

the Legal Reformer

HALT'S MEMBERSHIP NEWSLETTER • Spring & Summer 2002

Maryland Governor Kills Small Claims Reform – Again!

In a repeat of events from last year, lame duck Maryland Governor Parris Glendening has vetoed legislation which would have raised the state's small claims dollar limit from \$2,500 to \$5,000. Despite a concerted effort by HALT and its supporters, the governor took the same position as he did last year when he vetoed identical legislation at the urging of the Maryland Trial Lawyers Association.

As a result of the veto, Maryland's small claims limit remains the eighth-lowest in the country. Had the legislation passed, the state would have moved above the \$4,000 national median for small claims dollar limits.

"We're very disappointed that Governor Glendening has once again denied the people of Maryland access to the legal system in favor of helping the

trial lawyers maintain their monopoly over that system," said HALT Executive Director Jim Turner. "It's an example of special interest politics at its worse. The trial lawyers' financial support for Glendening apparently allowed them to torpedo this much needed reform. It's truly a sad day for Maryland."

The legislation passed unanimously in both houses of the Maryland General Assembly, as was the case in 2001. Also, as in 2001, the only group to voice opposition to the bill was the trial bar, which claims that increasing the dollar limit will hurt plaintiffs by tak-

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Victory for *Pro Se* Litigants

HALT won an important victory for *pro se* litigants in a recent decision by the U.S. Court of Appeals for the Federal Circuit. On April 3, in *Pickholtz v. Rainbow Technologies*, the appellate court ruled that a trial court must consider using its inherent powers to award attorney fees to a *pro se* litigant who has been subject to abuse of the discovery process by the opposing party.

The case is an appeal of a decision of the U.S. District Court for the Northern District of California to deny an award of attorney fees to Andrew Pickholtz, a *pro se* litigant, despite attempts by his opponent to stonewall his discovery requests. An order to pay the other side's attorney fees is a common sanction in instances of misconduct, but has usually only been applied to parties represented by counsel. On appeal, HALT filed an *amicus curiae* or "friend of the court" brief arguing that "failing to apply full sanctions against parties who have committed discovery abuses, simply

because the opposing party is not represented by counsel, perversely undermines the entire system of sanctions. If a party knows that it can commit discovery abuses against a *pro se* litigant with a large degree of impunity, the courts are actually fostering the kind of dilatory misconduct that occurred in this case."

The court's decision acknowledges HALT's argument, stating that the unavailability of sanctions "would place a *pro se* litigant at the mercy of an opponent who might engage in otherwise sanctionable conduct, but not be liable for attorney fees to a *pro se* party."

Commenting on HALT's work, plaintiff-appellant Andrew Pickholtz said, "I would like to thank HALT for its *amicus* brief. I have long considered the right to represent oneself a prerequisite for any judicial system that claims equal access. HALT is providing an important service to individuals and the American judicial process as a whole." ■

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ing away the rights they would have in a regular trial court.

“The issue here is not whether people are going to have access to the full process of a complicated trial,” said HALT Senior Counsel Tom Gordon. “The issue is whether they will have any access to the court system at all.” HALT’s testimony on the bill before the Maryland House Judiciary Committee emphasized that people with cases worth \$5,000 are not in a position to either hire an attorney or navigate the regular trial court by themselves, describing these people’s position as a “legal no-man’s land.”

Under the Maryland Constitution, Glendening’s veto cannot be overridden by the legislature, as it comes at the end of the legislative term. However, Glendening is in his second term as governor and is constitutionally barred from running for a third term, so the issue will fall to the next governor. “The only bright spot in this situation is that Glendening won’t be around next year to veto this legislation again,” said Turner. “Hopefully

the next governor will not be as beholden to special interests as Glendening.” The Maryland Trial Lawyers’ Association was one of the largest institutional supporters of Glendening’s 1998 reelection campaign, donating \$12,000 to him directly (the largest amount allowed by law) and spending about \$110,000 on radio and television advertisements supporting him.

Maryland Delegate Robert Baldwin, the chief sponsor of the legislation in the past two years, was disappointed with the governor’s action. “I can’t find anybody that objects to the bill besides the governor, and I haven’t gotten a good reason from him,” Baldwin told the *Baltimore Sun*.

Meanwhile, in recent months, other states have enacted reforms to increase access to their small claims courts. Virginia raised its small claims dollar limit from \$1,000 to \$2,000. Virginia’s \$1,000 limit was the lowest in the country, a distinction now shared by Rhode Island and Kentucky, which have limits of \$1,500. Also, Iowa raised its limit from \$4,000 to \$5,000. ■

HALT Welcomes New Staff

HALT is pleased to announce the addition of two new program staff, Suzanne Mishkin and David LaMora.

