



Tackling Implicit Bias

by Bob Steringer
MBA Past President

A year ago, I focused my first *Multnomah Lawyer* column as MBA president on the subject of implicit bias - our subconscious biases in judgment and behavior that are disconnected from intentional conduct. The MBA Board of Directors had just begun exploring the

topic of implicit bias with the goal of strengthening our commitment to the MBA's Statement of Diversity Principles, particularly our belief "that all members of the bar should have the opportunity to participate equally and fully in our profession." For my final column as MBA president, I offer an update on what we have learned and where we are heading.

The subject of implicit bias has continued to gain attention in the legal and non-legal worlds over the last few years, but a brief introduction is in order for those who might be new to the topic. Recognizing the existence of implicit bias means recognizing that we all have automatic, unconscious reactions to people that can differ substantially from our most closely held beliefs and our intentional actions. Some of these unconscious mental processes may result from personal experiences and cultural influences, and studies suggest that other aspects of our unconscious biases are written into our DNA through evolution.

By now, I expect that most of our readers have taken the Implicit Association Test at www.implicit.harvard.edu. This is the most commonly used research tool for measuring implicit bias. If you haven't taken the test, head there for a range of online tests aimed at measuring our unconscious biases on many topics, including race, ethnicity, gender, sexuality, disability and even weight. The results can be enlightening, especially to those who discover tendencies toward bias that directly contradict their beliefs about equality.

The purpose of recognizing the existence of implicit bias is not to berate ourselves or each other. Rather, it is only by recognizing its existence that we can hope to tame it or at least

reduce its impact on our decision-making. Overcoming implicit bias starts with a willingness to explore its presence in our own minds.

With that in mind, the MBA focused most of its attention this year on addressing the impact of implicit bias on our own decision making. These subconscious biases are stubborn, but research suggests at least two things that people and organizations can do to chip away at them. One thing we can do is eliminate barriers between ourselves and our colleagues with different backgrounds. Simply knowing a person outside our own category is a powerful thing, and it often takes intentional action to overcome the natural tendency to associate with people from similar backgrounds. Another thing we can do is adopt decision-making models that are more deliberative, which can help us overcome automatic reactions and assumptions that cloud our thinking.

...we all have automatic, unconscious reactions to people that can differ substantially from our most closely held beliefs and our intentional actions.

Taking those ideas to heart, the MBA Board recently agreed on a group of action items to help ourselves overcome implicit bias:

- All board members will be expected to participate in outreach to non-dominant culture lawyers, and we will work to strengthen relationships with diversity bar organizations on both an organizational and personal level.
- The board and the MBA's committee chairs will participate in at least one diversity and inclusion training program each year.
- The board will gently, but firmly, ensure that our committees fulfill their charge to include the promotion of diversity and inclusion in their programming.
- The board will maintain a standing meeting agenda item on diversity and inclusion, to make sure we return to that imperative at least once each meeting.
- The board will track our progress in diversifying itself, as well as the MBA's officers and committee membership.

My hope is that the board will consider other ideas, such as following decision making processes that ensure the impact on diversity and inclusion is expressly considered whenever a major decision is made.

Simply knowing a person outside our own category is a powerful thing....

Not all of the MBA Board's work on this topic this year has been focused on ourselves. For example, we had the great honor this fall to co-sponsor events in conjunction with the Portland visit of ABA President Paulette Brown, including a dynamic panel discussion on implicit bias. Looking to the future, we enthusiastically endorsed and will support two initiatives conceived by our energetic Equality & Diversity Committee:

- **MBA Diversity Award.** Beginning next year, the MBA will recognize an individual, legal employer, or other legal organization committed to promoting diversity and equality in the Multnomah County legal community through an MBA Diversity Award to be presented at the MBA Annual Dinner. With this award, we hope to spotlight efforts to foster a culture of diversity and inclusion and encourage others to join the cause.
- **Multnomah Bar Fellows.** This fall, we will launch our first class of Multnomah Bar Fellows - five law school students from diverse backgrounds who will be supported with tuition scholarships, work experience, mentoring and bar exam scholarships in an effort to lift up a new generation of excellent lawyers who will enhance the diversity of our legal community. The MBA is proud to be the originator and organizer of the fellows program, which is made possible by a major commitment of scholarship funds by the University of Oregon, coupled with critical work experience and stipends offered by law firms and the in-house legal departments of local employers. We have great hope for success and expansion of the fellows program in future years.

I conclude by extending sincere thanks to everyone who played a role in the MBA Board's efforts to tackle implicit bias and promote an inclusive legal community, especially: Judge Adrienne Nelson for inviting us to participate in ABA President Brown's visit to Portland, Chairperson Emily Teplin Fox and the entire Equality & Diversity Committee for their creative and tireless efforts, April Lewis and Carol French of Figure 8 Consulting for their thought-provoking training on implicit bias, and the state's vibrant diversity bar organizations for their friendship and guidance in pursuit of our common goals.

mba|CLE

To register for a CLE, please see p.4 or go to www.mbabar.org and log in as a member to register at the member rate.

JUNE

6.2 Thursday Piercing the Corporate Veil and Other Limits on Limited Liability

Susan Marmaduke
Keil Mueller
John Parsons

6.7 Tuesday Beating the Odds: Defenses to Superfund Liability

John Ashworth
Christine Hein
David Rabbino

6.8 Wednesday Campus Sexual Assaults Understanding Title IX and Federal Policy

P.K. Runkles-Pearson
Gloria Trainor
Kristen Tranetzki

6.9 Thursday Annual Probate Update

Judge Andrew Erwin
Judge Robert Herndon
Sibylle Baer
Bryan Marsh

6.14 Tuesday Advising Nonprofits and Serving on a Nonprofit Board

Kate Kilberg
Michele Wasson

6.15 Wednesday Washington and Clackamas County Court Update

Judge Charlie Bailey
Judge Robert Herndon

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DEADLINE for copy: The 10th of the month*

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BATTLE OF THE LAWYER BANDS

Thursday, August 11
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.

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Montavilla Jug Ensemble - Best Oregon Lawyer Band 2015

mba | EVENT

Night at the Spa

A private party for the Multnomah Bar Association

Thursday, July 21
Comma Vino Spa
1126 SW Morrison St., Portland
5-7 p.m.

Join the MBA Events Committee and your colleagues for an evening at Comma Vino Spa (just past the MAX tracks on SW Morrison). Sign up for a spa mini-service ranging from \$15 - \$30 when you arrive. The price is payable to Comma Vino Spa at the time of sign-up. Services include eyebrow wax, manicure, and foot reflexology. Limit one mini-service per attendee. Due to limited space, mini-services will be on a first-come, first-served basis. Appetizers and drinks will be provided. Nearby shops will be offering discounts to attendees.

Sponsored by Farleigh Wada Witt

RSVP to Kathy Modie at the MBA at kathy@mbabar.org.

Calendar

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

JUNE

10 Friday
July/August Multnomah Lawyer deadline

14 Tuesday
Riverside Golf Event
See insert

18 Saturday
SALC Race for Justice
www.salcraceforjustice.org

22 Wednesday
YLS Summer Social – Thorns Game
Details on p. 12

21 Thursday
MBA Night at the Spa
Details on p. 2

28 Thursday
OMLA Auction
www.oregonminoritylawyer.org

AUGUST

10 Wednesday
September Multnomah Lawyer deadline

11 Thursday
Battle of the Lawyer Bands
Details on p. 2

15 Monday
Lawyers & Law Students Golf Event
See insert

25 Thursday
Pro Bono Pour
Details on p. 13

JULY

4 Monday
Independence Day Holiday

14 Thursday
Family & Friends Golf Event
See insert

Plain Talk about Long-Term Care Planning What if I pay for long-term care insurance and never use it?

by Mary Osborn

Paying for something you're never intending to use would be wasteful. Who would do it?

The truth is there's only one instance when you make a decision to pay for something you're hoping never to use ... insurance. If you think about it, you have car insurance but you avoid accidents. You insure your home but you'd rather never have a fire or a flood. Insurance is something we buy with the unspoken hope we'll never really need it. But, it's smart to have it. It's also smart to have long-term care insurance because if you have an accident, suffer a stroke or have a debilitating illness like Alzheimer's disease, the cost can be enormous. Who'll pay? Will your loved ones be forced to care for you?

Long-term care insurance protection is something you hope you'll never need.

But it's smart to have it, because without it, you, your family and loved ones are not protected from one of the largest risks you face. When you buy long-term care insurance, you are joining eight million Americans who already own protection. Nearly 400,000 individuals bought new coverage last year.*

Consider yourself lucky if you never need the coverage. But, consider that some claimants have been paid over \$1 million from their long-term care insurance policy. Benefits paid to thousands totaled \$6.6 billion in 2012.*

For more information about long-term care insurance plans for MBA members, contact: **Mary M. Osborn, CFBS, CLTC, 503.998.5902, Mary@MaryOsborn.com, www.maryosborn.com.**

*Source: American Association for Long-Term Care Insurance; 2014 Sourcebook

maryosborn.com
Long Term Care Insurance Specialist

Learn about traditional and linked-benefit long term care plans for MBA members.

Mary Osborn, CLTC

Call 503-998-5902 or email mary@maryosborn.com for more information





The MBA will apply for 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.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

Piercing the Corporate Veil and Other Limits on Limited Liability Thursday, June 2, 2016 - 3:00-5:00 p.m.

World Trade Center, Mezzanine
Members \$60/Non-Members \$95

“Piercing the corporate veil.” The “fiduciary shield” doctrine. “Vicarious liability.” “Imputed contacts.” “Retained control.” When do the boundaries between one person and another work to limit liability, and when does the law disregard those boundaries for purposes of liability? When does a “limited liability” entity really limit the exposure of its owners? And when are contacts with a forum state imputed to another for purposes of personal jurisdiction?

