



Unlocking the (Apparently) Little-Known Benefits of MBA Membership

by Dana Sullivan
MBA President

Because a focus of my presidency has been on enhancing the benefits that the MBA offers to support its members, I have questioned members throughout the year about what benefits they would like to see the MBA provide. If I had a dollar for every time that a current member responded by saying, “it would be great if the MBA provided...” and went on to describe a benefit already available to our members, my kids’ college tuition would be squared away.

While perhaps I exaggerate, it is evident to me that while all of our members know that they can look to the MBA for high-value CLEs and networking and social events with colleagues and judges, many are unaware of member discounts and other tangible benefits that can more than offset the \$130 cost of membership. The MBA needs to step up efforts to get the word out to members about those practical ways that membership can help make running your business easier and more cost-effective.

So, What Are the Benefits Currently Available to MBA Members?

MBA Health, and Long-Term Care Insurance Plans

MBA members who have at least one W-2 employee are eligible to participate in group health and long-term care insurance plans structured specifically for lawyers and law firms. In April the plans will renew, and many of the plans are experiencing a reduction in premiums. For more information, contact Steve Doty of Northwest Employee Benefits at 503.284.1331.

Legal Northwest Staffing Specialists

MBA Members receive discounted pricing on direct hire positions and also receive a quality of service guarantee. Placement fees are partially credited if the placement doesn’t work out. Fees are credited on a sliding scale depending on the amount of time spent in a position. For more information, contact Anneke Haslett of Northwest Employee Benefits at 503.276.7313.

Ruby Receptionists

This is a new benefit, added this year. Ruby Receptionists provides virtual receptionist services for small firms and solo practitioners. MBA members receive a 6% discount on monthly plans, the \$95 setup fee is waived and members receive unlimited free voicemail. For more information, contact Ruby Receptionists at 866.611.7829.

NAEGELI Deposition and Trial

Naegeli offers MBA members discounts on court reporting and trial presentation services, including video conferencing and videography. For more information, contact Naegeli Reporting at 503.227.1544.

LexisNexis

LexisNexis offers special packages and pricing exclusively for MBA members in solo or small firms. For more information, contact Megan Tower-Humphrey of LexisNexis at 503.309.5294.

Bank of the Cascades

A long-time MBA partner, Bank of the Cascades offers our members discounted and VIP banking services designed specifically for attorneys. For more information, contact Elise Bouneff of Bank of the Cascades at 503.499.5931.

LawPay

LawPay offers access to low-fee merchant credit card services. For MBA members, the minimum contract period for MasterCard and Visa services is waived. For more information, contact LawPay at 866.376.0950.

Office Depot

MBA members receive up to a 40% discount on office supplies. See the MBA website for more details and contact information.

The Bar Plan

If you are an MBA member in need of securing a bond, this service provides access to simple and cost-effective court bond purchasing. For more information, contact Cathy Ahearn or Debbie Eller of The Bar Plan at 877.553.6376.

UPS

UPS offers MBA members discounts on express shipping. See the MBA website for more details and contact information.

MBA Conference Room

In addition to the services that the MBA offers through partnerships, we also offer free use of the MBA conference room to MBA members when it is not in use for MBA business. For more information see the ad on p. 13 of the newsletter, or call the MBA at 503.222.3275.

We Would Like to Expand These Benefits and We Need Your Input

As I explained in my last column, published in the November *Multnomah Lawyer*, the MBA has formed a Solo and Small Law Firm Committee tasked with developing programs and services of value to small firms and solo practitioners. We are launching this programming with a kickoff event from 5-7 p.m. on April 2 at the Red Star Club Room in downtown Portland. While the committee is putting together some wonderful programs that will provide small firm practitioners an opportunity to network and share ideas about best practices in business, financial management and client service, it is very important to us to hear from members what programs and benefits would be of particular value. To that end, we will be distributing a survey prior to the April kickoff event that will give members the opportunity to provide feedback not only about topics of interest for group discussion, but also about services that would help make your practices more efficient and cost effective.

Please keep an eye out for the survey and respond once you receive it. If you do, it may be that my successor can publish an even longer list of MBA membership benefits this time next year.

mba|CLE

To register for a CLE, please see page 3 or go to www.mbabar.org and log in as a member to register at the member rate.

MARCH

3.11 Wednesday

Family Law Update

Judge Maureen McKnight
Tom Bittner
Gary Zimmer

3.18 Wednesday

Presenting Expert Witnesses at Trial

Judge Karin Immergut
Bonnie Richardson
Renee Rothauge

3.19 Thursday

Assisted Reproductive Technology Law for Practitioners

Robin Pope
Beth Wolfsong

3.31 Tuesday

Animal Law Are Neglected Animals Personal Property or “Victims”?

Andrew Freeman
Denise Lukins

APRIL

4.8 Wednesday

Buying, Selling, or Transitioning in or out of Law Practice

Hong Dao
Roger Delles
Barbara Fishleder
Mark Fucile
David Winstead

4.23 Thursday

Washington & Clackamas County Courts Update

Judge Charlie Bailey
Judge Robert Herndon

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mba|EVENT

MBA Small Firm Committee

“How to Make Your Small Firm Successful”

Thursday, April 2
Red Star Club Room
503 SW Alder, Downtown Portland
5-7 p.m.

The MBA Small Firm Committee invites you to a free kickoff event for the committee’s new program. Enjoy complimentary appetizers, socialize and meet other attorneys who work at small firms, and learn about upcoming workshops designed specifically to help your small firm succeed.

RSVPs appreciated.
Contact shannon@mbabar.org.

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WinterSmash Raises Over \$19,000 for Multnomah Courtcare

by Kathy Modie
MBA Director, Events & Programs

What better way to raise money for a good cause than with a night of family fun, bowling, raffle prizes and a best bowling shirt competition? On Saturday, February 7, over 300 MBA members and their families participated in the MBA's 13th Annual WinterSmash fundraiser at AMF 20th Century Lanes in Portland.

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

Best team score and the coveted bowling trophy went to the Barran Liebman team, with their top three individual scores combined at 517. There were a lot of great bowling shirts again this year. Folawn Alterman & Richardson edged out the competition to win the prize for best shirt with their "Bowable Hours" design.

The prize winner for best individual score went to Lance Stebler from the Harrang Long Gary Rudnick team, with a score of 227.

The team with the most players this year was Bodyfelt Mount, with 37 bowlers signed up. Gevurtz Menashe and Folawn Alterman & Richardson both registered over 30 bowlers. Barran Liebman, Gearing Rackner Engel & McGrath, Gordon & Rees, Harrang Long Gary Rudnick and Wyse Kadish all registered 20 or more bowlers.

The 2015 WinterSmash benefited Multnomah CourtCare, the free drop-in childcare for children of parents who have no other alternative than to take their children with them to court.

Thank you to Harrang Long Gary Rudnick for sponsoring the food and beverages again this year, and to our sponsors and all who participated. Thank you also to the WinterSmash Subcommittee, chaired by Alice Garrett, for planning such a great event. Thank you, Sarah Petersen, Brad Krupicka and Bonnie Richardson for volunteering at the event.

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See WinterSmash photos at mbabar.org/Membership/WinterSmash2015.html.



Barran Liebman bowlers



Folawn Alterman & Richardson bowlers

Calendar

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

MARCH

5 Thursday
YLS Community Service Day
See p. 12

13 Friday
OWLS Roberts-Deiz Awards Dinner
www.oregonwomenlawyers.org

23 Thursday
CLP Legal Citizen of the Year Dinner
www.classroomlaw.org

29 Wednesday
YOUthFILM Screening
See p. 12

MAY

7 Thursday
MBA Annual Meeting & Dinner
Portland Marriott Downtown Waterfront
See p. 6

14 Thursday
MBA Golf Clinic & Networking
RedTail Golf Center
www.mbabar.org

25 Monday
Memorial Day Holiday

APRIL

2 Thursday
MBA Solo/Small Firm Reception
Red Star Club Room
See p. 1

22 Wednesday
Administrative Professionals Day

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Providence	30 doctors, 1 nurse

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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.

Annual Family Law Update

Wednesday, March 11, 2015
3:00-5:00 p.m.

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

On March 11 the MBA will hold its annual two-hour Family Law Update. **Chief Family Court Judge Maureen McKnight**, the Chief Family Court Judge for Multnomah County, will be joined by **Thomas Bittner** of Schulte, Anderson, Downes, Aronson & Bittner and **Gary Zimmer** of Zimmer Family Law.

Our speakers will provide family law practitioners with information on changes to Multnomah County Circuit Court procedures well as valuable updates on appellate case law.

For more information:

Call Sarah Brown, Holtey Law LLC at 503.224.9878. For registration questions, call the MBA at 503.222.3275.

Presenting Expert Witnesses at Trial

Wednesday, March 18, 2015
3:00-5:00 p.m.

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

The MBA presents a two-hour “how-to” program on expert witnesses at trial. Our panelists will discuss how to prepare an expert for trial, how to effectively present expert testimony to a jury, and how to cross-examine even the most experienced expert. All trial attorneys should attend this program, which will feature both plaintiff and defense perspectives as well as judicial views and pointers. The program will cover both federal and state-court practice and rules. Our dynamic panel will be **Judge Karin Immergut**, Multnomah County Circuit Court; **Renee Rothauge**, Markowitz Herbold; and **Bonnie Richardson**, Folawn, Alterman & Richardson.

