



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. October 2009 Volume 55, Number 9

## All Rise

By Leslie Kay, MBA President.



*Presiding Judge Jean Maurer talks about her path to the bench, eCourt, increasing access to justice, managing the state's busiest court, and how she does it all.*

**Q You grew up in a small town in central California, attended the University of California at Berkeley during the late 1960s and went on to Santa Clara Law School. What was your path to the bench?** My path to the bench was an unusual one in some ways. I started practicing law in 1974 when there were few women lawyers in the profession and even fewer on the bench. I was 24 years old, fresh out of law school. My first five years were spent working as a Deputy District Attorney in the Marion County and Multnomah County District Attorney's offices. I tried many court and jury trials and I worked hard to become a good trial lawyer. In 1980, after the birth of my son, I entered private practice with Bill Keys (before he was appointed to the bench) where I represented both civil litigants and persons accused of crimes.

My daughter was born several years later, and because of the firm's policy allowing me to work on a part-time basis, I was able to find the right balance between being a mother and a lawyer. Eight years later, my children were older and I returned to the Multnomah County District Attorney's office. My career in that office was very rewarding, but after 22 years as a lawyer, I found myself interested in becoming a judge. I applied for a position in 1996, when there were three vacancies on the court. I will always remember the day I learned that then Governor Kitzhaber appointed me to the bench. It was then, and is now, one of the best days of my life. I have had remarkably good fortune during my career. I am now in my 35<sup>th</sup> year in the legal profession, and have found it to be extremely satisfying. It is intellectually challenging and provides me with the ability to interact with people who come from all walks of life.

**Q What is the status of e-filing and how can MBA members prepare their offices for the transition?** This is a topic that is near and dear to my heart. Oregon eCourt will transform the way that lawyers, businesses, public agencies and individuals obtain information and services from our courts. It will provide access 24 hours a day, every day of the year. On September 23, the Multnomah County Circuit Court began the rollout of an electronic content management system for small claims and FED cases as an initial step toward electronic case files. Documents are scanned into the system and users are able to access them electronically from PCs in the courthouse. In the circuit courts, we expect to transition to electronic filing of documents in November, 2012. The appellate courts are already there. The system allows lawyers to file documents electronically and manage cases online at any time of the day or night. Electronic filing will speed processing times and

improve efficiency. The court is committed to providing adequate training to make this a successful transition.

**Q With the rise in the number of self-represented litigants at the courthouse, what role can the 4,400+ members of the MBA play in increasing access to justice?** MBA members can help ease the crisis by supporting our nonprofit law firms that represent low income individuals such as Legal Aid Services of Oregon, the Oregon Law Center, Disability Rights Oregon, the Juvenile Rights Project, Northwest Workers Justice Project, and the St. Andrew Legal Clinic with adequate funding and donations. MBA members should also consider taking the MBA pro bono pledge and make a commitment to handling at least one pro bono case every year. The MBA or OSB can direct you to pro bono opportunities.

**Q How is the court managing the increasing number of non-English speaking litigants?** The Oregon Judicial Department Court Interpreter Services coordinates interpreting services in Multnomah County Courts for people with limited English-proficiency in more than 100 languages and for the hearing-impaired. OJD employs schedulers and full-time certified Spanish and ASL interpreters and contracts with freelance interpreters. CIS trains interpreters of all languages in the Code of Professional Responsibility for Oregon Court Interpreters, court ethics and protocols. The OJD/CIS maintains a roster of certified interpreters for those who wish to verify an interpreter's certification or to hire a certified interpreter for out-of-court work.

**Q What other issues do you face as presiding judge?** That is a great question. The presiding judge has the responsibility of overseeing the administration of the court and collaborating with other partners in the justice system. The court is facing a crisis in funding for its basic operations. The facilities in both east county and downtown need replacement. Managing the state's busiest court under these circumstances is challenging at times. The demographics of our county are changing and there is an increased demand for access to the courts. We are so fortunate to have the lawyers that we do in this community, who are characterized by a level of professionalism that is rare. I rely on that every day when I am at work.