Dave joined the staff in May and is HALT’s new Information Systems Manager. He will be responsible for maintaining HALT’s website as well as internal computer systems. Dave has a background in web design, writing, programming and content management. Before coming to HALT Dave was a web producer for Associated Builders and Contractors in Arlington, VA and for four years prior to that, a marketing manager for Friends of the Earth, an international non-profit environmental organization. Dave received his B.A. in Communications from Siena College in New York in 1997.

Suzy also joined the staff in May as Associate Counsel and will lead HALT’s Lawyer Accountability, Legal Consumers Bill of Rights and Judicial



Integrity Projects. Before joining HALT, Suzy served as a paralegal in the litigation division of Morrison &

Foerster in San Francisco. She also interned with the offices of the Washington DC Federal Public Defender and the San Francisco District Attorney. A California native, Suzy received her B.A. in English from the University of California, Berkeley in 1997 and her J.D. from the University of California, Hastings in 2001. ■

Legal Reform News

ARKANSAS TOUGHEST ON ATTORNEY DISCIPLINE

According to the latest statistics from the American Bar Association's Center for Professional Responsibility, the state most likely to disbar its attorneys is Arkansas. An ABA study released in March indicates that Arkansas disbarred one out of every 722 of its attorneys during 2000.

The ABA study indicated that the runner-up was Indiana, which disbarred one out of every 763 actively licensed attorneys in the state. Taking the bronze medal was California, which ousted one out of every 811 lawyers in the state. Coming in fourth place was Florida (1 of 825) and fifth was Hawaii (1 of 851).

When a state has caught a great number of miscreants, the *National Law Journal* notes that this may signify that the watchdogs are doing their job. If that's true, Nevada may have a problem. It disbarred no attorneys during 2000.

GET A DIVORCE...ONLINE

A website, www.CompleteCase.com, started last year by a Seattle attorney offers the unhappily wed in Washington state, California, Florida, New York, and Texas the chance to get unhitched online.

"The idea really came from the huge number of calls I get from people who can't afford legal fees but want to get a divorce," says Randy Finney, a family law attorney for 11 years and founder of the website.

According to Finney, when attorneys are hired to settle a simple uncontested divorce, cases usually cost \$3,000 to \$4,000. An online divorce through CompleteCase.com is a mere \$249. Couples answer online questions relating to their salary, property and children, and their answers automatically

fill out all applicable forms, which a couple can download and later submit to court. The process, according to Finney, can take less than half an hour.

Finney is the first to admit that his website is not appropriate for parties with custody issues, property in dispute, or any other complex considerations. But when couples are filing for simple uncontested divorces, Finney says, "the documents are getting into court, they are being signed by judges, and parties are getting divorced in an amicable and inexpensive way, so that's what we consider success."

GAGGED IN NJ

The New Jersey Supreme Court's Professional Responsibility Rules Committee recently rejected citizen proposals to repeal the state's confidentiality requirement, also known as a "gag rule." The rule requires clients to keep secret any information about their complaint against a lawyer.

John Paff, President of Citizens for Justice in New Jersey, believes that the PRRC's "gag rule" threatens to suppress grievants' constitutionally guaranteed rights to free speech. "This rule effectively prevents grievants whose matters have been dismissed somewhere in the ethics process from telling their friends, elected officials and newspaper editors about how the ethics system failed them," Paff said.

In a proposal to the New Jersey Judicial Branch, activist Dorothy Mataras argued:

"Currently the system is intended to protect attorneys and judges, but exactly what are they being protected from? In an open system, if a grievant files frivolous allegations, everyone should be able to read it for themselves. On the other hand, if the allegations are true and the grievance systems choose to ignore meritorious claims, the public should not be duped into believing otherwise."

TEXAS GOING EASY ON NONLAWYERS?

A surprise settlement was struck in April between the Texas Unauthorized Practice of Law Committee and four independent, non-attorney companies. The Texas Committee, a group known for aggressively cracking down on those who serve as alternatives to lawyers, has become notorious for its refusal to settle large lawsuits. This time was different. In this case, the independent companies are assisting potential plaintiffs in filing their claims as part of a nationwide settlement in *Naef, et al. v. Masonite Corp., et al.*

Naef is an Alabama case alleging that two corporations produced defective hardboard siding that was installed in homes. The independent companies operate in Texas and, for a fee, assist owners of homes and businesses that may not know their structures contain the defective siding. During 2001, the Committee sent tersely worded letters to the independent companies, accusing them of engaging in activities "which may constitute the unauthorized practice of law" in violation of section 38.123 of the Texas Penal Code.

The parties, however, sat down to negotiate and "had a good constructive meeting" that ended in a settlement, according to Peter Kennedy, lawyer for the four companies and former lawyer for Nolo Press. The companies agreed to modify the contracts they provide to potential Naef class members, and as a result, the Committee consented to stop its investigation.

