



Our Focus on Diversity

by Richard Vangelisti
MBA President

In May the MBA Board unanimously amended our Commitment to Professionalism to state: "We will support a diverse bench and bar."

Our Statement of Diversity Principles adopted in 2009 defines "diversity" as "an inclusive concept and encompasses ... race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status."

Diversity is critical for our profession, the administration of justice, and for the larger public that we serve. Varied perspectives, experiences and background enable us to be more creative and effective in helping people and businesses solve legal issues.

The credibility of the bench and bar depend on varied backgrounds and perspectives. A profession and judiciary that reflect the public that we serve ensures that citizens believe that they have had a "fair shake" and full access to the legal system. If a citizen actually experiences "Equal Justice Under Law," then that person will more likely have respect for the rule of law.

Diversity is not only a "moral imperative" for our profession in my view, but it also happens to be competitively smart for lawyers and law firms in Oregon. Prospective clients are going to seek out and hire lawyers who reflect their values, experiences and backgrounds.

This reality could apply to an individual seeking a personal injury lawyer who speaks the client's language as well as to a company that demands a diverse legal team. Some companies are requiring diverse legal teams because the company has national or international operations that serve a broad customer base.

According to the OSB, 6.6% of Oregon lawyers have identified as racial and ethnic minorities and the remainder have identified as white or have declined to disclose their race or ethnicity. By comparison, 16.4% of the Oregon population is comprised of racial and ethnic minorities.

Under this statistical data, about a 10% disparity exists between Oregon lawyers and the general population. We are grateful to Mariann Hyland, Director of Diversity and Inclusion of the OSB, for providing these statistics.

Under the recent leadership of Heather Decker, the MBA's Equality and Diversity Committee (E&D Committee) has been working hard to promote greater diversity. Members of the E&D Committee visited each of the MBA and MBA YLS committees to explore ways that each committee can promote diversity in the coming years.

Along with the OSB, the E&D Committee has co-sponsored PSU's Explore the Law Program. E&D Committee member Lissa Kaufman chairs Explore the Law's Steering Committee. The program is aimed at exposing undergraduates of diverse backgrounds to the legal profession and provides support and information to those interested in continuing on to law school.

The E&D Committee has been promoting the MBA's Statement of Diversity Principles. We recently reached our goal of 1,000

signatories. If you are interested in signing the Statement of Diversity Principles, please visit www.mbabar.org/AboutUs/Diversity.html.

Last month the MBA Board devoted its annual retreat to the topic of diversity. Leaders of many of Oregon's specialty bars attended (see photo insert). We discussed a wide range of issues from why diversity is important to what are our present challenges and opportunities. Our primary focus was on how the MBA and the specialty bars could work together as co-equals toward promoting and celebrating diversity.

The credibility of the bench and bar depend on varied backgrounds and perspectives.

We generated many ideas for consideration:

- Promote cross membership in associations.
- Explore reduced membership fees for dual membership.
- Commit to leadership of bars meeting on a regular basis.
- Cross-market diversity events, CLEs and socials.
- Build partnerships around recurring events.
- Set attainable and measurable benchmarks and goals.
- Work together in establishing pipelines to the bar and bench.
- Partner with local businesses.
- Coordinate efforts with Oregon's law schools.
- Educate lawyers on equality and diversity issues.
- Build forums for open discussions on diversity.
- Find ways to connect to Oregon's rural legal communities.
- Establish administrative structure for coordination.
- Ensure that all events appear on a master calendar (i.e., MBA).

The MBA Executive Committee and leadership of the E&D Committee are meeting this month to consider these ideas. The MBA will develop an action plan to be included in the E&D Committee charge. The MBA is committed to supporting a diverse bench and bar with a resolute purpose to achieve results.

Please contact the co-chairs of the MBA E&D Committee (Rima Ghandour and Alan Galloway) or me if you have any suggestions on how the MBA can better support diversity in our legal community.



Back row, L-R: Cedric Brown, Guy Walden, Todd Struble (OMLA), Elizabeth Knight, Helen Hierschbiel, Simon Whang (OAPABA), Mariann Hyland (OSB), Eric Dahlin, Kevin Clonts (OGALLA), Trish Walsh (OGALLA), Bob Steringer, Richard Vangelisti, Greg Moawad, Steve Shropshire. Front row, L-R: Carol Hawkins, Liz Wakefield, Heather Decker, Tyler Anderson (OC-NBA), Traci Ray, Dana Sullivan, Akira Heshiki, Kathy Modie, Maya Crawford, Ryan Mosier and Ramón Pagán (OHBA)

Congratulations Award Recipients

The May MBA Annual Meeting, Dinner and Judges Reception recognized exemplary volunteers and the MBA Professionalism Award recipient **Thomas W. Brown**. In addition to Thom, 11 outstanding volunteers were recognized. **Douglas Bray** received the National Center for State Courts' 2012 Distinguished Service Award. The MBA Award of Merit was presented to **Eric L. Dahlin** and **Andrew Schpak**. The YLS Award of Merit was given to **Cynthia Gaddis** and **Andrew Ginis**. **Alison Pear** received the YLS Rookie of the Year Award. Pro Bono Awards recognized **Anne Furniss**, **Mary Lou Haas**, **Julie Lohuis**, **Suzana Malek** and **Whitney Yazzolino**.

Congratulations to all the very deserving award recipients!

Continued on page 17

mba|CLE

To register for a CLE, please see pages 3 and 4 or go to www.mbabar.org.

SEPTEMBER

9.17 Tuesday
Meditation for Lawyers
Michael Dwyer
John Folawn

9.18 Wednesday
Legislative Update
John Davis
Shemia Fagan

9.19 Thursday
iPad Apps & Tips
Kelly Andersen

OCTOBER

10.8 Tuesday
Preserving Your Case for Appeal
Jay Beattie
Helen Tompkins

10.17 Thursday
HIPAA Omnibus Rule Compliance
Cindy Hahn
Tatiana Perry

10.22 Tuesday
Mediation is a Contact Sport
David Markowitz
Jane Paulson
Richard Spier

10.29 Tuesday
An Innocent Abroad Legal Lessons from Amanda Knox
Anne Bremner

10.30 Wednesday
Medicare: Why Should You Care?
Tom D'Amore
Kelly Giampa
Lynetta St. Clair

In This Issue

Announcements.....	2
Calendar.....	2
CLE Schedule.....	3
Ethics Focus.....	7
Around the Bar.....	8
Profile: Judge Allen.....	10
Tips from the Bench.....	10
2013 Professionalism Award.....	11
YLS.....	12
Classifieds.....	16
Pro Bono Thanks.....	19
Multnomah Bar Foundation.....	20

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*or the preceding Friday, if on a weekend.

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mba | ANNOUNCEMENTS

Take a Matter that Matters

Sign the MBA 2013 Pro Bono Pledge at www.mbabar.org and commit to taking at least one pro bono case this year.

Legal Aid Receives Grant

The Portland Regional Office of Legal Aid Services of Oregon is the recipient of a \$33,200 grant from the Roscoe C. Nelson Jr. Fund for Pro Bono Law Services to the Poor administered by the Oregon Community Foundation. Roscoe C. Nelson Jr. practiced law in Portland for 52 years and helped the poor by providing free legal services throughout his career. His family members and friends established the fund to honor this tradition. The purpose of the endowment is to connect volunteer lawyers with low-income people in need of legal services in Multnomah County.

Noon Bicycle Rides

Take a noon break for a short, fast ride with hills. Meet 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 just meet at the start.

Oregon Women Lawyers Foundation Announces 2013-14 Officers and Board Members

Officers and directors for 2013-14 are Yumi M. O'Neil, President; Lori Deveny, Vice President/ President-Elect; Karen Nashiwa, Treasurer; and Kim Sugawa-Fujinaga, Secretary.

There are two new OWLS Foundation Board members: Etta Lockey and Deanna Wray. The foundation thanks 2012-13 president, Jill Brittle, and retiring board members Melissa Chureau, Laurie Craghead, Libby Davis, Suzanne Lacampagne and Kristin Larson for their service on the board.

The OWLS Foundation is a 501(c)(3) nonprofit organization with a mission to educate and support women and minorities in accessing and participating in the justice system.

FBA – Innovations in the Law: Science & Technology

The FBA is sponsoring an all-day conference on Friday, September 20 at OMSI. Check www.oregonfba.org for details.

Battle of the Lawyer Bands

Thursday, October 3rd

7-9 p.m.

Kennedy School, 5736 NE 33rd Ave., Portland

Bands comprised of at least one Oregon lawyer will compete for the title of "Best Oregon Lawyer Band." Judges from the MBA legal community will decide the winner at the end of all the performances. Join us and cheer for your favorite band! Crowd applause is a part of the judging criteria.

Thank you Miller Nash LLP and Schwabe Williamson & Wyatt PC for generously sponsoring the event.

If you would like to add your name to the list of sponsors, contact Kathy at the MBA.



The Over-the-Counter Jug Band - Best Oregon Lawyer Band 2012

webcheck

Local bar organizations are welcome to add their metro area events to the MBA online calendar at this link: <http://mbabar.org/Calendar/SubmitAnEvent.html>

Calendar

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

JULY

7.19 Friday
MBA Family & Friends Golf Event

See p. 16 for details

7.21 Sunday
Queen's Bench Summer Picnic & BBQ

Visit owlsqueensbench.org/summer-picnic.html for details

7.31 Wednesday
OCDLA Nancy Bergeson Celebration & Lecture

Visit www.ocdla.org for details

9.11 Wednesday
CEJ Party Under the Stars
Visit cej-oregon.org for details

9.19 Thursday
SALC Taste for Justice
Visit www.salcgroup.org for details

9.20 Friday
FBA District of Oregon Science & Technology Conference
Visit oregonfba.org for details

YLS/OWLS Workshop Negotiating Your Worth
Visit mbabar.org for details

AUGUST

8.1 Thursday
OMLA Auction
Visit oregonminoritylawyer.org for details

8.4 Sunday
FBA Picnic
Visit oregonfba.org for details

8.9-11 Friday-Sunday
OLIO Summer Orientation
Visit osbar.org/diversity/programs.html#olio for details

8.12 Monday
MBA Lawyers & Law Students Golf Event
See p. 10 for details

SEPTEMBER

9.2 Monday
Labor Day Holiday

9.7 Saturday
Pro Bono Pedal
See p. 13 for details

9.23 Monday
MBA Golf Championship
See insert for details

9.26-27 Thursday-Friday
ACLU Civil Liberties Conference
Visit aclu-or.org for details

OCTOBER

10.2 Wednesday
MBF Social
Visit mbabar.org for details

10.3 Thursday
Battle of the Lawyer Bands

10.4 Friday
YLS Wills for Heroes
See p. 12 for details

10.5 Saturday
MBA Wine Crush
See p. 18 for details

10.24 Thursday
MBA Absolutely Social
Save the date!

Oregon Minority Lawyers Association
OMLA
invites you to the
14th Annual Summer Social and Fundraising Auction
Thursday, August 1, 2013 @ 5:30 pm
SOLD
World Trade Center
121 SW Salmon Street, Portland, OR
Admission is \$10 for lawyers, judges, and professionals; \$5 for law students
Please RSVP at www.oregonminoritylawyer.org
We are a 501(c)(3) organization committed to making the legal community of Oregon a welcoming environment where people of all colors, races, and ethnic backgrounds can excel academically, professionally & personally.