Three Portland litigators - **John Parsons**, **Keil Mueller**, and **Susan Marmaduke** - will discuss those and other concepts that affect whether the boundaries between one person or entity and another will act as a firewall for purposes of liability and personal jurisdiction, and when they will not.

For more information: Call Bridget Donegan, Larkins Vacura at 503.542.3107. For registration questions, call the MBA at 503.222.3275.

Beating the Odds: Defenses to Superfund Liability Tuesday, June 7, 2016 - 3:00-5:00 p.m.

World Trade Center, Mezzanine
Members \$60/Non-Members \$95

As EPA issues the Proposed Cleanup Plan for the Portland Harbor Superfund Site and cleanup costs are likely to exceed a billion dollars, the “divisibility of harm” defense to CERCLA joint and several liability may become more important than ever. Our experienced panel of speakers will provide background on cases where courts have found harm to be divisible and reasonably capable of apportionment and will provide an in-depth analysis of how the divisibility defense proved successful in Burlington Northern. The panel also will discuss the application of the divisibility of harm defense in the Fox River litigation, with a special emphasis on varied approaches to characterizing and dividing harm. Finally, the panel will offer practical strategies for making divisibility of harm defense arguments at complex sites. Our panel includes **David Rabbino** of Tonkon Torp, **Christine Hein** of Ring Bender McKown & Castillo and **John Ashworth** of Kell, Alterman & Runstein.

Disclaimer: Opinions expressed by the panel members are their individual opinions and not their employers’ or clients’ and are not formal legal opinions upon which any party is entitled to rely.

For more information: Call Ed Carlson, Carlson Law at 971.254.8907. For registration questions, call the MBA at 503.222.3275.

Campus Sexual Assaults: Understanding Title IX and Federal Policy

Wednesday, June 8, 2016 - 3:00-5:00 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

This panel discussion will explore how sexual assault allegations on college campuses are investigated and adjudicated, including the role schools, law enforcement agencies and courts do and should play in handling these issues. The panel will also debate the ramifications of the 2011 “Dear Colleague Letter” issued by the Department of Education that required schools to address issues of sexual harassment and assault as part of their Title IX obligations, as well as discuss the new legislation on affirmative consent and the proliferation of Title IX cases filed in state and federal court. The panel will include **Kristen Tranetzki**, Angeli Ungar Law Group, who has represented students accused of sexual misconduct; **Gloria Trainor**, Summer Trainor PC, who has represented students who have reported sexual misconduct to their schools; and **P.K. Runkles-Pearson**, Miller Nash Graham & Dunn, who has advised higher education institutions on these issues.

For more information: Call Kevin Sali, Kevin Sali LLC at 503.329.3598. For registration questions, call the MBA at 503.222.3275.

Annual Probate Update Thursday, June 9, 2016 - 3:00-5:00 p.m. **World Trade Center, Auditorium** Members \$60/Non-Members \$95

The MBA presents the 2016 Annual Probate Update, featuring **Judge Andrew Erwin**, Washington County; **Judge Robert Herndon**, Clackamas County; **Bryan Marsh**, Multnomah County Probate Supervisor; and **Sibylle Baer**, Cartwright Baer Johansson PC. Ms. Baer will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the metro area. This CLE is a must for all probate practitioners and/or their staff.

For more information: Call Mindy Stannard, McKinley Irvin at 503.487.1645. For registration questions, call the MBA at 503.222.3275.

Advising Nonprofits and Serving on a Nonprofit Board: Navigating the Rules and Avoiding the Traps Tuesday, June 14, 2016 - 3:00-5:00 p.m.

World Trade Center, Mezzanine
Members \$60/Non-Members \$95

There are an increasing number of rules, regulations, excise taxes and other sanctions that can apply to a tax-exempt entity. Whether you serve on a nonprofit board or advise nonprofits as part of your law practice, it is important to know the rules that apply to various types of nonprofit entities.

Michele Wasson of Stoel Rives and **Kate Kilberg** of Catalyst Law LLC will address best practices in the nonprofit area to help advisors, board members, and key staff avoid conflicts of interest and apply sound fiduciary oversight. This presentation will cover private foundations, public charities, trade associations, social clubs, and similar tax exempt entities. The speakers will outline the policies and procedures that help ensure a tax exempt entity is operating in compliance.

For more information: Call Ed Carlson, Carlson Law at 971.254.8907. For registration questions, call the MBA at 503.222.3275.

Washington and Clackamas County Court Update Wednesday, June 15, 2016 - 3:00-5:00 p.m.

World Trade Center, Mezzanine
Members \$60/Non-Members \$95

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 Sean Ray, Barran Liebman at 503.276.2135. For registration questions, call the MBA at 503.222.3275.

To register for these classes, see page 4.

mba|EVENT

MBA Family & Friends Golf Event

Thursday, July 14
McMenamins Edgefield, Troutdale

Bring your kids, your colleagues, your clients and play nine, short par-3 holes at Edgefield. Fun Judges will judge your most creative swing and reward your most colorful attire. Costumes optional!

This fun, casual event is ideal for new golfers, non-golfers and children. Putting contest, raffle and mulligans benefit the Volunteer Lawyers Project at Legal Aid Services of Oregon. A putter and pitching wedge are the only clubs



needed and may be rented at the course for \$2 each. Stay after golf for the raffle and awards.

Thank you **OWLS** for partnering on this event and **Aufdermauer Pearce Court Reporting** for being our Prize Sponsor. Space is limited. Register by July 12. See the insert in this issue for details. Adults \$25, children \$10. Tee times begin at 2 p.m.

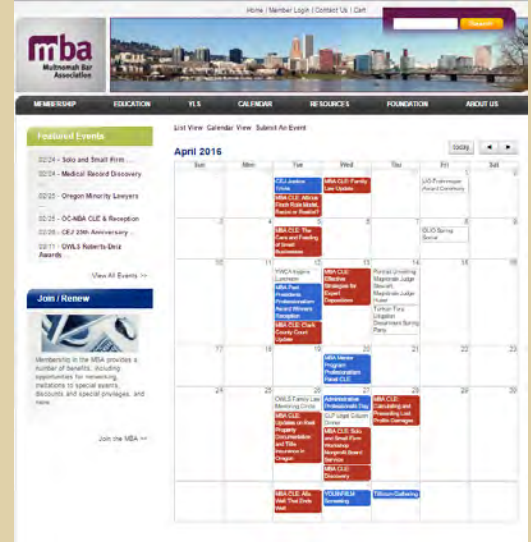
See insert to register and for more information.

MBA Offers Free Event Publicity

The MBA website includes a unique feature: the ability for law-related organizations and nonprofits to add their social events to the MBA online calendar.

The MBA offers other organizations the ability to access our online calendar in order to provide **one** site where all law-related events can be listed to help prevent conflicts.

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



Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

CLE Registration Form

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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.

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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.

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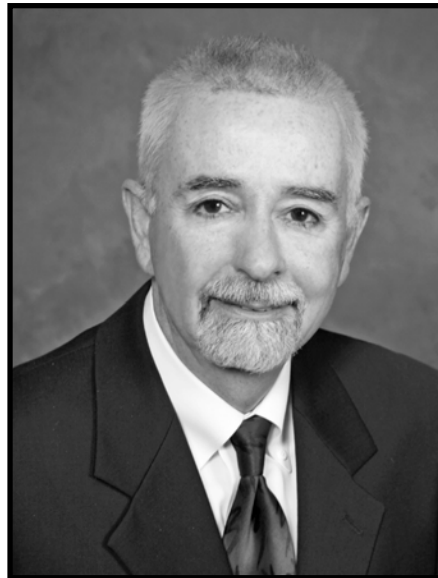


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mba | ANNOUNCEMENTS

Free CLE Webcast to MBA Members

The video webcast of the seminar entitled "Witness Preparation: A 'How to' Guide for More Effective Preparation Sessions" is now available in the Members Center at www.mbabar.org. The webcast is worth two hours of practical skills OSB MCLE credit.

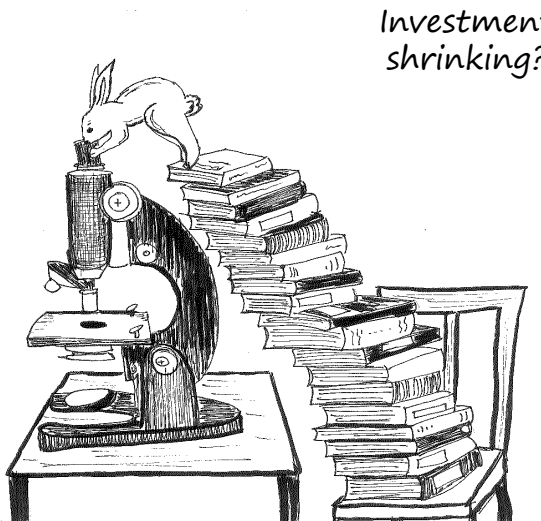
MBA members receive access to a rotating selection of six different CLE seminars each year - a \$360 value.

Statement of Diversity Principles Available to Sign

The MBA Equality & Diversity Committee invites you to sign the Statement of Diversity Principles. Read and sign the diversity statement and pledge at www.mbabar.org/about-us/diversity.html.

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.



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Photos from the dinner will appear in the July/August issue of the *Multnomah Lawyer*.

Available Meeting Space



The MBA conference room may be reserved for use by MBA members for client meetings, depositions and other professional law-related business.

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Ethics Focus

Contract Clauses Contractual Limitations and Arbitration Provisions

by Mark J. Fucile
Fucile & Reising



Lawyers often build limitations of liability and arbitration provisions into contracts they prepare for their clients across a wide spectrum of business ventures. Lawyers' ability to incorporate similar provisions into their own fee agreements with clients, however, is more limited. In this column, we'll look at three: limitations on liability for malpractice; limitations on bar complaints; and arbitration provisions.