For more information:

Call Seth Row, Parson Farnell & Grein at 503.222.1812. For registration questions, call the MBA at 503.222.3275.

Assisted Reproductive Technology Law for Practitioners

Thursday, March 19, 2015
3:00-5:00 p.m.

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

Expose yourself to a growing area of law: Come learn the basics about family formation law. It is an emerging, collaborative area of law fraught with interesting legal issues. The rights and obligations of intended parents, surrogates and donors need to be weighed and balanced. **Beth Wolfson**, Wolfson Law PC, and **Robin Pope**, Attorney at Law, will provide you with the basics to learn the sources of the relevant law, how to protect clients in the process, ensure the fairness of the process and create agreements that help the parties work together to create a life.

For more information:

Call Michael Hallas, McKinley Irvin at 503.953.1032. For registration questions, call the MBA at 503.222.3275.

Animal Law - Are Neglected Animals Personal Property or “Victims”?

Tuesday, March 31, 2015
3:00-5:00 p.m.

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

Historically, criminal law written to protect animals from abuse and impose punishments for such conduct has treated this as a crime against public policy and the public generally. Following developments elsewhere, with the 2014 decision by the Oregon Supreme Court in *State v. Nix*, animals in Oregon may be “victims” of crimes. This CLE will provide a survey of the intersection between animal law and criminal law at the state and federal level, with reports on recent Oregon cases and a discussion of the shift from animal as the property of the owner to a being with its own rights. Where should we draw the line. . . ?

Speaker **Denise Lukins** is a private practice attorney of 20 years’ experience, an accomplished horsewoman and dog trainer, and is also the hearings examiner for the Clark County and City of Vancouver Animal Control Hearings. As a Deputy District Attorney in Washington County, speaker **Andrew Freeman** has been prosecuting animal abuse and neglect cases for several years. He now serves as co-chair of the Washington County Animal Protection Multi-Disciplinary Team, a community collaboration among regional law enforcement and other government agencies and non-profits organized to address the interaction between animal abuse and other kinds of violence. The MDT has had substantial success investigating and prosecuting animal abuse crimes.

For more information:

Call Leslie Johnson, Kent & Johnson at 503.220.0717. For registration questions, call the MBA at 503.222.3275.

Buying, Selling, or Transitioning in or out of Law Practice

Wednesday, April 8, 2015
3:00-5:00 p.m.

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

Note: This class is worth .5 hours of ethics credit and 1.5 hours of general MCLE credit.

The MBA presents a two-hour program on buying, selling and transitioning in and out of practice. Topics to be discussed include:

- Ethics considerations for buying, selling, or transitioning into or out of a law practice
- Practice management issues related to transitions - determining the condition of a law practice
- Business valuations - components that make a practice valuable
- Alternatives to a strict buy/sell - practical ideas for testing things out
- Practice management considerations
- Tips for a successful transition
- Other important considerations

Our well-qualified panel includes **Hong Dao** and **Barbara Fishleder** of the PLF; **Roger Delles** and **David Winstead** of Professional Practices Group, which specializes in helping professionals buy, sell and transition their practices; and **Mark Fucile** of Fucile & Reising LLP.

For more information:

Call Don Jacobs, Attorney at Law at 360.695.1624. For registration questions, call the MBA at 503.222.3275.

Washington & Clackamas County Courts Update

Thursday, April 23, 2015
3:00-5:00 p.m.

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

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

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

The class will also provide attendees with updates to both Washington and Clackamas County court practices. Printed materials and online resources will be available to provide further assistance to attorneys who may practice in either or both of these counties.

For more information:

Call Cynthia F. Newton, Swanson Thomas Coon & Newton at 503.228.5222. For registration questions, call the MBA at 503.222.3275.

Multnomah County Trial Practices Update

**Thursday, May 21, 2015
3:00-5:00 p.m.**

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

This year's program will feature presentations by Multnomah County **Presiding Judge Nan Waller**, **Chief Family Court Judge Maureen McKnight** and **Chief Civil Court Judge Stephen Bushong**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. The panel will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter.

The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

For more information:

Call Courtney Dippel, Folawn Alterman & Richardson at 503.546.4630. For registration questions, call the MBA at 503.222.3275.

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Registration forms with payment must be received in the MBA office by 3 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.

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Register online and order or download MBA self-study materials at www.mbar.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.

3/11 Annual Family Law Update

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3/18 Presenting Expert Witnesses at Trial

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3/19 Assisted Reproductive Technology Law for Practitioners

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 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

3/31 Animal Law - Are Neglected Animals Property or "Victims"?

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 Class Registration (\$55 Members/\$85 Non)\$ _____
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4/8 Buying, Selling, or Transitioning in or out of Law Practice

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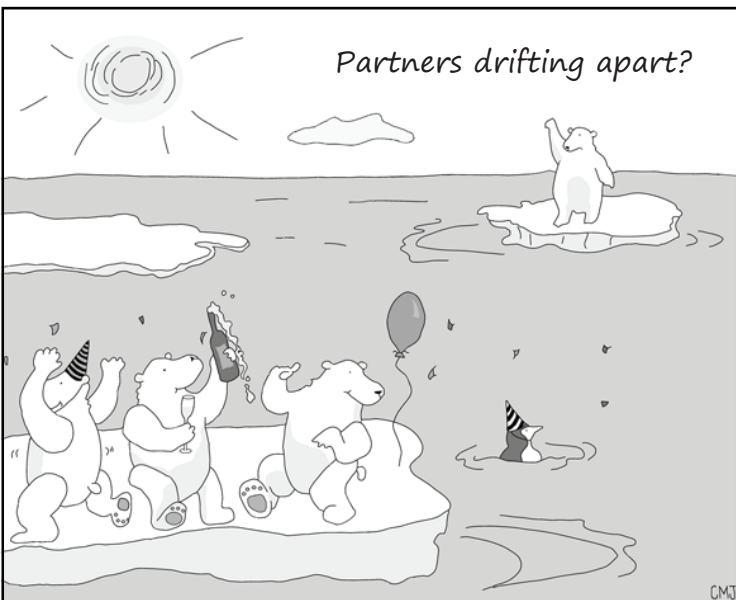
4/23 Washington & Clackamas County Courts Update

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 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

5/21 Multnomah County Trial Practices Update

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AFCC-Oregon to Hold First Conference

by Michael Dwyer
 Dwyer Mediation Center



On April 10, the Oregon chapter of AFCC will hold its first daylong educational conference at the Grotto Conference Center in Portland, devoted to that most challenging subject: Shared Parenting of minor children.

We are delighted to present Leslie Drozd, Ph.D. and Robert Simon, Ph.D., who are nationally prominent forensic experts. They will educate us on the current social science of Shared Parenting, the controversies

and debates, and its limitations. Along with the Hon. Katherine Tennyson, who will offer us her always-insightful views from the bench, we will also explore policy and practices regarding Shared Parenting.

AFCC stands for the Association of Family and Conciliation Courts. It is an interdisciplinary and international association of professionals dedicated to the resolution of family conflict. AFCC members are the leading practitioners, researchers, teachers and policymakers in the family court arena. (www.afccnet.org)

AFCC is dedicated to improving the lives of children and families through the resolution of family conflict. AFCC promotes a collaborative approach to serving the needs of children among those who work in and with family law systems. AFCC encourages education,

research and innovation, and seeks to identify best practices, in order to achieve the best outcome for children and families.

We now have an Oregon chapter of AFCC. Kathy Gillis, Ph.D., is our president. Officers include: Seville Easley (VP), Scott Leibenguth (secretary) and Collin McKean (treasurer). Board members include the Hon. Katherine Tennyson and the Hon. Lauren Holland (Lane County). William Howe, Linda Sherman, Ph.D., Laura Rackner, and Judith Swinney are other Portland professionals on the AFCC-Oregon Board.

We hope you can join us for this exciting, inaugural conference. At a cost of \$125 for AFCC members, this is the best educational value a family law lawyer or mediator could ever hope to find.

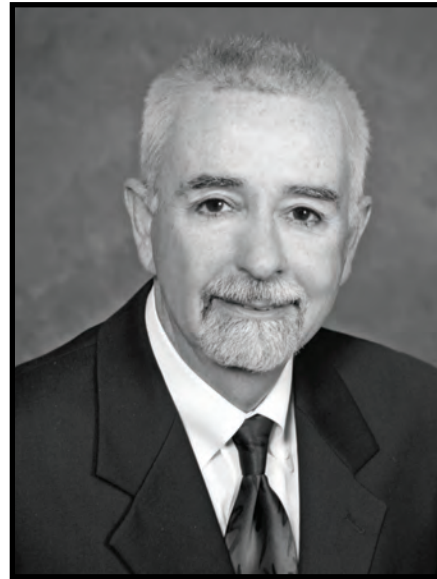
Details and registration information can be found at www.or-afcc.org/index.cfm.

Michael Dwyer is a lawyer-mediator, a past president of the MBA, and member of the AFCC-Oregon Board of Directors.

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SummerWorks Helps Our Community Prosper

by Loren Podwill
Bullivant Houser Bailey

It's important that, as citizens and business leaders, we provide opportunities to youth in our community. I'm proud of Bullivant's partnership with SummerWorks and impressed by the professionalism and enthusiasm of the young adults that have worked with us.

- Loren Podwill

Do you remember your first job? Mine was at a resort in the New York Catskill Mountains (of the movie Dirty Dancing fame). There I learned among other things, to be comfortable communicating with lots of total strangers, a skill that has served me well in my career as a trial attorney.