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.

Meditation for Lawyers

Tuesday, September 17, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Today, meditation and mindfulness training is no longer a suspicious, touchy-feely subject. The scientific and medical evidence for the benefits of mindfulness practice continues to mount. Across the country lawyers and judges are receiving mindfulness training to improve mental acuity and combat the stresses of a challenging profession. In 2008, the MBA was a pioneer in this effort, offering a successful, daylong program on mindfulness training for 140 lawyers and judges. Since then many lawyers have participated in weekly mindfulness practice and have learned to incorporate new mental skills into their law practice. Our speakers are **Michael Dwyer** of Dwyer Mediation Center and **John Folawn** of Folawn Alterman & Richardson LLP. A panel of lawyers will speak about their meditation practice and experience and the impact on their professional lives.

In this seminar, you will learn:

- What is Meditation?
- Why Meditation is helpful to Lawyers
- Basic Instruction on Meditation
- How to Integrate Meditation into Your Law Practice and Daily Life
- The Medical and Scientific Support for Meditation.

For more information:

Call Michael Dwyer, Dwyer Mediation Center at 503.241.9456. For registration questions, call the MBA at 503.222.3275.

Legislative Update

Wednesday, September 18, 2013
12:00-1:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$35
Non-members \$55

Please join two lawyer legislators to learn about the developments that took place during the Oregon State Legislature's 2013 session. This CLE will cover recent changes to civil laws that may affect your practice or your clients' interests. Panelists include two members of the Oregon House of Representatives: **John Davis**, a business and real estate attorney at McEwen Gisvold, and **Shemia Fagan**, a litigation attorney at Ater Wynne.

For more information:

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

iPad Apps and Tips for the Courtroom, the Office and on the Road

Thursday, September 19, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

The iPad has revolutionized the practice of law for those attorneys willing to discover its vast potential, not only for use in trial but also for improving productivity in the office, at home, and on the road. This two-hour presentation will explore numerous helpful apps and provide tips on how to use them most effectively, including how to use the Keynote app for opening statements and final arguments, the iAnnotate app for studying documents, the TrialPad app for presenting evidence in the courtroom, as well as how to use such apps as Errands, Dropbox, PDF Expert, Evernote, Pages, Notability, Penultimate, UPad, Adobe Ideas, Maps, Google Earth, OmniGraffle, Teleprompt+, Air Sketch, Jot! Whiteboard, and more.

The simplicity of the iPad and of these apps now make it possible for any attorney to organize and present information in an electronic format with no additional costs. In addition, this presentation will explore the emerging science of teaching (and learning) by harnessing the power of digital images.

This two-hour presentation will be led by attorney **Kelly Andersen**, who speaks on this topic regularly. Mr. Andersen has been practicing law in Oregon since 1979, and was named as an Oregon Super Lawyer in 2007, 2009 and 2010. He practices in Medford.

For more information:

Call the MBA at 503.222.3275.

Free CLE Webcast Available to MBA Members

The two-hour webcast of the "Nickel & Dimed: Controlling the Cost of Litigation" CLE seminar held earlier this year is now available to MBA members at no cost.

Visit www.mbabar.org and log in to the Members Center to view the webcast on your computer or smartphone.

CLE Class Registration on next page

Preserving Your Case for Appeal

Tuesday, October 8, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Helen Tompkins, Attorney at Law and **Jay Beattie**, Lindsay Hart LLP will explain what trial attorneys need to do to properly preserve their cases for appeal. Jay represents appellants in civil appeals in business, tort and insurance-based matters. Helen represents appellants in all types of civil appeals from subordinated debentures to products liability to civil procedure, medical malpractice and family law. They have 50 years of shared experience – split evenly between them. Both work closely with trial attorneys during litigation. Given the recent changes in de novo review and the hyper technical issues that are raised on appeal, it is crucial for litigation attorneys to know the ins and outs of preservation.

For more information:

Call Daniel Margolin, Stephens Margolin PC at 503.546.6374. For registration questions, call the MBA at 503.222.3275.

HIPAA Omnibus Rule Compliance

Checklist for Law Firms and Other Entities that fall within the definition of a Business Associate

Thursday, October 17, 2013
3:00-5:00 p.m.

World Trade Center
Sky Bridge Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

HIPAA Omnibus Rule compliance deadline is September 23, 2013. If you or any of your clients are business associates, have you (they) done everything to be in compliance? This presentation will cover the definition of a business associate and when a law firm may fall within that definition. Provisions of the Omnibus Rule that affect business associates will be discussed along with a checklist that business associates can use to confirm their compliance with the Omnibus Rule. The presentation will also touch upon business associate agreements and provisions important for that document from the business associates' perspective. Presented by **Cindy Hahn** (CIPP/US), Privacy Officer for Multnomah County, and **Tatiana Perry** (CIPP/US), a partner at Tonkon Torp. Both Cindy and Tatiana are Certified Information Privacy Professionals, a credential which is earned by taking two exams demonstrating a strong foundation in U.S. privacy laws and regulations and understanding of the legal requirements for the responsible transfer of sensitive personal data to and from the United States, the European Union and other jurisdictions.

For more information:

Call Ryan Bledsoe, Tonkon Torp at 503.802.2120. For registration questions, call the MBA at 503.222.3275.

Mediation is a Contact Sport - How to Get the Best Possible Result for Your Client

**Tuesday, October 22, 2013
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

“Mediation is a Contact Sport.” So said the late Sid Lezak, former United States Attorney for the District of Oregon, and godfather of mediation of civil cases in Oregon. By this, he meant that mediation between represented parties, before lawyer-mediators, is not a touchy-feely process seeking an objectively fair resolution of disputes. This is not to say that mediators don’t encourage consideration of the opponent’s legitimate needs (legal, financial, and emotional) or that counsel should be disrespectful or insensitive to the other side. However, mediation is part of the litigation process, not separate from it. Indeed, one of the best tactics in mediation is for counsel to make clear that he or she is ready, willing, and able to go to trial. Mediation is adversarial, and the preparation and tactics of counsel can make a big difference in the result. In this program, respected litigators **Jane Paulson**, Paulson Coletti and **Dave Markowitz**, Markowitz Herbold Glade & Mehlhaf and experienced mediator **Rich Spier**, share leading edge ideas for effective representation of clients in mediation.

For more information:

Call Shannon Armstrong, Markowitz Herbold Glade & Mehlhaf at 503.295.3085. For registration questions, call the MBA at 503.222.3275.

An Innocent Abroad - Legal Lessons from Amanda Knox

**Tuesday, October 29, 2013
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

Anne Bremner, the attorney for Amanda Knox’s family, will discuss lessons learned from Amanda Knox’s four years in an Italian prison. Bremner, an experienced prosecutor and member of the American College of Trial Lawyers, will evaluate the role the media had in Ms. Knox’s eventual release, legal rights of Americans abroad, Amanda Knox’s trial counsel, and the effect one misguided prosecutor can have on the outcome of a trial.

For more information:

Call Aukjen Ingraham, Cosgrave Vergeer Kester at 503.219.3837. For registration questions, call the MBA at 503.222.3275.

Medicare: Why Should You Care?

**Wednesday, October 30, 2013
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

The MBA presents a two-hour program on Medicare and the Medicare Recovery Act. The attorney panelists will address a myriad of issues from the perspective of both plaintiffs counsel and defense counsel.

Any lawyer encountering Medicare issues - whether frequently or occasionally - should attend this program. Topics will include:

- What is Medicare and how does it affect my clients?
- What is the SMART Act?
- What is the process for addressing Medicare concerns?
- How do you “protect Medicare’s interest” when a case resolves?

Our speakers are **Kelly Giampa**, Hart Wagner LLP, **Tom D’Amore**, D’Amore Law Group and **Lynetta St. Clair**, Hart Wagner LLP. Kelly’s practice focuses on medical malpractice and long-term care defense. Tom served as 2010-11 President of the Oregon Trial Lawyers Association (OTLA). His practice focuses on representing plaintiffs in personal injury actions. Both Kelly and Tom try cases involving Medicare issues on a regular basis. Lynetta’s practice focuses on advising insurance and corporate clients regarding Medicare compliance issues.

For more information:

Call Sim Rapoport of iBridge at 503.906.3933. For registration questions, call the MBA at 503.222.3275.

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To obtain MBA member rates for seminars and events, sign in as an MBA member first:
<http://mbabar.org/Membership/Login.html>

Photocopy, complete and mail or fax the registration form 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.

Registration Form

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

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Member Status:

- MBA Member
 Non-Member

Payment Options:

- Check VISA MasterCard
 American Express

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.

9/17 Mediation for Lawyers

- Class Registration Online (\$50 Members/\$80 Non)
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9/18 Legislative Update

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

9/19 iPad Apps and Tips

- Class Registration Online (\$50 Members/\$80 Non)
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10/8 Preserving Your Case for Appeal

- Class Registration Online (\$50 Members/\$80 Non)
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10/17 HIPAA Omnibus Rule Compliance

- Class Registration Online (\$50 Members/\$80 Non)
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10/22 Mediation is a Contact Sport

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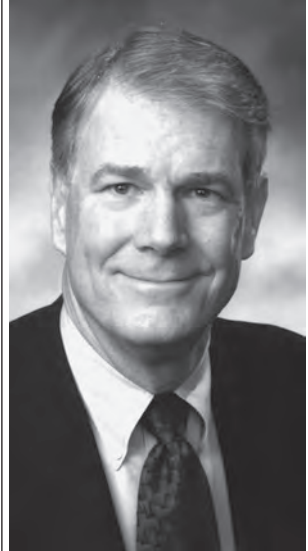
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10/30 Medicare: Why Should You Care?

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LNS Court Reporting Supports CEJ Fund Drive

The following article is one in a series from donors who helped support the Campaign for Equal Justice's annual fund drive to support legal aid. The MBA is grateful for their support of this important cause.