All three are governed principally by RPC 1.8(h). Oregon's version is based on the corresponding ABA Model Rule, former DR 6-102 and Oregon case law. With all three, it is important to remember that failure to adhere to the requirements of RPC 1.8(h) not only risks regulatory

...Oregon courts have refused to enforce contract provisions that violate the professional rules.

discipline, but may also result in unenforceability as a matter of contract law. In analogous circumstances, Oregon courts have refused to enforce contract provisions that violate the professional rules on public policy grounds (see, e.g., *Gray v. Martin*, 63 Or App 173, 181-82 663 P2d 1285 (1983); *Hagen v. O'Connell, Goyak & Ball, P.C.*, 68 Or App 700, 703-04, 683 P2d 563 (1984)).

Limitations on Liability

RPC 1.8(h)(1) permits a lawyer or law firm to "make an agreement prospectively limiting the lawyer's liability to a client for malpractice" but requires that "the client is independently

represented in making the agreement[.]" Unlike conflict waivers, which require that a lawyer recommend that a client seek independent counsel, RPC 1.8(h)(1) mandates that the client actually be represented by independent counsel. In *In re Smith*, 9 DB Rptr 79 (1995), for example, a lawyer was disciplined under RPC 1.8(h)(1)'s predecessor for including a limitation on liability in his fee agreements when the lawyer's clients had not been separately represented. Because it would be unusual for a limitation to be in a client's interest when being advised by truly independent counsel, these kinds of limitations are extremely rare in practice. (OSB Formal Ethics Op. 2005-165 deals with the somewhat different situation involving indemnification by a corporate client of a lawyer from third party suits stemming from an investigation by the lawyer on behalf of the client. Concluding that indemnification is permitted in this scenario, the opinion pointedly contrasts this

...the Oregon Supreme Court disciplined a lawyer for "conduct prejudicial to the administration of justice"....

circumstance with limitations on malpractice liability under RPC 1.8(h)(1).)

Limitations on Bar Complaints

RPC 1.8(h)(4) prohibits limitations on bar complaints outright: "A lawyer shall not ... enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or to pursue any complaint before the Oregon State Bar." RPC 1.8(h)(4) did not have a predecessor under the former DRs. It is, however, consistent with prior case law such as *In re Boothe*, 303 Or 643, 650-55, 740 P2d 785 (1987), where the Oregon Supreme Court disciplined a lawyer for "conduct prejudicial to the administration of justice" for attempting to extract an agreement not to cooperate with the bar in connection with the settlement of a civil suit. Bar complainants are also granted "absolute" immunity from civil liability by ORS 9.537(1).

Arbitration Provisions

RPC 1.8(h)(3) permits agreements to arbitrate malpractice claims on the "informed consent" of the client "in a writing signed by the client[.]" "Informed consent" is defined by RPC 1.0(g) and sets a high bar: "Informed consent"

denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." ABA Formal Ethics Opinion 02-425, which addresses arbitration provisions in fee agreements, explains in this regard (at 5) that a "lawyer should make clear that arbitration typically results in the client's waiver of significant rights, such as the

...a lawyer has a duty under the "communication rule"... to adequately explain an arbitration provision....

waiver of the right to a jury trial, the possible waiver of broad discovery, and the loss of the right to appeal." Further, where, as here, "informed consent" is to be confirmed "in a writing signed by the client," RPC 1.0(g) also requires that "the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given."

Arbitration provisions solely governing fee disputes, by contrast, do not include the "informed consent" requirement regulating their malpractice counterparts under RPC 1.8(h)(3). But, ABA Formal Ethics Opinion 02-425 counsels that a lawyer has a duty under the "communication rule" - ABA Model Rule 1.4 - to adequately explain an arbitration provision encompassing fee disputes so that the client will understand the significance of the provision. Oregon's version of RPC 1.4 is patterned on the ABA Model Rule.

Lawyers contemplating arbitration provisions addressing malpractice claims in particular should also discuss them with their insurance carriers. Although the Oregon PLF Plan does not currently take a position on arbitration, some excess carriers have historically not viewed arbitration as a uniformly favorable forum due to limitations on discovery and the lack of appeals. Arbitration provisions solely addressing fee disputes typically do not raise similar concerns from carriers because most malpractice policies (for example, the Oregon PLF Plan under Exclusion V(10)) do not cover fee disputes anyway.

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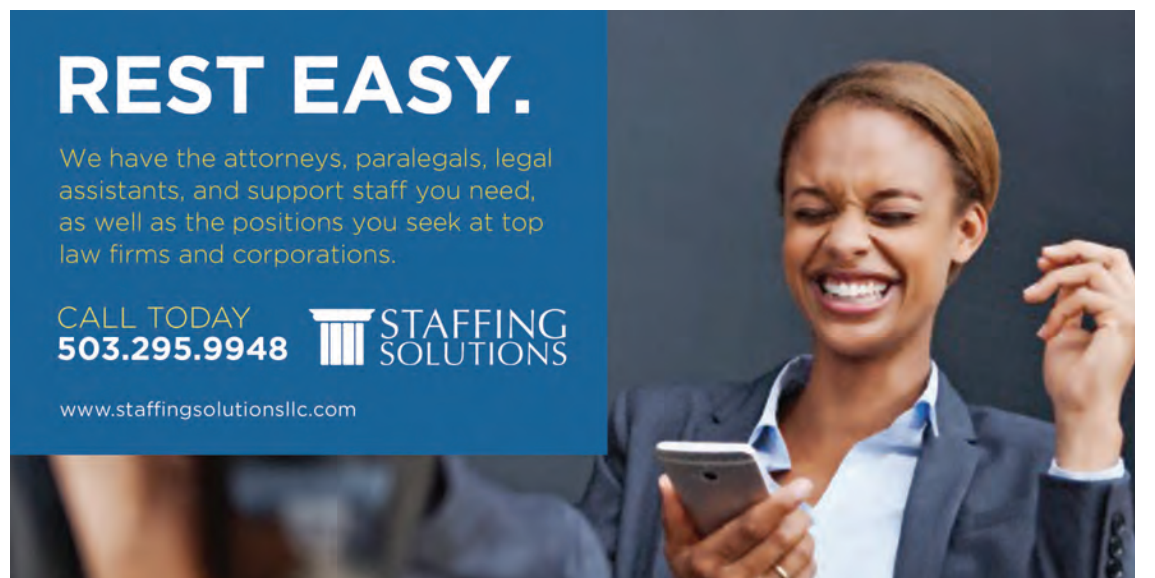
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Around the Bar



John Henry Hingson III

John Henry Hingson III

Oregon City Criminal Defense Lawyer **John Henry Hingson III** delivered a presentation titled Keeping the Faith, How Good Faith (*United States v. Leon*) Can Help You Prove Bad Faith (*Arizona v. Youngblood*) at the Mastering Scientific Evidence Seminar produced by the Texas Criminal Defense Lawyers Association and the National College for DUI Defense in New Orleans in April.

the *Family Court Review*. The award is presented annually to the best article published in the prestigious multi-disciplinary journal. The award has been made to Howe, and his co-author, Liz Scully, a family law lawyer in Los Angeles and law professor at UCLA, for their article entitled, "Redesigning the Family Law System to Promote Healthy Families," which catalogues various innovative family law reforms, most of which Howe has been intimately involved in creating and supporting. Howe has practiced law for 41 years and dedicates his practice exclusively to family law, including divorce and premarital agreements. He is a nationally recognized expert on family law reform and best practice.

construction, trucking and transportation, environmental/toxic tort, and general commercial litigation. O'Neil has defended clients in more than 100 arbitration hearings and several trials throughout Oregon and Washington.



Doug Morris

Miller Nash Graham & Dunn

Doug Morris has joined the firm's Business Team. With deep experience in business transactions, Morris focuses his practice on mergers and acquisitions, corporate finance, securities and general corporate representation of businesses, from high-technology and high-growth companies to nonprofits and social enterprises. Morris serves on the board of Metro Public Defenders, Inc.



Michael Mangan

Tonkon Torp

Michael Mangan has joined the firm's Litigation Department, where his practice focuses on all aspects of real estate litigation for commercial and industrial businesses and property owners.



Matthew Kirkpatrick

Kirkpatrick Law

Matthew Kirkpatrick has opened his own law firm, focused on consumer protection, insurance policyholder, and financial elder abuse claims. He can be reached at 503.901.8739 and mattk@mirkpatricklaw.com, or through the Kirkpatrick Law website at www.mirkpatricklaw.com and www.oregonconsumerlaw.com.



Matthew Scherer



Angela Ferrer

Buchanan Angeli Altschul & Sullivan

Matthew Scherer and **Angela Ferrer** have joined the employment law boutique as associates, where they will advise individuals and businesses regarding various types of employment disputes.



Kevin Kress

McGaughey Erickson

Kevin Kress has joined the firm as of counsel.



Tanya O'Neil

Gordon & Rees

Tanya O'Neil has rejoined the firm as a senior counsel attorney. Her practice focuses on a variety of matters, including employment, tort and product liability, premises liability, professional liability,



William J. Howe III

Gevurtz Menashe

William J. Howe III, of counsel, has been awarded the Meyer Elkin Essay Award by the Association of Family and Conciliation Courts and

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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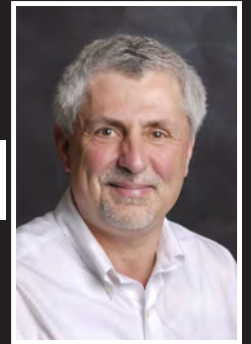


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The Third Annual "Tillicum Gathering" A Celebration of Diversity

On May 5, leaders from diversity and specialty bars across the state, as well as representatives from the MBA and OSB, gathered for the annual Tillicum Gathering. Now in its third year, the Tillicum Gathering is a social networking event organized by the MBA's Equality and Diversity Committee for legal leaders committed to fostering and expanding diversity in our legal community. Davis Wright Tremaine generously hosted an evening where diversity bar leaders exchanged ideas and discussed possible collaboration.