"We were glad to be able to meet with the committee membership and explain our business practices," says Kennedy. "And we're pleased that they agree with us that what we do is not the unauthorized practice of law."

by Suzy Mishkin

HALT Establishes Evelyn West Civil Justice Fund

Through a series of major gifts over the past year, longtime HALT member Evelyn M. West has made the largest financial contribution in the organization's history. In recognition of her extraordinary generosity and commitment to the legal reform movement, at its March 2002 meeting, HALT's Board of Directors established the Evelyn West Civil Justice Fund to support our education and advocacy programs.

Ms. West, who passed away in February, won a landmark gender equity settlement from the City of New



Evelyn M. West

York in 1985 after more than a decade of administrative proceedings and court litigation.

As reported in the January 22, 1985 edition of the *New York Daily News*, "Beginning in 1973, ... Evelyn West, a computer analyst, was paid less than men who performed similar work, was denied promotions that were given to males, and was penalized when she asked the federal Equal Employment Opportunity Commission to investigate, U.S. District Judge Mary Johnson Lowe said in a ruling."

Her experiences in this and her

other civil actions led to a deep commitment to HALT's work to improve the civil justice system.

"Evelyn West has helped to ensure that HALT can continue to be the voice of America's legal consumers over the next decade and grow to meet the new challenges of reforming our dysfunctional court system," stated HALT Executive Director Jim Turner. "A true pioneer in the fight for equity in the civil justice arena, the West legacy will let us continue the fight for the public interest principles she championed. The legal reform movement owes Evelyn a deep debt of gratitude, and HALT honors her memory by establishing this fund in her name." ■

Get Better Estate Planning for FREE

Write today for your free copy of our *Better Estate Planning* brochure. This twenty page pamphlet describes estate planning, explains why it is important for you, and discusses the best ways to man-

age your estate. Our brochure tells you what you need to know about writing a will, setting up a trust, reducing your tax liability through carefully planned charitable giving, and much, much more.

For your FREE copy of *Better Estate Planning*, contact us (please include your name and address) at: HALT, Planned Giving Department, 1612 K Street, NW, Suite 510, Washington, DC 20006; fax your request to: 202-887-9699; or e-mail us at: halt@halt.org.

New HALT Brochure Helps Airline Crash Victims

This spring, HALT released a new 16-page brochure, *After the Crash: What You Can Expect Next*. It explains what survivors and family members of victims can do to protect their legal rights after an airline disaster.

Each time an airliner crashes, victims can expect a standard set of responses from:

- Lawyers specializing in crashes who are now required to wait 45 days before contacting survivors or family members of air crash victims.

Learn why lawyers are so eager to sign-up clients.



- Airline representatives who have been known to approach survivors and victims' families after a crash. Find out why their friendly behavior might not be so friendly after all.

- Insurance companies representatives who will urge you not to file a lawsuit "precipitously." Learn why it's important to listen to them, but not to give them any personal information.

- The media which will begin contacting survivors and victims' relatives for interviews as soon as they have the passenger list. Learn how to protect your rights if you decide to talk to them.

- Federal, state and local police which

will be among the first on the scene. Learn what their specific role is and why you need to cooperate with them.

- The Red Cross and other emergency volunteers who are there to help you and to provide support services to the rescue workers. Learn more about what they do.

After the Crash is available, free of charge, through www.halt.org. To download the brochure, visit HALT's website, click on the *Everyday Law Series* link, and scroll down to the *Family & Personal Law* section for the *After the Crash* brochure. Or you can request that a copy be mailed to you by writing to: *After the Crash*, HALT, 1612 K St., NW, Ste. 510, Washington, DC 20006. ■

HALT in the Media



● The following media outlets featured HALT's Small Claims Courts Report Card:

WVGR-FM (Ann Arbor, MI), WTEM-AM (Silver Spring, MD), WALE-AM (Providence, RI), WHAI-FM (Greenfield, MA), WIZM-AM (LaCrosse, WI), *Massachusetts Lawyers Weekly*, *Portage Journal-Press* (IN), *Fauquier Times-Democrat*, *Hobart Gazette News* (IN), *The Hartford Courant*, *Waukesha County Freeman*, WTAL-AM (Tallahassee, FL), *The Daily Independent* (Ashland, KY), WNSI-AM (Jacksonville, AL), WGBF-AM (Evansville, IN), KHGI-TV (Axtell, NE), WMTW-AM/FM (Portland, ME), *Waterbury Republican-American* (CT), KTOK-AM (Oklahoma City, OK), WAMC-FM (Albany, NY), KSJB-AM (Jamestown, ND), *Chicago Daily Law Bulletin* (IL), Cowboy State News Network, WRVA-AM (Richmond, VA), WHO-AM (Des Moines, IA), WFUV-AM (Bronx, NY), KZIM-AM (Cape Girardeau, MO), WDUQ-FM (Pittsburgh, PA), KEEL-AM (Shreveport, LA), WFIU-FM (Bloomington, IN), WBES-FM and WKBE-FM (Charleston, WV), KENY-FM/AM (Juneau, AK), WHA-FM and WERN-FM (Madison, WI), WNAV-AM (Annapolis, MD), WHYN-AM (Springfield, MA), KIDO-AM (Boise, ID), WTMG-FM (Gainesville, FL), Radio One (Augusta, GA) WFXA-AM, WAEG-FM (North Augusta, SC), WDEV-AM (Waterbury, VT), *Buffalo*