The Campaign for Equal Justice (CEJ) may be the most noble organization in the legal profession. With a mission of making equal justice a reality for all Oregonians, CEJ has its work cut out for it. And when we received a call from a dear friend asking us to sponsor a CEJ event, there was no refusing her.



The CEJ was established by lawyers in 1991. The program supports Legal Aid attorneys serving clients throughout Oregon. The need is great - and growing every day.

LNS Court Reporting and Captioning is honored to play our small role by being a sponsor of the Campaign for Equal Justice. Carol Studenmund and Robin Nodland formed LNS in 1987 with a goal of integrating technology into legal services, as well as providing access for hearing-impaired people through captioning services. Since then, LNS has donated pro bono court reporting and captioning

services through the Oregon Court Reporters Association (OCRA), as well as to various community organizations.

And now a plug for OCRA and their members. Although not widely recognized, OCRA's pro bono program works in tandem with Legal Aid. Clients receiving pro bono legal services are eligible for OCRA's pro bono court reporter services. The OCRA pro bono program keeps a list of its members who have volunteered to donate services statewide. To access these services, contact OCRA's Public Relations Committee Chair, Elisa Kloster, at 541.404.1412 or klostercsr@gmail.com.

As we have watched many of our clients donating to the CEJ, LNS was inspired to do a little more. We want to thank all of our clients as well as all of the lawyers for giving so generously. And for setting a good example.

Robin Nodland, CSR, CCR, RDR, CRR, is President-Elect of the OCRA, co-chair/member of the National Court Reporters Association Technology Evaluation Committee and member of its Strategic Alliances Committee. Carol Studenmund, RDR, CRR, CBC, CCP, is a Past President of the OCRA, current OCRA legislative chair and realtime testing chair, as well as chair of the National Court Reporters Association's Captioning Community of Interest.

We are excited to announce that Kristen Stedman has joined our firm!



Prior to coming to Bodyfelt Mount, Kristen was a Staff Attorney at another Portland law firm where she focused her practice in commercial litigation. Kristen received her J.D. and Business Law Certificate from Lewis and Clark Law School in 2012. While in school, Kristen clerked at a general practice law firm and with the Office of General Counsel at Portland State University.



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Ethics Focus

On the Breach Practical Impacts of Suspension

by Mark J. Fucile
Fucile & Reising



Each year, the OSB publishes a detailed disciplinary report. For the past several years, suspensions of varying length have been the most common regulatory sanction. Although the numbers vary from year to year, as many as 35 Oregon lawyers have been suspended in a single year recently. Under Bar Rule of Procedure 6.1(a)(iii), suspensions can run from 30 days to five years.

Suspensions present very real issues for the lawyers involved, together with their clients, their firms and their families. In this

...as many as 35 Oregon lawyers have been suspended in a single year recently.

column, we'll look at the practical impacts of suspensions that are on the short side and longer term.

Two qualifiers are in order at the outset.

First, in an era of relatively common multi-state licensing, any lawyer facing a suspension

should carefully consider both the reciprocal disciplinary effect in any other jurisdiction in which the lawyer is licensed and the potential constraints that those other states may impose on law-related work during suspension. Washington RPC 5.8(b)(2), for example, generally prohibits Washington lawyers from even sharing office space with another Washington lawyer who is suspended.

Second, although our focus is on lawyers who are suspended, lawyers who hire a suspended colleague for a law-related position - such as a paralegal - need to be acutely aware of their own responsibility for ensuring that they do not facilitate the practice of law by the suspended lawyer. RPC 5.5(a) prohibits a lawyer from assisting others in the unauthorized practice of law and Oregon lawyers have been disciplined for allowing paralegals in their employ to do just that (see, e.g., *In re Morin*, 319 Or 547, 563-64, 878 P2d 393 (1994)).

...lawyers who hire a suspended colleague for a law-related position - such as a paralegal - need to be acutely aware of their own responsibility....

The Short Side

BR 6.3(a) and (b) succinctly summarize the duties of a lawyer when suspended. The former directs that the lawyer can no longer practice law after the effective date of suspension. The latter requires that the lawyer "immediately take all reasonable steps to avoid foreseeable prejudice to any client[.]" Read in tandem, these rules essentially require a suspended lawyer to inform

all clients with active matters of the lawyer's suspension and to transition the lawyer's files to replacement counsel for at least the duration of the suspension (unless, with client permission to retain the file, the period of suspension is so brief that no material events are reasonably anticipated during the lawyer's unavailability).

OSB Formal Ethics Opinion 2005-25 allows a lawyer to collect fees earned before the suspension. But, it does not permit a replacement lawyer to share fees with a suspended lawyer for work the replacement lawyer does during the suspension because the suspended lawyer is considered a "nonlawyer" during the suspension and RPC 5.4(a) prohibits a lawyer from sharing fees with a nonlawyer.

It is also important for a suspended lawyer not to hold himself or herself out as available to practice law. Although not involving a disciplinary suspension, the lawyer in *In re Kumley*, 335 Or 639, 75 P3d 432 (2003), was disciplined under the misrepresentation rule for listing himself as an "attorney" in the voters pamphlet when he was on inactive status, and, therefore, not available to practice law.

The Longer Term

All of the admonitions and duties applicable to a short suspension are equally applicable to a longer suspension. When the length of the suspension grows, however, economic realities force many lawyers to explore other work during the suspension. Work outside the legal field usually does not pose any problems for eventual reinstatement. Work in a law-related position, however, can pose risks even if the suspended lawyer is extremely careful.

BRs 8.3(a) and 12.9 generally permit lawyers who have been

suspended for six months or less to be reinstated by executing a "compliance affidavit" (and paying a fee). Among the certifications included is a sworn statement that the lawyer "did not at any time engage in the practice of law

It is also important for a suspended lawyer not to hold himself or herself out as available to practice law.

except where authorized to do so" during the suspension. BR 8.1, in turn, requires lawyers suspended for more than six months to formally apply for reinstatement. This process requires a similar certification and, if there is evidence to the contrary, puts the burden on the applicant to show by clear and convincing evidence that the lawyer should be reinstated (under BRs 8.12-.13 and *In re Gunter*, 344 Or 368,

371, 182 P3d 187, *modified*, 344 Or 540, 186 P3d 286 (2008)).

A suspended lawyer working, for example, as a paralegal, needs to be able to demonstrate that the lawyer's activities were restricted solely to those of a paralegal and were done under the supervision of a lawyer (see OSB Formal Ethics Op. 2005-166 at 458 (on paralegal work generally); OSB Formal Ethics Op. 2005-24 (on employing a suspended lawyer as a paralegal)). A false certification in this regard in the subsequent reinstatement process exposes the lawyer not only to a host of charges relating to practicing while suspended (see, e.g., *In re Devers*, 328 Or 230, 238, 974 P2d 191 (1999)) but the potentially devastating charge of lying on the reinstatement application itself (*Id.* at 239-45 (ordering disbarment)).

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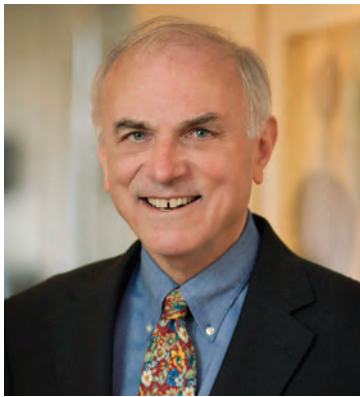
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Around the Bar



Jonathan A. Ater

Kienbaum is of counsel. Both Guest and Kienbaum expand the firm's Litigation, Employment Law, and Traditional Labor Relations practice groups.

Guest is a labor and employment attorney with nearly 20 years of experience in the Portland market. Her practice is a blend of complex litigation, counseling and training.

Kienbaum focuses her practice on traditional labor relations and employment law issues related to discrimination and harassment, hiring, performance management and terminations, and independent contractor misclassification issues.



Trung Tu

Oregon Area Jewish Committee Honors Local Attorneys with Judge Learned Hand Awards

Jonathan A. Ater was honored with the organization's Lifetime Achievement Award and **Trung Tu** with its Community Leadership Award

Since 1999, the OAJC Judge Learned Hand Awards have honored leaders in the legal field for professional excellence and contributions to the community. Judge Hand was famous for the extensive range of decisions which he rendered in more than 2,000 cases, especially those centering on questions of constitutional rights and anti-trust legislation. Award recipients are people who embody much of what Judge Hand represented: the rights of the individual and the importance of democratic values in an orderly society.



Todd Cleek

Cleek Law Office

Todd Cleek has been elected to a one-year term as Venture Portland's Board of Directors Vice President. Venture Portland is the support organization for Portland's 50 neighborhood business districts. For almost three decades, the organization has invested in the strategic growth of these neighborhood districts with training, technical assistance and grant funding.

Ogletree, Deakins et al **Caroline Guest** is now a shareholder and **Ursula**



Banu Ramachandran and José Klein

Barran Liebman

José Klein and **Banu Ramachandran** are new associate attorneys. Both represent employers and management in employment law litigation, and provide advice on a full range of employment law matters.

McKinley Irvin

McKinley Irvin has moved into an expanded space in downtown Portland, located at 1000 SW Broadway Ste. 1810, Portland OR 97205, 503.487.1645.



Wally Van Valkenburg

Stoel Rives

Wally Van Valkenburg, Managing Partner of the Portland office, has been elected to the Portland State University Foundation Board of Trustees. Members are selected for their business, civic and philanthropic leadership, professional expertise, and commitment to the advancement of Portland State University.

Tomasi Salyer Baroway

Eleanor A. DuBay has been admitted into the Idaho State Bar and the US District Court for the District of Idaho. She focuses

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Eleanor A. DuBay

her practice on representing lenders and secured creditors in consumer and commercial real estate foreclosures, troubled debt restructuring, loan workouts, bankruptcies, and general civil litigation.

Lane Powell

The firm has formally launched its Privacy and Data Security Practice Group. Leading this formalized practice group as one of its co-chairs is **JoAnn Lee Kohl**, who is testing to

become a Certified Information Privacy Professional/US. The group will be devoted to helping clients manage a host of privacy and data security concerns relating to compliance with federal, state and international privacy and security laws; development of internal privacy policies; preparation of website privacy notices and terms of use; navigation of trade secret protection and enforcement; handling data breach responses and notifications; and development of programs and policies governing storage, access, transfer, use, disclosure and disposal of information.

Miller Nash

Attorney **Andrea M. Barton** is the newest addition to the Litigation Team. Barton has years of experience advising local businesses, national corporations, and nonprofit institutions in the areas of commercial and real estate litigation.