**Q You are awfully busy. How have you negotiated the balancing of career and a two judge family?** I thought at one time that I would never be busier than when my children were young and I was also working hard as a lawyer. But that has not proven to be the case. As soon as they grew up and moved out of the home, I just started devoting more hours to my work! I have the unfailing support of my husband and my children. I have a wide circle of friends on whom I also rely. As I judge, I am given the opportunity to assist people in resolving their disputes in a safe and impartial forum, and to develop systems within the court to achieve that end. It makes for a very rewarding life.

*Interview conducted, condensed and edited by MBA President Leslie Kay*

## MBA CLE

To register for a CLE, please see the inserts in this issue or go to [www.mbabar.org](http://www.mbabar.org).

### October

**Thursday, October 15**  
**Child Abuse Reporting**  
Helen Hierschbiel

### November

**Thursday, November 12**  
**Civil Jury Trial Recommendations**  
Judge Janice Wilson  
Michael Simon

**Tuesday, November 17**  
**Persuasive Oral and Written Advocacy: Perspectives from the Bench**  
Judge John Acosta

**Thursday, November 19**  
**High Tech Ethics**  
Mark Fucile

### December

**Tuesday, December 1**  
**Bankruptcy Primer for the Non-Bankruptcy Attorney**  
Martin Meyers  
Richard Parker

**Tuesday, December 8**  
**Leave Law Alphabet Soup: FMLA, OFLA, ADA**  
Jennifer Bourman  
Jason Weyand

**Tuesday, December 15**  
**Legal Ethics**  
Roy Pulvers  
Peter Jarvis

## Absolutely social

**Wednesday, October 14**  
**The University Club**  
**5-7 p.m.**

**Opportunity to help Oregon's hungry!**  
**Bring nonperishable food (especially protein) items for the Oregon Food Bank.**

**RSVP via insert in this issue.**

**Featuring Oregon wines selected by attorneys Albert Menashe and Matt Levin especially for the social. Drop in after work for wine tasting and catch up with friends and colleagues.**

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DEADLINE for copy: The 10th of the month\*  
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\*or the preceding Friday, if on a weekend.

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## Member Resource Center

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

### Courthouse Watch

(This new regular feature will provide MBA membership with current information about the efforts to provide citizens with safe and efficient access to justice.)

We learned this year that Multnomah County has given up on using the site selected in 2007 for a new downtown courthouse. This news was disappointing because, despite the reservations many felt about building a courthouse at the foot of the Hawthorne Bridge, at least a long overdue decision had finally been made.

Currently, the county has no plans to move forward with the planning of a new downtown courthouse. Instead, the Multnomah County commissioners have issued a "Request for Competitive Proposal Quotes" for a study to "determine the economic,

logistical and redevelopment viability of renovating the downtown courthouse, while simultaneously maintaining a substantial portion of operations in the building." In other words, the commissioners are looking at implementing a seismic upgrade to the building while trying to conduct court business there at the same time.

Meanwhile, the county's plan to replace the deplorably inadequate east county courthouse has also stalled.

For more information about past courthouse reports, studies, photos of the downtown Multnomah County Courthouse and other court-related information, go to [www.mbabar.org/courts.htm](http://www.mbabar.org/courts.htm).

### Pro Bono Opportunities

By going to [www.mbabar.org/probono.htm](http://www.mbabar.org/probono.htm) you will learn more about pro bono and how you can get involved. At the Web site, you will find the MBA Pro Bono Pledge,

*Pro Bono Opportunities Handbook*, Pro Bono Toolkit and how to contact the Pro Bono listserv.

To learn about how to represent veterans before the US Court of Appeals to assist them in claiming VA benefits, go to the Announcements section of this newsletter issue, where more details may be found.

### MBA Web Site Member Section

The Member Section at [www.mbabar.org](http://www.mbabar.org) provides substantive information on marketing tips, practice and firm management and technology. Going solo? You'll learn smart ways to get started on the right foot under practice and firm management. Join the interactive forum in the Technology Corner.