Criterion (NY *The Free Lance-Star* (Fredericksburg, VA), and WNBC-TV (New York, NY).

● May 20, 2002, WJSS-AM (Havre de Grace, MD) interviewed HALT Senior Counsel Tom Gordon regarding Maryland Governor Glendening's veto of small claims legislation.

● May 19, 2002, KFI-AM (Los Angeles, CA) The Benjamin Dover Show featured HALT and its publications on the morning program.

● May 15, 2002, WNAV-AM (Annapolis, MD), interviewed Senior Counsel Tom Gordon regarding Glendening's veto of small claims legislation.

● April 16, 2002, WKKC-FM (Chicago, IL) interviewed Program Director Terri Rudy about self-help legal research and using a law library.

● April 10, 2002, WTOP-AM (Bethesda, MD) interviewed Executive Director Jim Turner about legal reform.

● April 3, 2002, *The Baltimore Sun* (MD), quoted Executive Director Jim Turner regarding the state legislature's efforts to increase the small claims dollar limit.

● April 2002, *Bottom Line/Personal*, offered copies of HALT's brochure Legal Service Plans.

● April 2002, *Bottom Line/Personal*, featured HALT's brochures, *Better Estate Planning* and *Opportunities for Charitable Giving*, in the publication's "Freebees" section.

● March 26, 2002, WAMU-FM (Wash-

ington, DC), Maryland Politics hour included comments by Senior Counsel Tom Gordon, on the Maryland legislation to increase small claims court limit.

● February 2002, *Bottom Line/Personal*, offered copies of HALT's brochure *Before You Hire a Lawyer*.

● February 2002, *American Jurist*, published a letter to the Editor from Executive Director Jim Turner and Associate Counsel Steve Serdikoff regarding the lawyer discipline case against American University Law Professor Mark Hager.

● January – May, 2002 HALT's public service announcement on the Legal Consumers Bill of Rights was featured on over 60 radio stations, including KKUP (CA), Familynet (TX), WEXY (FL), WFUR (MI), WICB (OH), and WROQ (SC).

● January 23, 2002, WNAV-AM (Annapolis, MD), interviewed Associate Counsel Tom Gordon regarding small claims court legislation in Maryland.

● January 17, 2002, KASE-FM (Austin, TX), Executive Director Jim Turner appeared on Michelle Roebuck's show to discuss HALT's Small Claims Court book and reform project.

● January 8 & 15, 2002, WKKC-FM (Chicago, IL), Executive Director Jim Turner appeared on Derek McNeil's show to talk about HALT and its mission.

● October 26, 2001, *The Courier-Journal* (Louisville, KY), quoted Executive Director Jim Turner on the reinstatement of a former Congressman's law license. ■

Cheers and Jeers



ONE CHEER TO THE VIRGINIA GENERAL ASSEMBLY AND GOVERNOR

MARK WARNER for passing and signing a law raising the state's small claims dollar limit from \$1,000, which had been the lowest limit in the country. ■

JEERS TO THE VIRGINIA GENERAL ASSEMBLY AND GOVERNOR MARK WARNER

for only raising their state's small claims dollar limit to \$2,000, which is still one of the lowest limits in the country. Only Rhode Island (\$1,500), Kentucky (\$1,500) and Kansas (\$1,800) have lower limits. ■

Lawyer Discipline by the Numbers

by James H. Johnston

Disbarment isn't a topic for polite conversation among lawyers. Perhaps it should be. Nearly one in 25 active D.C. attorneys was the subject of a complaint to the bar last year. Nationwide, one in 10 will be named. And while lawyers may say that theirs is a higher calling, the discipline system focuses mainly on the thieves, criminals, and incompetents at bar.

In 2001, there were 1,376 complaints against lawyers in the District, according to bar counsel. This means that about 3.5 percent of active practitioners received complaints, using the D.C. Bar's figures of 39,340 active members in the metropolitan area—although the same lawyer can be subject to several complaints.

Total bar enrollment of 76,037 includes members who are inactive or who live outside the area.