Andrea M. Barton

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions 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 Hawkins, carol@mbabar.org.

Out of the Closet

by Michael Dwyer



No longer do we need to be concerned about being labeled soft or “touch-feely” if we practice meditation to cultivate strong and smart minds. We are finally past the day when we must be worried that a

meditation practice will give our opponents grounds to perceive us as patsies who will cave at settlement time.

In the few short years since 2008, when the MBA offered its first seminar on meditation for lawyers, the practice of meditation has become well-accepted and the benefits well-known.

Back then, when 140 lawyers and judges gathered to learn about meditation from Michael Zimmerman, former Chief Justice of the Utah Supreme Court, we were hesitant even to use the term meditation. Instead, so as not to spook the skittish (I used to be one myself), we

used the more general term “mindfulness,” which is the act of paying attention, with purpose and without judgment, to what we are doing and what is happening in the present moment. Meditation is one practice, albeit a very effective one, to achieve mindfulness.

But today, there is a steady stream of scientists announcing, and doctors promoting, the substantial health benefits derived from a modest, regular

...we used the more general term “mindfulness,” which is the act of paying attention, with purpose and without judgment, to what we are doing and what is happening in the present moment.

practice of meditation. Studies now support meditation to reduce blood pressure, improve the immune system, lower stress in the amygdala, and improve pain tolerance. It may also protect against heart disease.

The benefits for lawyers do not stop with improved health. Meditation can make us smarter, better lawyers. Once scientists thought our brain was fixed for life, but they now know our brains possess the characteristic of plasticity, and studies show that meditation actually produces positive, structural changes in our brains. These include increased gray matter density in areas associated with creativity, with our ability to read others, and with the formation of new memories.

We know now through science what wise meditation practitioners have known for centuries. With practice we can create calm, stable, resilient minds that do not deteriorate under pressure. We can greatly enhance our capacity for listening, focusing, and paying attention. And we can reduce our reactivity to the shenanigans of opponents.

In short, meditation can have a profound impact on our professional and personal lives.

Realizing this, lawyers and judges across the country have been learning to meditate. Bar organizations, law schools, and law firms have embraced the practice. The largest gathering to date occurred in 2010 at Boalt Law School at UC Berkeley. Two hundred attendees learned about meditation from a glittering array of judges, law professors and practitioners, and medical and mental health professionals. Knowing how difficult it is to sustain a practice without the support of our colleagues, many bar associations now offer regular meetings for lawyers and judges to practice meditation together.

With practice we can create calm, stable, resilient minds that do not deteriorate under pressure.

In our own community, a group of lawyers has quietly met weekly to meditate since the 2008 conference. Once a year we also hold daylong retreats that have deepened our understanding and commitment of the interplay between meditation and law.

On September 17, the MBA will again offer a program on the basics of meditation practice. You will learn what meditation is and how to do it. You will hear from several lawyers with various backgrounds and experience levels with meditation. They will offer us their candid experiences with meditation (the relief it brings, the habit resistance) and its impact on their professional lives. We welcome you to join us.

If by chance you fear what your colleagues might think if they hear you have registered for this seminar, let me share a little story. When I was organizing the 2008 conference, I was approached independently by three lawyers who told me they could use some help dealing with our very demanding profession, but they had no one to talk to about it and were afraid what others in their firm might say if they started to meditate. All three lawyers, unbeknownst to one another, were in the same law firm with offices steps away from each other.

So, it's time to come out of the closet. It's not as scary as we fear. The benefits are big and real. And you might just meet your law partners.

Michael Dwyer is a lawyer-mediator and former president of the Multnomah Bar Association. He organized the MBA 2008 conference on meditation for lawyers.

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Tips From the Bench

Foundation for Admission of Documents as Business Records

by Judge Leslie Roberts
Multnomah County Circuit Court

Young men know the rules, but old men know the exceptions.
-Oliver Wendell Holmes

40.460 Rule 803. Hearsay exceptions; availability of declarant immaterial.

- (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time **by, or from information transmitted by, a person with knowledge**, if kept in the course of a regularly conducted business activity, and **if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation**, all as shown by **the testimony of the custodian or other qualified witness**, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In order to introduce these documents, then, you lay a foundation by establishing through a person with knowledge to testify that the exhibit is:

- (1) A compilation of information about “acts, events, conditions, opinions, or diagnoses”
- (2) By or from information from a person with knowledge;
- (3) Kept in the ordinary course of business as part of a regular practice to make the record;

Like much (one cannot say all) of evidence rules, the exception for business records is based on its own logic. The logic is that, even though it is hearsay (out of court statement by whoever made of record, of facts to be offered for their truth), it bears indicia of reliability equivalent to that provided by the test of cross-examination.

In the case of business records, this reliability is based on the hum-drum routine which gives rise to business records. Their quotidian origin, compiled for a regular business purpose and not for the purpose of advancing a position in litigation is deemed to assure - if not accuracy precisely - at least the absence of systematic bias. The rule itself expresses the characteristics that must be shown in the foundation for admissions. They are the characteristics that say, “No cross



examination is needed here!” The witness who establishes these characteristics can be anyone who has personal knowledge of the points to be shown. The witness need not know the technical method of computer storage of the data or the way the ‘person with knowledge’ who creates the record, does her job; the witness is there to show the very boring, tedious, day-to-day, regularity whereby a person with immediate knowledge records these bits of information for the normal business of the organization (whatever it is - school, club, company, hospital, etc.), because it is the regularity of the record keeping, the fact that it is part of the business purpose of the organization, and that it is done by a person with knowledge, that are the indicia of reliability.

An example of a legitimate business record would be water usage records of the Portland Water Bureau, compiled by meter readers (persons with first-hand knowledge) and compiled and kept so the bureau can bill customers.

It happens, however, that litigators sometimes slip up by failing to recognize what are the relevant characteristics. It is not just any document or record that appears in corporate files; it is only those hallmarks of reliability that substitute for the test of cross-examination.

I have seen a litigator seek to introduce some piece of idiosyncratic correspondence - for examine, a complaint letter by some other user of a product in issue - by claiming it is a business record. The lawyer will elicit the testimony that in the ordinary course of business, such correspondence received by the organization is indeed ‘kept’ - in the sense that it is put in a file and not thrown away. The lawyer then submits it as a ‘business record.’ But what would make such a letter any more reliable than a personal note written to your Aunt May? If the content of the letter is significant to the case, why would cross-examination be superfluous, simply because it came out of a Steelcase filing drawer? The business records exception is not some mysterious incantation to cleanse evidence of the stain of hearsay; it obeys logic and the logic guides its application.

What makes business records reliable is their origin in routine, and the fact that this data is not collected with an eye to litigation, but for other normal

Judge Beth A. Allen Multnomah County Circuit Court

by Erick Haynie
Court Liaison Committee member

The Honorable Beth A. Allen was appointed to the bench by Governor John Kitzhaber and was sworn in as a circuit court judge on February 4.

Judge Allen grew up in Myrtle Creek, Oregon. She graduated from South Umpqua High School in 1976. After high school, she enlisted in the Army, serving as a photo journalist for Army publications. After leaving the Army in 1986, she enrolled at Mt. Hood Community College, where she pursued studies in journalism. Judge Allen went on to enroll at Portland State University, where she graduated in 1992 with a B.A. in communications. Following her graduation, she pursued a career in public affairs with the Army Corps of Engineers.

In 1988, Judge Allen became involved in the opposition to a controversial ballot measure, Measure 8, which was an initiative that repealed Governor Neil Goldschmidt’s executive

order banning discrimination based on sexual orientation in the executive branch of state government. In 1992, Judge Allen was also involved in the opposition to Measure 9, which was another controversial anti-gay ballot measure.

Judge Allen’s work on these and other gay-rights issues inspired her to attend law school in 1993. In 1996, she graduated from Willamette University College of Law.

After graduating from law school, Judge Allen served as a clerk to Judge Mary Deits, who during that time became the Chief Judge of the Oregon Court of Appeals. In 1998, she began her 15 years in private practice as an attorney with Tonkon Torp, where she served as a general employment and litigation attorney. In 2001, she moved to the firm of Lane Powell, where she focused her practice on employment law. In 2006,



Judge Beth A. Allen

she started her own law firm, where she developed a specialized practice dealing with family law and related issues impacting the LGBT community. She also has experience in a wide area of civil law, including estate planning and general business law. A news release from the governor’s office describes Judge Allen as a “tireless advocate for diversity.” Judge Allen also serves as an adjunct professor of law at Lewis & Clark Law School.

Judge Allen currently serves as a full time family law judge in Multnomah County. She makes her home in Portland, Oregon with her partner and two young sons.

reasons, by the organization and not by someone else (a complaint letter writer) with knowledge of the event. It is in the sense that the record is made and compiled - not merely that the document is ‘kept’ as in preserved - that is important to the rule. In our example, a complaint letter from a dissatisfied customer is not a record generated as a routine and regular function of the business to serve a business purpose of the company and therefore its presence in files is no assurance of accuracy.

The letter might have a non-hearsay purpose, apart from the truth of the matter contained in it, such as to show notice to the company; but in that case it would be admissible because it was

relevant for purposes other than its truth. In other words, it is not hearsay at all and no exception to the hearsay rule need be invoked to justify its admission - only a limiting instruction in a jury case.

An exception to the hearsay rule, by definition, admits documents for the truth of what they state. Therefore, a document that doesn’t report facts - a rule manual for instance - is not a subject for analysis as a business record exception to the hearsay rule. A rule does not state facts, generally; it prescribes or proscribes conduct. So its admissibility isn’t advanced by the exception any more than it is prevented by the general prohibition on hearsay.

In summary, the hearsay exception for business records is useful where, otherwise, the general hearsay rule would prevent admission; that is, where it is an out-of-court declaration meant to reflect the truth of facts asserted. It operates for routine documents - regularly compiled and kept in the ordinary course of business from information obtained by a person with knowledge. Its passport into evidence is provided by a person qualified to state why it is kept, by whom, and that it is kept in the ordinary course of business. A short-hand way to see this is that if it is sufficiently boring, it may be a business record.

mba|EVENT

MBA Lawyers & Law Students Golf Event

Monday, August 12
Langdon Farms Golf Club, Aurora



Excellent opportunity to foster professional relationships as Willamette, UO and Lewis & Clark law students and the Portland legal community meet and network over lunch, dinner and a round of golf. Teams will be made up of lawyers, judges and law students, matching students’ interests with lawyers’ practice areas when possible. Scramble format.