A teen's first job experiences are crucial to gaining the skills and experience to build an economic foundation and transition to adulthood. But today, only one in four teenagers can find a summer job. That's why two years ago Bullivant partnered with Worksystems, Inc. and their SummerWorks program. Through SummerWorks, local youth - especially those from diverse and low-income communities - can get a paid, 180-hour internship and an on-ramp to career success.

This summer, we had the privilege to work with Inna, a young woman from Ukraine. She arrived with bright eyes, enthusiasm and an interest in the

legal profession. Inna was a quick study and very good with detail - swiftly mastering aspects of our filing system, back office work and phone system. She was eager to contribute and a joy to be around. We set up opportunities for her to job-shadow alongside our paralegals and attorneys to enhance her experience.

We were so impressed with Inna's enthusiasm and diligence during the summer that when we were later planning for our receptionist's parental leave, we decided to give Inna a call. Even though school limited her availability, we worked around this. The intern program, and our positive experiences with it, inspired us to provide the opportunity to a young person in our community. We could have easily gone the typical temporary staffing route. I have to admit, I was a bit nervous but I'm glad we did it.

"I am so thankful for my internship at Bullivant and then being hired by the firm afterwards. Having the opportunity to interact with people in the legal profession has strengthened my desire to become an attorney and it also has given me the tools to progress towards my goal with excitement."

- Inna Voronova



Loren & Inna

Inna has been an exceptional employee, but she is not alone. There are many youth in our community with potential who just need opportunities to learn critical workplace skills that can only come through real work experience. Over the last decade, teenagers and young adults have experienced the steepest drop in employment rates. You can make a difference. I encourage my colleagues to learn more about the program and consider opening your office this summer to a SummerWorks intern.

SummerWorks is a youth workforce development initiative of Worksystems, Inc., a non-profit organization that pursues and invests resources to improve the quality of the workforce in the City of Portland, Multnomah and Washington Counties. To learn more, contact Reese Lord (503.478.7340 or email rlord@worksystems.org) or visit www.worksystems.org/summerworks.

school denied her access to the girls' restroom. The U.S. Department of Education has made similar determinations involving transgender K-12 students in at least two recent cases (See Arcadia Unified School District, Case No. 09-12-1020 (2013) and Downey Unified School District, Case No. 09-12-1095 (2014)).

However, as more progressive decisions are reached by state and federal agencies, some politicians are fighting against these advances. In Kentucky, for example, a state lawmaker is sponsoring a bill that would penalize schools that allow transgender students to use the restroom consistent with their gender identity. Under the proposed legislation, a student could sue a school for \$2,500 if the student encounters someone of the opposite anatomical sex in the school restroom and the school permitted it or failed to stop it. In Florida, a state lawmaker is proposing a bill that would make it a crime for a transgender person to use a public restroom that does not correspond to their biological birth sex. Similar policies have been proposed in other states.

Here in Oregon, our anti-discrimination statutes prohibit discrimination on the basis of gender identity in public schools.

George Fox University denied a transgender male student's request to live in sex-segregated on-campus housing with other males because the student was not biologically or anatomically male. Moreover, George Fox University, and at least five other religiously affiliated colleges and universities, sought and received religious exemptions from Title IX's requirements as applied to transgender students. But religiously affiliated institutions were not the only ones to impose a strict gender binary on transgender students. Some women's colleges, including Smith College, have refused to admit transgender women, resulting in student body protests advocating for the inclusion of transgender women at these institutions.

In the K-12 system, Coy Mathias, a transgender girl in the first grade, won a groundbreaking ruling from the Colorado Civil Rights Division in 2013 when the agency determined she had been discriminated against after the

Transgender Students in Binary Spaces

by Paul Southwick
MBA Equality & Diversity Committee

Last year was a landmark year for the rights of transgender students. The U.S. Department of Education, Office for Civil Rights, announced that Title IX protects transgender students from discrimination on the basis of gender identity and transgender status. Maine's Supreme Judicial Court ruled that school officials violated the state's discrimination law, which prohibits discrimination based on gender identity, by requiring a transgender student to use a staff restroom instead of one consistent with the student's gender identity. And California's statute allowing transgender students to use restrooms and other sex-segregated facilities consistent with their gender identity, regardless of anatomy or biological sex, took effect.

However, despite transgender students gaining greater visibility and legal protections in recent years, some institutions have enforced a strict gender binary when it comes to admissions, restrooms, housing and other facilities. For example,

mba | ANNOUNCEMENTS

YLS Lunch & Learn

Join the YLS for a Lunch & Learn on Tuesday, March 10 at Kells. Peter Richter, chair of the MBA Court Liaison Committee, is the speaker. His topic is "Musings from a Curmudgeon Advocate." Cost is \$25 per person, and seating is limited. Register now at www.mbabar.org.

Free CLE Webcast to MBA Members

The video webcast of the seminar entitled "Privilege and Ethics Related to In-House General Counsel within a Small or Mid-sized Law Firm" is now available in the Members Center at mbabar.org. The seminar is worth two hours of ethics OSB MCLE credit.

MBA members receive access to a rotating selection of six different CLE seminars each year - a \$300 value. The free webcast content is refreshed every two months, so stay tuned!

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.

Statement of Diversity Principles Available to Sign

The MBA Equality & Diversity Committee invites you to sign the Statement of Diversity Principles. Read the statement at www.mbabar.org/about-us/diversity.html and demonstrate your commitment to diversity by signing the statement online at mbabar.org/AboutUs/DiversityPledge.html.

Paralegals Conference Features Chief Justice Balmer

Chief Justice Thomas A. Balmer of the Oregon Supreme Court has agreed to be the keynote luncheon speaker for the National Federation of Paralegal Associations, Inc. (NFPA) on Sunday, May 3 at the organization's joint conference at the Standard Insurance Center in downtown Portland. Chief Justice Balmer will speak on the topic of access to justice and the use of paralegals, while under the supervision of lawyers in the community, to assist in the delivery of legal services.

NFPA is a nonprofit professional organization representing more than 8,000 paralegals and is headquartered in Edmonds, WA. NFPA's core purpose is advancement of the paralegal profession. NFPA promotes global presence for the paralegal profession and leadership in the legal community. Locally, the Oregon Paralegal Association is an active member of the NFPA. For more information, please check out www.paralegals.org or call 425.967.9588.

Save the Date

**MBA 109th Annual Meeting,
Dinner & Judges Reception**

Thursday, May 7

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Portland Marriott Downtown Waterfront

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However, there are no state requirements or guidelines for public schools to follow when making determinations on transgender student access to sex-segregated spaces. Portland Public Schools has filled this gap by creating clear, detailed rules and guidelines regarding transgender student access to sex-segregated spaces, as well as other issues important to transgender students and their parents, such as student privacy and the ability to change name and sex designations on student

records (See www.pps.k12.or.us/files/general-counsel/Transgender_Students.pdf). To extend these protections beyond Portland Public Schools, the Oregon Legislature and state agencies should enact statewide legislation and regulations, similar to those in use by Portland Public Schools, to ensure that all of our transgender students have safe and equal access to restrooms and other facilities consistent with their gender identity.

Ethics Focus

Commenting on the Comments The ABA Model Rule Comments in Oregon

by Mark Fucile
Fucile & Reising



When Oregon moved from the old “DRs” to the RPCs a decade ago, the Oregon Supreme Court adopted professional rules patterned closely on the ABA’s influential Model Rules of Professional Conduct. Then, as now, the ABA Model Rules contained an integrated set of “black letter” rules and an accompanying set of interpretive comments. The ABA Model Rules explain (in Comment 21 to the “Scope” section) the relationship between the two intended by the drafters:

“The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule ... The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.”

When the OSB initially recommended switching from the DRs to the RPCs, the bar’s study committee focused on the rules rather than the comments. The study committee’s report, which remains available on the OSB website (“Final Report of the Special Legal Ethics Committee on Disciplinary Rules,” June 14, 2003), was not against eventually adopting the comments. Rather, the study committee’s report noted the significant change that simply replacing the text of our rules involved and, therefore, did not include the comments “at this time.” The study committee’s report emphasized (at 9), however, that “it is the intention of the ... Committee that the Comment[s] be a recognized interpretive guide.”

Today, the ABA reports that 39 states and the District of Columbia have adopted the comments as their supreme courts’ official guides for interpreting their RPCs. Regionally, these include Washington, Idaho and Alaska. Another four states have adopted the comments as “unofficial” guides for interpreting their RPCs. Oregon is not among them. Despite the original study committee’s hope, Oregon has not revisited adopting the comments.

Particularly in those states where the supreme courts have adopted the comments as “official” guidance, the practical utility is just that: they represent the respective supreme courts’ own guidance on what the text of the rules means. By contrast, even Oregon’s very comprehensive set of ethics opinions is - under Oregon’s unique RPC 8.6 - advisory only and, consequently, does not preclude lawyers from being

disciplined if the Oregon Supreme Court takes a different view on a particular rule than the bar (as has happened on occasion).

At the same time, Oregon’s history does not mean that the comments are not an important resource for Oregon lawyers. In fact, the Oregon Supreme Court has used the comments in recent years for precisely the reason the ABA drafters and the OSB study committee envisioned: to explain and illustrate the text of the rules.

