



The Face of the Oregon Court System

by Keith Garza
 MBA Board Director

Our courts are very little about concrete edifices – crumbling or not – oak paneling or marble facades. They are, at their core, human institutions. But what faces

do you see when you think about our state court system? For me, the question at first seemed easy and answered almost automatically based on my personal experiences. I have fed at judicial troughs for most of my career. Among others, the Supreme Court as a staff attorney for seven years and, later, the circuit courts where I had the privilege of sitting as a pro tem judge in at least a dozen of our counties' courthouses. For me, it is the faces of the people who make our courts work day in and day out – the JAs, the bailiffs, the clerks behind the counters, the techs who make everything run – that look back at me when I think about our judicial system.

Others probably see different faces. You might see the judges before whom you have appeared. Or a blurred appellate bench behind the opinion that guides the contract you are drafting. Litigants might focus on the jurors who decided their cases. A criminal defendant may think back to the public defender who advocated on his or her behalf.

So when I read that the Judicial Department's budget for the rest of the biennium – which remains less than 2.5 % of the state's general fund – is not as bad as anticipated, I am of course heartened to learn that Oregon eCourt will continue to move forward and that our East County Courthouse will open in April and probably have both furniture and equipment. Mostly, though, I am saddened. Having already lost more than 130 employees since 2011, it appears that some 50 or more people will need to be let go – perhaps as many as 20 from Multnomah County. Some of those most certainly will be friends and former colleagues. And, finally, I am also worried for all of us, because I know how hard those people work, have witnessed their dedication, and seen how hard it is to dispense responsive, responsible justice even in the “good times.”

But if courts are in the business of justice, then maybe the faces I am quick to put on that enterprise are not the most accurate ones. Isn't it true that, just as courts are not really about statues of Lady Justice and words chiseled in stone, they also are less about the people who run them and more about the people who need them. A long time ago, our State Court Administrator Kingsley Click and I were talking about some OJD matter, and she kept using the term “customer service.” How odd, I thought. This is government. Trying to make people happy is why I left private practice. But of course she was right.

So, instead, how about these for the faces of Oregon's courts: The bruised woman desperate for a restraining order on a Friday morning before a long weekend. The sunken features of an addict whose life can turn out very differently if only he is accepted into

a treatment court program – because those programs work. The worried proprietor waiting for a litigation outcome before making a significant business decision who perhaps would benefit from a commercial court or expedited trial. The couple who need to break their marital ties in a time and manner that won't bankrupt them and jeopardize their children. You pick the face – a former or present client, someone you know, maybe someone close to you. I suggest that those are the real faces of our judicial system.

So why hijack President Blackhurst's space to offer that observation? It's not to whine about the budget process or outcome. (Yes, the way in which we are funded needs structural attention, but things are tough all over.) Nor did I set out to sing a paean about the courts' judges and staff. (Yes, their stamina and ability to try to do at least the same with less is inspiring, but they are only human and the cracks are now showing.) Instead, my purpose was a practical one, one motivated by a couple of things I recently heard that made an impression on me:

- First, Presiding Judge Waller has related on several occasions that, when she is speaking to policy makers, she consistently is amazed by how vocal and effective those who have benefitted from other state government programs are regarding the significance of those services to their daily lives. The way she talks about what she has witnessed is compelling.
- Second, and as the Bar remarked in its *Capitol Insider* e-newsletter last week, things in Salem exceeded our limited expectations because “[l]egislators seem to have heard the lawyers, judges and businesspeople who talked with them about the importance of the judicial branch as a core function of government.”

So I write now because, in May, the courts will have an opportunity to seek to recover from the legislature's 20-member Emergency Board more than a million dollars of lost funding. Those who have tirelessly represented the third branch once again will be there at the table. Consider helping them in that effort. You almost certainly have a story to tell about the personal face that is our court system, about the vital role that it plays in the lives of real people, businesses and communities. Please share it. Tell an E-Board member, tell your legislator, tell a judge – heck, tell the chief justice - so they can take your message to Salem. After all and as Tip O'Neil was fond of observing, “All politics is local.”

The stories of our courts are told every day and can be seen in the faces of the consumers who – willing or not – receive the justice it metes out. Those who hold the future of Oregon's court system in their hands ought to see the faces of the real people it is there to serve before deciding its fate.

mba|CLE

To register for a CLE, please see the inserts in this issue or go to www.mbabar.org.

APRIL

4.3 Tuesday Litigators' Tips for Business Lawyers

Joe Arellano
 Brad Daniels
 Marie Eckert
 Barnes Ellis

4.24 Tuesday Legislative Update

Chris Garrett
 Shawn Lindsay

MAY

5.2 Wednesday Mandatory Sentencing

Chief Justice Paul De Muniz

5.24 Thursday Washington and Clackamas Courts Update

Judge Robert Herndon
 Judge Kirsten Thompson

5.30 Wednesday Annual Probate Update

Judge Rita Batz Cobb
 Judge Katherine Tennyson
 Bryan Marsh
 Tim McNeil

5.31 Thursday Multnomah County Judges Trial Practices Update

Judge Judith H. Matarazzo
 Judge Jean Kerr Maurer
 Judge John A. Wittmayer

JUNE

6.6 Wednesday Appellate Law Nuts and Bolts for Litigators

Justice Jack Landau
 P.K. Runkles-Pearson

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www.mbabar.org

See pp. 3-4 for
 CLE schedule and
 registration.

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mba|EVENT

Multnomah Bar Association Annual Meeting, Dinner and Judges Reception

Monday, May 21
 5 p.m.

Marriott Portland Downtown Waterfront
 1401 SW Naito Parkway

Celebrating the profession and recognizing our
 colleagues

Professionalism Award Recipient
 Edwin A. Harnden

RSVP by May 7.
 Invitations have been mailed separately.

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DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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Member Resource Center

Welcome to the member resource center, where you will find information of importance to members and the legal community at large.

Courthouse Watch

Spring 2012

- **Multnomah County** contracted with the inici group Inc to provide the Board of County Commissioners a comparison analysis of various delivery options to replace the existing downtown courthouse. These options will be evaluated and compared to the current renovation proposal based on a number of factors. The report is scheduled to be brought to the Multnomah County Commissioners in April.

- **The State Justice Institute** awarded a \$40,500 grant to Multnomah County, working in partnership with the Oregon Judicial Department, to update the 2002 Courtroom Requirement Projections for future Multnomah County courtroom needs. It is anticipated this study will be completed in April.

- **The East County courthouse** is expected to open mid-April.

- **The MBA has updated its courthouse committee** and resumed meeting, to create a strategy for continuing to advocate for a new or remodeled downtown Multnomah County Circuit Court courthouse.

- **The study by SERA Architects** that examined the feasibility of renovating the current downtown courthouse while maintaining substantial court operations was finished mid-2011. The SERA study includes the following findings.

- ✓ Such a renovation would likely be completed in four and one-half to six years. Work would occur between 4 p.m. and 1 a.m. and/or possibly on weekends. Seismic and security upgrades would come first, followed by phasing in of all new building and telephone systems. Construction would be done two floors at a time starting at the top, with staging on Salmon St., which would be closed during the renovation. The goal would be to design for contemporary courthouse standards where possible. The report indicates that certain operations would be moved out of the building during construction and some would be permanently removed to other buildings.

- ✓ The renovation could add 75,000 sq. ft. There are 39 courtrooms now. Depending upon how space is used and which functions remain

in the building, two more courtrooms could be added if the DA's office is in the building, six more if the DA's office is permanently moved out of the building. The study suggests moving traffic court, most court records and the law library out of the building during construction. It is undetermined whether or not they would move back into the building or be housed separately.

- ✓ Three elevators would be added for in-custody persons, a separate new one for court staff and the four public elevators in the main lobby would be renovated.

Pro Bono Opportunities

The Neighborhood Legal Clinic needs attorneys to staff weekly clinics in our community. Common legal needs include collection, contract, landlord/tenant, unemployment, small estates and insurance defense issues. Individuals and law firms can schedule one or more appearance each year.

The Neighborhood Legal Clinic is an OSB-certified pro bono program - participating attorneys are covered by PLF insurance and do not need to have independent coverage.

For more information or to volunteer, contact Lori Alton at 503.473.8326 or lalton@oregonlawcenter.com

New MBA Web Site

In January, the MBA launched a newly designed Web site. The online Membership Directory has been expanded and members may now update their photos, include a bio, add links to social networking sites and update practice area information online. The calendar has been improved and includes non-MBA events that are relevant to anyone in the Portland legal community. Visitors can add events to their Outlook or Google calendars through the site. Events may also be submitted for inclusion using the link at the top of the calendar. To login to the Members Center, you can use the email address currently on file in the MBA Directory for you user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

MBA Member Discounts

Appaloosa Business Services

Member-only discounts on Web site design and hosting services. Paul Tichy 503.336.1388 www.spottedhorse.com

Bank of the Cascades

Generous array of benefits specifically designed for attorneys. Elise Bouneff 503.499.5931 www.botc.com

Calendar

To add your organization or firm's annual events to the MBA online calendar, contact Carol Hawkins, carol@mbabar.org.

APRIL

4.6 Friday
MBA & YLS Board voting ends

4.12 Thursday
Hispanic National Bar Association Scholarship Luncheon at The Governor Hotel, 12-1:30 p.m.
Visit www.hnba.com for details or email rhernandez@schwabe.com for tickets

4.12 Thursday
FBA Oregon Chapter Spring Social
Visit www.oregonfba.org for details

4.19 Thursday
YLS Judges Social and CourtCare Fundraiser
Visit www.mbabar.org for details

4.24 Tuesday
Classroom Law Project Legal Citizen Dinner
Visit www.classroomlaw.org for details

4.27 Friday
OGALLA: A Class Act
Visit www.ogalla.org for details

4.30-5.5 Monday-Saturday
Community Law Week
Visit www.mbabar.org/yls for details

4.30-5.18 Monday-Friday
CourtCare Fundraising Campaign
Visit www.mbabar.org/foundation/courtcare for details

MAY

5.3 Thursday
YOUthFILM Screening at Hollywood Theater
Visit www.mbabar.org/yls for details

5.16 Wednesday
MBA Lawyers & Law Students Golf Event at Langdon Farms
See insert for details

5.21 Monday
MBA Annual Meeting & Dinner
Visit www.mbabar.org for details

The Bar Plan Online Court Bonds
MBA members can purchase a court bond online with 24-hour turnaround time. Cathy Ahearn or Deborah Eller at 1.877.553.6376 www.mba.onlinecourtbonds.com

LawPay
Reduced merchant credit card set-up fees and month-to-month contracts. 1.866.376.0950 www.affiniscap.com/mbabar

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LexisNexis
Special packages and pricing exclusively for MBA members. 1.800.356.6548 www.lexisnexis.com

MBA Insurance Plans
Member-negotiated group health and disability insurance structured specifically for lawyers and firms. Steve Doty 503.284.1331 www.mbabar.org

The Naegeli Reporting Corporation
Discounts on court reporting, video conferencing and videography. 503.227.1544 www.naegelireporting.com

Office Depot
Up to a 40% discount on select items. Jason Thorud 503.290.0273

UPS
MBA members can save up to 26% on their express shipping courtesy of UPS. www.savewithups.com/multnomahbar

Classified Advertising
In addition to publishing classified ads in the *Multnomah Lawyer*, the MBA posts all classifieds at www.mbabar.org. To obtain a quote, email your ad text to Carol Hawkins at carol@mbabar.org.

The MBA thanks LRS Architects for its pro bono design and development of construction documents for the CourtCare East space in the new East County Courthouse.

The firm was selected by the county to design the new courthouse, which is LEED Gold certified. The Leadership in Energy and Environmental Design (LEED) provides the building owner with practical and measurable green building design, construction, operations and maintenance solutions.

The courthouse is expected to open mid-April.





**Multnomah Bar
Association**

Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Please see the descriptions of MBA CLE seminars and events on both sides of this insert. Photocopy, complete and mail or fax the registration form (see the opposite side) with payment to the MBA to reserve your space. **Or register online and receive a \$5 discount.**

Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

April 24, 2012

Tuesday

12:00-1:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$35
Non-members \$55

Legislative Update

Note: This Class Will be Worth One General MCLE Credit

Please join two lawyer legislators to learn about the developments that took place during the Oregon State Legislature's 2012 session. This CLE will cover recent changes to criminal and civil laws that may affect your practice or your clients' interests. Panelists include two members of the Oregon House of Representatives: **Chris Garrett**, a litigator at Perkins Coie, and **Shawn Lindsay**, a business and intellectual property attorney at Lane Powell.