Prizes. Raffle and mulligans benefit the VLP. Entry includes boxed lunch and barbecue dinner. \$100 lawyers and judges, \$40 law students. 1:45 p.m. shotgun.

Please register by August 2 at mbabar.org or contact Pamela Hubbs at 503.222.3275.

Thomas W. Brown 2013 MBA Professionalism Award Recipient

The following is Thom Brown's acceptance speech at the MBA 2013 Annual Meeting

Thank you. Thank you very much. I begin with a warning: as my family knows well, I cry at episodes of Glee, so I seriously doubt I will get through this next 10 minutes without becoming emotional. I pledge to do my best but my best may not be good enough!

I am really honored and humbled to receive the 2013 MBA Professionalism Award and to join the 24 others who have been similarly honored, particularly Randall Kester and Wally Sweek, my fellow Cosgrave lawyers, and Ray Conboy and Jeff Batchelor, fellow appellate attorneys. To be regarded by my peers as worthy of a recognition that has been given to others who I admire so much is very special.

I want to first thank the members of the MBA Professionalism Committee and the MBA Board of Directors. I deeply appreciate your decisions to recognize me with this award.

I want to next thank all the people that I am personally aware of who supported my nomination. My partner Jill Laney, Robert Neuberger (who I'm so sorry is not feeling well enough to be here tonight and who, as many of you know, is facing great health challenges), my friend Jeff Batchelor and two judges who will remain nameless, lest affidavits of prejudice follow from their identification should I appear in front of them in the future. As I've told them all personally, I so appreciate what each one did to help make this special night happen.

I also want to thank my friends and the many Cosgrave colleagues

who came tonight. It means a lot to me that you are here.

Finally, I want to recognize all of tonight's other awards winners. Each has contributed significantly to our legal community. I'm honored to be included among them on this occasion.

I want to tell you a little about me and some of the people that have influenced me to be "professional" and then talk some about professionalism. Oh, yeah, and I'll teach you a Yiddish word.

I was the fourth of five kids born to Mort and Rose Brown, both of whom are no longer alive, but I suspect are looking down on me right now filled with great parental joy. Two experiences strongly influenced me as a child: The Holocaust, which I saw film clips of and heard about nearly every Saturday morning for 10 years at Temple Israel in Minneapolis, Minnesota where I grew up, and the deep hurt I experienced from anti-Semitism in the suburban Minneapolis schools I attended. Both experiences led me at a young age to strongly want to be a person who consistently valued and supported others, whether they were like me or different from me.

My parents pushed that commitment along; my mother, through her constant support and unconditional love, and my father, through one of the things he often said to me when the two of us walked together at night around our neighborhood: "Kid, I want you to remember one thing as you go through life; be a mensch" which, for those of you who don't know, is a Yiddish word meaning a person of integrity and honor; a decent and responsible person.

I've recalled my father's exhortation time and again when

faced with opportunities and challenges, both personal and professional. Indeed, just as I did a moment ago before walking up to this stage, before I talk to a group, argue an appeal, lead a meeting, or have important talks with my family, I remind myself to "be a mensch" – to act in those situations as a good and decent person. I don't always succeed, that's for sure, but the reminder helps me try when trying seems most important to me.

No one goes through life alone and I've been extremely lucky to have many people extend their hands and hearts to me and, by doing so, help me be the person I am. I want to mention just a few.

My wife, Virginia. A year ago she faced a great medical challenge. Through her positive and determined attitude, and her greater concern for the well-being of others than for herself, Virginia showed me, as she has done many times before, how a good and decent person approaches life's challenges. I am unquestionably a better, happier person because of Virginia's 34 years of love and support.

My children. Unfortunately, neither of them could be here tonight, but I know they are both here in spirit. Each one has faced life's challenges with courage and resolve and life's opportunities with creativity and enthusiasm. They have kept me focused on the well-being of others rather than on myself and determined to always try to be a good and decent parent.

Irv Steinbock. Many of you never knew Irv, a Multnomah County trial judge who I clerked for in law school. Irving was a wonderful person. He was taken from us far too young. Among many things, Irv showed me that humor, humility, respect for others and good common sense all contribute to professional success and satisfaction. And Irv also showed me that a good and decent person, who gives of himself to others, can positively affect peoples' lives every single day.

Bill Richardson. Many of you may also not know Bill, who I had the honor to clerk for at the Oregon Court of Appeals. He is a quiet, thoughtful, and deliberative person. Bill showed me that such a person could become both a professional success and a leader of other highly successful people.

Randall Kester. Some of you knew Randall. For those that didn't, that's too bad. He was a giant among lawyers. Randall showed me that one could be successful as a lawyer while being kind, caring, and committed to helping others. More importantly, Randall showed me that a good and decent person - a "mensch" - must sometimes sacrifice one's own professional ambition for a family's needs.

And, finally, Wally Sweek. I'm sure that most of you do know Wally, and you are all better for it. Wally, like Randall, showed me that professional success is enhanced, not compromised, by being a good and decent person. And Wally, like Randall, showed me something else very meaningful: making hard choices based on what your heart tells you is correct reveals an essential characteristic of a truly good and decent person.

All of these people - along with many, many others - have helped me try and be what I wanted to be as a child - and what my father urged me to be - a "mensch." I'm very grateful to each one of them for their wisdom, support and guidance in that lifelong endeavor of mine.

Enough about me. Now a few words about professionalism.

I think we are very lucky to practice law in Oregon. I work with attorneys across the world and I know that we have a very uniquely professional bench and bar. I have encountered very few exceptions in my almost 33 years of practice. We should all be proud of our consistent commitment to - and near universal success in being - professional in our dealings with each other, our clients, and the courts.



Thomas W. Brown

But professionalism has another feature. Distrust of and lack of respect for lawyers is common among non-lawyers. I'm convinced that some of that deep distrust and lack of respect is of our own making, borne by overvaluing billable hours, revenue creation, and personal wealth acquisition, and undervaluing service to and education of non-lawyers about how important the work we all do is to the preservation of the precious rights, freedoms and opportunities lawyers and non-lawyers alike enjoy day-to-day.

So, professionalism, in the sense I'm using the term now, refers to actions we each take that help create public understanding of and support for lawyers and for a fair, impartial and well-funded judicial system. And whether you are beginning as an attorney, well along that professional road or, like me, nearing that road's end, I believe that if we act like "mensches" - good, decent, responsible, trustworthy attorneys - when dealing with non-lawyers, we will bring about that critically needed understanding of and support for the legal profession and justice system to which we have devoted - judges and lawyers alike - our life's work.

Well, thankfully, my time in the spotlight now comes to an end. Thanks again to all who helped me stand here tonight. I appreciate all you've done more than I can say. I will always remember this very special recognition from my peers and this equally special evening. Good night.

New MBA Officers Elected One year terms began July 1



Richard J. Vangelisti, Vangelisti Law Firm LLC, is president. Richard graduated from Southern Methodist University Law School in 1995 and clerked for a federal judge for two years. He practices plaintiff's personal injury law and is admitted to practice in Oregon and Washington. He has been on the board since 2010.

Richard chaired the MBA Judicial Screening Committee. He serves as a mentor for the MBA Professionalism Committee's Mentor Program and is a member of the Oregon Bench and Bar Joint Commission on Professionalism. Richard previously served as president of the Oregon chapter of the Federal Bar Association. He also served as a co-chair and lawyer representative to the Ninth Circuit Judicial Conference.

Dana L. Sullivan, Buchanan Angeli Altschul & Sullivan LLP, is secretary. She has been on the board since 2011. Dana graduated from New York University Law School. She was admitted to the OSB in 1994. In her practice, Dana focuses on the



representation of individuals in employment litigation. She also advises individuals in contract and severance negotiations and conducts workplace investigations.

Dana served on the MBA CourtCare Committee for several years and received the YLS Award of Merit in 2000 for her outstanding service to the YLS Service to the Public Committee, where she coordinated its Dropout Prevention Program. She served

as president of the Oregon Trial Lawyers Association in 2009-10 and served on OTLA's Board of Governors from 1999 to 2011. Dana has also served on the following OSB Committees: Economic Survey, Federal Practice and Procedure (which she chaired 2007-08), Civil Rights Section Executive Committee, and she currently serves on the Civil Rights Section Newsletter Editorial Board. Dana also serves on the Federal Bar Association's Local Rules Committee.

Helen Hierschbiel, OSB, is treasurer. She has been on the board since 2011. Helen graduated from Lewis & Clark Law School in 1991 and was admitted to the Arizona State Bar in 1991 (now inactive) and the OSB in 1997. Her practice areas are legal ethics, government law and employment law.



Helen served on and chaired the MBA Professionalism Committee. She has been a volunteer at St. Andrew Legal Clinic Night Clinic since 2006 and was a Classroom Law Project Tour Guide.

Gregory T. Moawad, Director of Public Safety at Oregon Health & Science University, continues on the MBA Board as past president.



34 Years and Counting

by Traci Ray
YLS President



As the 34th President of the Multnomah Bar Association Young Lawyers Section, I am excited for the upcoming year and the opportunity to serve the YLS membership. Like Ed Harnden's score on the front nine, the number 34 is encouraging. Dwight "Ike" Eisenhower was the 34th President of the United States; Nolan Ryan, Shaquille O'Neal and Walter Payton wore number 34 on their jerseys, and as I write this column I am listening to #34, a song by the Dave Matthews Band.

Since 2008, I have enjoyed being involved with our Multnomah Bar Association Young Lawyers Section, serving on committees, attending events, working with our community partners, meeting fellow attorneys, and celebrating our profession and the accomplishments of our colleagues. I have learned through the MBA and the YLS that we have a unique opportunity to enhance our own experience as attorneys, and make a difference in our community. From the Pro Bono Bike Pedal to the YOUthFILM Project to the annual dinner,

there is something for everyone in the MBA YLS to contribute to and enjoy.

Throughout the coming year we will continue to offer and promote our core events, opportunities and values. In addition, we are looking forward to offering new networking opportunities that include events such as cooking classes that past-president Duke Tufty identified as a popular suggestion through our 2012-13 membership survey. We are also planning our first annual Wills for Heroes event, where the YLS will prepare 100 wills for local first responders. This national program, developed by the ABA Young Lawyers Division, will debut in Oregon this fall. Additionally, we are enthusiastic to work with our local specialty bars to promote inclusion and diversity.

As we begin our 2013-14 MBA calendar year, I welcome all ideas and input about ways to improve our programs and increase membership involvement. Please feel free to contact me via email (tray@barran.com) or phone (503.276.2115) with any suggestions or comments. I would like to thank Barran Liebman for their support over the next year; Richard Vangelisti, our MBA President, for his inclusion and backing of the Young Lawyers Section; Kathy Modie for all of her guidance and organization; and the 2013-14 Young Lawyers Section Board, who bring so much energy and innovative suggestions to our association. I look forward a great year!