For the second year in a row, recipients of the MBA's LSAT test preparation scholarship

were honored at the Tillicum Gathering. The scholarship pays for an LSAT preparation course for prospective law students who have a connection to Oregon, and who will diversify our bar when they complete law school and begin practicing law. The OSB awards a similar scholarship, and the recipients of that award were likewise honored at the Tillicum Gathering. Judge Angel Lopez, who has supported and participated in the administration of the MBA LSAT scholarship program since its inception, offered encouragement to the MBA and OSB LSAT scholars before distributing the awards.



LSAT scholarship recipients with Judge Angel Lopez

The Tillicum Gathering's attendees look forward to working together to promote and strengthen each group's work toward enhancing diversity in our legal community.



Judge Cheryl Albrecht, Elizabeth Girdan and Violet Nazari



Gabby Richards speaks with other Tillicum Gathering attendees



Jovita Wang and Valerie Colas

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Larkins Vacura Kayser is pleased to introduce the newest player on our team of talented trial lawyers, **Brett Applegate**. Aside from her impressive legal acumen (she did, after all, graduate first in her class) and creativity, she is a delight to work with. Brett's practice focuses on commercial and real estate litigation, and appeals. We are proud to have her join us.



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mba | EVENT

MBA Golf Event

Tuesday, June 14
Riverside Golf & Country Club

An MBA golf favorite, Riverside is one of the premier private clubs in Oregon. Enjoy a round of golf at this classic course and stay for hosted appetizers. 1 p.m. modified shotgun.



See the insert to register or visit www.mbabar.org.

Tips From the Bench

Getting What You Need

by Judge Stephen Bushong
Multnomah County Circuit Court



*"You can't always get what you want,
But if you try some time,
you just might find,
You get what you need."*

When Mick Jagger and Keith Richards wrote those words, everyone believed the song was about three major topics of the 1960s: love, politics, and drugs. But we now know that "You Can't Always Get What You Want" is about trial practice in Multnomah County Circuit Court. Here are some tips to help you get what you need before, during, and after trial.

Before Trial

- In preparing your pleadings, make sure your claims and defenses have some jury appeal in addition to being supported by the facts and the law. Just because you *can* state a claim (or assert a defense) doesn't mean you should.
- Discovery is a tool to help you prepare for trial. It is not an end in and of itself. Use the tools of discovery to get what you need for trial. Don't use discovery to try to bludgeon the other side into submission. Before filing a motion to compel, ask yourself: do we really need this discovery for trial? Or am I moving to compel because I'm annoyed at the other side for not giving me everything that I want?
- Be realistic in assessing the settlement value of your case. During settlement negotiations, be reasonable. Don't ask for the sun, the moon and the stars; you won't get them. Find out what the client really needs, not just what the client wants. If you think it will be helpful, do not hesitate to utilize the services of a mediator or settlement judge.
- If your trial is expected to last five days or longer, contact the presiding judge about five weeks in advance of trial and request an early assignment to a trial judge.
- In preparing for trial, start with the verdict form. Use it as a roadmap for collecting and organizing evidence and preparing jury instructions. Use the Uniform Civil Jury Instructions; don't forget to fill in the blanks. Use neutral wording; courts will typically reject one-sided jury

instructions, and the trial court's decision will be upheld on appeal if your requested instruction is not an accurate and neutral statement of the law. Don't ask for instructions that comment on the evidence or address issues the jury will not be asked to decide.

- Prepare and submit a trial memorandum if you need to set the stage for a motion in limine or for one or more jury instructions. You do not need to submit lengthy arguments in your trial memorandum about why you should win the case; save that for the jury.
- Use motions in limine to get pretrial ruling on disputed evidentiary issues. Do not submit boilerplate motions; they're just a waste of time.
- Talk to opposing counsel before trial. Pretrial discussions about exhibits, deposition excerpts, preliminary jury instructions (including a neutral statement of the case), sharing technology, and other issues will make your trial proceed smoothly and efficiently.

At Trial

- Let the jurors do most of the talking during voir dire. You need to hear their life experiences; you don't need to lecture them. Finding out about pertinent life experiences, attitudes and opinions will help you decide which jurors to excuse. Don't try to win your case during voir dire.
- Use your opening statement to educate the jury about the cast of characters, the timeline of events, and your theme of the case. Tell the story from your client's perspective; make it interesting. Save some of the details for the presentation of the evidence. Give the jury only what they need so they'll want to hear more.
- Streamline and simplify your case; don't make it more complicated. Don't overwhelm the jury with voluminous exhibits; use only the ones you need. The jury will understand your case and appreciate your efficient presentation.
- Only object when necessary to keep out damaging and inadmissible evidence. Don't try to impress the jury with your knowledge of the rules of evidence by objecting whenever you can. Nobody keeps track of how many of your objections were sustained by the court.
- Don't try to do too much during cross examination. Get what you need from the witness, and get out. Use deposition testimony to frame your questions, but don't impeach on minor



News from the Courthouse

by Steve Powers
Court Liaison Committee

Presiding Judge's Report and Courthouse Update

Judge Waller reports that the court continues to consistently send out trials off the morning call docket on the dates which they are set for trial. Compliance by lawyers with UTCR 5.100 (certificates of readiness) has been very helpful to ensuring timely processing of proposed orders and judgments.

New Courthouse

A life-sized courtroom was recently built so that designers, judges, court staff, attorneys, and others could evaluate and test the design for, among other things, sightlines and adjacencies. The current courtroom design includes a much larger well and places the witness box directly across from the jury box, to allow each juror a similar view of the witness. The design also includes ADA-accessible courtrooms, with one courtroom on each floor also being ADA-accessible for the judge. Each courtroom will be equipped with screens/monitors for videoconferencing and projections. A mockup of a high-volume courtroom is forthcoming.

The proposed jury orientation room will feature large windows with a view of the river, as well as an expansion area that can be used for large jury panels, trainings, CLEs or other large meetings. The current

layout includes the coffee kiosk near the jury orientation room, and the CourtCare space will be larger as well.

The court, the Law Library Board of Directors, and Multnomah County continue to discuss opportunities for the Legal Resource Center to be included in the new courthouse, in order to accommodate the needs of self-represented litigants as well as all courthouse library users.

Discussions also continue about two additional topics of interest in the new building: (1) to what extent law enforcement be able to carry firearms in the new courthouse (which impacts the design because of the potential need for firearm lockers); and (2) who can bypass regular security screening (or have limited or random screening) with expedited card access. Finally, the Portland Planning and Sustainability Commission was briefed regarding raising the height limit to accommodate the proposed courthouse, and the commission passed a favorable recommendation.

New Judges and Staff Training

Judge Waller reports that new Judges Patrick Henry, Bronson James, and Leslie Bottomly have settled into their positions and have been receiving positive feedback. The court has set up an internal training committee to look at training opportunities and the needs of the court. Safety and security in the courthouse, trauma-informed practices, and

improving customer service are some of the topics being explored. The court will receive back the procedural justice assessment done by the Center for Court Innovation, which will help to inform ongoing training needs.

Potential Call Docket Changes

Consideration is being given to consolidating afternoon call (which consists of drug and property crime cases, and is also known as "drug call") with morning call. This change will only be considered if the number of criminal case set-overs at call can be reduced. Discussions will continue on whether this is a viable option and what exact changes will be made.

OSB - Bar Press Broadcasters Council

Judge Waller reports that the council is working on revising UTCR 3.180, which governs media access and electronic recording in the courthouse. As part of the revisions, the council is looking at the no cell phone rule to accommodate attorneys who use cell phones for calendaring and other business purposes in courtrooms.

Feedback

Finally, Judge Waller reiterates that she wants to respond to concerns quickly, and gave an example of responding to an issue which was posted on the OWLS listserv recently. If members have issues they want the court to address, please contact the presiding judge or the TCA.

inconsistencies. You lose the power of impeachment when the witness can easily explain away minor discrepancies.

- Don't lose sight of the big picture. You need to win the war, not every battle. Don't forget that you're making a record for appeal. Move for a directed verdict when appropriate.
- Use your closing argument to persuade the jury and convince them to return a verdict in your client's favor. Focus on the main issues in dispute; don't just summarize the evidence. End on a strong point. Many lawyers seem to think they have a better chance of persuading the jury if they just keep talking; that is wrong.

After Trial

- Trial may be only the first step in resolving the dispute. You might have a better chance of getting what your client needs through a post-trial settlement than by pursuing lengthy post-trial motions and multiple rounds of appeal.
- Consider asking the jurors and/or the trial judge for feedback after the trial. Treat every trial as a learning experience, an opportunity to do better next time. Learn from your mistakes; don't repeat them.
- In some cases, what you really need is a ruling from an appellate court. When that is the case, file a notice of appeal. But remember that accurately

predicting the outcome on appeal is difficult. You lose some control over the case when you put it in the hands of the appellate courts.

In trial practice, you can't always get what you want, as the song says. Focus instead on getting what you need. If you do, you just might find that you get it.

Endnote: Mick Jagger and Keith Richards wrote and recorded "You Can't Always Get What You Want" in 1968. The song, featuring the London Bach Choir, appeared on the Rolling Stones' album Let it Bleed, and was released as a single on the "B" side (to "Honky Tonk Woman"). In 2004, Rolling Stone magazine ranked it as the 100th greatest song of all time.