The ABA compiles and publishes similar nationwide statistics. While incomplete, the ABA statistics show 116,922 complaints and 1,147,125 lawyers in active practice in 1999, meaning 10.2 percent of lawyers nationwide were the subject of a complaint.

In the District, bar counsel dismisses most complaints without formal investigation. The reasons for dismissal are several: they may be merely fee disputes, they may name lawyers who were not members of the D.C. Bar; or they may not allege an

ethical violation. If bar counsel decides formal investigation is warranted, she will "docket" the case. Of the 1,376 complaints last year, 434 (32 percent) were docketed according to bar counsel.

Although the D.C. Court of Appeals controls lawyer discipline, it doesn't try the cases. Instead, as provided in Rule 11, cases go first to the D.C. Bar's Board on Professional Responsibility and its subordinate hearing committees.

The board's nine members are selected for three-year terms by the court after being nominated by the bar. Seven are lawyers, and two are public members who are not lawyers. The board itself doesn't try cases either. If a hearing is needed, the case will be assigned to one of 11 hearing committees.

Each is composed of two lawyers and one public member selected by the board. Both board and committee members serve without pay.

Moving from the first filing of a complaint until final order of sanction by the court is obviously a protracted process. Yet not all cases docketed for investigation will reach the court. In 2001, bar counsel dismissed 303 cases and deferred action in 22. (Since many of these cases were docketed in past years, the number of cases disposed of last year does not equal the 434 cases docketed in 2001. Moreover, the same lawyer may be the subject of multiple dockets.)

With approval from a designated contact person on the hearing com-

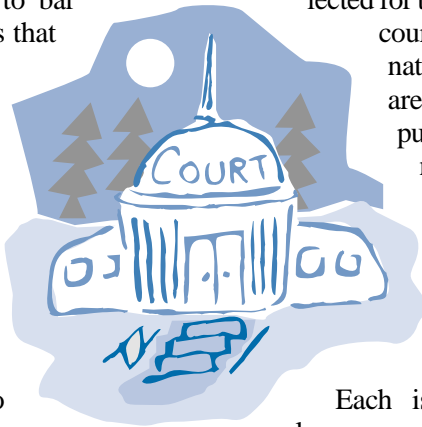
mittee panel, bar counsel can dispose of minor infractions with a diversion, whereby the lawyer agrees to remedial action, such as bar supervision or counseling. In addition, bar counsel can, with approval, issue an informal admonition that the lawyer can accept in lieu of a hearing. According to bar counsel figures, in 2001 the office issued 31 informal admonitions and reached 16 diversions, meaning 47 cases were disposed of adversely to the lawyer. Another 22 went to hearing.

A case may also not reach the court if the Board of Professional Responsibility determines that only a reprimand of the lawyer is necessary and if the lawyer decides not to appeal. According to the board, it issued four reprimands in 2001 and sent two cases back to bar counsel for informal admonitions.

Still, only the court of appeals can disbar, suspend or censure a lawyer. According to the board, which keeps track of such things, the court imposed sanctions in 78 cases in 2001, of which 26 were disbarments, 44 were final suspensions, four were censures, one was an informal admonition, and three involved some other sanction. Adding together bar counsel's 47 informal admonitions and diversions with the six reprimands and admonitions issued by the board, and the 78 sanctions imposed by the court produces a total of 131 disciplinary cases resolved unfavorably to the lawyer in 2001, whereas 1,376 complaints were filed in the same year.

Thus while about 3.5 percent of the active practitioners were the subject of a complaint in 2001, only one-third of 1 percent were sanctioned. Lawyers who have been named in complaints may take small comfort in the fact that many are called, but few are chosen.

(Excerpted, Legal Times, March 4, 2002)



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A Short History of Lawyer Discipline

Uniting bench and bar in the common purpose of lawyer discipline is a comparatively new phenomenon. Its roots are in the elemental need for judges to control the courtroom. But long ago, judges concerned themselves with the out-of-court conduct of lawyers as well. In *Ex parte Wall*, 107 U.S. 265 (1883), for example, the Supreme Court noted that English courts would strike attorneys from the rolls if they committed acts inconsistent with their professional oaths. Yet it has been wrongly argued that courts were the only ones to regulate the legal profession.

In point of fact, legislatures also have regulated the profession. In the 19th century, New York had a law that graduates of Columbia Law School should automatically be admitted to practice, and the New York Court of Appeals upheld the law. Today, in Maryland, the state's highest court regulates the profession by act of the legislature. On the other hand, when Congress passed a law barring former Confederate soldiers from practicing in federal court, the Supreme Court struck it down as an intrusion on its inherent power over the profession.

Voluntary bar associations have also wanted to regulate the profession. One of the earliest bar associations in the United States was formed in Boston in the 18th century. Voluntary bars became more common in the latter part of the 19th century as the number of lawyers swelled from 22,000 in 1850 to 60,000 in 1880 and 114,000 in 1900. The voluntary American Bar Association was founded in this period.