YLS Horoscope

The warmer weather brings new adventures and acquaintances your way. Take time to enjoy these new pursuits, but beware false friends and cumbersome clients. As long as you do right, you will prevail.

Risks taken this month will pay off multifold in the year to come, so long as you see them through to completion. Now is the time to tackle any unfinished projects. Doing so will bring you peace and prosperity.

webcheck

Sign the 2013 Pro Bono Pledge and commit to taking at least one pro bono case this year. <http://mbabar.org/AboutUs/ProBono.html>.

New YLS Officers Elected One year terms began July 1

Traci Ray, YLS President for 2013-14, works at Barran Liebman, where she is the Executive Director. She graduated from the U of O School of Law in 2007 and passed the bar that same year. Traci has been actively involved in the YLS, serving as a member of the Pro Bono Committee in 2009, co-chair of the Professional Development and Education Committee in 2010, and on the board since 2011. Traci votes as the MBA YLS Delegate to the ABA and serves on the OSB Pro Bono Committee. She is a board member with ROI Portland, an instructor at Portland Community College, and a member of the Legal Marketing Association.



Jeanne K. Sinnott

Jeanne K. Sinnott, YLS President-Elect, is an associate with Miller Nash LLP and practices in the areas of debtor-creditor litigation, real estate

litigation and bankruptcy. Jeanne graduated from Lewis & Clark Law School and was admitted to the OSB in 2007. She joined the YLS Service to the Public Committee in 2009 and served as the committee chair in 2010-11. She co-chaired the YLS Imprint Program in 2009 and 2010. She has also volunteered with Lewis & Clark's Practice Interview Program.



Valerie Colas

Valerie Colas, Treasurer, graduated from the University of Miami School of Law and was admitted to the OSB in 2009. She works at the Office of Public Defense Services representing parents in juvenile dependency appeals. Valerie chaired the YLS YOUthFILM Project Committee in 2010-11. She joined the YLS Board in 2011 and served as the board secretary in 2012-13. She also served on the YLS

Membership Committee and as a court tour guide for the Classroom Law Project.



Micah R. Steinhilb

Micah R. Steinhilb, Secretary, graduated from Lewis & Clark Law School and was admitted to the OSB in 2008. He is an associate with Gordon & Polscer LLC and practices in the areas of insurance, products liability, construction defect and environmental law. Micah joined the board in 2012 and chaired the YLS Professional Development and Education Committee in 2011-12. He is an adjunct professor at Lewis & Clark Law School, a past editor of the Environmental & Natural Resources Section *Case Notes* Newsletter and serves as a mentor with Lewis & Clark Law School.

Duke Tufty, Wyse Kadish, continues on the YLS Board as past president.

YLS Board Changes

by Traci Ray
YLS President

Change is in the air! As we welcome summer and begin our new 2013-14 board terms, the YLS would like to recognize **Amy Hoven's** contributions to the YLS and thank her for her hard work and dedication over the years. Amy joined the YLS Futures Committee in 2008, chaired the committee in 2010-11 and joined the YLS board in 2011. Amy recently resigned from the board, and although we

will greatly miss her, we wish her well and look forward to seeing her at YLS events.

Jovita Wang has been appointed to fill the vacancy left by Amy. Welcome Jovita! Jovita is an associate at Miller Nash and focuses her practice on business, commercial and employment litigation. She graduated from the University of Washington School of Law in 2010 and passed the Oregon Bar that same



Jovita Wang

year. She joined the YLS Pro Bono Committee in 2011, and most recently served as chair in 2012-13.

Wills for Heroes

The YLS is adopting the ABA's Wills for Heroes program. On Friday, October 4, we will provide four essential legal documents (Simple Will, Power of Attorney, Advance Directive and HIPAA Release) free of charge to 100 of Oregon's first responders, including police officers, fire fighters, EMTs and search & rescue. By helping first responders plan now, we help them ensure their families' legal affairs are in order. The Wills for Heroes Foundation is a 501(c)(3) charitable nonprofit and it supports these programs, giving back to the community and "protecting those who protect



us." Since November 2001, the Wills for Heroes program has provided more than 7,000 estate planning documents nationwide, and this will be Oregon's first partnership with the well-established program.

Disability Rights Oregon Pro Bono Spotlight

by Michael Fuller
YLS Pro Bono Committee

This month's spotlight focuses on the pro bono work performed by attorneys at Disability Rights Oregon (DRO) Special Education Advocacy Program.

The program's mission is to help children with disabilities receive the special education services they require. Volunteer attorneys draft and file complaints with the Oregon Department of Education (ODE) on behalf of their clients. Complaints referred to attorneys through the program are limited to fairly straightforward violations of the Individuals with Disabilities Education Act.

The attorney-drafted complaints are eventually assigned to an investigator and later adjudicated by an ODE legal specialist. Complex or novel issues are handled by DRO's staff attorneys, often through mediation or due process hearings.

"Although parents who address the failures of the special education system through due process hearings can recover attorney's fees when they win, resolution can take up to a year," says Joel Greenberg, a staff attorney at DRO. "Our new program allows parents to work with volunteer attorneys to file complaints directly to the ODE. The ODE complaints are typically resolved in two to three months," he says.

Before the implementation of the program, complaints were often being drafted by parents who were emotionally involved but without the technical knowledge to effectively advocate legal positions.



MBA member attorney Shenoa Payne was active in the creation of the program. "I've always had an interest in working with individuals with disabilities," says Payne. "Due to cuts in federal funding, DRO appreciates the help of volunteer attorneys now more than ever."

Before law school, Shenoa had experience working for children with disabilities as a behavioral therapist for children on the autism spectrum. She worked in and around various group homes and camps and says she knew she wanted to continue advocating for individuals with disabilities in her career as an attorney. "It seemed like the perfect fit," she says of her decision to clerk with DRO in law school. "I knew I wanted to work in public interest and DRO provided plenty of opportunities to help individuals with disabilities."

As a law clerk, Shenoa helped DRO clients obtain various accommodations, from securing adequate theatre seating to allowance of service animals on public transit. After passing the bar and joining the MBA YLS Pro Bono Committee, she began investigating ways to expand DRO's pro bono volunteer opportunities for lawyers.

Shenoa helped develop what would eventually become the Special Education Advocacy Program with DRO's administration and

special education attorneys in September 2012.

"Attorneys Tasha Cosimo, Joel Greenberg, Chris Shank and I started thinking of ways to operate a program of pro bono volunteers with no real permanent staff. In

late 2012 we started setting up timelines and set out to draft a program manual," says Shenoa.

The program, which held its first attorney training sessions in April and May of 2013, is set to officially launch in the fall. "Drafting the training manual proved to be a considerable undertaking. Unlike the DRO attorneys, I had no real experience or knowledge of substantive educational law. It was a real learning experience at first," Shenoa said.

The manual is now complete and provides everything a new volunteer attorney will need to participate in the program. "We included information on the substantive law the attorneys will be working with, laid out the program requirements, and included tips for drafting complaints and working with parents or guardians to gather facts," says Payne.

The program is currently in the attorney training and recruitment process. Case assignments will start in the fall. Shenoa says volunteers might expect to spend 10 to 20 hours on a project.

Attorneys with questions or interest in the program are encouraged to contact DRO now, as fall and spring are peak seasons of need in the special education field. To register for the upcoming training session, email DROSpEdAdvocacyProgram@gmail.com.

Charley Gee YLS Public Service Spotlight

by Nadia Dahab
YLS Service to the Public Committee

Before he was invited to coach the mock trial team at Franklin High School in Southeast Portland, Charley Gee had never participated in a mock trial team and had never really considered the opportunity to coach a team as a practicing attorney. For a number of years, he had volunteered as a judge for a mini-mock trial practice tournament. But as these things often go, volunteering at that annual event eventually turned into one of the most rewarding opportunities that Gee has had yet in his legal career.

Gee is now an attorney at Swanson, Thomas, Coon & Newton in downtown Portland, where he also worked as a clerk before deciding to attend law school. He practices personal injury law. He graduated from the University of Oregon School of Law in December 2010, and soon after became involved in the MBA Young Lawyers Section and the Oregon Trial Lawyers Association. He currently chairs the YLS Futures Committee.

But in his free time during the mock trial season, which runs between September and February, Gee volunteered to coach mock trial at Franklin High. As a coach, Gee worked with three other attorney coaches and about 20 students. During the weeks leading up to the trial, he met twice a week with the students, coaching them on everything from breaking statutes down into elements, to applying the evidence code, to full practice trials. Over



Charley Gee

that time, he also spent significant hours working with students one-on-one, helping them to improve their trial techniques and their case analyses.

One of the most rewarding parts of coaching mock trial, according to Gee, is being able to see the students develop their skills over the course of the program. "They go from being shy and clueless about conducting a trial to being effective little trial lawyers," said Gee. "High school kids without legal training can come up with some pretty amazing evidentiary issues that, as an attorney, you would never even think of." In that way, Gee explained, coaching the mock trial team has in many ways also helped him improve his own legal skills.

Gee would encourage attorneys looking for a great opportunity to work with kids to volunteer either as a coach or as a judge at the mini-mock practice tournament in the fall. For more information on those mock trial events, visit www.classroomlaw.org.

YLS Summer Social

The Third Annual YLS Summer Social was held on June 27 at Red Star to celebrate the hard work of YLS committee chairs, members and volunteers. Outgoing board members and committee chairs were thanked for their leadership. Appetizers and refreshments were enjoyed. Over 70 people attended the event. Thank you Mackenzie Hogan for emceeding the event and thank you to everyone who attended!

Thank you to Barran Liebman and Miller Nash for supporting this event.



Andrew Schpak, David Salerno Owens, Laura Salerno Owens and Kim Sugawa-Fujinaga



Duke Tufty, Dan Simon and Miyuki Yoshida

Pro Bono Pedal Saturday, September 7th

by Andrew Ginis
YLS Pro Bono Committee

Please join us for the 3rd Annual Pro Bono Pedal, a fun cycling event to benefit the Volunteer Lawyers Project (VLP) at the Portland Regional Office of Legal Aid Services of Oregon. The ride itself is a fun route through Southeast neighborhoods, featuring gorgeous views of Portland from Mt. Tabor. Riders, family, friends, and other non-riders are invited to join the after-party at Coalition Brewery for great food, music and a no host-bar. A portion of bar receipts is donated to VLP.

For more information or to register, please see the enclosed flyer or visit www.mbabar.org.