The Honorable Roger DeHoog

Oregon Court of Appeals Judge

by Steve Powers
Court Liaison Committee

Having served on the Deschutes County Circuit Court from 2012 until he took his seat on the Oregon Court of Appeals in January, Judge Roger DeHoog is no stranger to a diverse and voluminous docket. A graduate of Dartmouth College and the U of O School of Law, Judge DeHoog graciously agreed to be interviewed by me as a representative of the Court Liaison Committee:

Q: You began your legal career as an indigent defense provider with Crabtree & Rahmsdorff, Defense Services Inc. in Bend, and later served as a juvenile court referee and judge pro tem. How, if at all, has that experience shaped your present-day work? Are there stories that you carry with you from those experiences?

A: As you know, as a public defender you don't choose your cases. Often your most valuable role as an appointed attorney is minimizing the adverse impact that a client's poor decision will have on the client's life and family. An important part of that kind of advocacy is getting to know your clients, the challenges they face, and where their potential lies. It's also important to understand that for most of them, the courtroom is a foreign environment, where they often feel vulnerable and confused. By getting to know my clients and advocating for them as human beings, not merely criminal defendants, I developed a better understanding of our disadvantaged populations. At the same time, I began to appreciate how our court system is perceived by the general public and how our courts might better serve that public every day.

I became a juvenile court referee and judge pro tem in order to broaden my connection with my community, but brought along the understanding that each person that comes to court needs to be treated as an individual, and in a way that suits his or her particular circumstances or needs. Even today, when I read briefs, I always think about how the events and outcome of the cases might affect the real people they involve - the litigants, their attorneys, any victims, and sometimes even witnesses - because I know that a seemingly minor issue for the court can have a very profound impact on those individuals and on their perception of the courts. Of course, it's always the rule of law that controls the outcome of the case, but it's important that we articulate the law in a way that enhances, rather than harms, the public's perception of both the court and the law.

Q: When did you first think about becoming a trial judge? Having worked in private practice and later for the Oregon Department

of Justice (DOJ) what made you want to move from counsel table where you could frame the legal arguments and sit closer to the witness box where you have to decide credibility and which legal arguments prevail?

A: I first thought about seeking a judicial career after I had spent some time as a juvenile referee and judge pro tem and realized how much I enjoyed the judicial role. It suited my temperament and allowed me to view the law more objectively, rather than as a tool to advocate one position or another. Although by that time my practice had already branched out to include family law and general civil practice, I felt that I (and ultimately, Deschutes County), would be better served if I developed my civil expertise more deeply before pursuing a judicial appointment. When a timely position opened up at DOJ, I was able to do that, by working alongside and learning from a number of exceptional civil litigators in their trial division.

That time spent litigating significant cases on behalf of the state with talented colleagues was one of the most challenging and rewarding parts of my career, but my goal remained becoming a judge, and not a career litigator. So when Judge Stephen Tiktin retired from the Deschutes County bench, I decided to express my interest in a position in the hopes of one day getting an appointment. To my surprise, I was fortunate enough to be appointed by Governor Kitzhaber on that first try. And while I admittedly sometimes miss the competitive spirit of litigation, I know that on balance, I am much more suited to a judicial role.

Q: And then, at some point, you decided to forgo the view of the witness box entirely and trade your daily interaction with the raw humanity that comes into the courthouse each day for scores of trial transcripts and pages upon pages of briefs filled with excerpts of the record and appendices. What drew you to the Oregon Court of Appeals, which is known as one of the busiest intermediate appellate courts in the nation?

A: You make it sound so fun! But to answer the question, what drew me to the trial bench was my interest in engaging the community, and what I sometimes miss is the daily interaction with the public - the parties, jurors, witnesses, and attorneys. But my fascination with the law itself was a big part of what drew me to the law. And while, unquestionably, trial court judges confront tough legal issues on a daily basis, the sheer number of hours spent on the bench and the need to process cases quickly don't leave much time to delve deeply into those issues. Since, like most trial judges, I spent the

majority of my time on the bench, my opportunities to research and write on the law came mostly in the evenings and on weekends, and on my own.

Now, as an appellate judge, my days are filled with digesting briefs, reading draft decisions, and working on opinions - in other words, it's all about the law. And you're right, there's a lot of it. But I'm grateful to have exceptional law clerks, who help by tirelessly reading transcripts, doing research, and drafting decisions. Also, while the volume of the work limits the time we have to engage in protracted legal discussions, the collegial environment of the Court of Appeals and the way we decide cases in panels gives me far more opportunities to engage other judges on the law than I had while on the trial bench. And as for being a particularly busy court, I couldn't agree with you more, but there are still always evenings and weekends....

Q: At your recent investiture, Senior Judge Walt Edmonds noted that you follow in the footsteps of three Court of Appeals judges that had professional roots east of the Cascades. Currently, you are the only appellate judge from outside the Willamette Valley. What does it mean to you to follow Judges Robert H. Foley, J.R. Campbell, Thomas F. Young and, of course, Walt Edmonds?

A: I am honored to be one of the very few judges to serve on the Court of Appeals whose professional roots were in Central or Eastern Oregon. My predecessors brought not only unique perspectives and approaches to the court, but also a tradition of excellence. Judges, of course, are neutral, so it would probably be a mistake to characterize my appointment as giving the counties east of the Cascades a "voice" on the court. But at the same time, by making the appointment that she did, Governor Brown acknowledged that those counties are out there, and that there are hardworking and capable judges throughout the state that warrant serious consideration for appellate appointments, even though they may not be as well known as the lawyers and judges of the Willamette Valley. My hope is to live up to the legacy that Judge Edmonds and the others have left behind, as well as to the trust that Governor Brown has placed in me.

Q: You became the second Asian Pacific American to serve on the Oregon Court of Appeals and are one of two appellate judges who have also served as a circuit court judge. How has your personal and professional background shaped your judicial philosophy and approach?

A: Because of my mixed ancestry and because it is rare to come across others who have Indonesian roots, that specific aspect of my heritage has played a relatively modest role in my sense of identity. That said, whether it is because of my perceived ethnicity or something else, I sometimes feel as though I have a little more to prove than others. However,

that sense has led me to be more aware of potential prejudgments that I, myself, might make, and to work hard to eliminate any unfair doubts that others might have about me. My hope is that this has made me more consciously welcoming in my courtroom and in my thinking, and to be more aware and accommodating of hurdles that others might face in their everyday lives.

As far as being a former trial judge is concerned, I am, quite frankly, surprised that there are not more of us on the Court of Appeals. Trial judges know from experience how legal issues arise in the course of proceedings, what limitations there are on a judge's ability to address them, and what practical consequences a particular appellate decision might have. As I've already mentioned, the rule of law dictates the decision that is made, but each opinion should, to the extent possible, be written with those considerations in mind. While I am in awe of the energy, intelligence, and writing ability of all of the judges on our court, a few more sets of trial court eyes might be a good addition in the future.

Q: What would you say is the overall quality of briefs that you read? Are there any tips, suggestions, or recommended books for counsel to improve their brief writing? And how has your writing evolved over time?

A: On average the briefs I read are good, and some are exceptional. But as you might imagine, there's a considerable range. Most of the offices that do a large volume of appeals generally submit technically proficient and often well-written briefs. Those who don't do many appeals should remember that they will have no more than 15 minutes to argue their cases in person, but their briefing will be read by multiple judges, staff attorneys and law clerks - often multiple times - so it pays to do it well. Although it may seem obvious, appellate practitioners should read and regularly re-read the Oregon Rules of Appellate Procedure, or ORAPs, and should pay particular attention to the provisions of chapter 5, which sets forth the requirements for briefs. Every brief should be carefully reviewed before filing (preferably by someone other than the author), for readability and for compliance with those rules. Specifically, as to each section of the brief, the reviewer should ask, "what is this part of the brief supposed to accomplish, does it do so, and does it do so in a way that advances the appellant or respondent's position on appeal (usually by enhancing the reader's understanding of the argument being made)?"

As an example, ORAP 5.40(6) requires the appellant's brief to state, without argument and in general terms, the question presented on appeal. There is more than one way to do this correctly and effectively, but it should always tell the reader something substantive about the issue to be decided. So, for example, most practitioners - but not all - know that it is neither correct nor helpful to state that the question presented on appeal is "whether the trial



Hon. Roger DeHoog

court erred in granting summary judgment." Something as general as "what is the proper scope and application of the economic loss doctrine under Oregon law?" would suffice; the same question couched in terms of the specific relationship or harm at issue would be better; and, sometimes, a succinct introductory sentence or two would be even better yet.

The point is, if you're not satisfying the purpose of each part of your brief, you almost certainly are not persuading the reader. As far as additional reading goes, there are a number of good books on legal writing, but I'm personally a fan of almost anything that Bryan Garner has written. That's not to say I agree with everything Garner says, but if your brief complies with the ORAPs, incorporates some of Garner's tips, and is carefully proof read, then you are probably way ahead of your opponent.

Opinion writing is not that different from brief writing - both should be clear, logically sound, and persuasive. I strive to use short, simple sentences, while at the same time trying to avoid choppy and abrupt phrasing. Also, while legal writing doesn't have to be completely formulaic and dry, I've found a little color goes a long way and so should be used sparingly. The same is true for word choice - it's okay to show off your vocabulary once in a while, but if your readers are constantly pausing to pull up dictionary.com to understand your point, you're probably losing persuasive steam. In general, I try whenever possible to be complete without being repetitive, succinct without being cursory and conversational without being too casual. As far as substance goes, if my opinions read like clear explanations of existing law, then I feel I've done my job well.

Q: Judge Easterbrook of the U.S. Court of Appeals for the Seventh Circuit once observed that: "Argument is the court's time. The brief is counsel's monologue, argument the dialog." What's your take on oral argument? What do you expect from counsel and in what ways have counsel been effective and ineffective at argument?