By 1910, the idea of the unified or integrated bar association emerged. Hubert Harley, a lawyer and newspaper editor, is credited with first promoting the concept. The unified bar was to be a mandatory, statewide bar association, operating under the aegis of the state supreme court. It would oversee

admission to practice before the courts and also provide the features of a craftsmen's guild, trade association and consumer protection agency.

Unification forestalled further legislative regulation of the profession. When the Missouri Legislature failed three times to pass laws to create a unified bar in that state, the Missouri Supreme Court took the bar under its wing, saying this action was inherent in the judicial power. By the 1930s, with encouragement from the ABA, most states had unified their bars. Even in states without unified bars, such as Maryland and Kansas, responsibility for admission and discipline is vested in the highest state court.

As the bar began to organize, the practice of law—once equated with litigation in court—changed.

Lawyers were increasingly giving advice out of court. Had they thought about it, judges, who historically had regulated lawyers only because they came before the bar in the courtroom, might have shied away from becoming a consumer protection agency and regulating out-of-court practice. Yet voluntary bar associations, which seemed to feel it was in their interest to control the practice

of law by lawyers both in and out of court, drafted the ethical standards. The court simply adopted them.

Because the practice of law historically meant appearing in court, there has been little interest in preventing nonlawyers from preparing legal documents and rendering out of court advice. But this too changed when, in 1930, the ABA formed a new commit-

tee on the unauthorized practice of law.

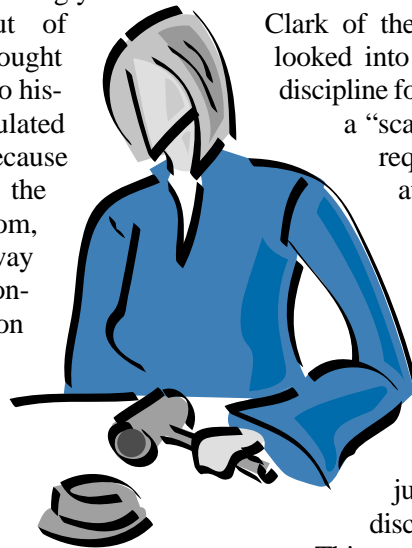
The ABA had already taken the lead in promulgating canons of professional ethics in 1908. The idea was that the ABA's canons would be the model for state courts and state bars to adopt. Indeed, this has happened. With slight variations from state to state, the legal profession follows ethical principles worked out by the ABA. Today, the ABA's nine Model Rules of Professional Conduct replace the old canons.

Naturally, there has to be a mechanism for enforcing the rules. This is where lawyer discipline came in. As conceived by Hubert Hurley, the unified bar would not be a self-regulating organization in the strict sense of the word. State supreme courts would oversee the process, and judges would administer discipline.

Yet in 1970, retired Justice Tom Clark of the U.S. Supreme Court looked into the system of lawyer discipline for the ABA and reported a "scandalous situation" that required "the immediate attention of the profession." The Clark committee itemized 36 faults in the disciplinary system. Perhaps the most significant of these was that panels of lawyers, rather than judges, were running the disciplinary system in most states. This was particularly worrisome because it meant that the reality was contrary to the theory that the bar wasn't a self-regulating organization. Nonetheless, the Clark committee staunchly defended the idea that state supreme courts were the proper institutions to regulate the profession.

An ABA commission chaired by academic Robert McKay revisited the matter in 1992. It concluded that

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progress had been made in solving the problems identified by the Clark committee although McKay recommended additional changes. The McKay commission mounted another vigorous defense of unified bars to counter any perception that the judge-practitioner relationship was incestuous and little different from self-regulation.

The two reports, and other ABA-sponsored reforms, have had a profound effect on lawyer discipline in

the United States. They have been the stimulus for bar programs to improve professional quality and the lawyer-client relationship, such as continuing legal education, lawyer advice, and counseling and fee arbitration. They caused state bar associations to beef up enforcement of ethical standards. And there is little doubt that the quality of the disciplinary process, and perhaps that of the bar itself, has improved appreciably in the past 30 years. On the other hand, the reforms

helped make lawyer discipline the complex, legalistic process it is today.

— James H. Johnston, reprinted, *Legal Times*, March 4, 2002.

What a sad, spectacular, heart-rending, garishly awful meltdown."
— Film critic David Edelstein on Halle Berry thanking her lawyers in her Oscar acceptance.

Make that a Double Skinny Latte with a Simple Will to Go

by Theresa Meehan Rudy

So who had this idea first, you or Ed Stevens — you know the bowling alley guy on TV?