# CALENDAR

For a complete MBA calendar, please visit [www.mbabar.org](http://www.mbabar.org). To add organization or firm events to the MBA online calendar, contact Carol Hawkins, [carol@mbabar.org](mailto:carol@mbabar.org).

## October

**6**  
Tuesday, MBA Board meeting

**7**  
Wednesday, MBA CLE  
Computer Forensics and  
Electronic Discovery  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**8**  
YLS Drop-in Social at Clyde  
Common  
See p. 10 for details.

Thursday, OWLS Benefit and  
Fashion Show, Dress for Success  
Visit [www.oregonwomenlawyers.org/events](http://www.oregonwomenlawyers.org/events) for details.

**9**  
Friday, November *Multnomah*  
Lawyer deadline

Friday, Professionalism Panel  
Discussion for Criminal Law  
Practitioners  
See Announcements on p. 4 for  
details.

**12**  
Monday, MBA/OMLA CLE series  
begins  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**13**  
Tuesday, YLS Board meeting

**14**  
Wednesday, MBA *Absolutely*  
*Social at University Club*  
Visit [www.mbabar.org](http://www.mbabar.org) for details.

**15**  
Thursday, MBA CLE  
Child Abuse Reporting  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**18**  
Sunday, MBA and Portland  
Center Stage Present *Ragtime,*  
*the Musical*  
See Announcements on p. 4 for  
details.

**21**  
Wednesday, Practice  
Management Seminar: Website  
Optimization for Law Firms  
See insert for more information

**23**  
Friday, Campaign for Equal  
Justice LAFF-OFF  
See ad on p. 4 for details.

**25**  
Sunday, MBA and Portland  
Center Stage Present *Josh*  
*Kornbluth's Benjamin Franklin,*  
*Unplugged*  
See Announcements on p. 4 for  
details.

**26-30**  
Mon-Fri, Pro Bono Week

**27**  
Tuesday, Pro Bono Fair at  
Oregon Historical Society  
See ad on p. 11 for details.

**28**  
Wednesday, MBF Board  
meeting

## November

**3**  
Tuesday, MBA Board meeting

**10**  
Tuesday, December *Multnomah*  
Lawyer deadline

Tuesday, YLS Board meeting

**12**  
Thursday, MBA CLE – Civil Jury  
Trial Recommendations  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**17**  
Tuesday, MBA CLE – Persuasive  
Oral and Written Advocacy  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**19**  
Thursday, MBA CLE – High Tech  
Ethics  
See insert or register at  
[www.mbabar.org](http://www.mbabar.org).

**26-27**  
Thursday-Friday, Thanksgiving  
Holiday  
MBA closed.

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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## The Mysterious ORS Chapter 9: Lawyers' Statutory Duties



When we think of the regulatory structure governing lawyers, we usually focus on the Rules of Professional Conduct (RPCs). That's natural, as the RPCs lie at the heart of our regulatory obligations. Lawyers in Oregon, however, also have statutory duties under ORS Chapter 9 that, although instinctively understood because they largely parallel the RPCs, are far less known. In this column, we'll look at three aspects of those statutory duties.

### Constitutional Basis.

Many lawyers correctly note that most of our duties flow from the RPCs as approved by the Supreme Court and because we're "officers of the court." Fewer lawyers know that Oregon statutory law plays a role with both. On the former, ORS 9.490(1) makes the RPCs "binding upon all members of the bar" (which, in turn, is defined by ORS 9.005(7) as the Oregon State Bar). On the latter, ORS 9.010(1) anoints us as "officer[s] of the court." The Supreme Court has observed that, as a matter of state constitutional law, "the Legislature may regulate the legal profession and the practice of law, provided that a statute does not unduly burden or unduly interfere with the judiciary in the exercise of its judicial functions." *State ex rel Acocella v. Allen*, 288 Or 175, 181, 604 P2d 391 (1979); accord *State ex rel Metropolitan Public Defender Services, Inc. v. Courtney*, 335 Or 236, 240-41, 64 P3d 1138 (2003). The statutory duties that echo their professional rule counterparts, therefore, coexist constitutionally with the RPCs.

