUG p18

Judiciary

Random Thoughts from 20 Years on the Bench
JUN p23

Democracy by the Dozen
NOV p13

Law Enforcement

How Washington State Failed to Protect Its Police Officers and How It Can Rectify This Failure
AUG p27

Lawyers' Fund for Client Protection

FEB p41; NOV p44

Leadership

Leadership in Lawyering
JUN p14

WSBA Leadership Institute: Growing Lawyer Leadership for the Future
Dec p28

Legislation/Regulations

Your Sale of Goods — The Law Applied May Not Be What You Expect
APR p26

Time to Untie the House?
JUN p28

New Legislation of Interest to Attorneys: 2004 Highlights
JUL p27

Legislature

Using the Internet to Watch a Bill Become a Law
MAR p16

Letters

JAN p7; FEB p7; MAR p7; APR p6; MAY p 7; JUN p7; JUL p7; AUG p7; SEP p7; OCT p7; NOV p7; DEC p6

Living Trust Scams

An Unholy Alliance: Nonlawyers Who Mass-Market Trusts, and the Lawyers Who Assist Them
MAR p26

MCLE

On the MCLE Front: Addressing a Troubling Increase in Attorney Requests to the MCLE Board
MAR p41

Mediation

Transformational Law: New Approaches Expand Choices in Law Practice
FEB p18

Collaborative Law Reaches Out
FEB p29

Preserving Mediation's Greatest Attribute: Simplicity
MAR p34

WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes
JUN p39

The Top 10 Reasons for Adopting the New Uniform Mediation Act in Washington
NOV p18

Member Profiles

To Be or Not to Be ... Coached: A Profile of Coach Irene Leonard
MAR p36

Introducing Deputy Director Paula Littlewood
APR p19

Volunteering for Service in Iraq (D. Anthony Weeks)
APR p36

A Few Minutes With Rob Boggs
JUN p36

Member Services

The Benefits of Membership: What Can the WSBA Do for You?
MAR p38

Mentoring

Professionalism and Mentoring: Good for Us All
MAY p37

Practice of Law Board Advisory Opinion

AUG p33; OCT p47

Practice Tips

How to Say "No"
JAN p64

Appellate Practice Tips: The Supreme Court Visits Bellingham
FEB p37

The Art of Storytelling
MAR p21

The Stressless Practice of Law
OCT p32

President's Corner

Why Diversity Matters — Reflecting the Public We Serve
JAN p11

The Value of an Organization
MAR p13

Listening to Diversity Concerns
APR p13

A Profound and Grave Crisis: The pursuit of blind, affordable justice
JUN p9

The WSBA: Have It Your Way — Our commitment to member benefits
JUL p11

Third-Year Governors Have Their Say
AUG p11

The State of the Bar
SEP p9

First, Let's Bless All the Lawyers
OCT p18

Democracy by the Dozen
NOV p13

Justice in Jeopardy: Rendering the Service of Ensuring Adequate, Independent, Stable Court Funding
DEC p9

Pro Bono/Service

Pro Bono Publico Services by WSBA Members in 2003
JUL p13

WSBA Members Who Reported 50 or More Hours of *Pro Bono Publico* Service in 2003
JUL p16

Professionalism

Respecting Lawyers
FEB p34

Gandhi was right. Civilized law practice would be a good idea
MAR p64

Volunteering for Service in Iraq
APR p36

Professionalism and Mentoring: Good for Us All
MAY p37

First, Let's Bless All the Lawyers: *Rendering Service and Exercising Responsibility*
OCT p13

Recruitment

How to Read the Modern Law Student's Résumé
MAY p33

Resolutions Committee

Notice of Public Hearing
AUG p45

Technology

Bigger than E-filing: E-service
APR p2

WSBA

The WSBA Headquarters: Facilitating Facilities Decisions
FEB p15

The Value of an Organization
MAR p13

Introducing Deputy Director Paula Littlewood
APR p19

The WSBA: Have It Your Way — Our commitment to member benefits
JUL p11

The WSBA Database and You
AUG p15

The State of the Bar
SEP p9

2004 Board of Governors, and Committee and Section Chairs
SEP p15

Financial Highlights for Fiscal 2003
SEP p16

Bar Year 2004-2005: A Preview
NOV p15

The WSBA Honors Its 2004 50-Year Members
NOV p38

Young Lawyers/WYLD

Introducing the WYLD Bridge Builders
MAY p13

Democracy is all the rage these days

by LINDSAY THOMPSON, *Bar News* Editor

If you read the Opportunities for Service section in this rag, you'll know that the terms of five members of the Board of Governors end in September. Shortly people can file their petitions to run for those seats.