Two ready examples are *In re Hostetter*, 348 Or 574, 238 P3d 13 (2010), and *In re Spencer*, 355 Or 679, 330 P3d 538 (2014).

Hostetter involved the former client conflict rule - RPC 1.9 - and the interpretation of what constitutes a “substantially related” matter that would trigger application of the rule and a potentially disqualifying conflict. The Oregon Supreme Court turned to the ABA Model Rule comment and its integrated definition in answering that key question, noting (at 348 Or at 590): “That definition is not binding on this court, but we consider it for its persuasive value.”

Spencer addressed the “doing business with clients” rule - RPC 1.8(a) - and the interpretation of what constitutes a “business transaction” that falls within the rule and the resulting responsibility for meeting the rule’s high bar for disclosure and consent. Again, the supreme court turned to the ABA Model Rule comment in answering that central question, observing (at 355 Or 686): “Given the identity between the text of RPC 1.8(a) and the text of the ABA rule on which it was modeled, we find the commentary to ABA [Model] Rule 1.8(a) persuasive in interpreting the meaning of Oregon’s rule.”

Continued on page 15



Free Conference Room Space in Downtown Portland

The Professional Liability Fund is offering Oregon lawyers free use of a conference room located at 520 SW Yamhill Street, Suite 1025, Portland, Oregon. To reserve this space and learn more details about this free conference room space, go to the PLF website, www.osbplf.org, and click on Practice Management, then Oregon Lawyers’ Conference Room.

Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.

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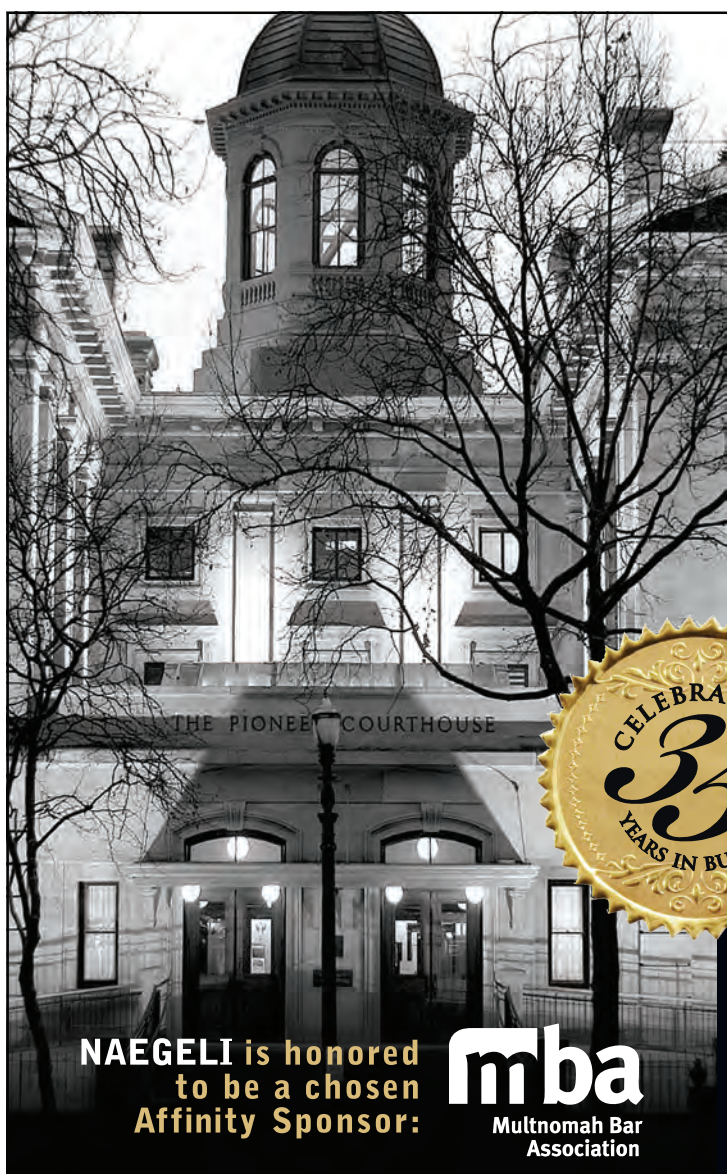
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Around the Bar



Jeanette Schuster

Tonkon Torp

Jeanette Schuster has been named to the board of directors of Women in Environment (WiE), a Pacific Northwest organization focused on supporting environmental professionals in the region.

Schuster is a partner in the firm's environmental and natural resources practice group. She provides advice and practical solutions on environmental compliance and enforcement matters and on commercial and real estate transactions for clients in diverse industries.



Paul Migchelbrink

Farleigh Wada Witt

Paul Migchelbrink, a shareholder, was recently elected chair of The Salvation Army Portland Metropolitan Advisory Board. He has served as a board member since 2010, and was vice chair in 2014.

The Salvation Army celebrates its 150th anniversary in 2015, and will hold special events throughout the metro area to celebrate this milestone.

Migchelbrink maintains a diverse business practice emphasizing corporate matters, real estate and commercial finance, and intellectual property and brings over 20 years of legal knowledge and experience to the board.



Caroline Guest

Ogletree Deakins

Caroline Guest has been elected as the co-managing shareholder of the firm's Portland office. She is a labor and employment attorney with more than 20 years

of experience in the Portland market. Her practice is a blend of complex litigation, counseling, and training.



Richard Alexander

Stoel Rives

Richard Alexander, senior counsel in the firm's Portland office, was appointed by former Governor Kitzhaber to the Oregon State Board of Architect Examiners. The board has responsibility for the licensing, discipline and promulgating of regulations for architects in the State of Oregon and was created by the Oregon Legislature in 1919. It protects public health, safety, and welfare by regulating the practice of architecture. It ensures that persons practicing architecture in Oregon are properly qualified and licensed and is responsible for disciplining those who violate the law.

Alexander represents public and private owners, prime contractors, major subcontractors and suppliers, and design professionals in the construction and design field. Currently his practice is limited to serving as an arbitrator and mediator in construction disputes.



Tyler Volm



Amy Angel

Barran Liebman

Tyler Volm has been named to the Ambassador Board of Big Brothers Big Sisters Columbia Northwest (BBBSCN) chapter. Tyler has volunteered with the organization for five years as a big brother. The Ambassador Board will allow Tyler the opportunity to contribute at an organizational

level with the fundraising and community outreach activities of BBBSCN while continuing to mentor his little brother through high school.

Amy Angel, partner at the firm, has joined the board of Portland Opportunities Industrialization Center, Inc. (POIC). The organization's mission is to reconnect alienated at-risk youth affected by poverty, family instability and homelessness, focusing on high school education through Rosemary Anderson High School, and career training through POIC Work Opportunity Training programs. Amy was also recently elected vice president of the Multnomah Bar Foundation Board.



Damien Hall

Ball Janik

Damien Hall has been appointed to the CareOregon Board of Governors. CareOregon is a nonprofit providing health plan services to four coordinated care organizations, which serve about 250,000 Oregonians.

Hall's practice areas are land use and real estate.

Fitzwater Meyer Hollis & Marmion

Firm partner Theresa Hollis has been unanimously elected president of the Special Advocates for Vulnerable Oregonians (SAVO) Board of Trustees. She is a founding member of the organization and was its first treasurer.

SAVO is dedicated to assisting the court in protecting individuals under guardianship from potential abuse, neglect and exploitation.

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.

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Tips From the Bench

Communication Breakdown

by Judge Stephen K. Bushong
Multnomah County Circuit Court

A lawyer contacted me recently and asked for my list of pet peeves. I thought I must be neglecting this important judicial responsibility because I didn't have a list. But there are things that lawyers do (and don't do) that annoy me. So I started making a list. Of course, that got me thinking about the classic Led Zeppelin song, "Communication Breakdown." When you read my list, you'll see why.

Refusing to talk to opposing counsel. I often ask lawyers appearing in my courtroom, "Have you discussed this with opposing counsel?" Too many times, the answer is "no." Or worse, one lawyer says they conferred, and the other lawyer says they have not. You'd be amazed at how much you can accomplish just by talking to each other. Sending an email isn't enough. Pick up the phone and talk to each other. Have lunch or coffee. Actual communication will resolve lots of issues, and will make the practice of law more enjoyable for you and the judge.

Failing to respect jurors/court staff. Don't keep the jury waiting in the jury room for hours while you argue in excruciating detail every "matter for the court." Summarize, get right to the point, and move on. Don't be rude to court staff when they are unable to get you exactly what you want when you want it. Don't be rude to your own associates and staff. Remember, the courtroom clerk (and thus, the judge) sees and hears everything that happens in the courtroom.

Failing to own up to your mistakes. The practice of law is extremely difficult and stressful. Everyone makes mistakes. When you do, don't blame your staff, or the opposing side; just own up to it. As with the Watergate scandal, the cover-up may be worse than the crime.

Attacking opposing counsel. Judges and jurors don't care about the injustices, real or otherwise, that you have suffered at the hands of opposing counsel. Stick to the evidence and the law. Take the high road even if opposing counsel is being a jerk.

Torturing the jury. Jurors often tell me after trial in civil cases that the lawyers repeated the same points over and over. The jurors get it; they don't need to hear you make the same point for the umpteenth time, especially at the end of the day or right before a lunch break. It's just torture. Pay attention to jurors' body language (and the clock). Shorten your closing argument; you want it to have an impact on the jury, not bore or annoy them.