**Statutory Duties.** The core of our statutory duties lies in ORS 9.490 and ORS 9.460. The first, as noted, makes the RPCs binding on all members of the bar (including, under ORS 9.241, out-of-state lawyers who are practicing here temporarily). The second, however, contains duties that, while they echo the professional rules, are stated as elements of state statutory law. These include both general injunctions to follow state and federal law (ORS 9.460(1)) and specific duties to, for example, "[m]aintain the confidences and secrets of the attorney's clients" (ORS 9.460(3)). On the latter in particular, the Supreme Court noted in *State v. Keenan*, 307 Or 515, 519, 771 P2d 244 (1989), that the statutory

duty of confidentiality and its professional rule counterpart (presently RPC 1.6) are broader than the attorney-client privilege standing alone.

### Practical Consequences.

Somewhat counterintuitively, the practical consequences of our statutory duties lie largely beyond the regulatory realm. Lawyers can certainly be disciplined for violations of their statutory duties. See, e.g., *In re Lackey*, 333 Or 215, 222-25, 37 P3d 172 (2002) (discipline for violation of ORS 9.460(3)). At the same time, the Supreme Court has stated (see, e.g., *In re Lawrence*, 332 Or 502, 511, 31 P3d 1078 (2001)) that because our principal statutory duties largely mirror the RPCs, a violation will not usually enhance a disciplinary sanction.

It is important to remember, however, that the duties reflected in both the RPCs and statutory law have a very active life beyond lawyer discipline. In matters involving lawyer testimony, for example, the Supreme Court in *Keenan* (at 519) observed that "[t]o hold that, except for the rules of evidentiary privilege, the general obligation to testify overrides an attorney's professional obligation of secrecy would be too facile, where, as in Oregon, the professional obligation is statutory law." Similarly, in situations involving lawyer civil liability and related fee forfeiture, the Supreme Court concluded in *Kidney Association of Oregon v. Ferguson*, 315 Or 135, 142 n.12, 843 P2d 442 (1992), that "although the rules do not establish the standard of care in a negligence action, the rules do, in part, describe a lawyer's fiduciary duty to his client." (Emphasis in original.) Further, the Court of Appeals in *Tydeman v. Flaherty*, 126 Or App 180, 187-88, 868 P2d 755 (1994), found that a breach of these fiduciary duties can also state a claim for negligence under the applicable standard of care. Finally, the Supreme Court in *State ex rel Bryant v. Ellis*, 301 Or 633, 636-40, 724 P2d 811 (1986), after noting that the professional rules in Oregon have the force of state statutory law by virtue of ORS 9.490, held that trial courts have inherent equitable power to disqualify lawyers in breach of their professional and fiduciary duties. In short, although Chapter 9 may be less familiar to lawyers than the RPCs, its duties can resonate with equal force in many important facets of law practice.

# ANNOUNCEMENTS

### Professionalism Panel Discussion for Criminal Law Practitioners

October 9, from 12:15-2:15 at the Multnomah County Courthouse

MBA Professionalism Committee members will host a panel discussion of professionalism issues for criminal law practitioners. Our distinguished panelists will be Hon. Jean Maurer, Multnomah County Circuit Court Presiding Judge; Hon. Thomas Ryan, Multnomah County Circuit Court judge; Julia Philbrook, Multnomah County Circuit Court judge pro tem; and Bruce Green, Louis Stein Professor of Law at Fordham University School of Law and Vice Chair of the ABA Criminal Justice Section's Committee on Ethics and Professionalism. The CLE and lunch are free to participants. We are applying for two ethics credits. To register, call the MBA, 503.222.3275.

### MBA Teams up with Portland Center Stage

A new partnership with Portland Center Stage invites you to take part in lively conversations around themes of law, liberty, justice and freedom directly following certain matinee performances. The first two plays to offer these discussion opportunities will be *Ragtime, the Musical* on Sunday, October 18 at 2 p.m. with attorney Judy Snyder leading the discussion; Michael Dwyer leads the conversation at *Josh Kornbluth's Ben Franklin: Unplugged* on October 25 at 2 p.m. Visit [www.mbar.org](http://www.mbar.org) for details.