Interested in becoming a sponsor? Contact Ryan Mosier at 503.222.3275 for information on sponsorship opportunities.



Proposed UTPA Legislation Would Impact Insurance Companies

by Nick Thede
Maloney Lauersdorf & Reiner



Attorneys handling insurance-related matters should keep a watchful eye on the progress of HB 3160-A as the current legislative session draws to a close. The bill would amend the Oregon Unfair Trade Practices Act (UTPA), ORS 646.605 *et seq.*, to provide a private cause of action against an insurance company based upon the handling of a policyholder's insurance claim. The proposed law would allow policyholders to seek actual or statutory damages and attorney fees under the UTPA in actions against their insurer. Under certain conditions, it would also provide the court with discretion to award punitive damages and equitable relief.

Insurance companies, including property, casualty, and health insurers, are not currently subject to liability under the UTPA. Additionally, under current Oregon law, extra-contractual damages are not typically available to policyholders in first-party insurance litigation. The virtual exemption from extra-contractual liability that insurance companies currently enjoy would be erased if the amendments to the UTPA are passed by the legislature and signed into law by the governor.

HB 3160-A would accomplish this by adding violations of the Unfair Claims Settlement Practices Act (UCSPA), ORS 746.230, to the laundry list of conduct that is actionable under the UTPA. The UCSPA prohibits insurance companies from engaging in a number of claims handling practices, including failing to promptly determine whether a claim is covered, refusing to pay a claim without conducting a reasonable investigation, compelling an insured to initiate litigation to recover benefits, and not providing an explanation of the basis for denying a claim. As it currently stands, the UCSPA does not provide a private cause of action for policyholders. Its inclusion in the UTPA would change that, and violations of the UCSPA would subject insurance companies to liability for damages under the UTPA.

Attorneys have expressed concern over the potential scope of liability under the UTPA if the proposed legislation becomes law. The concern lies with language contained in the proposed legislation that

could be construed to impose personal liability on attorneys and other professionals hired by insurance companies during the claims process. Although the Senate committee considered a number of amendments relating to attorney liability, none of those amendments were adopted. If the current version of the bill becomes law, the issue of attorney liability will be left to the courts to decide.

Both proponents and opponents of HB 3160-A compare the proposed amendments to laws in Washington that provide extra-contractual remedies for policyholders. In Washington, insurance companies are subject to the provisions of the Consumer Protection Act,

RCW 19.86 *et seq.*, and the Insurance Fair Conduct Act, RCW 48.30 *et seq.* Each of the Washington laws provides extra-contractual remedies, including treble damages and attorney fees, in litigation arising out of the handling of insurance claims. Washington courts also recognize a common law tort action arising from the handling of insurance claims. Proponents of HB 3160-A argue that the Washington statutes have proven necessary to adequately protect consumers. Opponents, on the other hand, argue that the Washington statutes have led to an unreasonable rise in litigation, costs, and ultimately insurance premiums.

The legislature has attempted to pass similar measures in prior sessions only to see the bills die in committee. However, several lawmakers have placed considerable political clout behind HB 3160-A in a concerted effort to pass the amendments to the UTPA. In April, the House of Representatives passed HB 3160-

A by a vote of 33-27. On June 4th, the Senate Committee on General Government, Consumer and Small Business Protection voted to recommend passage of the bill and referred it to the Committee on Rules, where it is currently pending. It remains to be seen

if the bill will be put to the full Senate. Regardless of your stance on HB 3160-A, this is a bill that is certainly worth watching as the 2013 legislative session draws to a close.

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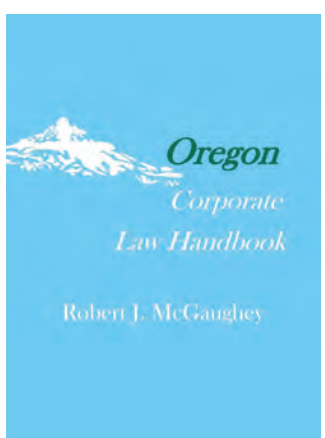


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OSB Forms New Section Military and Veterans Law

by Chris Kent
Kent & Johnson



In November of 2012, in response to the increasing legal needs of Oregon service members and

their families, the OSB Board of Bar Governors authorized the establishment of a new section for military and veterans law.

The History

This is not the first time that the bar has had a military and veterans law section. An earlier Military & Veterans Affairs Section was active for many years but was abolished in 2000, following years of declining enrollment. On September 11, 2001, the world

changed and America has been at war since that time. As a result, our state has seen a dramatic increase in the number of service members and veterans who need legal assistance. In addition, federal law changes have opened the door to private bar involvement in legal work for veterans. As a section, our numbers are still small but growing, and we invite you to join us in promoting and serving the legal needs of those who have served for the benefit of us all.

The Need

There are no records of the number of Oregonians who have served, or are currently serving in active duty. There are records of deployments of the Oregon

National Guard and reserve units in the state. Since 2001, Oregon National Guard and reserve units have deployed multiple times. Presently, we are facing FIVE active-duty deployments from Oregon's 41st Infantry Brigade Combat Team. These will include a deployment of nearly 1,500 soldiers in 2014, which is the state's second largest deployment since WWII. Again, this does not include Oregonians already on active duty. The fact of the matter is that America has now been at war longer than any other time in its history. Undoubtedly, WWII was more intense and involved all citizens. However, the total number of troops deployed to combat areas in the last decade numbers in the hundreds of thousands.

These serial deployments create all kinds of issues for our legal system: criminal prosecutions involving veterans, divorce, employment discrimination, lender abuse, and of course disability claims. On the disability claims side alone, there are over 600,000 backlogged claims with the Veterans Administration. Not a week goes by that a major newspaper doesn't write some editorial or information piece about the delay and the injustice facing service members with disability claims.

Many Oregon employers, banks, other institutions, and lawyers are unaware of the rights under federal laws like USERRA, SCRA and other statutes.

The Mission

The mission of this section is to provide more legal help to Oregon's service members and their families, to help train lawyers in the claims process and other areas, and to lobby the legislature for appropriate changes to statutes affecting service members.

One of our immediate concerns is to increase the number of experienced practitioners who could help represent Oregon veterans in the claims process.

When a service member is deployed, he or she often leaves behind a spouse, children and other family members who have legal needs that have arisen as a direct result of the deployment.

What You Can Do

The first order of business is to get the word out about this section and to attract as many members as possible. You do not need to be a veteran or service member to be a member of the section. A concern for the issues and desire to help is all that is necessary.

Your involvement will help us gather funds for training and develop education programs that will help us provide better representation to Oregonians.

How to Join

If you are interested in joining this section, please go to www.osbar.org/store/db/dbhome.asp. Thank you for your support.

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Positions

Established Mid-Size

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The Oregon State Bar is looking for someone who will be a contributor to the Public Affairs program. The Bar invites all interested applicants to submit a cover letter & resume. Please visit www.osbar.org/osbcenter/openings.html for job details. Equal Opportunity Employer.

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The Portland office of **Bullivant Houser Bailey**, is seeking a highly motivated litigation associate with 2 to 4 years of experience in casualty litigation, including asbestos and products liability. This position involves all phases of litigation and includes drafting pleadings and discovery, managing files, and handling hearings, depositions, arbitrations, and trials. The qualified candidate will have:

- An exceptional academic record, along with excellent oral and written communication skills.
- Strong legal research, analytical and problem-solving skills.
- The ability to handle a file from intake to trial with minimal supervision.
- A willingness and desire to engage in business development activities.

Applicants must be admitted to practice in Oregon. Washington bar admittance a plus.

Please send cover letter, resume, transcript and writing sample to Jill Valentine, Attorney Services Administrator, Bullivant Houser Bailey, PC, 300 Pioneer Tower, 888 SW 5th Ave., Portland OR 97204 or email Jill.Valentine@Bullivant.com.

Insurance Coverage Associate

The Portland office of **Bullivant Houser Bailey** is seeking an attorney with at least three years' experience practicing in the area of insurance coverage to join our Portland insurance coverage team. Applicants must have exceptional legal research and writing skills, and be eager to assume responsibility. This position involves all phases of litigation including case management, motion practice, discovery, arbitrations, appraisals, and trials. It also involves non-litigated insurance coverage work including research, writing opinion letters, and advising insurers on their obligations with respect to claims and claim-handling. Admission to the Washington bar is desirable.

Qualified applicants should send a cover letter, resume, transcript and writing sample to Jill Valentine, Attorney Services Administrator, Bullivant Houser Bailey, PC, 300 Pioneer Tower, 888 SW 5th Ave., Portland OR 97204 or email to Jill.Valentine@Bullivant.com.

Legal Publications Attorney Editor

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Please visit www.osbar.org/osbcenter/openings.html for job details.

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Patent Associate

Stolowitz Ford Cowger LLP is currently seeking well qualified Associates to join our firm, located in Portland Oregon. Applicants having at least two years of patent prosecution experience, registered to practice before the USPTO, and holding a Bachelor of Science degree in Electrical Engineering or Computer Science, are encouraged to submit a resume and writing sample to Christine Pavlyk at info@stofoco.com.

Associate Attorney

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Margaret Madison Phelan PS, in Vancouver WA is looking for an attorney with approximately three years' experience. Our two attorney law firm needs another attorney to help us meet the needs of our growing client list. Please visit our web page for more information (www.madphelan.com). We're looking for an attorney who wants to make our firm their future.

To apply for this position, please apply by email to resumes@madphelan.com. The subject line must include your name along with the job position. Attach your resume and cover letter in .pdf format. Please discuss life experiences that are related to this position, any relevant legal projects you have worked on and your connection to Clark County. For example, discuss any business, Medicaid, trust, probate, guardianship, tax, estate planning or fiduciary background. Please also include your current salary, your annual salary requirement, undergraduate GPA, law school GPA, complete work history, law school class percentile and the date you passed any state bar examinations.

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mba|EVENT

MBA Family & Friends Golf Event

Friday, July 19
McMenamins Edgefield, Troutdale

Bring clients, family and friends and enjoy 9 holes of short par 3 golf in a relaxed setting. This fun, casual event is ideal for new golfers, non-golfers and children. A putter and pitching wedge are the only clubs needed and may be rented at the course for \$2 each. There will be a putting contest, raffle for the VLP and fun prizes. Stay after golf for the raffle, awards and no-host food and drink. Co-sponsored by the OWLS Foundation. Prizes sponsored by Aufdermauer Pearce Court Reporting. Space is limited. Adults \$25, children under 17 \$10. Tee times begin at 2 p.m.

Please register by July 12 at mbabar.org or contact Pamela Hubbs at 503.222.3275.