For more information: Call Heidee Stoller, Ater Wynne at 503.226.8616. With registration questions, call the MBA at 503.222.3275.

May 2, 2012

Wednesday

12:00-1:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$35
Non-members \$55

Mandatory Sentencing: The De Muniz Commission Report

Note: This Class Will be Worth One General MCLE Credit

Over the last 30 years, Oregon's average annual prison population has grown by 448% while the state's violent crime rate has fallen by 45%. Over the last 15 years, Oregon's overall public safety spending has risen by 500% and the Department of Corrections budget has risen by 770%.

In view of these and related developments, Governor Kitzhaber convened the Commission on Public Safety, chaired by Chief Justice Paul J. De Muniz. The Governor charged the Commission with developing recommendations for changes to Oregon's sentencing policy in order to harmonize criminal justice goals and budgetary realities better.

The Commission has recommended that Oregon pursue thoroughgoing revisions to the way it sentences criminals in order to "optimize the use of Oregon's most expensive corrections resource — prisons." Doing so will require a sensitive balancing of numerous imperatives, each with a constituency of its own, and involve interests dear to all Oregon lawyers, not only those who specialize in criminal law. Join **Chief Justice De Muniz** for a lunchtime presentation on what he learned as chair of the Commission and what its recommendations might mean to Oregon and to you.

For more information: Call Bear Wilner-Nugent, Attorney at Law at 503.351.2327. With registration questions, call the MBA at 503.222.3275.

May 24, 2012

Thursday

3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Washington and Clackamas County Courts Update

The MBA CLE Committee presents a two-hour CLE focusing on Washington and Clackamas County court updates. This CLE is designed for all attorneys and will provide information and forms for navigating the Washington and Clackamas County courts.

Our panel includes Washington County Presiding **Judge Kirsten Thompson** and Clackamas County Presiding **Judge Robert Herndon**. This class will assist the practitioner in adjusting to court procedures outside of Multnomah County, including court organization, filing and serving your complaint, general calendaring, routine motion practice and scheduling and getting court assistance with trial and pleading issues.

The class will also provide attendees with updates to both Washington and Clackamas County court practices, including printed materials and online resources.

For more information: Call Joe Franco, Markowitz, Herbold, Glade and Mehlhaf at 503.295.3085. With registration questions, call the MBA at 503.222.3275.

May 30, 2012

Wednesday

3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Annual Probate Update

The MBA presents the 2012 Annual Probate Update, featuring the following panel members: **Judge Katherine Tennyson**, Multnomah County; **Judge Rita Batz Cobb**, Washington County; **Bryan Marsh**, Probate Coordinator from Clackamas County; and **Tim McNeil**, Davis Pagnano McNeil et al. Mr. McNeil will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the tri-county metro area. This CLE is a must for all probate practitioners and/or their staff.

For more information: Call Aukjen Ingraham of Cosgrave Vergeer Kester at 503.323.9000. For registration questions, call the MBA at 503.222.3275.

May 31, 2012

Thursday

3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Multnomah County Judges Trial Practices Update

NOTE: The written materials for this class will include the recently updated Judges Trial Practices Survey

This year's program will feature presentations by judges **Judith H. Matarazzo**, **Jean Kerr Maurer** and **John A. Wittmayer**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. The panel will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter. The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

For more information: Call Jen Wagner of Stoll Berne at 503.227.1600. With registration questions, call the MBA at 503.222.3275.

CLE Classes continued on next page

mba | CLE

June 6, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Appellate Law Nuts and Bolts for Litigators

You've successfully tried your case, but the other side files a Notice of Appeal. Your client wants you to defend the appeal. This has never happened to you before. What happens next? How do you preserve that victory for your client? Or you lost at trial and your client wants to appeal. How do you go about turning a loss into a win? Is getting the case overturned on appeal realistic?

This CLE is designed for trial lawyers who do not regularly practice in the appellate arena. Topics will include: whether to appeal or defend an appeal, the life of an appeal, general tips and traps, electronic filing and procedural differences between the Court of Appeals and the Supreme Court. This two-hour program will be presented by Oregon Supreme Court **Justice Jack Landau** and **P.K. Runkles-Pearson** of Stoel Rives.

For more information: Call Melissa Ward of Spooner & Much at 503.517.0777. For registration questions, call the MBA at 503.222.3275.

June 7, 2012
Thursday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

HIPAA/High Tech Basics for the Business Lawyer

This CLE will address (non-litigation) aspects of HIPAA/High Tech that affect "Covered Entities" (such as doctors, hospitals and health plans), and the service providers (accountants, lawyers, billing companies) that handle health information in the course of providing services to the Covered Entities. **Blerina Kotori** of Tonkon Torp and **Leslie Bottomly** of Ater Wynne will cover:

- What do HIPAA's privacy and security rules require of Covered Entities?
- How do you determine if you are a Covered Entity?
- What does HIPAA require a Covered Entity to do if private health information is accidentally disclosed?
- What is a "Business Associate Agreement" between a Covered Entity and a service provider (accountants, lawyers, billing companies) and which provisions may be negotiated?
- What does HIPAA require of Business Associates?
- Indemnification and insurance issues involving the costs associated with HIPAA violations.

For more information: Call Heidee Stoller of Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

June 13, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Winning Approaches to Opening Statements & Closing Arguments With Bill Barton and David Markowitz

Learn how to craft and deliver persuasive opening statements and closing arguments from two of the most respected trial lawyers in Oregon. Whether you are a new or seasoned lawyer this program will be of interest to you. Topics will include goals, themes, techniques, style and basic structure of openings and closings.

For more information: Call Joe Franco of Markowitz, Herbold, Glade & Mehlhaf at 503.295.3085. For registration questions, call the MBA at 503.222.3275.

Registration Form

Receive a \$5 Discount when registering online at www.mbabar.org.

NAME _____	ACCOUNT NUMBER _____
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PHONE _____	_____
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Member Status:
 MBA Member
 Non-Member

Payment Options:
 Check VISA MasterCard
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Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

Multnomah Bar Association
620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
503.222.3275 ■ Fax to: 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis.
For details, call the MBA at 503.222.3275.

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available; an additional \$5 charge will apply.

4/24 Legislative Update
Class Registration Online (\$30 Members/\$50 Non)
 Class Registration (\$35 Members/\$55 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

5/2 Mandatory Sentencing: The De Muniz Commission Report
Class Registration Online (\$30 Members/\$50 Non)
 Class Registration (\$35 Members/\$55 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

5/24 Washington and Clackamas County Courts Update
Class Registration Online (\$50 Members/\$80 Non)
 Class Registration (\$55 Members/\$85 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

5/30 Annual Probate Update
Class Registration Online (\$50 Members/\$80 Non)
 Class Registration (\$55 Members/\$85 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

5/31 Multnomah County Judges Trial Practices Update
Class Registration Online (\$50 Members/\$80 Non)
 Class Registration (\$55 Members/\$85 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

6/6 Appellate Law Nuts and Bolts for Litigators
Class Registration Online (\$50 Members/\$80 Non)
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 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

6/7 HIPAA/High Tech Basics for the Business Lawyer
Class Registration Online (\$50 Members/\$80 Non)
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6/13 Winning Approaches to Opening Statements & Closing Arguments
Class Registration Online (\$50 Members/\$80 Non)
 Class Registration (\$55 Members/\$85 Non) \$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

Total due \$ _____

WinterSmash Raises \$19,500 for CourtCare

by Kathy Modie
MBA Director, Events and Programs

What better way to raise money for a good cause than with a night of family fun, bowling competition, raffle prizes and a best bowling shirt competition? On Saturday, February 25, about 250 MBA members and their families participated in the MBA's 10th Annual WinterSmash fundraiser at AMF 20th Century Lanes in Portland.

In the spirit of fun, teams gathered to vie for prizes based on their scores and outfits.

Best team score and the coveted bowling trophy went to the Barran Liebman team, with their top three individual scores combined at 520. Harrang Long Gary Rudnick won the prize for best shirt.

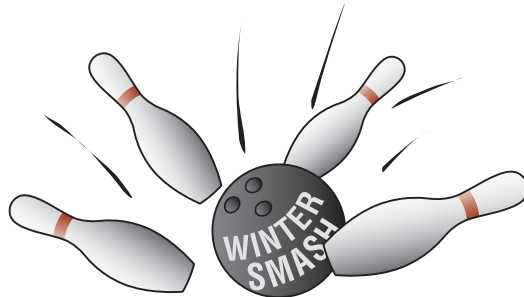
The prize winner for best individual score went to Paul Martinez from Synergy Legal with a score of 192.

The team with the most players again this year was Harrang Long Gary Rudnick, with 44 bowlers signed up. Ater Wynne also had over 40 bowlers. Barran Liebman, Bodyfelt Mount, Buchanan Angeli Altschul & Sullivan and Gordon & Rees had over 20 bowlers each.

WinterSmash benefits CourtCare, the free drop-in childcare for

children of parents who have no other alternative than to take their children with them to court.

Thank you to Harrang Long Gary Rudnick for sponsoring the food and beverages again this year, and to our sponsors and all who participated. Thank you also to the WinterSmash Subcommittee for planning such a great event: Co-Chairs Cody Elliott and Colin Andries; Melissa Beyer, Samantha Gamboa, Hwa Go, Brad Krupicka and Donald Molnar. Thank you, Sylvia Stevens, for selling raffle tickets at the event.



Barran Liebman team with their trophy for team high score



Harrang Long Gary Rudnick bowlers

King Pin Sponsor

Harrang Long Gary Rudnick P.C.



The other partner is you

Life of the Party Sponsors

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Markowitz Herbold Glade & Mehlhaf
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Marriott Portland Downtown Waterfront
Jesús Miguel Palomares
Pumpkin Ridge Golf Club
Red Star Tavern & Roast House
Judith Swinney
20th Century Lanes

See WinterSmash photos at www.mbabar.org/Membership/WinterSmash2012.html.

What Lawyers for Oregon Businesses Should Know About Washington Taxes

by Charles J. Pruitt
Partner, Wyse Kadish

Continued from March 2012 issue of the Multnomah Lawyer
The entire article is available at <http://mbabar.org/Resources/Publications.html>



The Next Step

If your client does not believe that it is transacting business in Washington for purposes of establishing nexus, it needs to make the considered business

decision whether and to what extent it is willing to do business in Washington. If it decides to register with the Secretary of State and to be subject to Washington taxes, that will take it in one direction. If, on the other hand, it wishes to eliminate nexus with the state and simply transact business in interstate commerce, that will take it in another direction.

If your client takes the first course, you can help the company register with the Secretary of State and comply with Washington's tax laws. Among other actions, you can counsel the company

on how it can insure that its transactions are properly classified for use tax purposes.

If your client takes the second course, you need to work with it to structure its future dealings with Washington customers so that they do not create nexus. Note, however, that the DOR maintains that, once nexus is established, it will continue for five years even though the nexus creating activity ceases. That assertion is questionable on constitutional grounds.

At the very least, you will need to work with your client to resolve its tax liability for past

sales. The company needs to look backward to see if nexus existed during the entire period covered by the DOR's audit. If the DOR claims that sales tax is owing because your client did not obtain resale certificates from its customers, you will need to work with the company to document that the sales were not retail sales for which a tax had to be collected. Also, if sales tax is found owing, you can work with the company to determine what right, if any, it has to be indemnified by its customers.

If your clients are not intentionally doing business in

Washington, you should counsel them concerning how to be sure that nexus is not created. If your client's customer base includes Washington residents, make sure that Washington residents pick up their merchandise in Oregon. If products need to be delivered by any means other than UPS, FedEx or the Post Office, the client's customers need to make their own arrangements.

And your clients should be instructed to seek your counsel before responding to questionnaires sent to them by the DOR.

webcheck

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Ethics Focus

Identity Theft: Loss of Clients' Confidential Data

by Mark J. Fucile
Fucile & Reising



Technology has transformed the practice of law over the past generation. For many firms, "file rooms" are now a set of servers - sometimes on-site but increasingly in an off-site "cloud." For many lawyers, "brief cases" are now laptops, tablets and smart phones. At the same time, the mobility that technology affords us brings with it new challenges to safeguard client confidentiality within this

"...the mobility that technology affords us brings...new challenges to safeguard client confidentiality..."

new electronic environment. A generation ago, leaving a paper file behind at a restaurant after a lunch meeting with a client would bring a sense of embarrassment until it was recovered. Today, the loss of a laptop loaded with multiple client files in those same circumstances would bring much more than just passing embarrassment.