I mention this because I am struck by the disconnect between perceptions of the Board and reality. The perception of many is it's a bunch of geezers from big law firms, at once incredibly reactionary, unresponsive, and hidebound, and at the same time so whimsically with it and liberal, so attuned to the last PC effusions of Blue State Depravity, that Howard Dean and Marilyn Manson are phoning up all the time for tips on keeping up.

The conclusion that follows, of course, is that there's nothing to be done. Can't change them, any more than you can expect the governor from the Fifth Congressional District to be from anywhere besides Spokane.

But then, if you look at the election results, year in and year out, a remarkable thing can be seen. Most races, most of the time, aren't races at all. Only one person files, and that person wins. When my friend Jenny Durkan finished her term on the Board, *no one* filed at all.

That meant the BOG had to appoint someone. And whaddya know? Seventeen people applied.

Not surprising, at one level. It probably looks a lot easier to win seven votes on the BOG than to canvass the lawyers who live in your district. But as a practical matter, it's a rare day when over half the voters in any BOG district cast ballots.

So either way you're not looking at having to chase after that many votes. And as a candidate, you can get a list of mailing labels for your constituency from WSBA at no cost. In 1998, the list wasn't free, but it was discounted — buying that list was all I spent — $135 — and that was for 7,200 names in the old 7th District, which has since been divided into three.

I sent e-mails to friends in all the Seattle firms where I knew anyone and asked them if they'd either send an e-mail to their colleagues endorsing me, or forward one from me to all of them. Where there were lots of members in one place — prosecutors' offices, government agencies — I ran out a one-page flyer, affixed labels, and sent them by the regular messenger service to those offices, where they got distributed with the mail.

So it's easy to get something out to the voting public. Or, if that sounds too burdensome, you can just file, sit back, and await the call of destiny. That, too, has been known to work.

Once you win, there's some helpful orientation on begin gubernatorial, and you get a big book in advance of every meeting with background on the things the Board will be asked to consider. You get to travel around the state some and meet lawyers in other places. This is really informative. WSBA staff book the hotels and provide for meals, and you get reimbursed for travel, so while the job does take some time, the out of pocket is minimal.

Governors have less power than some members think, but more than one might suppose. If you think a point of view isn't being represented, you can appoint people with it to important committees. You get input on court rule changes and any number of other issues that affect us day to day as lawyers.

Some friends and I put together a plan that increased the size of the Board of Governors by three members in 2001, and that has helped drive a stake through the heart of the "old elevator lawyers run the board" idea. The average age of the current board is 43. Four members are under 40. The youngest is 30. Three members have children born in 2004; in December, along with the annual Board photo, this year they had the "Board Babies" photograph.

So it's not Alva Long's Board of Governors any more. Why not make it yours?

Lindsay Thompson served on the Board of Governors from 1998 to 2001. You can get other campaign tips from him at tradelaw@thompson-law.com.

When will you find out how good your malpractice insurance really is?

Not all malpractice plans are created equal.

If a claim is ever filed against you, you want to be confident you have coverage that adequately protects you and your practice.

Our plan is competitively priced and offers several key policy benefits and services that can really make a difference…

- Unlimited claims expense in addition to the liability limit
- Prior acts coverage including full individual career coverage
- 50% reduction in deductible for early claims reporting
- Automatic coverage for independent contractors
- More extended reporting period options (tail coverage) – 12, 24, 36, and 60 month, or unlimited duration
- Take advantage of premium financing options to make payments more affordable
- Quick and easy to get a quote

Find out how good ours is –

Turn to the team of professionals who know the industry and will recommend the right coverage for you.

Call or visit our website for a quote or for more information on this quality coverage.

1-800-552-7200

(mention WA130)

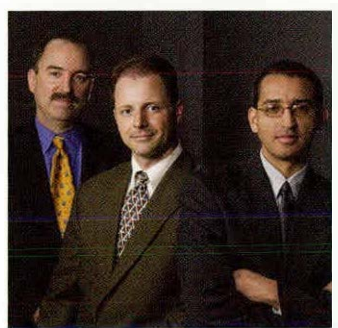
www.proliability.com/WA130

Administered by:

MARSH
Affinity Group Services,
a service of Seabury & Smith

Underwritten by:

WA130



DUI law is complex. It takes years of practice to understand how to successfully negotiate a DUI case through Washington's court system—especially since recent legislation has made the laws even tougher. That's the kind of experience you'll find at Fox Bowman Duarte. Collectively, our six lawyers have more than 75 years of litigation experience. And we regularly teach other lawyers about the complicated nature of DUI law.

FOX BOWMAN DUARTE

The nation's toughest DUI laws demand the toughest DUI lawyers.

1621 114th Avenue SE, Suite 210 | Bellevue, WA 98004 | 425.451.1995 | www.foxbowmanduarte.com