A: Judge Easterbrook is a very smart judge, but I wouldn't entirely agree with his statement that oral argument is "the court's time." If anything, it's shared time. It's counsel's time to emphasize key parts of the arguments, and the court's time to ask questions left unanswered by the briefs and to explore the relative strengths and weaknesses of each side's

Continued on page 18

Young Lawyers Section

Ask the Expert

Dear Experienced Attorney,

I am a newer lawyer and have recently encountered a very difficult opposing counsel who bullies me, misrepresents our conversations, and generally behaves unprofessionally whenever we interact. I am very frustrated by his tactics and wonder if you have any suggestions of how I should deal with him?

Hazed and Confused

Dear Hazed,

Welcome to the world of litigation. It sounds as though this may be your first experience with a difficult opposing counsel, but I assure you it won't be your last. While each individual lawyer will have her own style and techniques for handling opposing counsel, I can offer a few tips that have worked well for me over the years.

The most important tip to remember is to not sink to your opposing counsel's level. That doesn't mean you should let him get away with his unprofessional behavior, but avoid fighting fire with fire in this instance. Instead, use water. What I mean is, always engage him in a calm and professional manner and use the federal or state rules or law to rebuke his approach when appropriate.

If a telephone call becomes hostile, state clearly that you will not tolerate abusive or crass language. If he persists, then inform the lawyer that hereinafter you will only communicate with him via written correspondence. After doing so, you may find that his next words include an apology.

Leave a paper trail. Write professionally-toned letters that document your opposing counsel's misrepresentations,

broken promises or improper tactics. If it later becomes necessary for you to file a motion with the court, or respond to one, attach your letters to a declaration in support of your motion to demonstrate opposing counsel's mistakes and unprofessional behavior. In your motion itself, write a well-reasoned brief that focuses on your best arguments and highlights the opposing party's misstatements of the facts and legal issues in the case.

Make a record of your opposing counsel's inappropriate conduct during depositions. For example, state "[L]et the record reflect that Mr. Doe is standing up, yelling and pointing at me." And if he speciously objects to all of your questions, do not debate him but simply instruct the witness to answer each question. If he sees that his tactics are ineffective, then he may eventually cease using them. If the tactics persist, consider offering to get the judge on the phone to settle the deposition dispute, though this approach should be reserved for the more extreme circumstances.

Finally, when you are in court, always wait your turn and then address the judge. Do not address opposing counsel directly or interrupt, even if and when he makes false statements of facts or about the law. Keep in mind that your reputation is established every time you appear in court and it will only be enhanced if you focus on the merits and facts of your case, and refuse to lower yourself to the level of your opposing counsel. There's little an Oregon judge despises more than civil lawyers who make their cases personal and can't behave civilly.

YLS Service to the Public Committee Celebrates Another Successful Community Law Week

by Jamison McCune
YLS Service to the Public Committee

The YLS Service to the Public Committee hosted Community Law Week from April 25 - May 1. Each year, Community Law Week provides legal education, access, and assistance to the public through a series of interactive events held around the American Bar Association's (ABA) Law

Day on May 1. This year's theme, "Miranda: More Than Words," celebrated the 50th anniversary of the landmark Supreme Court case *Miranda v. Arizona*. Highlights of this year's Community Law Week included The YOUTHFILM Project screening and awards

ceremony and a free legal information booth at the North Portland Library.

YOUTHFILM Project Screening and Awards Ceremony

This year's YOUTHFILM Project culminated in an award ceremony and film screening on Wednesday, May 4 at the Hollywood Theatre in Northeast Portland. The screening provided the participants and young auteurs an opportunity to showcase their film submissions on the big screen and before an audience

of attorneys, judges, and civic-minded community members. Films considered *Miranda*-related issues such as the privilege against self-incrimination, individual rights, knowledge of laws, and the right to assistance of counsel. Senior Judge Robert Wollheim awarded prizes to this year's top films, followed by a reception after the screening at Columbia River Brewing.



Tell It To the Judge / Free Legal Information Booth

The YLS Service to the Public Committee hosted a free legal information booth at the North Portland Library on April 30, 2016. Judge Bronson James of the Multnomah County Circuit Court held "open court" for two hours and spoke one-on-one with community members about their questions, concerns, and opinions on the justice system. Volunteers also provided general legal information and helped community members identify much needed legal resources. Patrons expressed their gratitude for the event and for hosting the legal information booth in the Humboldt neighborhood in North Portland.

Volunteers at the event were: Kara Bolin, JennyRae Foreman, Chris Fryefield, Nick Porta, Bryan Kidder, Shane Riedman, Rachael Soule, Marcus Swift and Jessica Witt.

Thank you to our generous 2016 Community Law Week sponsors - Executive Producer: Davis Wright Tremaine, LLP and Co-sponsors: Barran Liebman LLP, Bodyfelt Mount, and Schwabe Williamson & Wyatt.



Senior Judge Robert Wollheim awards student filmmakers at YOUTHFILM Project awards ceremony

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Come celebrate the work of our volunteers as the committee year draws to a close. The YLS has booked a private viewing deck for the Thorns FC soccer match versus the Chicago Red Stars at Providence Park on Wednesday, June 22. Join us for this fun opportunity to mingle and take in the match.

Attendance for YLS and MBA members is \$5. Guests and nonmembers are welcome to attend and may register online for \$10. Space is limited, advance purchase only.

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Chanpone Sinlapasai & Refugee Adjustment Day YLS Pro Bono Spotlight

by Tracy Hooper
YLS Pro Bono Committee

As an immigration attorney and former refugee from Laos, Chanpone Sinlapasai is very familiar with the difficulties refugees face navigating through a complex immigration system to obtain permanent residence status. Realizing that local nonprofit organizations did not have the capacity to meet the high demand for free assistance processing green card applications, Chanpone and a small group of her friends developed Refugee Adjustment Day. At the event, green card applications are processed for up to 400 refugees who are eligible to apply for permanent residence status.

For the past eight years, refugees from all over Oregon have traveled to Portland to attend Refugee Adjustment Day. In fact, last year there were so many refugees seeking assistance that Chanpone and her team



quickly organized a second event so no one would be turned away. This was no easy feat, as Chanpone typically begins planning for Refugee Adjustment Day a year in advance.

Chanpone and her team coordinate with local nonprofit organizations to find a venue and volunteer interpreters. The refugees attending the event come from all over the world and

speak a multitude of languages, and Chanpone ensures that those who need an interpreter will be provided with one, regardless of what language they speak. Additionally, Chanpone works with local businesses to obtain donated food and beverages for refugees and volunteers at the event.

Chanpone is constantly coming up with new ideas to improve Refugee Adjustment Day. As part of the green card application process, refugees are required to undergo a medical exam which can cost \$100 or more per person. For many refugees, particularly large families, the cost of the medical exam is an impediment to obtaining permanent residence status. So this year, Chanpone and fellow organizers worked with medical clinics to provide reduced cost or free medical exams at Refugee Adjustment

Day to eliminate that obstacle.

While a lot of time and effort goes into organizing Refugee Adjustment Day, it is Chanpone's favorite pro bono event. Chanpone went to law school to help people and it is extremely rewarding to be able to provide an invaluable service to so many people who have been displaced from their homes. Given the success of Refugee Adjustment Day in Oregon, Chanpone is currently working with the American Immigration Lawyers Association to develop the resources necessary to establish a national Refugee Adjustment Day.

Chanpone believes Refugee Adjustment Day is an excellent way for young lawyers to get pro bono experience. The time commitment is relatively small, but the attorneys have a major impact on the lives of the refugees they assist. Chanpone and fellow advocates



provide a training session prior to the event in collaboration with the OSB and the Refugee Resettlement Agencies, so attorneys with little to no immigration experience can learn and participate. In the past, many volunteers who signed up to participate for an hour or two ended up staying the entire day because it is such a fun and fulfilling experience.

The next Refugee Adjustment Day will be held in the middle of July. There is a training video available through the OSB and a live training will be held again in the beginning of July at Catholic Charities. Any attorneys interested in volunteering may contact Chanpone at chanpone@mspc-law.com.

Amelia Forsberg YLS Member Spotlight

by Shayda Zaerpoor Le
YLS Board Director

Amelia Forsberg is an Oregon native, but it's safe to say she has a fair amount of travel experience under her belt. Though she spent the bulk of her childhood in Corvallis, she also had stints in both Tokyo and Oman, where her dad was a professor. So as a kindergartener, Amelia learned to speak Japanese. When I asked her what stuck out to her from her experiences living abroad, she recounted how the expat community bonded together, and how inclusive the environment was.

She told me about how she was drawn to the University of California, San Diego for her undergraduate education. Amelia initially highlighted the reason the way I expected: "the weather was warm and nice." But she followed that up with something I don't hear as often (at least, not from lawyers): "and I was good at physics, so that fit in with the program at UCSD."

What's interesting about her story is how her family background, undergraduate education, and law school training came together. While her dad was a professor, he also owned a biotechnology company, he had worked with a lot of patent attorneys, and most importantly, he had talked to Amelia a lot about how important patents were. Post-undergrad, Amelia also had a job in genetic research. So when she decided to take the LSAT, she knew from the beginning of law

school that she wanted to go into intellectual property.

Amelia came back to Oregon to attend Lewis & Clark Law School. She also landed a study abroad position at a patent law firm in Munich (more traveling). She spent her time reviewing patent applications in an office where most other people didn't speak English. The Japanese from kindergarten didn't come in handy, either.

She's been with Chernoff Vilhauer LLP since 2014, practicing in intellectual property law. Amelia happens to be the only associate at her firm, which she says leads to a lot of mentors focused on you as a protégé. When asked about the transition from San Diego back to Oregon, she said that the biggest difference (aside from the weather) is how small the community is here. The connections and the relationships in the legal community are strong, and you can actually be *known*, whether in the legal community or the broader community. In short, practicing in Portland involves a highly reputation-based environment.