In this column, we'll first look briefly at our duty to protect client confidentiality and safeguard client property. Then we'll turn to what you need to do if computer equipment is lost or stolen (or your computer is "hacked") and, with it, confidential client data is compromised.

Duties of Confidentiality and Safekeeping

RPC 1.6(a) states our bedrock duty to preserve client confidentiality. The duty is both strict (with few exceptions) and broad (extending to "information relating to the representation of a client"). ORS 9.460(3) echoes RPC 1.6(a) and puts those duties in statutory form. RPC 1.15-1(a), in turn, charges lawyers with the duty to protect client property in their possession.

The OSB late last year issued an ethics opinion (2011-188) on third party electronic storage and the Professional Liability Fund this year amended its basic plan to exclude data loss. We'll look at both in detail later this spring.

Our fundamental duty to protect client confidential information, however, is aptly summarized in the heading to Comment 16 to ABA Model Rule 1.6: "Acting Competently

"The precise steps we take vary with the circumstances..."

to Preserve Confidentiality." The precise steps we take vary with the circumstances and are gauged by what Comment 17 to Model Rule 1.6 describes as "reasonable precautions." The precautions encompass both physical and electronic security and cover both our firms and outside contractors we may use to assist us in handling client work.

Computer or Data Loss or Theft

If you suffer a computer or data loss or theft that includes sensitive client confidential information, then (in addition to contacting the authorities as appropriate) you need to tell the clients affected. This duty has two sources. First, under RPC 1.4(a), lawyers have a duty to "keep a client reasonably informed about the status of a matter[.]" Of note in this regard, files are generally considered client

property in Oregon under OSB Formal Ethics Opinion 2005-125 (at 333 n.2). Second, under the Oregon Consumer Identity Theft Protection Act (ORS 646A.600-646A.628), firms must notify clients if certain specific classes

"...firms must notify clients if certain specific classes of information are stolen..."

of information are stolen, such as Social Security numbers, drivers' license numbers or financial account numbers. ORS 646A.604 describes the content of the notice and ORS 646A.602(11) outlines the kinds of personal information that trigger the notification requirement. If your firm has offices or clients beyond Oregon that are affected, then you would need to consult the rules and laws in those other jurisdictions as well.

The PLF has developed some excellent practice aids addressing both data security and data loss. They touch on both the ethics rules and the Oregon Consumer Identity Theft Act. The practice aides are available at www.osbplf.org. Included among them is a sample notice to clients in the event of a data theft or loss. The sample notice can be tailored to client-specific circumstances or to client-wide data loss. The PLF also has practice management advisors available to help craft security plans tailored to firm size and practice focus.

Summing Up

Simply reading the PLF's sample notice and imagining having to send it to all of your clients should motivate us all to implement rigorous programs to keep client information secure.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and Mark@frllp.com.

This year the YOUTHFILM Project added a mentor program. This exciting new opportunity matches a volunteer lawyer with a group of student filmmakers. The mentor answers questions about the law and this year's theme, interacts with the filmmakers as they develop ideas, and assists with planning and organization. The mentor program is just another way the YOUTHFILM Project hopes to encourage students to get involved and care about civics issues.

We hope to see everyone at this year's event. For more information, please visit www.theyouthfilmproject.org.



mba | ANNOUNCEMENTS

Take a Matter that Matters

Sign the MBA 2012 Pro Bono Pledge at mbabar.org/AboutUs/ProBono.html and commit to taking at least one pro bono case this year.

Comment Period for UTCRs Ends April 18

The state courts are in the process of adopting new Uniform Trial Court Rules (proposed UTCR Chapter 22) that set additional standards for security, confidentiality and access to information in filed court documents. The public comment period on these proposed rules runs 49 days from publication of notice in the Oregon Advance Sheets. The text of the proposed 2012 UTCR changes is at: <http://courts.oregon.gov/OJD/programs/utcr/utcrules.page>.

Hispanic National Bar Association Luncheon

The HNBA Legal Education Fund's inaugural scholarship luncheon is April 12 at The Governor Hotel in Portland. The keynote speaker is The Hon. Jimmie V. Reyna, U.S. Court of Appeals for the Federal Circuit. For tickets or to purchase a table, contact Román Hernández, rhernandez@schwabe.com. Details about the fund are available at www.hnbafund.com.

The U.S. Court of Appeals for the Ninth Circuit

Applications from all qualified persons are invited for the position of Federal Public Defender (FPD) for the Eastern District of California, which will be available on December 3, upon the retirement of the current FPD.

Application forms and more information may be obtained at www.ca9.uscourts.gov. Applicants are advised to allow for sufficient time to complete and submit the application. Applications must be in the format required by the Ninth Circuit and received by 5 p.m., Thursday, May 3.

MBA Noon Time Rides

Gather at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or meet at the start.

Nonprofit Law Practice Assists in Building Low-Cost Housing

The Community Development Law Center (CDLC), a nonprofit law practice providing legal advocacy for Oregon's nonprofit agencies, is assisting Bienestar in a \$6 million project to build low-cost housing in Washington County which has been funded by the Rural Development Department of the U.S. Department of Agriculture. CDLC is a program of St. Andrew Legal Clinic.

The Bienestar project will provide 46 apartments for farm-worker families at its Juniper Gardens project in Forest Grove, Oregon. The award was made as part of a national competition and is the only one in Oregon, and one of only 10 in the U.S. CDLC has provided legal expertise on purchasing the property, financing the project, negotiating and preparing contracts, complying with city requirements and coordinating public improvement aspects of the project.

Multnomah County Sheriff's Office Changes Professional Call Times

In order to accommodate jail staff shift changes, the times for professional calls to inmates has changed. Current professional call times are: 0900-1100, 1300-1445, 1600-1700 and 1900-2100.

YOUTHFILM Screening is May 3

Mark your calendars! Come enjoy a night of popcorn and viewing student short films that will be sure to entertain. On May 3 at 6:30 p.m., the YOUTHFILM Project hosts its 6th annual film-screening event at the Hollywood Theatre as part of Community Law Week. Everyone is invited and welcome to attend.

The YOUTHFILM Project is part of the MBA Young Lawyers Section. The YOUTHFILM Project allows elementary, middle school and high school students all over Oregon and SW Washington to show off their creativity, knowledge and skills by producing short films on civics

issues. The filmmaking teams are no larger than five students and the films must incorporate the ABA Law Day theme, which is new each year. This year's contest celebrates the American judicial system: "No Courts, No Justice, No Freedom" and includes topics such as defending the unpopular, accessing the courts, constitutional rights and the jury system. Top films will be screened for the public at the Hollywood Theatre in Northeast Portland during Community Law Week. Honored guest, Oregon Supreme Court Chief Justice Paul J. De Muniz, will award prizes.



UPS Offers MBA Members a Chance to Win a \$500 Apple Gift Card

Sign up for an MBA UPS account by May 10, 2012 and receive one entry for the sweepstakes for a chance to win a \$500 Apple Store gift card.

No purchase or payment of any kind is necessary to enter or win this promotion.

Sign up today at savewithups.com/multnomahbar



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Around the Bar



Dana Sullivan

Buchanan Angeli et al

Firm partner and MBA Board Director **Dana Sullivan** will be presented the Lewis & Clark 2012 Joyce Ann Harpole Award on April 2. The annual award is presented to an attorney who is dedicated to the pursuit of justice while maintaining a sense of balance among career, family and community. Award nominations are received from the community at large.



Thomas Purcell

Martin Bischoff

Thomas Purcell has joined the firm as an associate.



Jon Monson

Cable Huston

Jon Monson has been made a partner in the firm. He is a member of the firm's Litigation and Sports Law Practice Groups. His practice includes complex commercial disputes, professional sports-related litigation, business torts, securities, white-collar and insurance defense.



Brenda Meltebeke



Kay Abramowitz

Ater Wynne

Two firm partners have been elected to the boards of local organizations. Partner and Firm Chair **Brenda Meltebeke** has been elected as a member of the Oregon Entrepreneurs Network Board of Directors. **Kay Abramowitz**, Partner and Chair of the Wealth Preservation and Family Business Groups, has been elected as a member of the PSU Foundation Board of Directors.



Steven Boyd Seal

Williams Love et al

Steven Boyd Seal has joined the firm as an associate. He will practice in the product liability area.



Jeffrey Bennett

Warren Allen

Firm partner **Jeffrey Bennett** has completed his firm's acquisition of the assets of the Hummel & Barnhouse firm. The Warren Allen firm and Bennett now represent many of Hummel & Barnhouse's former clients.

Bennett's practice focuses on landlord's rights, business law and real estate matters.

Day & Koch

Anne Koch has joined with another attorney in a new AV-rated law firm assisting clients with business, entertainment and intellectual property matters. Her practice will continue to focus on the representation of creative companies and individuals in business and corporate transactions and copyright and trademark



Anne Koch

matters. Koch may be reached at anne@dayandkoch.com.



Paul Conable



Steven Olson



Mark Cushing

Tonkon Torp

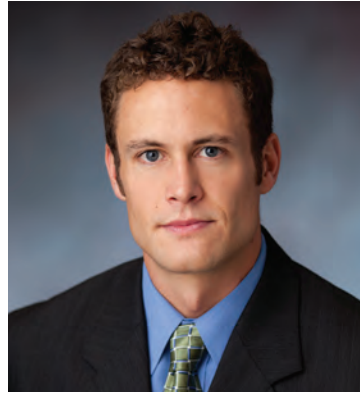
Paul Conable and **Steven Olson** have been appointed co-chairs of the Litigation Department.

Conable is a commercial litigator who represents individuals and companies in a broad range of disputes, including complex lawsuits involving business operations, government investigations, financial services, breaches of contract and environmental matters.

Olson has substantial litigation experience in federal and state courts across the county. His focus is complex business litigation, including contract and shareholder disputes, business torts, real estate transactions and environmental matters.

Mark Cushing has been elected to a three-year term on the Board of Governors of the Pacific Northwest College of Art (PNCA) Board of Governors.

Cushing chairs the Government Relations and Public Policy Practice and also is founder of the Animal Policy Group, a unique advocacy practice offering strategic



Duncan Delano



Edwin (Ned) Perry

counsel and local, state and federal government relations services on matters ranging from pet and production animal issues to international accreditation of veterinary colleges.

Duncan Delano has been elected to the Board of Directors of the Oregon Association of Environmental Professionals. Duncan is a member of the Environmental & Natural Resources Practice Group.

Edwin (Ned) Perry has been elected to a three-year term on the board of Portland YouthBuilders, a nonprofit organization committed to providing long-term support for low-income youth. He has provided pro bono counsel to the organization for more than a decade.

Perry is a commercial litigator and former chair of the Litigation Department. His litigation, mediation and arbitration practice focuses on complex contract, construction and real estate disputes.



Michael Phillips

Davis Wright Tremaine

Partner **Michael Phillips** has been named pro bono legal counsel for The Conservation Alliance, a group of outdoor industry companies that funds and partners with organizations to protect wild places for their habitat and recreation values.

Phillips focuses his practice on securities, mergers and acquisitions, and general corporate and business law for outdoor recreation, life sciences and high tech clients. He provides similar pro bono legal services to Oregon Bioscience Association.



Tara Schleicher

Farleigh Wada Witt

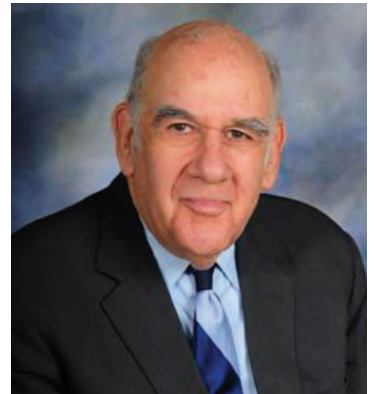
Tara Schleicher, chair of the firm's commercial bankruptcy and insolvency practice group, has been recertified as a business bankruptcy law specialist by the American Board of Certification, a nonprofit sponsored by the American Bankruptcy Institute and accredited by the ABA. Originally certified in 2007, she has more than 15 years of experience representing debtors, creditors and trustees in all types of bankruptcy and insolvency matters.



Brian R. Talcott

Dunn Carney

Brian R. Talcott has been elected to the Classroom Law Project Board of Directors.