Refusing to talk to your client. Lawyers sometimes object to document requests as overly broad and unduly burdensome. When the matter comes to me on a motion to compel, I may ask the lawyer, "How do you know complying with the request would be unduly burdensome? Have you talked to your client?" Too many times, the answer is "no." Before going to court, you should always talk to your client about resolving whatever issues are in dispute (or even the entire case). Bringing up settlement is not a sign of weakness.

Attempting to litigate discovery issues/disputes during trial. The time for raising discovery issues is before trial. Don't try to convince the jury that you should win your case because the lawyer on the other side failed to give you all the documents you requested. If necessary, raise it with the judge, not the jury. Jurors don't care about your discovery issues; they have more important things to decide. The judge may prevent you from bringing this up in front of the jury. Discovery is a tool to help you prepare for trial, not a relevant issue for the jury to consider and decide at trial.

Asking potential jurors if they think that serving on the jury would be a personal hardship. I always question jurors about their availability and decide which jurors should be excused for hardship. After I've made those decisions, the lawyers have an opportunity to question potential jurors about their life experiences and any prejudices or biases they may have. Some lawyers use that opportunity to give jurors another chance at being excused for hardship: "Tell me again why it would be hard or inconvenient for you to serve on this jury." Please don't ever do this; that's my job.

In the song, Robert Plant sings: "Communication breakdown, it's always the same. I'm having a nervous breakdown; drive me insane." Doing the things listed above won't drive me insane, but it will irritate me. Avoid the "communication breakdown" when talking to other lawyers, your clients, the jury, and the court.

Endnote: The song "Communication Breakdown," written by Jimmy Page and Robert Plant, appears on the band's 1969 debut album Led Zeppelin and was released as the B side on the band's first single, "Good Times/Bad Times."



News from the Courthouse

by Brad Blommer
Court Liaison Committee

In February, the MBA Courthouse Liaison Committee heard from Circuit Court Chief Criminal Judge Julie Frantz about four innovative criminal programs.

Veteran's Docket

Multnomah County started its special Veteran's Probation Docket in July 2014, following the national trend for establishing dedicated veterans' courts to assist those who face criminal problems after serving in the country's military. The Veteran's Probation Docket, managed by Judge Eric Bergstrom, handles the cases of veterans with certain eligible criminal cases. A representative from the Veterans Health Administration attends court hearings to make referrals and coordinate VHA services. This docket is small but continues to grow as word spreads throughout the community. Veterans face unique challenges upon returning to public life after service. This program recognizes the need to address those challenges when veterans end up in the criminal justice system by ensuring that they receive the VA services to which they are entitled.

Mental Health Court

Mental health court is in its fifth year. Currently, Judge You presides over this program. This is a multi-system effort where service providers assist individuals with diagnosed mental illnesses who are involved in the criminal justice system. Participants have the benefit of the case managers' knowledge of mental health and other community services. Once enrolled in the program, participants continue to attend weekly, bi-weekly, or monthly sessions with the mental health court judge to ensure compliance and progress.

Gang Outreach

The gang mentorship program is part of the 11:45 project. This is a community project to

reduce gang violence by recruiting community members to provide a positive presence in gang-affected neighborhoods by walking the streets for 45 minutes, once a week, for one year. 11:45 has also made mentors available to the court. Gang-affiliated offenders, ages 18-24 who are charged with a misdemeanor, may be offered participation in the 11:45 mentor program as a condition of probation. Eligible defendants are required to have one lunch with an 11:45 mentor. The mentors are then available if the defendant chooses to continue the contact and receive guidance on how to get out from under gang influences.

Justice Reinvestment

The Multnomah County Justice Reinvestment Program (MCJRP) was established as a result of passage of HB 3194 in 2013. HB 3194 provides money to local communities to reduce the use of prison beds so that another prison does not have to be built. Defendants eligible for MCJRP participate in a risk/need assessment to assist prosecutors, defense lawyers, probation officers and the court in determining whether a defendant can safely be kept in the community on probation with wraparound services in place. Services available include housing assistance, mental health treatment, drug treatment, family counseling, mentors and parenting classes.

Presiding Judge's Report and Courthouse Update

Multnomah County held two open houses on the new courthouse project to give the public and stakeholders information on the two sites approved by the Multnomah County Board of County Commissioners for further consideration. The Hawthorne bridgehead site has been designated as the preferred site, and the block between the Marriot and the KOIN Tower is the alternate site. The county is continuing to study both sites as their suitability for the new courthouse. At the open houses, information on both sites was presented as well as the timeline and next steps for the project. The PowerPoint displayed

at the open houses is posted on the county's website.

Multnomah County will be requesting in the current session that the legislature authorize \$17 million in bond funding for the next stage of the project.

Judge Waller recently attended a meeting of presiding judges in Salem, where Chief Justice Balmer spoke about the new Oregon Docket Management Initiative. The initiative will focus on effective and efficient case flow docket management techniques for all case types. The docket management initiative also will include re-examining time to disposition standards across all case types.

Court Administrator Barbara Marcille discussed progress on building a management team at the courthouse and the reorganization of operations units. For the first time, there are now managers in all of the following areas: civil, criminal, family, administrative services, technical training, and technology, and all operations units report to a manager. The court has also added a public information analyst who will focus on responding to questions, problem solving, and disseminating information for the public and the bar. The court will be looking at the content on its website, reevaluating courthouse signage, reviewing the court hearing notification system, and looking for other ways to improve communication.

The court will also be seeking feedback on a proposal for modifying the current expedited civil jury program to encourage participation.

An interesting aside shared by Judge Waller is that some historic court records were recently found in a Multnomah Circuit Court offsite storage facility. Three boxes of handwritten case records from the Territorial Court of Multnomah (prior to Oregon statehood - circa 1855) were discovered. The records will be reviewed and archived properly, and the hope is that some of these records could eventually be displayed in the new courthouse.

To “Litigate” or “Advocate” Or, “If You Are a Hammer, Everything Is a Nail”¹

by Peter Richter
MBA Court Liaison Committee Chair



Surely it was a coincidence that just as responses were being received from the MBA Court Liaison Committee’s survey of Multnomah County Circuit Court judges’ “Pet Peeves,” and as I was finishing up a case in which I had to keep reminding myself to “advocate” not “litigate” (I’m ashamed to say sometimes with not much success), I read an article by the Hon. Mark W. Bennett, a U.S. District Court judge for the Northern District of Iowa, entitled *Reflections on Judicial Regrets*.¹ Judge Bennett “...was surprised by the lack of preparation, the poor quality of the advocacy, and the diminishing collegiality of lawyers (especially from out of state),” a sentiment often shared by our Oregon judges. Judge Bennett went on to observe, as have many of our Oregon judges, that “...I remain deeply troubled by the incredibly overbroad discovery requests and obstructionist responses I observed. Plaintiff’s counsel often asked for so much irrelevant information that they would have no idea what to do with it if they received it. The request for production of documents and interrogatories are almost always accompanied by a list of definitions that exceed the length of the Magna Carta, the Declaration of Independence, the U.S. Constitution, and The Gettysburg Address, combined. Their overbroad discovery requests are inevitably met by every equally silly and impermissible boilerplate objection known to human kind. Then, the defendants add ‘without waiving the foregoing objections we...’ and produce only a dribble of the requested information. Counsel for both sides are guilty of obstructionist conduct in discovery. Such lawyers are almost always members of the ‘litigation industry.’ They are not real trial lawyers. Then, there are the depositions and the objections frequently made by Energizer Bunny perpetual objecting machines - ‘litigators’ - masquerading as real trial lawyers.”

For numerous reasons, most young lawyers today have been taught and trained primarily in the process and procedure of “litigation” - that is, the use of all the discovery tools available under the various practice rules. Too often, the goal of the “litigator” is the use of techniques to delay, obfuscate, outlast, and outspend

the opponent. In fact, a young “litigator” at a large national law firm once admitted to me that his firm held in-house CLEs teaching how to avoid discovery!

As a partial attempt to counter this trend, your MBA Court Liaison Committee has begun a poll of those who see and hear, firsthand, how we act in their courtrooms. We have started to collect “Pet Peeves” from Multnomah County judges to identify the behavior that judges believe is inappropriate and work against what should be the goal of every lawyer - help their clients resolve their legal problems:

- Favorably
- Economically
- Efficiently
- Professionally.

We have also begun polling lawyers about their “Pet Peeves” about judges. All participants have been assured of total anonymity to encourage candor and help us all achieve our goal.

The case I recently concluded reminded me how important the following are:

1. **Face-to-face meetings are always better** than an endless and escalating chain of emails, which usually resolve nothing.
2. **The tendency must be curtailed to “overlitigate”** by exchanging seemingly endless discovery requests and inadequate responses so that we do not turn into what Judge Bennett calls “the ‘litigation industry’ [which] has mushroomed, while real trial lawyers are now on the endangered species list.”
3. **We need to teach, train, and give young lawyers the experience** necessary for them to become advocates and not litigators.

I am reminded that the etymology of “Litigate” and “Litigation” is from the Latin verb “litigare,” meaning “to quarrel, fight, fall out, argue, squabble.” In contrast, to “advocate” is a verb meaning “to speak or write in favor of; support or urge by...[discussion].” See Judge Stephen Bushong’s “Tips from the Bench” column for his observations about how we can become better advocates.

Watch future articles for additional judges’ “Pet Peeves” and lawyers’ “Pet Peeves” about judges!