### OWLS Invites Nominations for Roberts-Deiz Awards

Oregon Women Lawyers is

inviting nominations for the 18th Annual Justice Betty Roberts and Judge Mercedes Deiz Awards. The awards recognize and celebrate the accomplishments of individuals in promoting women and minorities in the legal profession and community in Oregon. The recipients will be honored at the annual awards dinner on Friday, March 12, 2010 at the Governor Hotel in Portland.

The Judge Mercedes Deiz Award recognizes an individual who has made an outstanding contribution to promoting minorities in the legal profession and in the community. Forms are at [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) and are due by November 18 to Angela Franco Lucero, fax 971.204.0261, email [angela@tkatlaw.com](mailto:angela@tkatlaw.com).

### Oregon Minority Lawyers Association Summer Social and Fundraiser

At its annual auction, the association raised \$29,767.59. Benefactors include Ball Janik; Lewis & Clark Law School; OSB Business Law Section; Stoel Rives; U of O Foundation; and Williams Kastner.

### Oregon Criminal Defense Lawyers Association (OCDLA) October Seminars

October 19-20 is Juvenile Law Training Academy's seminar, "Critical Issues in Juvenile Court: 2009." The 2009 Public Defense Management Seminar is October 22-23 at Mt. Bachelor Village Resort in Bend. This program is for attorneys and staff involved in public defense. October 23-24 is a seminar at Mt. Bachelor Village Resort in Bend "Death Penalty Defense: New Developments to Successfully Try, Appeal and Post-convict." To register for these seminars, visit [www.ocdla.org/seminars](http://www.ocdla.org/seminars).

### Oregon Asian Pacific American Bar Association (OAPABA) Elects First Board

The new bar has elected its first board of directors. Officers include Julia Markley, David Wang, Emily Yip and Kevin Kono. The regional and at-large representatives include Oubonh White, Kevin Hashizume, Simon Whang, Elisa Dozono, Jessica Asai, Beth Bagley, Connie Kong and Angela Sagalewicz.

### Oregon Trial Lawyers Select New Officers

The Oregon Trial Lawyers Association (OTLA) selected Portland employment attorney Dana Sullivan of Buchanan Angeli et al as president. New officers are President-elect Tom D'Amore of D'Amore and Associates, Portland; Secretary/Treasurer Michael Wise of Michael Wise & Associates, Portland; and Parliamentarian Brian Dretke of Hallman & Dretke, Pendleton.

### Represent a Veteran Pro Bono before the US Court of Appeals

The Washington, D.C. based Veterans Consortium Pro Bono Program is seeking volunteer lawyers to assist veterans who claim entitlement to VA benefits. Each lawyer agreeing to accept one case will receive free training, a veterans' law manual, a pre-screened case and ongoing access to a mentor lawyer. An all-day training is being offered in Portland on Monday, October 26, sponsored by Perkins Coie LLP and the Veterans Consortium Pro Bono Program. The cost is free with acceptance of one pro bono case. CLE accreditation is pending. To register, contact Erick J. Haynie, [ehaynie@perkinscoie.com](mailto:ehaynie@perkinscoie.com) or 503.727.2017.

**LAF-OFF**

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**October 23, 2009**

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# Small Business Fraud Don't Let it Happen to You

By Elise Bouneff, Senior Vice President, Bank of the Cascades.



According to the US Chamber of Commerce, the average cost of a fraud event targeting businesses with fewer than 100 employees was \$200,000 for the period of January 2006 through February 2008. One-third of business bankruptcies are due to employee theft, and less than 25 percent of the funds stolen are recovered when the fraud is discovered.

People commit fraud for many reasons. The good news is they won't be successful if you protect yourself. As part of your daily standard business practice you can watch for the fraud warning signs by knowing your employees, instituting internal controls and keeping a close eye on bank and credit card accounts.