Arden Shenker

Shenker and Bonaparte

Arden Shenker, a partner in the firm, has been selected together with his wife, Lois, to receive the Rabbi Joshua Stampfer Community Enrichment Award. They are being honored for their lifelong leadership and philanthropy in both the Jewish and general communities in the northwest, nationally and internationally.

Shenker concentrates his practice on complex business, energy, environmental, commercial and civil litigation and administrative proceedings.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The deadline is the 10th of the month, preceding publication or the previous Friday if that date falls on a weekend. All items are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to carol@mbabar.org.

Tips for Better Brief Writing and Oral Argument (Part 3)

by Hon. Donald C. Ashmanskas
US Magistrate, District of Oregon
(deceased)

This is the final section of Hon. Ashmanskas' tips. Read the entire article online at www.mbar.org/resources/publications.

23. File Your Brief Late: The best time to file a brief is Friday afternoon at 4:30 for an oral argument on Monday. That's particularly effective when the judge's law clerk has already finished her memo and now has to stay all weekend to revise it. You are assured of getting the last word. You should also mail a copy to your opponent on Friday afternoon. With some luck, he won't receive it until oral argument is over.

24. Cite Unavailable Materials: When citing unpublished district court opinions or similar materials, never attach a copy to your brief. If the judge can't read the case you've cited, he'll have to take your word on its contents. That also applies to obscure 19th Century treatises, or \$600/year industry newsletters.

25. Move to Strike: Federal judges love motions to strike. Don't like something in your opponent's complaint? Move to strike the offending words. If your opponent files affidavits opposing your summary judgment motion, move to strike the entire affidavits or particular sentences in them. If you prevail on the motion to strike, you win the case since your summary judgment motion is now unopposed.

Don't make the mistake of thinking a motion to strike is unnecessary because the judge knows the rules of evidence and is perfectly capable of ignoring

irrelevant statements, hearsay or argument. The judge will be grateful for an opportunity to rule on another motion. Nowadays, federal judges have so little on their calendars they look forward to all the extra work they can get.

A novel spin off is to file a motion to strike your opponent's affidavits on grounds the facts stated therein were wrong – and thus there are no disputed material facts and you are entitled to summary judgment as a matter of law.

26. Don't Proofread Your Brief: Some attorneys waste valuable time proofreading a brief in the mistaken belief that typographical or collating errors reflect badly on the quality of their legal research. Wrong, wrong, wrong! Experienced attorneys know these errors actually make a brief more effective. Why? Because if the pages are out of order, the law clerk can't just whiz through the brief – she has to stop and sort the pages. Smart lawyers not only collate the pages out of sequence, but also make sure the pages are not numbered. Now the law clerk must read each page carefully to ensure one idea follows the next. What more could you ask?

Another tip: If you omit key words, paragraphs or sentences, the law clerk must try to decipher what you meant to say – and they may come up with a better argument

than the one you had in mind. You also get to file an amended brief with the corrections, which the law clerk must read carefully to compare the two documents, one line at a time, to determine which changes you made.

27. Don't Identify the Changes in Amended Documents: When filing an amended document (e.g., complaint, brief), do NOT attach a cover letter listing the changes. That way the reader must carefully compare the two documents, one line at a time, to determine what changes you have made. Sure that's rude, but at least you know the law clerk will carefully read your brief.

28. Put the Wrong Case Number in the Caption of Your Brief: If the case number is wrong, the brief may be sent to the wrong judge or incorrectly docketed. That holds true for any filing. A surefire way to maximize confusion.

29. The End of the World is Near: No brief is complete without a description of the parade of horrors that will result if your opponent prevails. This is not just a motion to extend discovery. The future of the universe is at stake.

30. Always Request Expedited Consideration: If you file a plain vanilla motion, it will ordinarily not be heard for another five weeks. Smart lawyers always request "expedited consideration." Most of the time, it really is an emergency because you waited until the last minute to file the motion. Even if it isn't a true emergency, you should still act like it is. You don't want the judge to get the idea that your motion isn't very important. See "The End of the World is Near," supra.

ORAL ARGUMENT

31. Demand Oral Argument Whether You Need it or not: That adds a lot of billable hours (e.g., travel time).

32. Read Your Brief to the Judge: The judge may say she's read your brief, but she's just trying to make herself look good. Deep down, you know she's lying. So read her your brief word-for-word. You'll be glad you did.

33. Don't Let the Judge Interrupt Your Presentation: You've spent all week preparing your presentation – and it's a work of art. No one who hears your speech could possibly rule against you. The problem is, the judge won't let you give your speech. He keeps interrupting you with questions on subjects you don't even care to discuss. How rude! Tell the judge politely but firmly that you will be happy to answer any of his questions, but only after you've finished making your presentation.

34. Cite New Cases and Theories: Use oral argument as an opportunity to surprise your opponent (and judge) by citing new theories and cases you didn't mention in your briefs. If you're lucky, your opponent will be unable to refute your argument because he has never even heard of the case you just cited.

35. Bad Mouth the Judge in Front of His Staff: One of our more flamboyant local attorneys warmed up for oral argument by loudly complaining about: (a) having been removed to federal court; and (b) having to appear before a magistrate judge who is not even a real judge. The attorney made sure the judge's law clerk, courtroom deputy and judicial assistant were all present to witness the performance.

36. Ignore the Standard of Review: Standards of review are a real pain. They take up valuable space in your brief, they interrupt the flow of your argument and they are a pain to research. My advice is to ignore them. If it is a summary judgment motion, everyone knows the standard of review so you don't need to include it. If it is any other type of motion, you probably have no idea what the standard of review is and don't really care either. If the other side is so concerned about the proper

standard of review, let them research it.

Should the judge be so foolish as to inquire at oral argument (and thereby admit that he doesn't know the standard), simply say: "The standard of review is irrelevant, Your Honor, because my client would prevail regardless of which standard is applied."

37. Cancel at the Last Minute: If you know two weeks before oral argument that you'll be withdrawing your motion, or have reached a stipulation with your opponent, why spoil the fun by calling the court to cancel the argument? Leave it on the calendar so the judge won't be bothered by booking other engagements and the law clerk isn't deprived of a chance to write a fascinating memo on the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986.

38. Talk Fast so the Court Reporter Can't Keep Up: Self-explanatory.

39. Use It or Lose It: You've written the speech of your life but, before you can deliver it, your opponent stands and announces that he won't contest your motion; or the judge announces that he's inclined to rule in your favor – and you haven't even said a word. What rotten luck! Now no one will have an opportunity to hear your great speech. There is no satisfaction from the meek surrender of a cowardly foe – you want to vanquish him on the field of battle. Even worse, your client is in the audience and you're wondering how on earth you will be able to justify that huge bill you're going to send her.

My advice is to give the speech anyhow. Refuse to accept your opponent's meek capitulation. The calendar shows one-half hour allotted for oral arguments and, by golly, you're going to use it even if the outcome is a foregone conclusion. Your client will be impressed and don't worry about all those horror stories of lawyers talking their way out of a victory they had already won – that only happens to other lawyers.



Welcome!


We are pleased to announce that Kathryn Smith Root has joined the firm. She is yet another experienced addition to the Northwest's most established family law firm.

Kathy brings her many years of experience representing clients with divorces involving complex property and financial issues, interstate and international child custody, and relocation. She is also a leading authority on interstate and international custody in the US.



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Tips From the Bench

Spring Cleaning

by Judge Stephen K. Bushong
Multnomah County Circuit Court

Spring has sprung, so it is time to clean out some random thoughts that have been cluttering up my brain. Here they are.

Jury Instructions

Many lawyers submit requested jury instructions that are not very helpful to the trial judge. Some lawyers attempt to “improve” upon Uniform Civil Jury Instructions (UCJI) by modifying them to make them more favorable to their client’s position. Some submit multiple versions of instructions on the same point in the hopes that the judge will just “pick one.” Many requested instructions have little or no connection with the questions the jury will be asked to answer on the verdict form.

Below, in no particular order, are some suggestions on crafting effective jury instructions:

- Use the most current version of the Oregon UCJI. They are available in BarBooks on the OSB Web site, updated as new or revised instructions are approved by the UCJI Committee.
- Fill in the blanks, or choose between alternatives given for a particular UCJI.
- When modifying a uniform instruction, be sure to let the judge know that you have modified it. Don’t modify a uniform instruction just to make it more favorable to your client’s position.
- If there isn’t an Oregon UCJI on point, try another state’s uniform instructions or the Ninth (or other) Circuit’s instructions before attempting to craft an instruction based on case law.
- Special instructions should address the elements of the claims and defenses that will be decided by the jury and define key terms used in those instructions. Do not request special instructions that argue the case or comment on the evidence.
- Submit a “Summary of the Pleadings” to go with UCJI 13.02. Do not argue or summarize the evidence in your “Summary of the Pleadings.”
- Submit “Preliminary Instructions” to be given at the beginning of the case, as suggested in the “Recommended Best Practices for Civil Jury Trials” in Multnomah County.
- Use simple words that will be easily understood by most jurors. Avoid using technical legal terms. Give a neutral statement of the law, including the parts that are not favorable to your position.
- Give appropriate citations in support of your requested instruction. If it is patterned on a federal instruction or an instruction from another state, say so.
- Don’t just quote statutes, administrative rules, or cases. They’re usually not written



in terms that jurors will understand. Simplify and summarize complex statutory or regulatory schemes, omitting portions that do not apply to your case.

- Make sure your requested instructions fit with your verdict form.

Motion Practice

Lawyers sometimes seem to file motions just because they can. Sometimes they ask the court to consider evidence outside the pleadings on an ORCP 21 motion, insist on perfection in pleading the elements of a claim or defense, argue the facts on a summary judgment motion, or ask the court to sanction the opposing side at every possible opportunity. Such tactics rarely succeed.

Here are some tips on effective motion practice:

- Before filing a motion, consider whether filing a motion is likely to succeed and whether filing a motion is the best way to address the issue.
- Have a meaningful conference with opposing counsel before filing a motion. You’ll be surprised how often you’ll be able to work things out informally.
- Make sure you understand the point of the motion. Only move to compel discovery of information that you really need for trial.
- Don’t just string-cite cases and quote helpful language from appellate decisions. Cite the important cases and tell the judge the outcome of the case. If the appellate courts have been consistently reversing (or affirming) a particular ruling, the judge needs to know that.
- Don’t overstate your case, belittle your opponent, or pretend that his position is so confusing you don’t even understand it. Not every argument is a winner; some are not even worth making. Be selective in choosing your battles.
- If you’re struggling to figure out a way to try to win your case on a motion for summary judgment, your motion probably won’t succeed. Some cases just need to be decided by a court or jury at trial. Motions for summary judgment based on factual arguments rarely succeed.
- Always consider the big picture. Does your motion, if granted, set up possible grounds for reversal on appeal? If so, is it worth it?

News from the Courthouse

by Joseph Hagedorn
Court Liaison Committee member

Courthouse Report

Judge Waller and Doug Bray Judge Waller gave a report on the budget. Because the legislature had not quite finished its extended session, Judge Waller was awaiting final budget numbers. It appeared that eCourt would be funded but there were concerns that the 3.5% legislative reduction in the OJD appropriation in July 2011 would not be restored. If the full 3.5% is not restored in the budget, the court could lose up to 25 positions, plus additional positions lost if the funding is not provided for the furniture and equipment for the East County Courthouse. Doug Bray said that it appeared that the legislature would designate a \$9 to \$10 million fund to the Emergency Board that could fill some of the OJD gap, but many state agencies will be competing for this money.

Judge Waller discussed the education component - publicizing the importance of court funding. On a related note, a recent article in the *Portland Business Journal* was a good example of work being done to get out the word by the MBA and Judge Waller.

Bray noted that the judicial assistants in Multnomah County are spending 10 hours a week working to support operational divisions of the court and that judge’s clerks are working in the file room when not occupied with court hearings. Bray also noted that filings had been flat but are starting to pick up this year. Judge Waller added that the goal still is to have a judge for every trial that is ready to go out; the court has continued to meet this goal so far. She said that more civil than criminal cases are going out to trial these days. Also, there is now a “foreclosure panel” of judges for special assignment to hear property foreclosure matters.

Update on eCourt: Yamhill goes live in June. The plan is to start rolling out eCourt in Multnomah County in January 2013. It is expected to require 18 months for completion.

A committee member suggested that Multnomah County needs a separate ex parte for probate, like other counties, for the expedited appointment of personal representatives in probate matters. Judge Waller will talk to Judge McKnight about this issue.