“If you would win a man to your cause, first convince him that you are his sincere friend.”

- Abraham Lincoln

Multnomah County Courthouse A Brief History

by Charley Gee
MBA Court Liaison Committee



Prior to the mid-1860s, most trials in Oregon occurred in private buildings or outdoors¹. Early Polk County pioneer and lawyer Ruben Boise wrote of an 1854 trial in Eugene that was heard “in the open air under a large oak tree, with a table and chair for the judge and some chairs and rude benches for the lawyers and other attendants, and when the court business got slack, we adjourned to the race track, which was nearby.”²

As Portland and Multnomah County rapidly expanded in the mid-19th century, though, the need for a courthouse presumably became clear. While the two courthouses that have occupied the block between SW 4th and 5th Avenues, and SW Taylor and Salmon Streets hosted many notable trials and personalities in their years, the buildings and their functions also had a rich local history:

- **1864:** Portland’s first public building, the Multnomah County Courthouse was commissioned as the rapidly expanding port city grew. The site chosen was a parcel of land owned by William Chapman, a lawyer and early city leader.³
- **1866:** Construction of the first Multnomah County Courthouse was completed. It was a two story Italianate structure with a relief of Abraham Lincoln carved into the front keystone.⁴ Its construction cost \$65,000 (approximately \$970,000 in 2015).⁵



Workers demolish the original Multnomah County Courthouse in 1911

- **1885:** A major renovation of the first courthouse added a wing on the Salmon Street side.⁶
- **1890s:** Because of Portland’s rapidly growing population, the relatively new courthouse became stretched to its limits. Plans for a new courthouse progressed far enough that

sketches were presented in an in-depth story in the April 17, 1892 edition of *The Sunday Oregonian*.⁷ However, the construction was abruptly halted by the financial panic of 1893 and the proposed courthouse was never built.⁸

- **1890:** Portland attorneys Charles Carey, Rufus Malloy, and Alfred Sears Jr. formed the Multnomah Law Library.⁹ The men recruited 100 Portland attorneys to pledge \$100 each to fund the library and Judge Julius Moreland pledged free rent and heat for the library in the courthouse, but use was limited to dues-paying attorneys.¹⁰



Multnomah County Courthouse, 1934

- **1909:** By the early 20th century, the need for a new courthouse was obvious to the community. The editor of *The Morning Oregonian*, remarking on the planning and bidding process wrote that “[i]t will be a gorgeous house, but a mighty expensive one to keep. It will not be built for \$800,000, as estimated, either, nor furnished for less than \$300,000...[t]he building will be unnecessarily large, luxurious and elaborate. Of course, with so many courtrooms and so many office rooms, we shall have to elect men to occupy them.”¹¹
- **1910:** University of Oregon Law School graduate Fred Salway was hired as the librarian of the newly opened Multnomah Law Library.¹²
- **1912:** Construction of the current Multnomah County Courthouse began. The building was designed by

Portland architects Ion Lewis and William Whidden, who had also designed Portland’s City Hall.¹³ The building was to be comprised of a rectangular ring around the block that left a courtyard in the

center. The brick foundation of the original 1866 courthouse was incorporated into the basement and foundation of the new courthouse.¹⁴

- The new courthouse was built using the then new fire prevention technique

of riveting steel beams into cages and wrapping them in concrete instead of using timber for supports.¹⁵

- At eight stories high, it was the largest courthouse on the West Coast.¹⁶ It featured 11 courtrooms, which was, at the time, projected to fill the need for local county courtroom space indefinitely.¹⁷ Construction cost \$1.6 million (about \$39,000,000 in 2015).¹⁸
- **1915:** Multnomah County Circuit Court Judge Calvin U. Gantenbein opened the Northwestern School of Law in the courthouse after The University of Oregon’s Law School moved to Eugene.¹⁹

- **1964:** A change occurred in the Multnomah Law Library when the first Multnomah Bar Foundation finally secured enough supporters to reform the library board and modernize the library’s practices. Fred Salway, the first librarian hired in 1910, retired. In his place a young lawyer and professional librarian named Jacquelyn Jurkins was hired.²⁰ When she was hired, Jurkins would not give any commitment to the library beyond two years.²¹ She continued as the Library Administrator until her retirement in 2014.

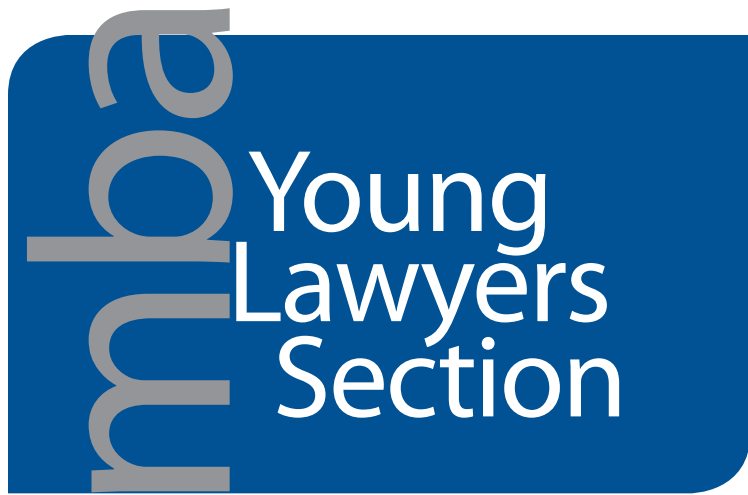
- **1978:** An energy efficiency study concluded that building a skylight over the interior lightwell and courtyard of the courthouse would be “like putting on a big blanket in the courtyard and tucking it in to keep the heat.”²² However, given the shortage of space in the already crowded courthouse the decision was eventually made to utilize the space for offices.
- **2015:** Following years of deterioration and studies showing a severe danger of collapse in an earthquake, Multnomah County Circuit Court is ready to begin the process of moving from its century-old building, groundbreaking in its time, to a modern new courthouse that will be constructed on the banks of the Willamette River.

(Endnotes)

- 1 Fred Leeson, *Rose City Justice: A Legal History of Portland, Oregon*. (Oregon Historical Society Press, 1998), 17
- 2 Leeson, *Rose City Justice*, 17
- 3 Leeson, *Rose City Justice*, 24

Continued on page 15

¹ American Bar Association Journal of the Section of Litigation, Vol. 41, No. 2 (Winter 2015).



Young Lawyers Section

YLS Board Changes

The YLS would like to recognize Cynthia Gaddis' contributions to the YLS and thank her for her hard work and dedication.



Cynthia Gaddis

She graduated from Lewis & Clark Law School in 2011. Cindy joined the YLS Service to the Public Committee in 2011, served as co-chair of that committee in 2013-14, and joined the YLS Board of Directors last summer. As board liaison, she played an integral role in the development of the YLS Entrepreneur Academy. Cindy is leaving Portland to take the position of Protected Leave Supervisor with the Washington State Department of Labor and Industries.



Tom Adams

Tom Adams has been appointed to fill the vacancy left by Cindy. Tom graduated from New York University School of Law and was admitted to the OSB in 2011. He practices personal injury and consumer law at Forum Law Group LLC. Tom joined the YLS Professional Development & Education Committee in 2012 and presently serves as chair of that committee. In addition to his work with the YLS, Tom is an Oregon Trial Lawyers Association Guardian and volunteers with both LASO's Domestic Violence Project and Big Brothers, Big Sisters.

From Public Service to Private Practice YLS Member Spotlight

by Jeanne Sinnott
YLS President

Megan McGuire and Cody Berne, first-year associates with Miller Nash Graham & Dunn LLP's litigation department, followed unique and interesting paths to the practice of law. After earning her degree in English Literature from the University of Connecticut, Megan joined the Texas Army National Guard as an intelligence analyst and was deployed to Baghdad, Iraq. She later worked for a private civilian contractor, and was stationed in Afghanistan and Iraq.

After growing up in Portland, Cody Berne attended Pomona College in Claremont, California. After college, Cody returned to his hometown and spent six years with the Portland Police Bureau. During his time with the Bureau, Cody worked with HEAT (Hotspot Enforcement Action Team), a unit that was created to address gang violence in Portland, as well as with the downtown bicycle patrol. I recently sat down with Megan and Cody to discuss their respective backgrounds.



Megan McGuire

Megan, why did you join the National Guard?

A primary motivation was financial assistance for school. I was the first person in my immediate family to go to college, I paid my own way, and the National Guard has a great tuition waiver program. My other primary motivation came from my family's history of service and sense of patriotism. My grandfather served in the Navy during the Korean War and my dad was in the Air National Guard Military Police. So, I was always fascinated with the armed services and even more motivated to serve after

September 11, 2001. I ended up in the Texas Army National Guard because I wanted to be a Military Intelligence Officer and the Texas Army National Guard at the time had an entire Military Intelligence Battalion. Plus, my mom's side of the family is from Texas and it seemed like a great adventure.



Cody Berne

What about you, Cody? Why did you join the bureau?

I joined the bureau because I wanted to have an immediate and positive impact on the community where I grew up, and I wanted to see public policy in action from an "on the ground" perspective. I wanted to see how directives and legislation from our political leaders and legislature were actually implemented, and be the person carrying out the charge.

Cody, can you describe a specific instance when you had immediate and positive impact on the community?