I did. We've been here five years. I use to travel to Los Angeles to do TV commercials. And during that whole process I married an attorney. I had read about a place in Los Angeles that was a legal resource center and a coffee shop and thought, "What a great concept." You're doing service work, it's fulfilling, it's relaxed — you don't have to get dressed up. So I brought the idea back here and talked to my husband about it and we decided to put one foot in front of the other and if doors kept opening, we'd keep moving forward with it and they did.

Is the law office located right in the coffee shop?

The office had been located here but we had to move it out. There's been a divorce happening. So now I have a woman close by who will meet clients here or they can go to her office. Everybody's thrilled with her.

What motivated you to open this kind of business?

The whole concept behind this is to provide a useful public service. So we

provide a place where people can go to get letters drafted, contracts reviewed, wills done. I did this because I don't think people know where to go to get answers to simple legal questions. Most people find law firms to be too intimidating. I know I do. So people are free to come in and they don't even have to ask a question — they can see how much legal services cost just looking at the menu board.

You post your legal services on a menu board?

When you come into our shop, behind the counter are four menu boards with all the food and drink items we provide and on the other side of the shop is a menu board with the legal services we provide and the cost.

Give me some examples.

For example, uncontested divorce \$500; Name Changes \$300; Adoption \$750; Small Business Formation \$500 plus filing fee; Simple Will \$250; Will & Trust \$350; Power of Attorney \$75; Living Will \$50.

HALT interviewed Leslie Murphy, founder of Legal Grounds Coffee Shop in Dallas, Texas. The shop offers food, coffee and flat rates on legal services.

Do you have an opinion about do-it-yourself law? Software packages?

I think those are all fine. But I think there's still things you need to know like — don't lock your will up in a lock box. Unless those kinds of details are answered in those kits, I think it's worth it for people to pay a little extra to make sure their documents are all in order and are going to do what you want them to do. It gives you peace of mind. This is a place where if you need to ask a question because of something you don't understand or because it's written in legalese, you can still go and talk to a human being about it.

How many people just want to get some free advice over a cup of coffee?

When the law office was in the shop that would happen. There are a number of people who have just some sort of a question but they're never going to hire you for anything. But if you answer their question, they're going to tell people and that's how we've built up our business — just by being a service to the community. ■



Mandatory Malpractice Insurance

by David King

If asked why mandatory malpractice insurance coverage for attorneys is a necessary reform, Venice, Florida attorney James D. Park replies, “my answer would be Russ Meade.” Meade represented Pauline Orr who was suing her husband after he filed for divorce after 40 years of marriage. Meade recovered Orr’s share of all of the assets except one — the government civil service pension plan — a huge asset his client was entitled to. Not only did Meade screw up, he didn’t have malpractice insurance. He didn’t have to; it wasn’t required.

Unfortunately, the case of Russ Meade is more often the rule rather than the exception. According to the American Bar Association, approximately thirty to fifty percent of attorneys nationwide do not carry malpractice insurance. As is most often the case, consumers who obtain judgments for attorney malpractice never recover the full amount of their losses, and they are left with little or no recourse for an attorney’s misconduct. In fact, according to the Montana State Bar Association, “Roughly 57 percent of all claims are resolved without payment of any indemnity.”

The legal profession has a long history of failing to hold member attorneys accountable for their actions. Although state bar associations typically maintain Client Compensation Funds to reimburse clients who have money stolen from them by their attorneys, these funds are woefully inadequate. In Nevada, for example, the client compensation funds typically provide clients with less than 78 cents on the dollar.

When asked why he chooses to carry insurance, Park replied, “I feel I don’t buy coverage for myself, I buy it for my clients. In the event I were to make a mistake over the course of representing hundreds of people over decades, I don’t want my client to suffer financially.” Unfortunately, many

attorneys do not share Park’s concern for their clients.

One of the larger problems is that, “most clients presume lawyers carry insurance,” says Jonathan Marshall, secretary to the Board of Commissioners on Grievances and Discipline, and why shouldn’t they? Automobile drivers and doctors are required to carry insurance. Although they do not intend to cause accidents or medical mishaps, there is adequate concern that possible misfortunes could potentially be very dangerous. Because of this concern, all fifty states have required their drivers and doctors to be insured. Consumers normally do not discover that their attorney is without malpractice insurance until it is too late. Russ Meade never expected to be the target of a malpractice suit, he simply made a mistake. Malpractice insurance protects consumers from exactly this kind of mistake.

Given that important legal rights and potentially large sums of money are of-

ten involved in legal transactions, there must be several states that wish to protect their consumer, right? Wrong. Oregon is the only state that sufficiently provides adequate protection for its consumers by requiring its attorneys to carry malpractice insurance. Four other states, however — Alaska, Ohio, South Dakota, and Virginia — require that attorneys disclose their insurance status to their clients before representing them. Consumers in any other state are left guessing as to what, if any, protection they might enjoy if something were to go wrong. Although there will be a proposal from the American Bar Association Standing Committee on Client Protection at the next ABA annual meeting to adopt a rule on the issue, the ABA has thus far taken no official position as to the need for or practicality of malpractice insurance.