Judge Waller and Doug Bray noted that the East County Courthouse construction was proceeding well. Judge Baldwin will be the first judge; one referee is also expected to sit. The CourtCare space has been especially designed for children. Also, there are meeting rooms for attorneys and clients. The building is LEED certified gold - it even has its own generator if the power goes out. Public parking will be across the street. The types of cases to be heard are out-of-custody misdemeanors and all violation offenses occurring east of 122nd Ave. More case types will be added over time.

Presiding Outreach

Judge Waller recently met with construction defect lawyers to discuss how cases move in the courthouse. The lawyers had questions regarding set-overs for civil cases off of morning call. One concern was that under the new case management rules, cases would be pushed out to trial even if trial counsel is unavailable; Judge Waller said that she will always be reasonable in her case scheduling decisions, but expects lawyers to be clear in stating reasons for any continuance and timely in presenting the information to the court. One example from the criminal docket Judge Waller mentioned was that a lawyer set over a case for a third time. The client/defendant then stood up and asked the judge when he would get his trial. Judge Waller discussed the need to communicate with clients and to get the necessary information

about availability; lawyers who are asking for a continuance need to be able to specify a reasonable basis for the case delay, and, in criminal cases, good cause must be articulated if the request is for an extension under ORS 136.295.

Judicial Practices Survey

Laura Rufolo reported on the status of the *Judicial Practices Survey*. A quarter of the judges have returned the completed surveys with changes.

Expedited Civil Jury Trials

Dan Duyck gave an update on the expedited jury trials. He was planning on getting a list from Judge Wilson of the lawyers who have used the system and will talk with them about their experiences. Eric Dahlin wondered how the system had started. Judge Waller noted that it came about because there was a concern that jury trials were going away and it was a good opportunity for lawyers to get jury trial experience. Many of the cases using the expedited jury trial process come out of the arbitration process. Dahlin also wondered if lawyers just didn’t know about the opting-out of mandatory arbitration. Plaintiff’s lawyers are frustrated by the arbitration system because they know cases are going to be appealed anyway.

MBA Web site

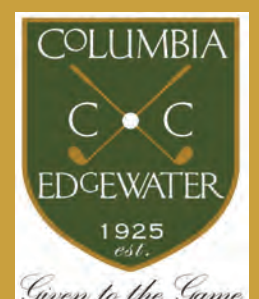
Eric Dahlin solicited feedback on the new MBA Web site. There is a lot of content that members may not know is there. For example, articles on marketing tips, firm and practice management and technology and member benefits, such as a United Parcel Service (UPS) discount for MBA members. The Web site member directory profiles may include biographical and community activities and social media accounts. The new calendar format lists MBA and other law organization events.

mba|EVENT

MBA Golf Events

See the insert for more information and to register!

- | | |
|------------------|---|
| May 16 | Lawyers & Law Students at Langdon Farms |
| June 19 | Riverside Golf & Country Club |
| July 20 | Family & Friends at McMenamins Edgefield |
| August 9 | Golf Clinic & Networking at RedTail |
| October 1 | 15th Annual MBA Golf Championship for VLP at Columbia Edgewater |



Janice Morgan

Legal Aid Services of Oregon's New Executive Director



Janice Morgan is the new LASO executive director. She replaces Tom Matsuda, who retired after 10 years of service to return to his home state of Hawaii.

Morgan is a 1983 graduate of Georgetown University Law Center and has served as LASO's Farmworker Program Director since 1998. She has an extensive background in poverty law, having also worked for programs in Michigan and Washington D.C.

Morgan came highly recommended by her predecessor, Tom, who said "Janice has been a tireless advocate for low-income clients, is well-respected by her LASO colleagues and has many connections with the private bar. I have the utmost confidence in her abilities."

Morgan said, "I'm looking forward to this new position. I believe deeply in equal access to justice and look forward to the challenge of continuing to provide civil legal services to those most in need – even as resources for our work have been declining."

LASO is the largest of Oregon's statewide legal aid programs, providing civil legal services to low-income Oregonians with high priority needs; food, shelter, medical care, income maintenance and safety from harm.

Scott O. Pratt

Pro Bono Spotlight

by Abra Cooper
Schwabe, Williamson & Wyatt



Throughout his 30-year career, Portland attorney **Scott Pratt** has committed a portion of his practice to pro bono work. Pratt, a solo practitioner focusing on real estate and business transactions as well as probate and estate planning matters, moved to Oregon from the Midwest to attend Willamette University College of Law, graduating in 1981. In 1982, he moved to Portland and shortly thereafter started his own practice. While Pratt has handled, and continues to handle, some of the cases he receives through the OSB's Lawyer Referral Service on a pro bono basis, most of his pro bono hours come from his work with Legal Aid Services of Oregon's Senior Law Project.

The Senior Law Project has provided legal assistance to seniors in Multnomah County

since 1978. Pratt estimates he has been volunteering with the Senior Law Project for the past 20 to 25 years. The Senior Law Project holds clinics at nine different senior and/or community centers in the Portland area. The clinics are held regularly, some as often as every week, at a set day and time. In total, the Senior Law Project holds 25 clinics a month. Home visits can also be arranged. Currently, approximately 120 attorneys volunteer with the Senior Law Project.

At these clinics, volunteer attorneys meet with clients and offer advice on civil legal issues. While all of the clients are seniors, their legal issues do not necessarily fall under the rubric of elder law. "The clinics service elderly people and some of their legal issues stem from the fact that they are senior citizens. But

"...clients at these clinics are seeking advice on legal questions that come up at any age...."

a lot of times, clients at these clinics are seeking advice on legal questions that come up at any age, such as collection issues and other consumer problems," says Pratt.

The initial meeting between volunteer attorneys and Senior Law Project clients are free of charge to the client regardless of whether they meet Legal Aid

Our duty as attorneys is to help our clients through what the Rules of Professional Conduct now call competent and diligent representation and what, under the old Disciplinary Rules, used to be called zealous representation within the bounds of the law. Yet much has also been written in recent years about the importance of civility and professionalism in the practice of law. In most instances, civility and professionalism will increase the likelihood of achieving client objectives while avoiding

"...there are few... instances in which civility and professionalism will actually work to the client's detriment."

excessive fees. And there are few, if any, instances in which civility and professionalism will actually work to the client's detriment.

Imagine that you are involved in heated litigation. Of course, your view is that your client's case is entirely righteous while opposing counsel is unreasonable if not complicit in her client's obvious dishonesty. Over time, the tensions between counsel have mounted. You have both adopted a "win at all costs" strategy as you search the litigation landscape for every possible advantage. When discovery disputes arise, you no

financial standards. "A lot of times, what you are doing at these meetings is just providing counseling to the clients. Most of them just want assurances that whatever legal problem they have, whether it involves drafting a will or transferring property to a child or a collection issue, is not as daunting as it might seem," says Pratt.

Pratt intends to continue volunteering with the Senior Law Project and says that the work he

"...the project is 'often some of the most satisfying work I do.'"

does through the project is "often some of the most satisfying work I do. But beyond that, I think that having a law license is a privilege, and with that privilege comes the responsibility to give something back to the community."

For more information about the Senior Law Project, call Legal Aid Services of Oregon at 503.224.4086 or visit www.lawhelp.org/program/1673/index.cfm?pagename=homepage.

The Corner Office PROFESSIONALISM

longer "meet and confer" in good faith but instead convey your positions through angry emails and caustic voicemails. Your motions bring this frustration to the court's attention. And whether you realize it in the moment or not, it shows to your staff, your colleagues and the judge.

The judge understandably tires of mediating between the two of you and, in an effort to get both lawyers to behave, issues a series of rulings - some in your favor and some not. Is it possible that your success on these motions might have been greater if the judge had not decided that you, along with opposing counsel, had been behaving uncivilly and unprofessionally? Likely, yes.

Now suppose you go one step further and seek to avoid one of the judge's rulings precluding the admission of evidence. You think your argument is novel, creative and justified by your adversary's

"You think your argument is novel, creative and justified by your adversary's bad conduct."

bad conduct. Your opposing counsel disagrees and reports you to the bar, and the judge holds you in contempt or issues sanctions against you. Perhaps you will be able, after much effort, to convince the bar that what you did was not frivolous and to reverse a

contempt or sanctions award on appeal. But was it worth it - either for the client or for you? Have you, instead, poisoned your own and your client's well even if you would prefer to describe your conduct as diligent or even zealous? While some may consider it admirable to take such risks ostensibly to further a client's position, there is significant and avoidable risk of backfire, both for your client's case

"No one has to or should be a weak advocate in the name of good manners...."

and your professional reputation.

No one has to or should be a weak advocate in the name of good manners, but taking the tough guy or avenging angel position carries risks that we typically don't see until after the fact. By fostering open and honest communication with opposing counsel, avoiding inflammatory conduct, being polite even when frustrated, and following the rules and orders of the tribunal, you reduce the probability of attracting bar complaints and sanctions. You also reduce unnecessary legal fees and create a better record - to say nothing of the chance to learn that even opposing counsel and her client may, at times, have the better argument or be right on the facts.

Take a Moment to Update Your Profile on the MBA Web Site

The new MBA Web site includes a number of improvements such as an expanded online directory. Members may now include biographical information, update their photos, links to social networking sites and update practice area information online. Mailing addresses are obtained from the OSB automatically, or from the MBA database for non OSB/MBA members.

The calendar has also been improved and includes non-MBA events that are relevant to anyone in the Portland

legal community. Visitors can add events to their Outlook or Google calendars through the site. Events may also be submitted for inclusion using the link at the top of the calendar. Because of limited space, most non-MBA CLE seminars will not be included at this time.

If you have suggestions for how we can improve the site or for content you would like us to add, please email Guy Walden at guy@mbabar.org, or call us at 503.222.3275.

Annual CourtCare Campaign Begins on April 30th

This year's annual CourtCare campaign will run from April 30th to May 18th. CourtCare's drop-in facility protects young children by providing childcare to families at the Multnomah County Courthouse.

This year the Campaign is funding the new East County Courthouse CourtCare room.

Your past generosity has helped keep CourtCare alive. This year we ask that you help us grow the service so it can serve all of Multnomah County.

Make a donation online, or look for additional information about the campaign in late April. With questions, call the MBA at 503.222.3275.



Our Duty

by Nick Kampars
YLS President

In January 1999, the entire issue of the OSB *Bulletin* was devoted to professionalism in the legal industry. Then-Chief Justice Wallace P. Carson and prominent Portland attorney Barrie J. Herbold penned the first article and offered a definition for the word “professionalism.” They wrote: “Professionalism, as distinct from ethics, is characterized by a conviction on the part of any individual lawyer or judge that she or he is charged with the responsibility to continuously **‘...Professionalism... is characterized by a conviction on the part of any individual...that he or she is charged with the responsibility...’**”

ensure that the legal system works - effectively, efficiently, and fairly - for all.”

The idea of professionalism in the legal field, and in this state in particular, is not new. Professionalism and ethics ran hand in hand for many years, and the size of our bar ensured that most lawyers conducted themselves in a manner that would reflect positively on their reputations. But as the number of lawyers grew - between 1980 and 2000, the MBA’s membership more than doubled - a renewed emphasis on the meaning of professionalism was sought

In 1995, Chief Justice Carson ordered the creation of the Oregon Bench/Bar Commission on Professionalism. In 1997 and 1998, the MBA’s Professionalism Committee organized a summit, chaired by Chief Justice Carson and Thomas Cooney Sr., that produced a report with concrete goals distributed to lawyers across the state. The MBA also developed and modified a statement of professionalism to identify the traits that make a professional lawyer. This path has continued to the present day, with the OSB adopting its Statement of Professionalism last December.

The statements are easy to read and the aspirations make sense, but their implementation can take extra effort, especially for newer lawyers. For lawyers who have not yet experienced the reputational impact of

their conduct, it can be difficult to understand why our legal organizations place so much emphasis on “professionalism” or take pride in the way we conduct ourselves. But it doesn’t take too long to realize its importance, and the YLS makes great efforts to ensure that young lawyers gain the experience and opportunities to implement these goals.

Amy Hoven, a young lawyer with Kennedy Watts et al, moved to Portland after practicing law in L.A. One of her first observations was that “the key to understanding professionalism here is that you definitely will see your opposing counsel again.” Hoven also noted that “In Portland (and Oregon), I discovered that the lawyers take great pride in being professional.”