Sure. I speak a little Spanish, and I remember a call where an autistic child who spoke no English was wandering the streets. After a few hours, we found out where he belonged, and we were able to reunite him with his family. It felt good - it was a situation where I had some background that was useful and I was able to help. Also, while working with HEAT, my partner and I would talk regularly to kids who were at high risk of becoming gang members. I got to know many of these kids, and cared about them, and hopefully they cared about the choices they were making in part because of us.

Megan, what were the most notable parts of being stationed in Afghanistan and Iraq?

The most notable part of being deployed to Iraq was experiencing how hot it can really get - even having lived for years in Texas. The best description I have is being in a dry sauna, filled with sand and dust blowing around in wind that somehow is hotter than the stagnant air. The most notable part of Afghanistan was the rice. I know, odd. But I had the best rice I've ever eaten purchased at a bazar in Kabul. I still think about that rice. I wish I could recreate it.

Cody, what is the biggest misconception that the public has about police officers?

The biggest misconception is probably about what motivates the officers. Most go to work every day to do the right thing. But sometimes the dominant narrative in the news does not reflect that. It can be frustrating for a lot of police officers. Certainly bad things happen, but people forget that police officers must make very difficult decisions very quickly. People don't often hear about the good decisions or about the events that resolve without a major problem. Misconceptions can cast a pall on police, which can make it more difficult for them to do their jobs.

How did your respective backgrounds help prepare you for the practice of law?

Cody: Working as a police officer, you learn to deal with all different types of people: good people, bad people, and everyone in between. Policing also gave me perspective. Some of the difficulties that lawyers think are a huge pain aren't such a big deal, in the grand scheme of things. **Megan:** Being an intelligence analyst has three major components: sorting through large amounts of information, analyzing that information, and drawing conclusions and making predictions based on that information. Based on my experience so far, I can see a lot of similarities between being an analyst and practicing law; notably, synthesizing large amounts of information. Also, I learned in the service that being part of a strong team is the best way to be successful. Probably the most important way that my prior experience has helped prepare me for the practice of law is that it gave me tools for managing time and stress.

Justice Trivia - March 26

by Shayda Le
YLS Membership Committee



The Campaign for Equal Justice is ramping up for its last event of the campaign season to present Justice Trivia! The CEJ provides critical financial support to Oregon's legal aid programs. It was founded by lawyers and is supported by the legal community all throughout our state. Justice Trivia is a fantastic opportunity to learn more about legal aid and the essential role it plays in access to justice in our community, as well as a chance to meet and spend time with other young lawyers.

Please join us on March 26 at Kells Irish Restaurant & Pub for trivia led by ShanRock's Triviology. Doors will open at 5:30 p.m. and trivia begins at 6 p.m. Teams of up to five people are welcome, with a cost of \$10 per person to benefit Legal Aid Services of Oregon. Teams will also be forming at the event for anyone who wants to join a team, get to know other young lawyers, and compete for a good cause. Light appetizers will be provided and a cash bar will be available. There will be prizes for trivia winner and best team name. Register at www.cej-oregon.org.

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YLS Director Nominees

Three three-year positions start July 1. In the event of a contested election, a ballot will be sent to members. Only YLS members may vote for YLS Directors.



Holly Hayman

Holly Hayman Graduated for the U of O School of Law and was admitted to the OSB in 2011. She works at Leonard Law Group LLC and specializes in commercial bankruptcy and business law. She joined the YLS Membership Committee in 2011, and presently serves as chair of that committee. Holly volunteers her time with the Legal Aid Services of Oregon Bankruptcy Clinic, and serves on the Campaign for Equal Justice Associates Committee. She is a member of both the OSB Debtor-Creditor Section as well as Oregon Women Lawyers.



Shayda Le

Shayda Le graduated from Boston University School of Law and was admitted to the Massachusetts Bar in 2011 and the OSB in 2012. She practices in the area of employment law at Barran Liebman LLP. Shayda joined the YLS Membership Committee in 2013, and presently serves as chair of the YLS Entrepreneur Committee. Shayda volunteers with YLS Wills for Heroes program, and serves on the Campaign for Equal Justice Associates Committee. She is also a member of the Iranian American Professional Society of Oregon, and Women in Insurance and Financial Services.



Evan Lenneberg

Evan Lenneberg graduated from Lewis & Clark Law School and was admitted to the OSB in 2012. He works in the areas of construction litigation, real estate transactions and litigation at Ball Janik LLP. Evan joined the YLS Pro Bono Committee in 2013, and currently serves as chair of that committee. He is also a Lewis & Clark Law School Mentor, and is a member of the OSB Construction Law Section Executive Committee. Evan represented the YLS on the OSB Pro Bono Celebration Committee.

David R. Boyajian YLS Pro Bono Spotlight

by Tracy Hooper
YLS Pro Bono Committee

David Boyajian learned the importance of providing pro bono legal services at a young age. His father received the Rhode Island Bar Association's Pro Bono Publico Award for his commitment to pro bono activities for the elderly. David recalls admiring the plaque in his father's office which represented the time and effort his father dedicated to pro bono work. David's father taught him that attorneys have the special privilege of access to the legal system and an obligation to make that access available to everyone, especially the most vulnerable members of society.

David's commitment to pro bono services was reinforced while he was a law student at Tulane University Law School during and after Hurricane Katrina. In the wake of the storm, the courts were running at an extremely reduced capacity; computer systems were destroyed, files were lost, and court personnel had been displaced. As a result, juvenile offenders were being detained past their release dates. David recognized the strong demand New Orleans had for individuals who could help provide a voice within the compromised

legal system and participated in Tulane's Juvenile Criminal Law Clinic, despite having to complete his entire year of 1L courses in a single semester because of the hurricane.

As a maritime attorney at Schwabe, Williamson & Wyatt, David makes pro bono work a priority for his practice. He is an active member of Schwabe's Pro Bono Committee, which identifies and promotes pro bono opportunities and encourages attorney involvement. Additionally, he handles two cases per year for Schwabe's East County Legal Clinic, which serves low-income members of east Multnomah County's Hispanic community. David describes his work for the legal clinic as intimate and rewarding. He has handled a variety of cases for the clinic, including debt collection cases where his clients were being intimidated and unfairly threatened with deportation. While he often spends a considerable amount of time on these cases, sometimes all it takes is a phone call or two to save a client thousands of dollars or countless hours of worry. Through these and other activities, David routinely exceeds the OSB's aspirational



David R. Boyajian

standard of 80 hours of pro bono legal services each year.

David believes attorneys have an obligation to provide pro bono services and should organize and prioritize their practices accordingly. "Finding the time for pro bono work is challenging but *making* the time for it is every lawyer's responsibility." While there are many pro bono opportunities available, David recommends that attorneys find a cause they care about, carve out the time, and seek out a way to help.

David is also deeply involved in the local and regional maritime community. He currently serves as vice president of the Board of Directors of the Maritime Commerce Club of the Columbia River and as vice president of the Board of Directors for the Merchants Exchange of Portland, Oregon's Scholarship Fund.

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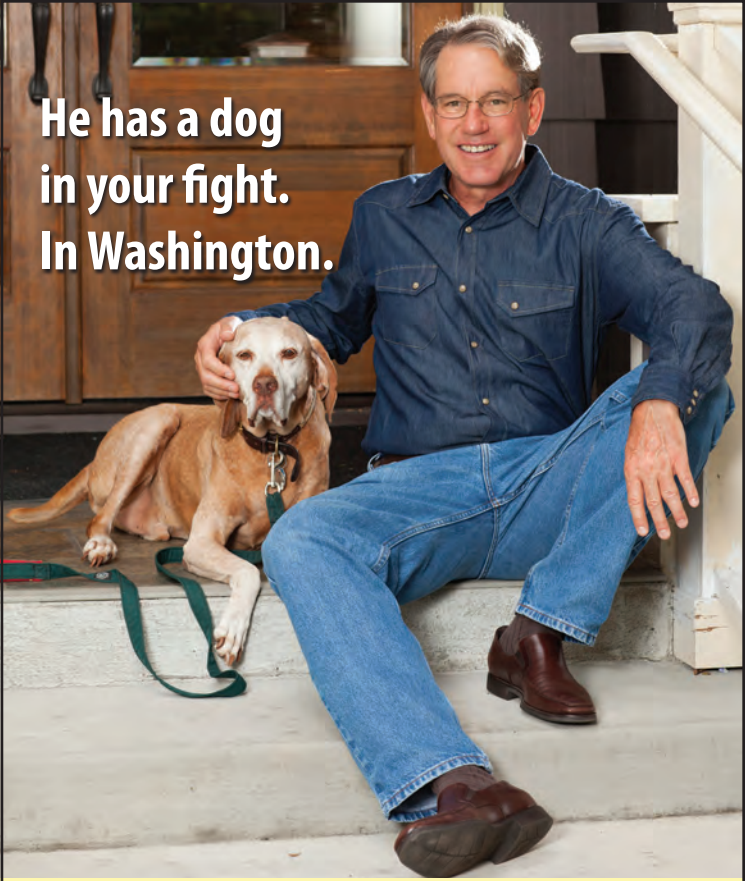
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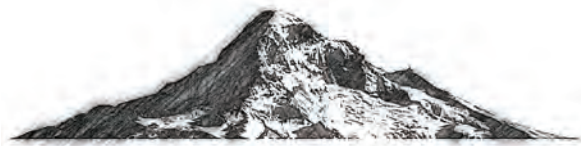
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The Corner Office PROFESSIONALISM

Here at the Corner Office, even when we think about topics besides law - sports, for example - the MBA Professionalism Statement always seems to rise to the surface. Two recent items from the sports page, one well known and the other obscure, come to mind.