MBA Annual Meeting

Continued from page 1

Thank you to MBA Annual meeting sponsors

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Justice David Brewer presents Doug Bray with his award



Duke Tufty with YLS award recipients Cindy Gaddis, Andrew Ginis and Alison Pear



Richard Vangelisti with Pro Bono Award recipients Whitney Yazzolino and Julie Lohuis

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Greg Moawad with MBA Merit Award recipients Eric Dahlin and Andrew Schpak



Greg Moawad with Pro Bono Award recipient Mary Lou Haas

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Employers Required to Provide Notice of Insurance Exchange

by Steve Doty
NW Employee Benefits, Inc.
MBA Health Plan Administrator

Beginning January 1, 2014, individuals and small employers will have access to medical insurance plans offered through a new "Health Insurance Exchange." In the State of Oregon, the Exchange is called "Cover Oregon." Open Enrollment for coverage through the Exchange begins October 1, 2013. The Affordable Care Act (ACA) amends the Fair Labor and Standards Act (FLSA) to require that employers provide all new hires and current employees with a written notice about the health insurance Exchange (Cover Oregon) and some of the consequences if an employee decides to purchase a qualified plan through the Exchange in lieu of the employer sponsored coverage. **This notice is required to be distributed to all current employees no later than October 1, 2013 and to all newly hired employees at the time they are hired.**

Employers Subject to the Notice Requirement

The Notice of Exchange requirement applies to employers that are subject to the FLSA. Although the FLSA's minimum wage and maximum hour provisions are generally limited to entities that are engaged in interstate commerce and have a gross annual volume of sales that is not less than \$500,000, the Notice of Exchange does not have the same limitation.

Employers who must comply are determined by the FLSA's broad, general definition of "employer," which includes "any person acting directly or indirectly in the interest of an employer in relation to an employee." The employees of any employer within this definition will be subject to the Notice of Exchange. This simply means that an individual employed by an employer must receive a Notice of Exchange. The only exceptions are those employed by a public agency, immediate family members engaged in agriculture and certain persons who provide services as a volunteer.

Content of Exchange Notice

In general, the Exchange notice must:

- Inform employees about the existence of the Exchange and describe the services provided by the Exchange and the manner in which the employee may contact the Marketplace to request assistance;
- Explain how employees may be eligible for a premium

- tax credit or a cost-sharing reduction if the employer's plan does not meet certain requirements;
- Inform employees that if they purchase coverage through the Exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of this employer contribution may be excludable for federal income tax purposes; and
- Include contact information for the Exchange and an explanation of appeal rights.

Model Notice Available

On May 8, 2013, the Department of Labor (DOL) released Technical Release 2013-02 to provide temporary guidance on the Exchange notice requirement. This temporary guidance will remain in effect until the DOL issues regulations or other guidance. According to the DOL, future regulations or other guidance will provide employers with adequate time to comply with any additional or modified requirements.

The DOL has provided a model notice for employers to use. There are two notices, one for employers who offer employer-sponsored health insurance and a second notice for employers who do not offer employer sponsored health insurance.

Both of these Model Notices are available on our website at www.nwebi.com. Click on the "Federal Health Insurance Reform" link to access the model notices.

Providing the Notice

Employers must provide the Exchange notice to each employee, regardless of plan enrollment status or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

Employers must provide the Exchange notice to both new hires and current employees as follows:

- **New Hires** – Employers must provide the notice to each new employee at the time of hiring beginning **October 1, 2013**. For 2014, the DOL will consider a notice to be provided at the time of hiring if the notice is provided within **14 days** of an employee's start date.
- **Current Employees** – With respect to employees who

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For more information, contact:

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- Oregon Dental Service (ODS)
See any dentist
- Willamette Dental Plan
Can be purchased by itself
- Vision Service Plan (VSP)

On the website, click on "Benefits Login."
The password is: **MBA** (all caps).

are current employees before October 1, 2013, employers are required to provide the notice no later than **October 1, 2013**.

Method of Providing the Notice

The notice is required to be provided automatically, free of charge. The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

This safe harbor allows plan administrators to send certain disclosures electronically to:

- Employees with work-related computer access; and
- Other plan participants and beneficiaries who consent to receive disclosures electronically.

The safe harbor does not require the use of any specific form of electronic media. However, plan administrators are required to use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries. Merely placing a disclosure on a company website available to employees will not by itself satisfy this disclosure requirement.

Revised COBRA Notice

In addition, the DOL's temporary guidance includes a new COBRA model election notice, which has been updated to include information regarding health coverage alternatives offered through the Exchanges. This new model COBRA notice is also available on our website, www.nwebi.com.

MBA First Thursday Joint Social with Specialty Bar Associations

About 100 people gathered at Perkins Coie for the "First Thursday" social on June 6 at Perkins Coie. Attendees heard from state and local bar associations that support and celebrate diversity in the legal profession and enjoyed drinks and light finger foods before heading out into the Pearl District to participate in First

Thursday festivities. Thank you to Cheryl Coon, OSB Disability Section; Kendra Matthews, OWLS; Ali Seals, OR-NBA; Trish Walsh, OGALLA; Ramón Pagán, OHBA; Rima Ghandour, MBA Equality & Diversity Committee; and Kim Sugawa-Fujinaga, OAPABA for attending and speaking on behalf of your organizations.



First Thursday Social attendees

Thank you Perkins Coie for hosting the event.
Thank you Farleigh Wada Witt for sponsoring the event.
Thank you By Design Legal for sponsoring the wine at the event.

mba | EVENT

MBA Wine Crush

Saturday, October 5
Hawks View Cellars
20210 SW Conzelmann Rd.
Sherwood
1-4 p.m.



Please join us at scenic Hawks View Cellars for a discussion with the winemakers about the crush season and grape harvesting process, followed by a crush demonstration. The cost of \$25 per person includes appetizers, the crush demonstration, and a wine tasting of the Hawks View wine lineup. Additional glasses of wine and bottles will be available for purchase as well.

Register at <https://mbabar.org/calendar/event/394-MBA-Wine-Crush> or contact Kathy Modie at the MBA at kathy@mbabar.org or 503.222.3275.

Pro Bono Volunteers

Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, and Children's Representation Project. To learn more about pro bono

opportunities in Multnomah County, go to www.mbar.org and click on "About Us" and "Pro Bono."

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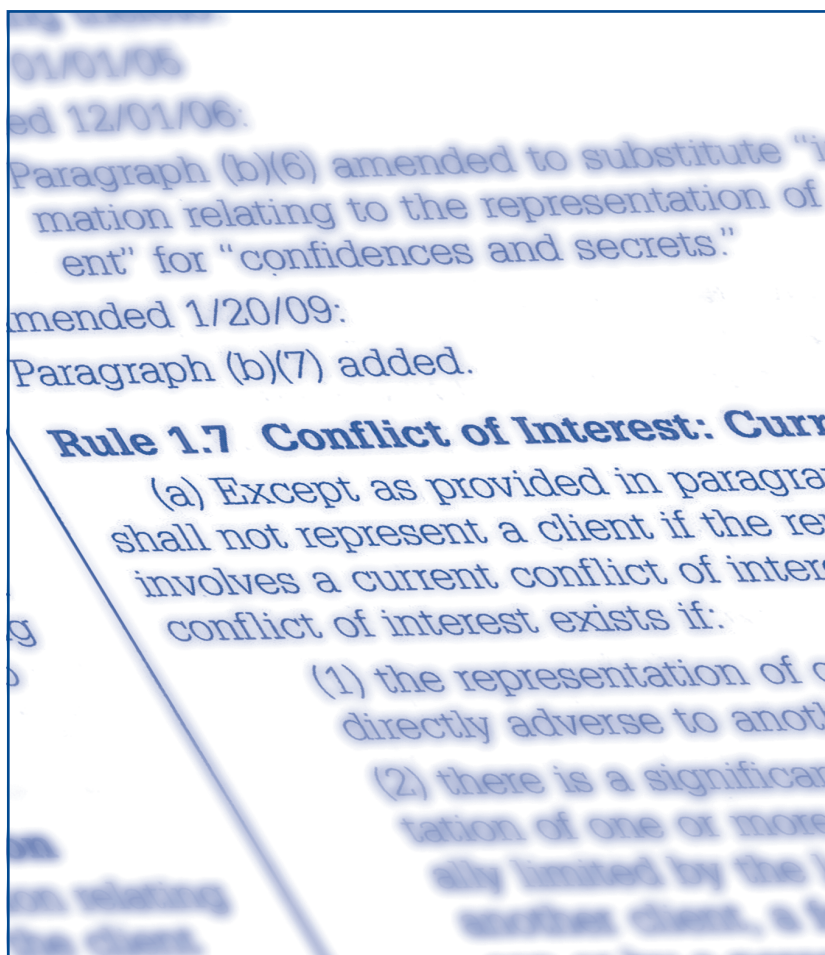
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An Update from Grantee SOAR

by Caroline van der Harten
Immigration Program Manager/Attorney
Sponsors Organized to Assist Refugees

“I was so proud to cast my ballot for the first time.”

Thanks to funding from the Multnomah Bar Foundation, Sponsors Organized to Assist Refugees (SOAR) has been offering the Voter Education Project to low-income newly naturalized citizens since 2011. This past year of the Voter Education Project was particularly exciting as clients were not only learning about

the electoral process, but also voting in the 2012 presidential election. “I was so proud to cast my ballot for the first time,” said one of SOAR’s prior participants. Through this project, SOAR provides monthly classes, during which participants register to vote and learn about voting in Oregon - what it means to vote, how to read a voter’s pamphlet, where and when to vote.

Refugees and immigrants represent approximately 13%

of Portland’s population. Immigrants naturalize for a variety of reasons, including the ability to petition to bring certain family members to the US, the ability to travel freely and better access to jobs. Prior to offering the Voter Education Project, clients typically did not list voting as the primary reason for naturalization. According to the



Immigration Policy Center, only 60.5% of naturalized citizens register to vote. Out of all registered voters in Oregon, only 5.8% are naturalized Americans.

Many of the participants in SOAR’s classes entered the US as refugees, and had previously been unfamiliar with any form of meaningful civic participation.

The Voter Education Project promotes civic involvement, voter engagement, and immigrant integration among Portland’s newest American citizens.



Ecumenical Ministries of Oregon’s SOAR Immigration Legal program provides culturally competent immigration-related legal representation and education to low-income refugees and immigrants in and around the Portland area. SOAR’s Legal program was established in 1992 and is recognized by the Board of Immigration Appeals (BIA) as an authorized provider of immigration legal services.

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