David King a junior at Pepperdine University, in California interned with HALT during the Spring '02 semester.

2002 Spring and Summer Interns

This year, HALT offered student internships to Candice Holmes and David King during the Spring and to Lauren Broderick, Firas Ayoub, Yumiko Maeda and Andrew Weltman during the Summer. Interns are sponsored through the Hasse Internship Program.

Firas Ayoub, a senior at Brown University, is majoring in International Relations and Comparative Literature.

Lauren Broderick will be entering her third year at George Washington University School of Law. She did her undergraduate work at Boston University.

Candice Holmes, a junior at Wesleyan University, is majoring in English and Sociology.

David King, a junior at Pepperdine University is majoring in Political Science and German.



Top: (L to R) Ayoub, Broderick and Weltman.
At right: (L to R) King and Holmes.
(Not pictured: Maeda.)



Yumiko Maeda, a senior at UCLA, is majoring in Political Science with a minor in Public Policy.

Andrew Weltman, a senior at Claremont McKenna College, is majoring in Philosophy and Public Affairs. ■

Please Don't Call Me...I'm Not Interested!

by Candice Holmes

It happens to all of us. Dinner's on the table and the phone rings. You think about not answering, but decide to get it anyway. Should have trusted your instincts. It's an overly aggressive telemarketer ticking off reasons why you need to purchase a Diner's Club Card...right now!

Over 20 states have passed laws that prohibit telemarketers from calling consumers who put their names on "do-not-call" lists. Similar bills are pending in the rest of the states. Sounds great until you realize that how these lists are put together, who's responsible for maintaining them, how you get on them and which telemarketers they cover, vary from state to state.

To eliminate the confusion, new regulations were proposed in January that would allow the Federal Trade Commission to create a national "do-not-call" list of consumers who have decided they do not want to be solicited by telemarketers. To get on the list and to opt-out of even getting an initial call from telemarketers, consumers simply dial an automated toll-free number. Telemarketers would then be responsible for making sure callers on the national list are removed from their calling lists. They also have to update their calling lists based on the national list once a month.

Under current laws, telemarketers who call consumers on state's no-call lists face hefty fines. Those fines would be increased to \$11,000 per call under the new regulations proposed by the FTC.

"We want to allow consumers to have a company by company approach in who calls them, but right now it's hard because without regulation, you have every company in America trying to call you," said Catherine Harrington-McBride of the FTC. "We are trying to provide three options: the national registry which is maximum protection; express verifiable expres-

sion where a consumer has high security but can make exceptions to those blocked by providing permission via tape or letter; and personal regulation of a consumer having the power to decide one on one if they want to be solicited by that company."

The proposed regulations would apply to all cold call, direct mail, and media telemarketing companies using mass mailing, fax, and both live and



prerecorded phone solicitations. Among the exemptions are banks; credit card, insurance, and telephone companies; non-profit organizations; newspapers; catalogs; neighborhood calls; phone surveys; calls to offices during business hours; and organizations which the consumer already has a preexisting relationship with. Still, these companies have to respect your wishes when you ask to be taken off of their call lists.

Until a national do-not-call list is adopted, you should, as a preventative measure, contact your local "do not call registries" and/or register with the Direct Marketing Association. (The DMA is an organization of almost 5,000 companies and it operates its own do-not-call list. To get on it, you pay \$5 and are protected for up to 10 years. Affiliate members who call people on DMA's list are threatened with expulsion.)

You can also contact the three major credit bureaus and ask them not to share your personal information. If you are faced with a telemarketing call, you should know that they can only call between the hours of 8 a.m. and 9 p.m. and must immediately identify their product, the company, and that it is a sales call. They must tell you the total cost and risk of the products and any restrictions on returns before you can make a payment. You are within your rights to request information in writing and the FTC recommends you check the company out with the local or state consumer protection offices before making a financial transaction. You can end the call at any time, so ignore any high-pressure tactics. If you state that you are uninterested and want your name off their call list, they are obligated to remove it. To file a complaint, you can contact the FTC at 1-877-FTC-HELP (382-4357) or your local Attorney General.

Candice Holmes, a junior at Wesleyan University in Connecticut interned with HALT during the Spring '02 semester.

Helpful Links:

National Consumers League

(www.nclnet.org/privacy/index.htm) Information on how to protect your privacy against telemarketers.

Direct Marketing Association

(www.the-dma.org)

Allows consumers to join their do-not-call list which covers thousands of businesses for a \$5 fee.

The Federal Trade Commission

(www.ftc.gov) Includes explanations on past and present legislative activities plus useful consumer information about how to deal with telemarketers.

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