Unless you've been living in Guantanamo for the past month, you've heard about "Deflategate." The New England Patriots allegedly played the AFC championship game with balls that they intentionally deflated below the league's required minimum pressure. Coach Bill Belichick vigorously denied the accusation at a press conference. The league will investigate.

Media commentators greeted Belichick's denial with varying degrees of skepticism. Many counseled waiting for the factual investigation, but it is telling that almost nobody said, "I can't believe the Patriots would do such a thing. They're not that kind of outfit." The more common reaction was, "I don't know if they did it or not, but that's about their speed."

That's because the Patriots came into Deflategate with an established reputation for pushing the rules to their limits, and perhaps beyond. In 2007 the league punished them for illegally videotaping the sideline signals of Jets coaches. The incident became known as "Spygate." It was on everyone's mind when the issue

of deflated footballs first became public. Even if they're cleared of the current charges, the team will continue to operate under a cloud.

The other incident got much less attention. Unless you're a tennis fan, you probably missed it. During the Australian Open, Tim Smyczek, a 112th-ranked journeyman, implausibly took the great Rafael Nadal to a fifth set and had him on the ropes. When Nadal tossed the ball to serve, a boorish fan yelled something that distracted him, and the serve went long. Under the rules, Nadal had only one more serve. Smyczek did not hesitate. He caught the chair umpire's attention and held up two fingers, the signal to give Nadal another first serve. Nadal's team stood and applauded the gracious gesture.

Nadal went on to win the match, and said, "What he did at the end of the fifth is just amazing. He's a great example, what he did today." Smyczek shrugged off the praise with a comment that perhaps revealed his Wisconsin upbringing: "I know my parents would have killed me if I didn't. It was the right thing to do." He has earned a solid reputation as paragon of sportsmanship. He will get the benefit of every doubt. He is the anti-Belichick.

It's clear where this is going. As lawyers, our reputations are priceless. We begin building them with our first email to

opposing counsel, our first memorandum to the court, our first interaction with a supervisor. By our conduct we can control how we are perceived. The RPCs lay out the bare minimum standards, but if we aim no higher than that, we will eventually lose the respect of our bar colleagues and of the public. The MBA Professionalism Statement reminds us of the zone beyond the rules, where we do things not to avoid discipline, but because they're "the right thing to do." If we commit ourselves to the example of Tim Smyczek (and evidently, of his parents), our reputations individually as practitioners and collectively as a profession will benefit.



The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer our question. Questions may be submitted anonymously.

Ethics Focus

Continued from page 7

The OSB has made similar use of the comments in recent ethics opinions, including those addressing emerging technology issues such as listservs (OSB Formal Op. 2011-184), metadata (OSB Formal Op. 2011-187) and social media (OSB Formal Op. 2013-189).

These cases and ethics opinions also illustrate two important practical reasons for using the comments as a risk management resource. First, because Oregon's professional rules are now based on the ABA Model Rules, the accompanying comments often supply answers to the key nuances that lawyers confront in real life. Second, as the old DRs fade

into history, the body of case law developed under that set of professional rules adopted here in Oregon in 1970 often no longer offers insights into contemporary practice topics.

The comments are a readily available resource. They are available for free on the ABA Center for Professional Responsibility's website: www.americanbar.org/groups/professional_responsibility.html.

Perhaps someday Oregon will join the vast majority of jurisdictions that officially integrate the comments into the professional rules. In the meantime, however, the comments still offer extremely useful practical guidance on the meaning and application of the RPCs crafted by the drafters of the corresponding ABA Model Rules.

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, 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, Children's Representation Project, and Changing Lives Forever Project. To learn more about pro bono opportunities in Multnomah County, go to www.mbabar.org and click on "About Us" and "Pro Bono."

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Multnomah County Courthouse

Continued from page 11

- 4 Leeson, *Rose City Justice*, 24
- 5 Leeson, *Rose City Justice*, 24
- 6 Leeson, *Rose City Justice*, 26
- 7 Unknown Author, New County Courthouse, *The Sunday Oregonian*, April 17, 1892, page 18.
- 8 Leeson, *Rose City Justice*, 26
- 9 Leeson, *Rose City Justice*, 57
- 10 Leeson, *Rose City Justice*, 57
- 11 Unknown Author, No Title, *The Morning Oregonian*, July 19, 1909, Page 6.
- 12 Leeson, *Rose City Justice*, 157
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- 14 Leeson, *Rose City Justice*, 87
- 15 Leeson, *Rose City Justice*, 87-88
- 16 Leeson, *Rose City Justice*, 88
- 17 Leeson, *Rose City Justice*, 88
- 18 Leeson, *Rose City Justice*, 88
- 19 Leeson, *Rose City Justice*, 89
- 20 Leeson, *Rose City Justice*, 158
- 21 Leeson, *Rose City Justice*, 158
- 22 Editorial, Courthouse Cavity - to fill or cap?, the *Oregonian*, July 18, 2978, Page 18.

Courthouse photos used courtesy of Oregon Historical Society OR-Hi 63240 & OR-Hi 58923

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When the MBA's most recent website launched, it included a unique feature: the ability for law-related organizations and nonprofits to add their social events to the MBA online calendar.

The idea behind the MBA offering other organizations the ability to access our online calendar was to create **one** site where all law-related events could be listed to help prevent conflicts.

Please consider adding your social events to the MBA online calendar at the following link: mbabar.org/Calendar/SubmitAnEvent.html. Or, you may contact the MBA by emailing us at mba@mbabar.org to add your item to our online calendar.

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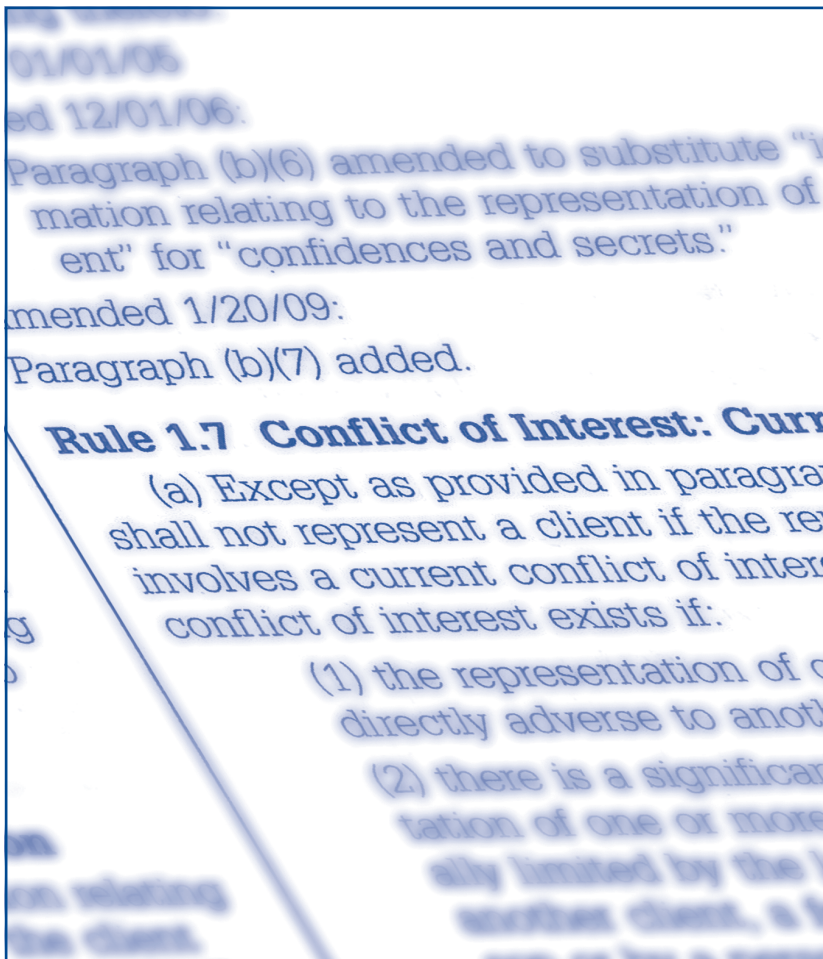
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After 36 illustrious years of practicing business litigation, our managing shareholder, Peter Glade, has retired.



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Peter Glade has been the archetype of what constitutes an "exceptional" trial lawyer. Knowledge of his craft, poise under pressure and thoughtfulness have made Peter an icon within the legal community. We'll miss his easy smile and the highly potent eggnog he made every holiday season. Congratulations, Peter!

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**We're pleased to
welcome Matt Mertens,
our new associate.**

Matt is a member of our firm's Business, Litigation, and Business & Restructuring practice groups. Previously, he clerked for the Hon. Elizabeth L. Perris in the United States Bankruptcy Court for the District of Oregon.

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Pete has practiced patent, trademark, copyright and trade secret law in Portland for over 30 years and maintains an active practice with growing emphasis on mediation and arbitration of intellectual property matters.

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It is with great excitement that we introduce our new managing shareholder, Kerry Shepherd.



Go get 'em, Kerry.

Kerry, congratulations and welcome to the top spot at Markowitz Herbold. You have earned it. Your honed legal skills, the quality of your character and your vision for the future have made you the natural choice to take the helm of our firm. We have the utmost confidence in your ability to guide Markowitz Herbold in bold new directions. It's going to be an exciting ride!

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