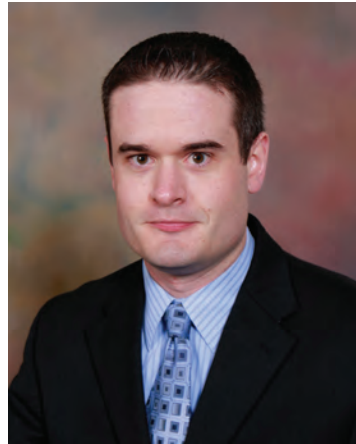
Keil Mueller, a young lawyer at Stoll Berne, moved to Portland after practicing in New York. “Compared with my experience in New York, young lawyers in Portland are much more focused on - and interested in - becoming a part of the broader legal community outside of our individual firms.” Keil also recognized the benefits that are produced through professional relationships. “By avoiding unnecessary and expensive legal quarrels that too often are the **‘...we make the practice of law more enjoyable for ourselves and more efficient and effective for our clients.’**”

norm elsewhere, we make the practice of law more enjoyable for ourselves and more efficient and effective for our clients.”

These young lawyers provide evidence that the ideas of professionalism fostered by so many in our bar are alive and well. Even as the number of lawyers has grown, bar organizations and individuals continue the debate and strive to educate newer lawyers of its importance. Those efforts, including the continued promise the YLS makes in this regard, will ensure that the Oregon legal community remains a special place to practice law, where each lawyer recognizes their own responsibility to make sure the system works effectively, efficiently and fairly for all.

Effective E-Discovery for Small Firms

by James Sikora
YLS Futures Committee member



All litigators, whether in a large, small, or solo practice, must be prepared for electronic discovery due to the prevalence of electronic data. It is commonly estimated that more than 90% of all information is now created electronically. Some cases **“...more than 90% of all information is now created electronically.”**

may involve more electronic documents than others. But electronic discovery cannot be avoided. The prospect of electronically intensive discovery may cause some lawyers and clients to balk at potential costs and complications in the discovery process. When faced with such a case, how does a small or solo practitioner tackle the problem and secure, store, request and work with electronic data in a thorough and cost-effective manner? Several e-discovery experts will answer this question in an upcoming CLE on April 18: E-Discovery - Basics for Small Firms. In anticipation of that program, two of the CLE panelists offered some basic tips for approaching e-discovery and initial planning.

The first step in tackling e-discovery, regardless of the amount of data, is to remember

that e-discovery is still discovery. Gary Hardiman, Senior Legal Assistant at Esler, Stephens & Buckley emphasized this fact and explained that e-discovery can be adequately managed with the proper tools and techniques. If the litigator successfully identifies and employs the proper tools and techniques, the always-present factor of cost will not overwhelm the e-discovery process and it will progress much like traditional discovery. A few basic tips are helpful, however, in identifying the proper tools and techniques.

When litigators think about e-discovery, the first things that usually come to mind are technology, software and electronic documents. But it is important to remember that people remain one of the most important elements in managing e-discovery. No e-discovery plan can be successfully developed and implemented without the involvement of the right people. Identifying the people with knowledge of the relevant electronic data, what data exists, and how and where the data is stored is a critical first step in any e-discovery plan, according to **“Identifying the people with knowledge of the relevant electronic data, what data exists, and how and where the data is stored is a critical first step in any e-discovery plan....”**

Nicole Ciccarello, an e-discovery specialist and consultant who now works for the Federal Public Defenders Office. Ciccarello emphasized the importance of identifying the right people early in the process. Without the assistance of these people, identification and preservation cannot be accomplished, and,

consequently, the later stages of collection, processing and production will suffer.

If the amount of electronic data is significant enough to warrant the services of an e-discovery vendor, a thorough understanding of the nature of your client’s electronic data will also help in selecting the best vendor to meet the needs of the e-discovery plan. Knowing how to select the right vendor is important. But it is only the first step in optimum utilization of a vendor’s services. Remaining **“Remaining actively involved after the vendor is chosen and throughout the process is vital.”**

actively involved after the vendor is chosen and throughout the process is vital, according to Ciccarello. Active involvement ensures that the e-discovery plan remains proportional to the needs of the case by allowing continued evaluation of costs and comparison of the costs to the benefits provided to the case, which promotes the goal of cost containment.

With the proper tools and techniques, the small-firm practitioner can successfully manage e-discovery in a cost-efficient manner.

For more information about what tools and techniques are available to assist in achieving this goal, visit www.mbabar.org for details of the April 18 YLS CLE entitled “E-Discovery - Basics for Small Firms.” Joshua Ross of Stoll Berne will moderate a panel discussion on techniques and strategies to secure, store, organize, request, and work with electronic documents from the perspective of plaintiffs and defendants. The panel of speakers includes Haze Moss of Bridge City Legal, Nicole Ciccarello of the Federal Public Defenders Office, and Gary Hardiman of Esler, Stephens & Buckley.

mba yls | EVENT

Annual Judges’ Social and CourtCare Fundraiser

Thursday, April 19

5:30-7:30 p.m.

Schwabe Williamson & Wyatt

1211 SW 5th Ave., Portland

Please join fellow young lawyers and Multnomah County’s federal and state court judges for this casual opportunity to network and socialize.

The YLS will also sponsor a raffle drawing at the event to benefit CourtCare, a free, on-site, drop-in childcare center for parents who must bring children with them to the courthouse. Raffle tickets may be purchased from YLS Membership Committee members and will also be on sale at the event. You do not need to be present at the drawing to claim your prize.

Please mark your calendars and spread the word about this event. See you there!



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ATTORNEYS AT LAW

The Career Path Less Traveled - Part III

by Traci Ray
YLS Board Director

Over the past few months, young lawyers have shared their trials and tribulations in seeking employment. First, Jim and Mackenzie unveiled their successes using staffing agencies. Last month, Yumi and Sean focused on starting out in non-attorney roles. This month, in my third and final column, Jonathan French, a partner with Immix Law Group, and Duke Tufty, an associate at Davis Wright Tremaine, explain how making meaningful connections and engaging in informational interviews helped them each seal the employment deal.

Jon, a partner at Immix Law Group, decided to move to Portland in late 2008 following six years of active duty as a Navy JAG. Before making the move from Norfolk, Virginia, Jon made two trips to Portland. "I set up a whole bunch of informational interviews for both of my visits to Portland," Jon recalls. "I



Jonathan French

thought it was best to create a critical mass with informational interviews, so that I could keep my energy and momentum up, and so that the people I was interviewing with could talk to each other about me. It had a cross-pollination effect of sorts that benefited my search." And benefit, it did. Jon's efforts were rewarded with a job offer three days after he arrived in Portland.

Jon continued to expand his network even after landing his first Portland job and it has paid incredible dividends in terms of career and deep relationships, Jon explains. Jon is now a big proponent of being involved, inside **"New lawyers should look to engage outside of work, in business groups, nonprofits and other community organizations...."**

and outside of work. "New lawyers should look to engage outside of work, in business groups, nonprofits and other community organizations to get to know this place we live and work in and the people who make it move. A lawyer needs to be a part of a firm that supports those efforts, too," Jon advises.

Jon describes networking like this: "I believe in relationship-building, which is 'us-focused' (as opposed to regular networking

which is 'me-focused') and is highly rewarding in the long term, beyond just a job search. Whatever organizations you choose to belong to (and they should be things you're passionate enough about to really invest yourself into) you should always seek genuine relationships with real people, not shallow contacts with 'influential' people. It means meeting people

"...seek genuine relationships with real people, not shallow contacts with 'influential' people."

without an agenda in hand and without seeking anything from them. I've found that people in the Portland community, and particularly the business community, are really open to sharing their wisdom and guidance and sharing their connections with you if you approach them first from a place of genuine interest in relationship." Well said, Jon.

Duke, an associate with Davis Wright Tremaine and the president-elect of the MBA YLS, graduated from law school without a job. "Unfortunately, the company I did my summer clerkships with was not hiring, but they were very helpful in making introductions and providing good recommendations," Duke shares. Luckily, one of those introductions led to two informational interviews and ultimately a job for him. "The first informational interview was helpful, but not necessarily encouraging. The interviewer (my future employer) repeatedly indicated that they wanted someone with 5-7 years of experience. I did not let this dampen my enthusiasm. I focused **"...they wanted someone with 5-7 years of experience. I did not let this dampen my enthusiasm."**

on why I would be able to fulfill many of the job functions she described with little or no training. For duties that some training would be required, I emphasized my demonstrated history of being a self-starter, my ability to deliver quality work product with little or no supervision and some creative ways to get the training with little cost or effort on her part. She called me back about six weeks later, offered me an interview, and then hired me. I was thrilled and really enjoyed my time there. If it were not for my current job at DWT, I would likely still be happily working there," Duke explains.

Duke's positive experiences with informational interviews did not stop with his first job. "During law school, I heard about Jim Neill, a partner at DWT, who focused on alcohol regulatory and restaurant law. I was intrigued and excited about the possibility of building a practice in this area. I arranged an informational interview with him through one of my friends at

law school. Nothing came of this interview for about 18 months. However, I stayed in touch with friends who were associates at DWT and let them know that I continued to be interested in working there.

Almost a year and a half after first meeting Jim, I received a call and later a series of interviews that led to an offer that I eagerly accepted," Duke fondly remembers. "Years later, Jim recounted to me what about our interview stayed with him and, in part, why they contacted me later. I supported myself through college and additional education by bartending and managing bars. During the interview, he



Duke Tufty

asked me what my favorite drink was to make as a bartender. A softball question if there ever was one. Rather than give a pat answer, I went into a history of the Manhattan. I detailed the many variants of the drink, how I preferred to make and drink one, and what distinguished a good one from a great one. In addition, I took this as an opportunity to describe how to anticipate the needs of a guest, how to quickly build rapport with them and ultimately how to develop regulars by exceeding their expectations and delivering a memorable experience.

Then, I drew the connection between my extensive service experience and delivering a similar level of service to clients of the firm. This really made an impression on Jim and seemed to be the difference between just another informational interview and a job opportunity. Jim passed away not so long ago and I always think of him when ordering a Manhattan. He was a fantastic attorney, friend and mentor."

Overall, Duke had the following advice to job seekers: **"The best approach to finding a legal job is through meeting people and making connections."** "The best approach to finding a legal job is through meeting people and making connections. Informational interviews represent one of many ways of doing this. It is important to build your resume, develop useful skills and be strategic at the same time so you have something to offer when meeting people. You never know when and where opportunities may arise. Whether it leads to finding a job, building a referral network or just meeting some great people, it's worth it. The sooner you start, the more organized you

Continued on page 15

Community Law Week Events

by Jennifer Woodhouse and Raife Neuman

"All of us must have and protect our right and our freedom to use courtrooms when we need to. That courtroom must be open to protect families. That courtroom must be open to validate and protect contracts for business. That courtroom must be open to keep the wheels of justice turning. That courtroom must be open to defend our individual rights to prove again and again that we continue to be a free society."

ABA President Wm. T. (Bill) Robinson III

How would our legal system work without courts? Without courts, how would we ensure justice? How would their absence affect our freedom? This year's theme for Community Law Week - *No Courts, No Justice, No Freedom* - seeks to engage the community in thinking about these issues. Community Law Week includes a series of events organized by the YLS Service to the Public Committee that will take place between April 26 and May 5. The goal of the week is to reach out to underserved parts of our community, educate the community on basic legal issues, and assist individuals in accessing legal resources.

Volunteer support is critical to the success of the community outreach events held during the week. Please consider joining in this year's celebration of our community, civic education, and the MBA YLS by volunteering your time to any one of the projects listed below. For more information about Community Law Week, visit www.mbar.org/YLS/CommunityLawWeekYOUthFILM.html.

Access to Justice Fundraiser for SALC: Come help us ring in Community Law Week with an evening of food, drink and prizes. In support of providing easier access to the courthouse for all who need it, the Service to the Public Committee has partnered with St. Andrew Legal Clinic for an evening fundraiser. Come join us at the Shaffer Fine Art Gallery, 308 SW 1st Ave., on Thursday, April 26. Suggested donations of \$10 at the door, but all are welcome! Keep your eyes open for an email with more details!

Free Legal Information

Booths: Each year, free legal information centers are set up at various locations in Multnomah County throughout the week. The week will kick off with a legal information booth in Pioneer Courthouse Square on April 30; watch for other booths throughout the week. Volunteers provide general legal information and disseminate free brochures for two hours at a time. To volunteer, contact Mike Fuller (mfuller@olsendaines.com).