Amelia's involvement with the local bar community is as varied as her travels have been. Through the MBA YLS, she is a member of the YLS Membership Committee. She says she enjoys this committee because you're spending time planning events and outings that you enjoy. She says sometimes it's hard to get people out of their



Amelia Forsberg

offices to attend, but when people participate they have a really good time. In addition to the MBA YLS, Amelia is part of the planning committee for the MBA VLP Golf Tournament, the executive committee of the OSB Intellectual Property section and the House of Delegates, and is a member of the Oregon Patent Law Association.

As for her time spent out of the office, her latest exploration involved traveling for 10 days through Patagonia, hiking and biking and exploring. When I ask her what she does for relaxation, she says she bakes bread. She actually uses the words "non-science" to describe the process, and "beautiful loaf" to describe the fruits of her labors. I asked her if it's the bread-baking or bread eating that is the goal, and she tells me, "both."

Her advice to other young lawyers? She says to focus on creating real relationships with other people in the community and giving other people a chance to know what your personality is like. At the end of the day, she says, people want to work with someone who's eager to learn, and who they enjoy being around.

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Pro Bono Oregon Listserv
 Receive a weekly summary of available pro bono volunteer opportunities in your email inbox every Thursday. Listings include the type of case and a brief description of the issue and do not include highly identifying facts or party names. Sign up by sending an email to probonooregon-subscribe@mail.lawhelp.org.

Update Your Directory Listing on the MBA Website
 The MBA website includes an expanded online Membership Directory and members may now update their photos, include a bio, add links to social networking sites and update practice area information online. To update your listing, login to the Members Center where you may use the email address currently on file in the MBA Directory as your user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

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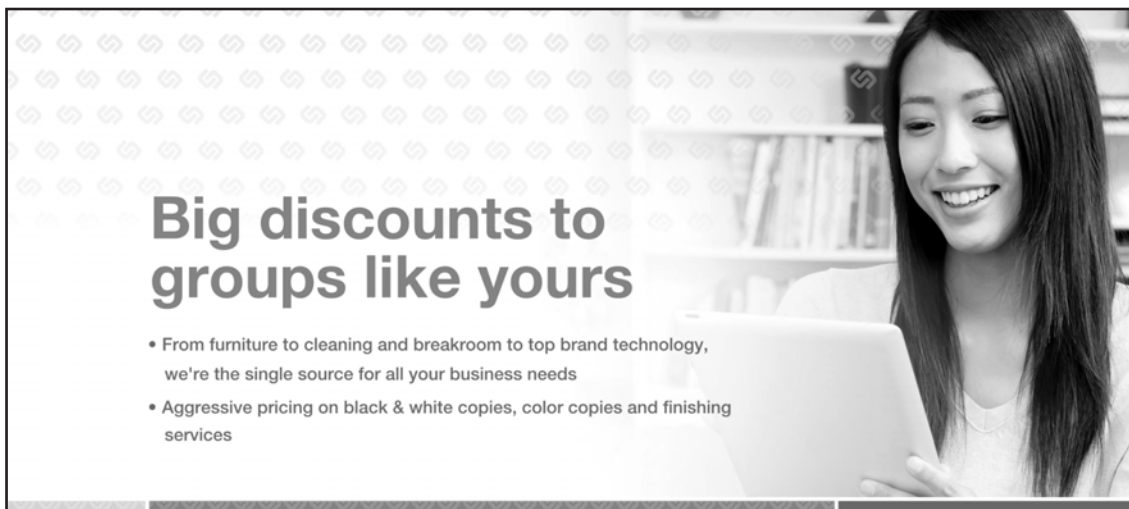
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basis for solid waste, parks, and miscellaneous matters. Metro is seeking a lawyer with experience in (1) solid waste matters as a Hearings Officer or as an attorney representing a client in solid waste; (2) park or natural area rule enforcement or exclusions; or (3) contested case hearings procedures in at least one other area of the law, including but not limited to code enforcement proceedings, personnel matters, or other civil proceedings. For further information please email legal assistant Lisa Hefty at lisa.hefty@oregonmetro.gov. Proposals are due by June 10, 2016, extended from May 12, 2016. Metro Solicitation No. 3162.

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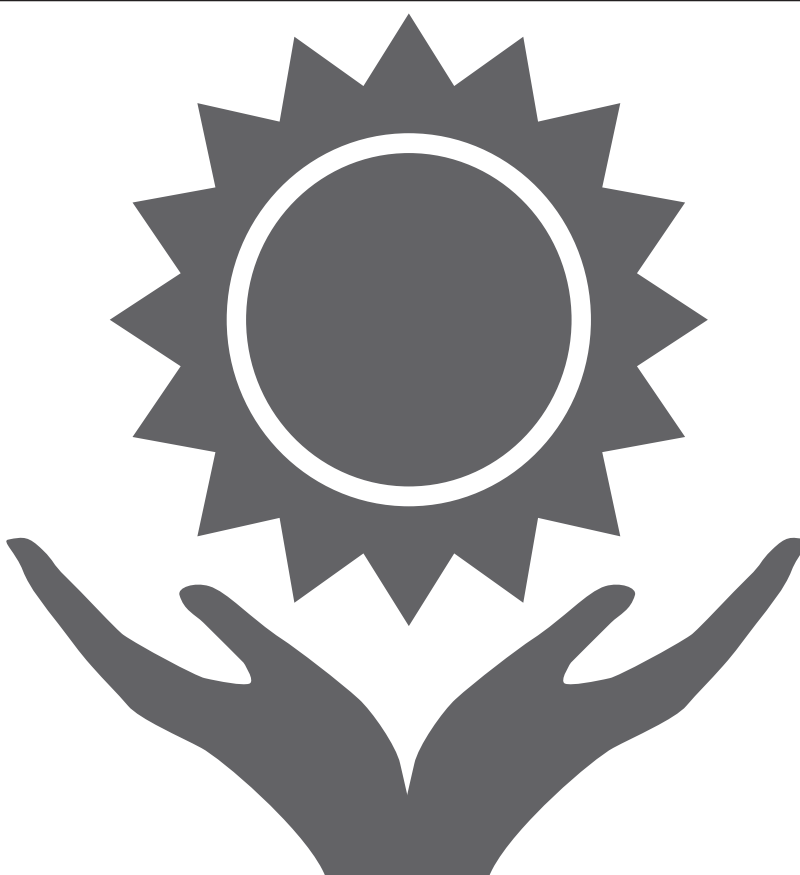
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MBF Awards over \$44,000 in Civic Education Grants

by Pamela Hubbs
Office and Foundation Administrator

The Multnomah Bar Foundation has awarded \$44,945 in grants to 11 area nonprofits for programs that educate people of all ages about the justice system and encourage civic engagement.

Bus Project Foundation was awarded \$3,500 for the PolitiCorps Leadership Fellowship program to train, educate and inform young progressive leaders. The fellowship builds opportunities, skills, and commitment to civic engagement while increasing public participation in our democracy.

City Club of Portland was granted \$2,500 for its Civic Scholars and Civic Awards program to promote civic education and engagement in underserved Portland schools and recognize excellence in individuals, student groups and nonprofits whose work presents an innovative approach to civic engagement.



Elders in Action was granted \$3,000 for Action, Passion, Talent = Civic Engagement, a program that helps older adults understand the legal system, and how to navigate it as potential volunteers and advocates.

League of Women Voters of Oregon was awarded \$3,500 for voter services, including the Oregon Student Mock Election with expanded outreach to the Spanish-speaking community.

League of Women Voters of Portland was granted \$4,000 to hold candidate and ballot measure forums and provide comprehensive voters' guides prior to the primary and general elections. Forums are nonpartisan, open to the public, available online and on local cable access, and are often the only opportunities for voters to

hear all candidates speak at the same event.

MetroEast Community Media was awarded \$4,545 to produce "El poder de ser un votador dedicado" or "The power of being an engaged voter," a short Spanish-language video and Public Service Announcement that encourages



and promotes being an engaged voter and will be shared with Spanish-speaking audiences and Hispanic-focused nonprofits locally, regionally and nationally.



Multnomah Bar Foundation

Oregon Nikkei Endowment was granted \$3,500 for "Minoru Yasui: From Roots to Results," a middle school curriculum and teaches training that promotes civic education through the study of the incarceration of Japanese Americans during WWII with particular focus

on Oregon attorney Minoru Yasui, who was posthumously awarded the Presidential Medal of Freedom in 2015.

Oregon Tradeswomen, Inc. received \$4,000 for the civic education component of TOOLS (Tradeswomen Organized for Outreach, Leadership & Support) providing voter registration, voter education, civic engagement, and advocacy and legislative work, so that tradeswomen are included in the civic and legislative process on issues that affect them.

Saturday Academy received \$4,400 to fund speech and debate and mock trial classes at Title I middle schools, and Kid Lawyer Summer Camp, where fifth - eighth grade students learn about the judicial system in a fun, hands-on learning experience.



Sponsors Organized to Assist Refugees was granted \$5,000 for its Voter Education Project, to promote full immigrant integration, civic participation and voter engagement through monthly classes to newly naturalized citizens. Participants learn about the American voting system and receive help registering to vote. MBF funding will also be used to expand and update the curriculum.



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Continued from page 11

arguments. Counsel should thoroughly understand both sides of the argument, and recognize any potential weaknesses in their own. Critically, counsel should be very familiar with the trial court record. Effective counsel tend to state the key points of their arguments without merely reciting their briefs, and fluidly answer any questions interjected by the court. Ineffective counsel are those who seem unfamiliar with the arguments (sometimes even their own), who speak over the court's questions, or who fail to carefully listen to and answer the questions asked. In my view, counsel should get the chance to answer the questions they're asked, so I won't cut them off unless they aren't answering my question.