Tell it to the Judge: This one-day event on May 5 will allow local citizens with questions, concerns or opinions to talk directly with a local judge. Volunteers are needed to facilitate public interaction with the judges. To volunteer, contact Colin Hackett (colinrockey@yahoo.com) or Forrest Millikin (forrest.millikin@gmail.com).

YOUthFILM Project: The YLS YOUthFILM Project Committee sponsors this filmmaking contest that provides students an opportunity to express themselves creatively, while learning more about our government and justice system. Students enter by producing a short film or video based on this year's theme: *No Courts, No Justice, No Freedom*. Top films will be screened for the public at the Hollywood Theatre in Northeast Portland on May 3 at 6:30 p.m. Prizes will be awarded by Oregon Supreme Court Chief Justice Paul J. De Muniz. Please visit www.theyouthfilmproject.org for details.

Community Law Week would not be possible without our generous sponsors. Thank you to Ater Wynne, Barran Liebman, Davis Wright Tremaine, Gervurtz Menashe, Harrang Long Gary Rudnick, Holland & Knight, Parsons Farnell & Grein, Schwabe Williamson & Wyatt and Wyse Kadish, who have already committed to sponsoring Community Law Week. It's never too late to become a sponsor or volunteer! If you or your organization is interested in sponsoring this year's Community Law Week, please contact Corrinne Hill (corrinne.hill@hkllaw.com) or Forrest Millikin (forrest.milliken@gmail.com).

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Sign the Statement of Diversity Principles at <http://www.mbar.org/AboutUs/DiversityPledge.html>.



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Jonnel Covault, *Moment's Rest*, 2004

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YLS Member Profile

Andrew Ginis

YLS Pro Bono Committee member



1. Where are you from?
Midland, MI. It's in the middle of Michigan....

2. What college and law school did you go to?

I finished my undergrad at the University of Michigan in 2005, and I graduated from Lewis & Clark in 2010. Fortunately, two of my favorite things are wolverines and pioneers.

3. How did you get to Portland?

Via I-80 in a 2006 VW Jetta with a U-Haul trailer.

4. Where do you work and what do you do there?

I have my own business, tax, and technology practice in NW Portland in between the Pearl and 23rd. I mostly work with tech-driven startups and nonprofits.

The Career Path Less Traveled - Part III

Continued from page 13

are, and the more persistent you are, the better your chances of finding the perfect job. Build your credentials, develop your skills and reputation, and meet as many people as possible. And try to have fun doing it."

"Build your credentials, develop your skills and reputation, and meet as many people as possible."

I would like to extend a hearty thank you to all six interviewees who participated in my three columns. And to everyone who made it through all three columns, thanks for reading. If I have not met you already, I look forward to meeting you soon – maybe at the next MBA YLS social, which just happens to be the YLS Judges Social & CourtCare Fundraiser on April 19 at Schwabe Williamson & Wyatt, and is the perfect place to expand your network and meet some of the attorneys profiled. I hope to see you there!

Traci Ray is the Director of Marketing, Client Services & Events at Barran Liebman, an employment, labor & benefits law firm. She is the chair of the OSB's Pro Bono Committee, and a board member for the MBA's Young Lawyers Division. Traci can be reached at tray@barran.com.

5. How did you hear about the YLS?

The Pro Bono Pedal. I love cycling events and was impressed that a group of lawyers sponsored an event.

6. How did you first get involved with the YLS?

I think I filled something out online.

7. Tell us about what you like about the YLS.

I like its culture of creativity and permission. It's a great combination! There's always something interesting in the works.

9. What do you think the YLS needs more of? Less of?

Member's Lounges. Lack of Member's Lounges.

10. When did you join the committee? Why did you join?

Fall 2011. I had been taking on pro bono tax cases through the Volunteer Lawyers Project for about a year, and I was looking for a way to help other attorneys get involved in pro bono work too. Also, *see supra* n. 5.

11. What have you found most rewarding about volunteering for the committee?

I like the ability to have a positive impact on the practice of law. There's an incredible need for free and low-cost legal services and the Pro Bono Committee's work makes a real difference in peoples' lives by increasing access to legal services. That's very rewarding and makes me proud to be an attorney.

12. Has your committee membership helped with your professional or personal goals?

Absolutely. Because we're from different practice sizes and types, it's helped me connect with some great attorneys who I probably wouldn't have otherwise met.

13. What have you found most surprising about volunteering for the committee?

There's free beer at meetings. 'Nuf said.

14. What is your favorite YLS event or activity? Why?

See supra n.5.

15. If you weren't on this committee, what committee would you be on?

There are other committees?

16. What are you currently reading (non-legal)?

Chanterelle Dreams, Amanita Nightmares by Greg Marley. No, I won't tell you where I found those morels.

17. What is your favorite restaurant?

Beast. Naomi Pomeroy is ridiculous.

18. What do you do for fun?

Lately I've been snowshoeing near Mt. Hood and Mt. Adams. I'm ending the season by summiting St. Helens this spring. I've skied the Cascades for a few years, but I wanted to explore the mountains from a different perspective. I also enjoy obscure German board games.

19. What's something about yourself that not many people know?

I used to do this weird thing when I was a little kid where I'd make a funny face and rub my stomach. I thought it was hilarious, but my family had no idea what I was doing and laughed at me because I looked like an idiot. I've never told that story to anybody, so I'm sure that it qualifies for this typical personality-probing question. I'm also sending this article to my mother so that she doesn't get mad that strangers knew that story before her.

20. What's the best thing about Portland?

Food. Cart, truck, stand, stall, '92 Ford Ranger, I don't care. It's the real reason that Portlanders spend more time outdoors than Bear Grylls.



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Financial Aspects of Succession Planning

by Stephen Mabey and Karen MacKay

This article is an example of the information found in the Member Center at www.mbabar.org. Numerous substantive articles on marketing, firm and practice management and technology tips are included. Reprinted with permission, from the ABA Law Practice, May 2011 issue.

With law firms beginning to recognize the reality of the generational shift, more and more are putting succession planning on their to-do lists. However, many fail to fully sense the urgency of the situation and how the number of partners who are currently nearing retirement age may have a devastating impact on firm revenues absent effective planning.

Take the state of Washington, for example, where the number of lawyers in practice who are over 60 years old has grown 309.1 percent from 2001 to 2011. Current figures aren't available for every jurisdiction, but the figure for Washington should drive home the point that succession planning is an urgent matter that needs to go at the top of a firm's priority list.

The following explores the financial ramifications that can result when senior partners, who are typically the biggest billers in most law firms, begin to retire in large numbers—and some steps firms should take starting today in response. With some proper planning, firm mindedness and a good bit of luck, the firm will be serving clients long after today's partners retire.

Understanding What's at Risk: Digging into Revenue Streams

In assessing the financial risk to the firm, the first step is to understand the firm's revenue stream, in terms of the percentage of revenues that senior partners typically generate in comparison to more-junior lawyers. As an illustration, let's take a firm where all partners generate combined revenues of \$8 million. Let's also say this firm has a formula-based partner compensation system in which every hour delegated to junior lawyers has a negative impact on the partners' personal earnings, so over time the middle of the firm has eroded.

Next, let's look at how this sample firm's revenues are generated by age group. Those under the age of 60 represent less than half of the total revenue, at \$3,500,000. The partners who are over the age of 70 represent the smallest percentage, with \$500,000, so if they leave tomorrow, the impact on firm revenue won't be too immense. But what if the partners between the ages of 60 and 64—who bring in \$2,750,000 of the total revenue—decide en masse that it's time to retire?

To fully analyze what's at risk, law firms will need to delve into their client base to understand the depth and breadth of the firm's overall relationships with clients. As you do so, think in terms of what the client's business means to your firm in terms of

revenue today and the potential for tomorrow. Here are some key questions to consider:

- **What work do you do for this client?** How many practice areas, or how many individual lawyers, currently serve the client?
- **How many people in the firm have a relationship with this client?**
- **If the client is a business, will the business wind up when its owner retires?** Or is there a next generation preparing to take the helm—and if so, who in your firm is the logical fit for the relationship going forward?
- **What specific steps can you take to shift the relationship to the next generation in your firm?**

If the firm's primary revenue stream comes from individuals who mostly require one-time services or only occasional legal advice, which is common for small firms, you may have a tougher job understanding and predicting your client base's potential revenue stream. Consider the revenue by practice area:

- **What areas is the firm known for, and how do lawyers in the firm attract clients who need such services?**
- **Who are the key referral sources, and how many people in your firm know them?**
- **If the senior partners get business by networking in certain industry groups, local associations or service clubs, are there younger partners or associates in your firm who are also involved in those groups?**

A critical part of this analysis is understanding which of the firm's competitors will be "chasing" key clients if the current relationship partner leaves. This should help lend a sense of prioritization from a flight-risk perspective.

This in-depth analysis should probably be the work of the firm's senior financial administrator—one who knows the client base and the lawyers well—and it should look at trends over the past three years. By clearly understanding the client base and its retention prospects under the current lawyer-client relationships, you will have a much better understanding of the risks and opportunities for the firm going forward.

Ingraining Practice Transitions in the Firm's Planning

Despite the prospective financial threats presented by senior partners' departures, the real status quo in many firms, particularly small and midsize ones, is that there is no policy as to how and when clients

should be transitioned. But it's clear that without the transfer of client responsibility to the next generation, the firm's financial prospects may seriously erode.

The long-term sustainability of the entity necessitates that the orderly transition of clients from senior to junior lawyers become an ingrained part of client-relationship planning. That includes taking steps like these well in advance of a particular partner's actual transition period:

- **Establishing more than one contact point** both at the relationship and the service levels with clients
- **Including delegation of client work as a fundamental compensation criteria**
- **Talking openly to the clients at appropriate points about the coming need for succession planning on their work files**

Of course, the trickiest part may be getting senior partners to buy in to the process of transition planning for their practices. This requires reaching a firm-minded consensus over the fact that when partners retire without a plan, it can pretty much guarantee a slow evaporation of their book of business and the quiet erosion of the firm's revenues. Retiring in spirit, if not in fact, and without telling anyone has the same effect: The partner gets dressed, goes to the office, goes through the motions but the long slow disengagement with colleagues and clients can be equally disastrous.

To retire with a plan, partners need to be prepared to have the conversation. It is often a difficult conversation, fraught with emotion, apprehension and even fear. But whatever the obstacles, law firm leaders need to open the lines of communication among the partners. However, a particular stumbling block that frequently arises in laying out transition plans

for equity partners is how it will affect their earnings, and when that impact will begin. Let's turn to that critical issue now.

Addressing Compensation Questions with Equity Partners

Most compensation systems don't effectively or fairly address how practitioners will be compensated when it comes to transitioning out of equity status. As one partner eloquently put it, retiring partners are expected to be "philanthropic." This is especially true of objective or formula-based systems, which generally combine personal productivity and books of businesses in calculating compensation (or value to the firm).

Unfortunately, this leads to the main obstacle to successful practice transitioning—the conflict between the partner's desire, or need, to earn a certain income level and the firm's need to have client relationships successfully transferred to younger partners.

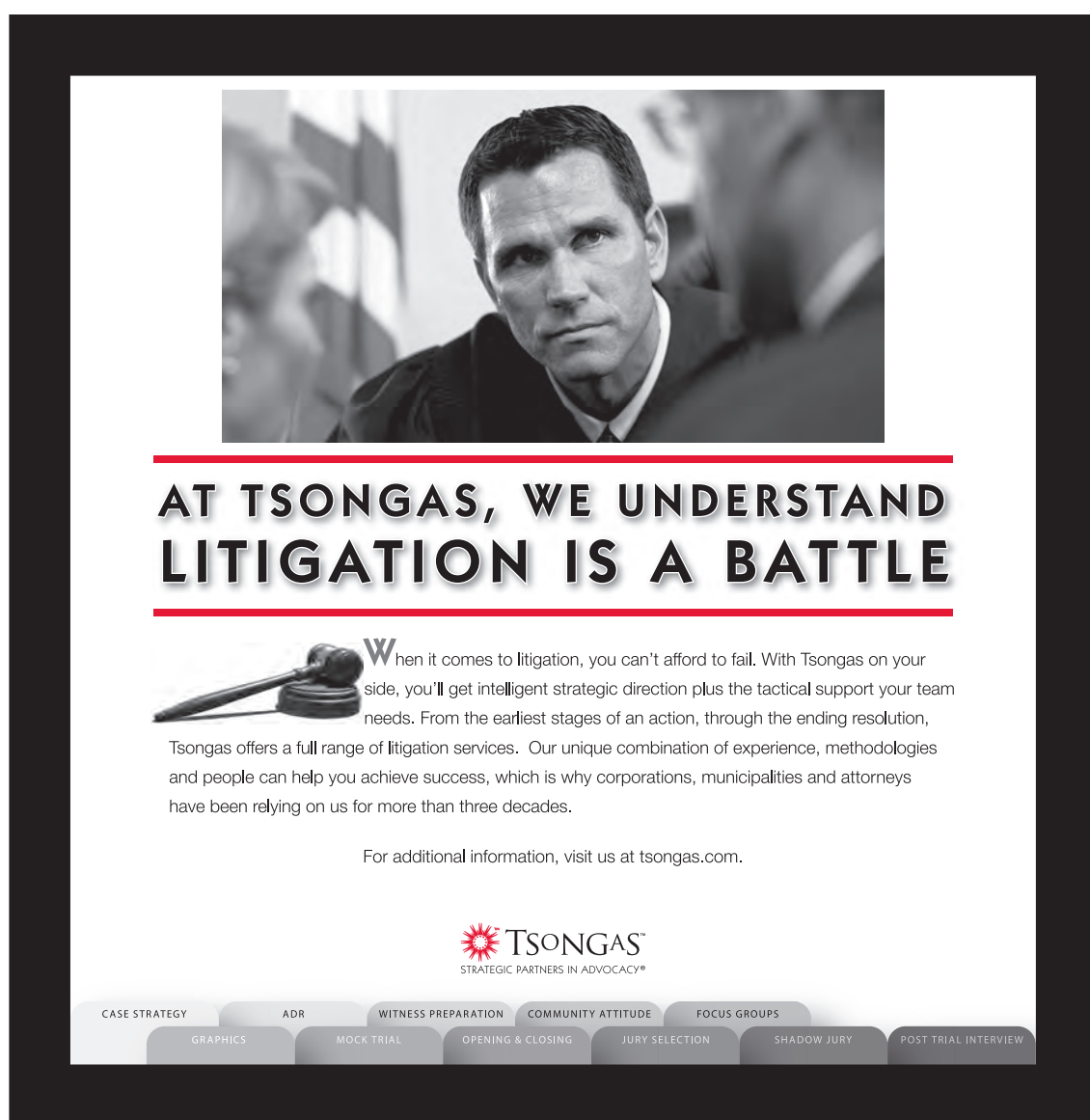
Successful transition arrangements require open and direct dialogue among partners that reaches consensus on several key points:

- **Retirement Date.** This is the date at which the lawyer will cease to be an actively practicing equity partner. This doesn't preclude the lawyer continuing in an of counsel role (or an alternate nonequity position) after this date, subject to the firm's approval.
- **Length of the Transition Period.** This is the length of time, in months or years, over which the orderly transfer of clients and work to younger partners should take place, the goal being that all principal client responsibilities are transferred in advance of the retirement date. There are no "cookie cutter" solutions here, which means the

transfer arrangements must be adapted to the given practice and practitioner in transition.

- **Compensation and Evaluation Criteria During the Transition Period.** During this period, it's critical that the partner transitioning stays in the "normal partner" compensation scheme. However, since the partner's client responsibilities and corresponding workload is expected to decline during this time, the firm should have additional evaluation criteria for things apart from billable productivity in support of the transition. For example, some partners' transition plans may specify that, as of a given point in time, they are to have no more than 40 percent of the total time on any given file. Those who meet that number are clearly delegating the bulk of the work to others according to plan and that behavior should be rewarded in some way. Those with more than 40 percent of the total time on active files, on the other hand, may need to be penalized.
- **Post-retirement-date expectations.** Lastly, there should be up-front discussion about what the transitioning partners can expect from the firm in the post-retirement phase. If, for example, the lawyer will stay on in an of counsel role, the parties need to be clear about the time frame for it, the compensation involved and the office space and staff support that will be available under the new arrangement. Expectations concerning medical and similar benefits should also be discussed with all retiring partners, including how the coverage will change and who pays the premium beyond retirement.

Continued on page 17



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Financial Aspects of Succession Planning

Continued from page 16

Paying Out Capital Contributions

A final issue in planning for the departure of equity partners is the corresponding payout of capital to them. The terms of the partners' agreement, of course, will vary across firms, but for more than a few firms the need to pay out capital can present a significant cash flow issue. Careful advance calculation of the payouts that will be needed during given timeframes can and must be part of the firm's financial forecasting.

Notably, the pay out of capital is one argument that supports staying on as counsel for a period of time after retiring from the equity partner ranks. From the firm's perspective, these retiring partners have a vested interest in working with and for the firm to generate sufficient revenue and cash flow to pay themselves out. In other words, negotiating the time period over which capital may be paid out can assist in an effective and smooth transition period, since it's one way of augmenting a partner's cash flow during the winding down of the practice - and it also smoothes out the potential cash crunch that can result in the firm from paying out lump sums.

Everything you can do to plan out the cash flow requirements involved in equity partners' departures will be important to the financial wellbeing of both today's and tomorrow's partners - and to the sustainability of the firm itself. Remember, practice transitioning is ultimately about how the firm survives the storm of the generational shift.

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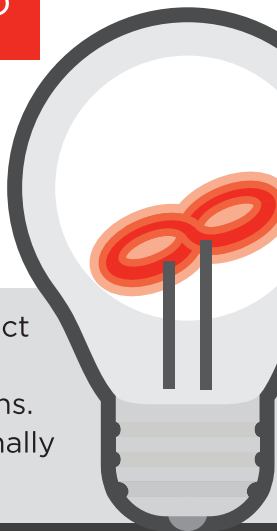
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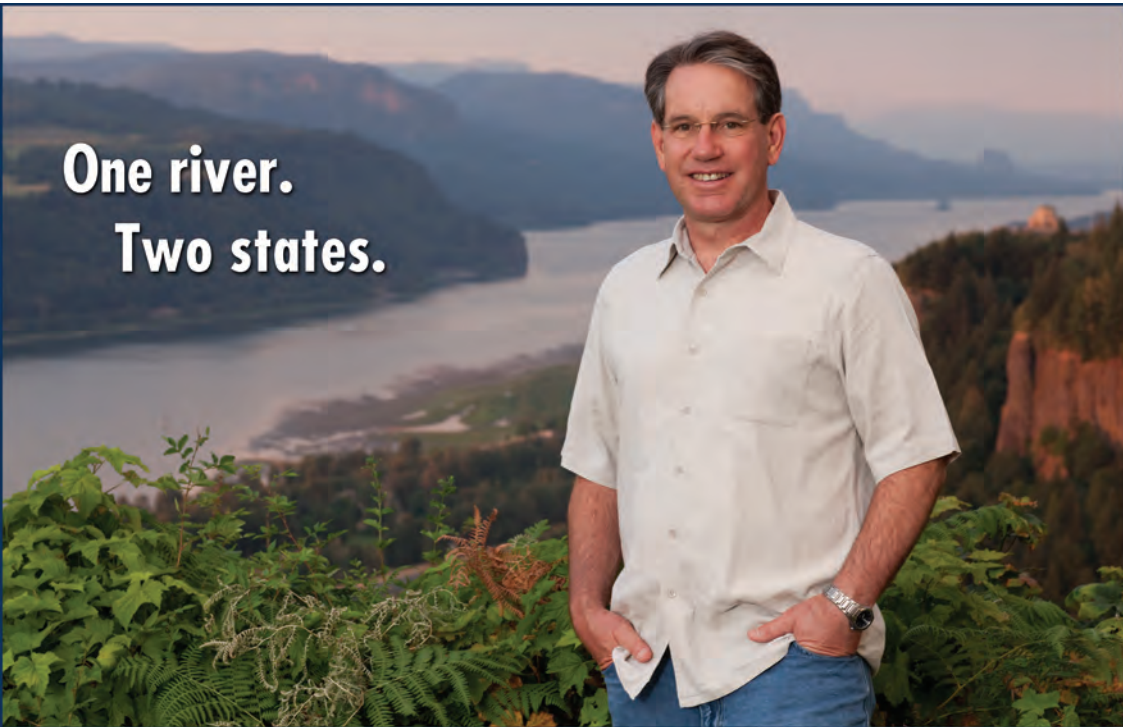
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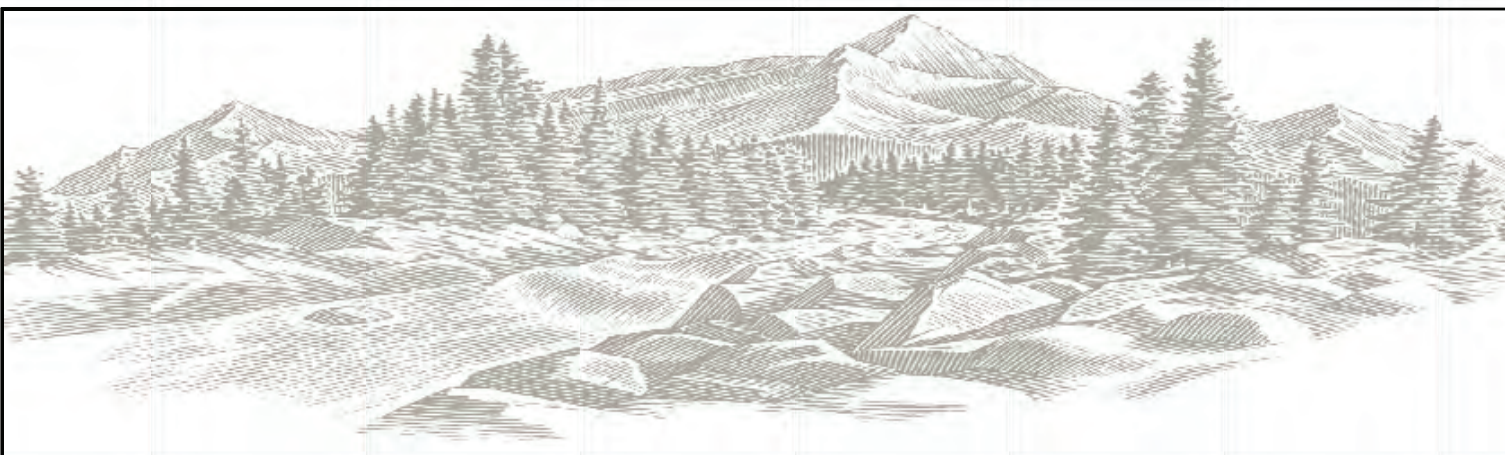
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Multnomah Bar Foundation

Your Gift is Making Great Things Happen

by Pamela B. Hubbs
MBA Office and Foundation Administrator

Lawyers are passionate about civic education. They want the public to understand the rule of law and the value of an independent judiciary. They know that educated voters, who have

an understanding of the court system and its impact on their lives, will be more supportive of the third branch of government and funding for court facilities and operations.



Classroom Law Project's Youth Summit

MBA members established the foundation for just that purpose: to increase the public's understanding of the legal system; to promote civic education, public participation and respect for the law; to improve the quality and administration

of the legal system; and to support programs and projects related to the MBF's purpose.

April marks the MBF's seventh anniversary and its history of grants-making to advance civic education has been strong.

Grants made in 2011 funded "The Courts and You | Legal Logic," a public affairs show about the role of the legal system in maintaining a safe and peaceful society by **MetroEast Community Media**; the Voter Education Project, a seminar series that **Sponsors Organized to Assist Refugees (SOAR)** offers to newly naturalized citizens; and **Classroom Law Project's** Youth Summit, "Words Matter: Limits on Free Speech."

Grants given last year allowed the **Bus Project** to create "Democracy Cup," to teach high school students about civic participation and engage them in a competition to register peers

and family members to vote; gave the **YOUthFILM Project** mentoring resources and funds to promote and screen their civic-themed student filmmaking event; and supported the creation of "Oregon Taxes" Fast Fact Flyer, **League of Women Voters of Oregon's** resource for quick, factual information on Oregon tax structure, laws and regulations.

All this was possible because you invested in your foundation



Bus Project engages high schoolers to do voter registration



YOUthFILM Project winners

and believed in its mission to make a difference in areas our members care about.

Your gift is making great things happen.

For more information, contact Pamela Hubbs at 503.222.3275 or pamela@mbabar.org.

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