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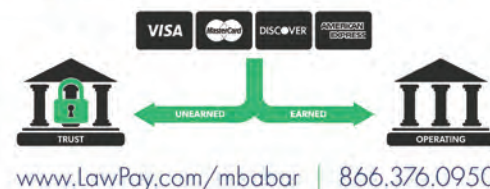


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**Midsized Firm Partners Group
Please join us!**

In 2009, the MBA's midsized firm roundtable discussion group was established. The purpose of the group is to share information and collaborate. Participating attorneys have been extremely forthcoming while addressing important and sometimes sensitive topics, which has allowed group members to bring suggestions and recommendations back to their own firms.

The group was modeled after the longstanding MBA Managing Partners Roundtable, which is for firms with 20 or more attorneys. Since then, firms with 5-19 attorneys in or near Multnomah County have been encouraged to participate. Please consider this an open invitation to partners of midsized firms to join our lively group. Ideally, firms have one more experienced partner and one less experienced partner attend so that diverse views are represented; although many firms send just one representative, often a managing partner.

The group tends to meet three times per year from 4-5:30 p.m., which leaves time for socializing as well as addressing substantive issues. Topics the group has addressed in recent years include: partner compensation, morale in the workplace, the escalating costs for benefits for staff and attorneys, and billing practices and alternatives. On occasion, the group has held joint meetings with the Managing Partners Roundtable, once having Treasurer Ted Wheeler and Commissioner Deborah Kafoury as their guests. The groups are discussing a future joint meeting focusing on implicit bias.

Since its inception in 2009, David Bean of Wyse Kadish LLP has chaired the group. Recently, Tim Resch of Samuels Yoelin Kantor LLP graciously agreed to chair. David is to be commended for his leadership in starting and maintaining the group and Tim for agreeing to lead it into the future.

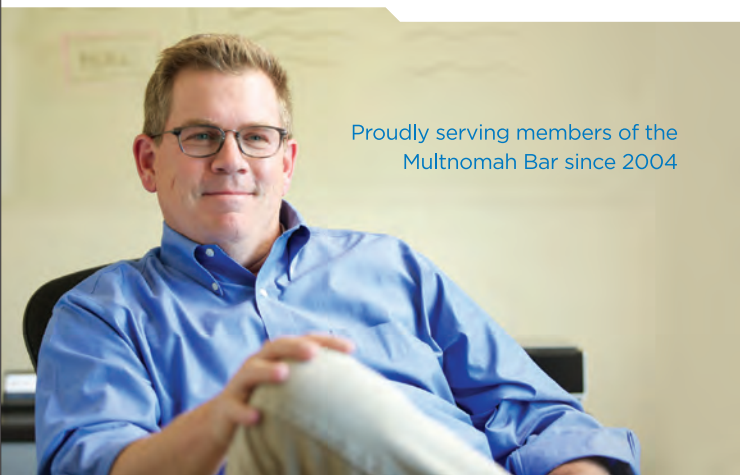
The group's next meeting is scheduled for June 15 at 4 p.m. at the offices of Samuels Yoelin Kantor LLP. David Elkanich of Holland & Knight LLP and Bonnie Richardson of Folawn Alterman & Richardson LLP will join the group for a discussion of *Crimson Trace Corp. v. Davis Wright Tremaine LLP* and its important lessons for all law firms. If you are not familiar with the case, you should be! It speaks to circumstances under which communications between law firm attorneys may be discoverable in malpractice cases.

If you are interested in attending or receiving emails announcing the June 15 or future meetings, please contact Kathy Modie at kathy@mbabar.org. If you have questions or ideas, Tim or David would be pleased to hear from you.

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Celebrating 25 Years of Supporting Access to Justice

by Sandra Hansberger
Executive Director, Campaign for Equal Justice

On February 26, about 450 lawyers gathered at the Sentinel Hotel to celebrate the 25th Anniversary of the Campaign for Equal Justice (CEJ). The campaign was started by Oregon lawyers who wanted to work together to better fund civil legal aid in Oregon. Over the years, helping to ensure equal access to justice to our most vulnerable Oregonians has been instilled as an important part of our professional obligation and is a proud tradition of the Oregon legal community. Twenty-five



years later, through the annual fund drive alone, the Oregon legal community has contributed more than \$25 million in support of Oregon's legal aid programs. The campaign has also played a key



role over the years in bringing lawyers, elected officials, legal aid, the courts and other community partners together to address how to better meet the legal needs of Oregon's poor and elderly.

In the CEJ's early years, *The Oregonian* ran an article calling Oregon lawyers "The good guys" and their efforts to expand legal aid "as a noble public service." According to the CEJ founders in the private bar, it was an effort to unite Oregon lawyers around the goal of equal access to justice. Throughout the years, the campaign has had an important role in reaching out to Oregon foundations to support legal aid; working to increase state and federal funding; and educating lawyers and the community about the tremendous unmet legal needs of the poor. The campaign helps with legal aid open houses, organizes CLEs and regional events on access to justice, participates in annual trips to Washington, D.C. to seek increased federal funding for legal aid; and operates an endowment. The campaign accomplishes its work through the help of more than 300 volunteers who speak at events, work on committees,



and serve on the organization's advisory committee and board.

The CEJ celebrated its 25th anniversary of the legal community's generous support with songs, comedy, awards, and hearing from a legal aid client who, with her two children, escaped domestic violence. Governor Kate Brown welcomed the group and congratulated the legal community on their accomplishments. Attorney General Ellen Rosenblum sang a beautiful rendition of "Somewhere Over the Rainbow" with lyrics wishing for access to justice - "if access should not be denied, then why, oh why, not try?" On a lighter note, and also

to the delight of the audience, Heather Weigler performed a brief reprise of her Laf-Off rubber chicken winning comedy skit. Ira Zarov, one of the founding members of the campaign, was presented with the Henry Hewitt Access to Justice Award. The award is presented to an individual for substantial contributions to legal aid for low-income Oregonians, and for strong leadership, consistent effort and commitment to the ideal of equal justice under the law.

After hearing the compelling story of Judi, a domestic violence

survivor, committed supporters of legal aid's work chipped in an additional \$50,000, bringing the annual fund drive total to close to \$1.4 million. A new record!

The program ended with awarding the Justice Cup - a traveling trophy that is awarded to the Oregon region with the highest

percent of lawyers participating in the campaign. This year the Justice Cup once again went to Jackson County - with 42% of lawyers contributing. Lane County had 33% of lawyers participating, and Portland had 29%.

Multnomah County and the Portland area have a big group of supporters from every sector of the legal community. Leaders in our area remind people to get involved every year through multiple CEJ committees, including the Large Firm Partner Committee, Mid-size Firm Committee, and the Associates Committee; as well as more informal groups such as volunteers and staff in the OSB House of Delegates, Oregon Women Lawyers, and the Oregon Trial Lawyers Association. This year, many of these groups not only met their fundraising and support goals, but also achieved record numbers of lawyers supporting



the Campaign and donating the highest amounts in the campaign's 25-year history.

This year's annual fund drive ended on March 31. The campaign will be publishing its annual report in the next few months, and it will hit your mailboxes soon. In the meantime, the CEJ staff, board, and Oregon's legal aid programs thank you once again for standing up for justice. Our fall campaign kicks off in September.

On July 1, I will be turning the reins over to a new executive director. It has been an honor and a privilege to have worked with our very generous legal community in support of legal aid for these past 11 years. I am fortunate to have had a front row seat to witness the best our legal community has to offer - professionalism,

generosity, and incredible teamwork. It is the power of collaboration, philanthropy and justice. I have had a chance to end my tenure here in celebration of the campaign's 25th anniversary. By the time this article is printed I have no doubt that our board will have named the campaign's new executive director. I will continue as an enthusiastic supporter of the organization and I look forward to seeing what the future will bring.



The Lawyers' Campaign for Equal Justice

The Campaign and Oregon's legal aid programs thank all of our supporters who contributed over \$1.38 million in our annual fund drive that ended March 31, 2016. We extend a special thank you to our Guardians of Justice, Defenders of Justice, and Justice Council law firms.

Guardians of Justice

Firms of 3 or more attorneys which averaged \$1,000 or more per capita

Barran Liebman LLP
Elser Stevens & Buckley LLP
Gaylord Eyerman Bradley PC
McDowell Rackner & Gibson PC
Markowitz Herbold PC

Mitra Law Group
Paulson Coletti Trial Attorneys PC
Stoll Berne
Tarlow Naito & Summers LLP

Defenders of Justice

Firms of 3 or more attorneys which averaged \$500-\$999 or more per capita

Angeli Ungar Law Group LLC
Brophy Schmor LLP
Dorsay & Easton LLP
Dunn Carney
Farleigh Wada Witt
Gaydos Churnside & Balthrop

Lane Powell PC
Ring Bender McKeown & Castillo LLP
Stoel Rives LLP
Tomasi Salyer Baroway
Tonkon Torp LLP

Justice Council

Firms of 3 or more attorneys which averaged \$301-\$499 or more per capita

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Ball Janik LLP
Bodyfelt Mount
Buchanan Angeli Altschul & Sullivan LLP
Corson & Johnson Law Firm
Cosgrave Vergeer Kester LLP
Davis Wright Tremaine LLP
Deloitte Tax LLP
Eugene City Attorneys Office
Evans Batlan
Greene & Markley PC
Hershner Hunter LLP

Hitt Hiller Monfils Williams LLP
Hobbs Straus Dean & Walker LLP
Kit A Jenson Attorneys at Law
Landye Bennett Blumstein LLP
Miller Nash Graham & Dunn LLP
Perkins Coie LLP
Pickett Dummigan LLP
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Schwabe Williamson & Wyatt
Scott Law Group
Stebbins & Coffey
Wyse Kadish LLP