**Institute internal controls**

You can control the opportunity for someone to commit fraud. Start by separating financial duties between custody, authorization

and accounting/reconciliation of checks. This is tough in a small business where one person might wear several hats. Make a list of all the steps involved in receiving and disbursing checks, and divide the duties among your available staff. No one person should have control over transactions from start to finish.

**Manage your bank and credit card accounts**

If you're the managing partner, you should receive and review unopened bank statements and credit card bills. Review the reconciliations monthly as well, and watch for unusual items. Just as you would with your personal account, pay attention to where your money is going. Some red flags to watch for include: forged signatures, checks written to cash, checks to unknown vendors or suppliers, missing

*Continued on page 6*

It is hard to go a week or two without hearing about some kind of financial fraud: a loyal bookkeeper empties a law firm's checking account or a seasoned office manager uses the company's credit cards for personal use.

While many small law practices are sure it will never happen to them, think about this:

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## Small Business Fraud

Continued from page 5

checks, checks endorsed by an unknown payee and checks that don't match up to your account records. Credit card accounts need the same supervision. Set a policy of business transactions only and be sure that receipts submitted for expenses match up to the statements.

### Know your employees and watch for the fraud warning signs


While it is a minority of employees who commit fraud, careful and prudent hiring practices will help you know your employees. Verify references and consider background checks. And build a culture in which employees feel engaged and valued, and be open to listening to employee concerns: up to 50 percent of initial detection comes from tips and complaints. Watch for the fraud warning signs such as employees who have an inability to keep up with regular work, are not taking vacation or coming into work on vacation, have a lifestyle or spending habits that are inconsistent with income and who talk about personal financial pressures.

It is never too late to take steps to protect your law firm. Talk to your banker about products and protocols you can incorporate right now to safeguard your assets - and your reputation.

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# AROUND THE BAR

JUDGE KATHERINE TENNYSON  
Multnomah County Circuit Court Judge **Katherine Tennyson** has been elected to the National Council of Juvenile and Family Court Judges Board of Trustees.



Robert W. Wilkinson

BALL JANIK  
**Robert W. Wilkinson** has been named as partner. Wilkinson joined the firm in 2001 and his principal areas of practice include commercial and construction litigation.



Peter McKittrick

FARLEIGH WADA WITT  
**Peter McKittrick** has been appointed an adjunct professor at Lewis & Clark Law School and will teach a course on bankruptcy and debtor-creditor law. In addition to practicing bankruptcy and debtor-creditor law for more than 20 years, McKittrick is a member of the Portland panel of Chapter 7 bankruptcy trustees.

MITCHELL-PHILLIPS LAW  
**Ken Mitchell-Phillips Sr.** has established his own law firm - Mitchell-Phillips Law, located in the World Trade Center, 121 SW Salmon St. Ste.1100, Portland 97204. The new firm focuses on business transactions, corporate finance, real estate, international law, estate planning and specialty services for minority and women-owned businesses as well as small and emerging businesses. He may be contacted at 503.471.1330 or info@mitchellphillipslaw.com.



Alex Duarte

ALEX DUARTE  
**Alex M. Duarte**, Corporate Counsel for Qwest Communications International, was recently appointed by Governor Kulongoski and confirmed by the Oregon Senate to serve as one of five members of the Oregon Liquor Control Commission. Duarte's general counsel for its Oregon and Utah operations and its resident attorney in Portland, practices telecommunications, regulatory and administrative law.



David P. Meyer

DAVID P. MEYER  
**David P. Meyer** has moved his office. He will continue to practice business, construction, litigation and personal injury law. His new address is 621 SW Morrison St. Ste. 900, Portland OR 97205; telephone 503.224.1096; email dpmeyer@meyerlaw.com.

ATER WYNNE  
*The Star Profile, A Management Tool to Unleash Employee Potential*, written by employment attorney **Jathan Janove** and published by DaviesBlack, has received a 2009 Gold Award in the Business/Career/Sales Category by the Independent Publisher Book Awards.

Janove, a partner at the firm, describes his book as a "short, practical, and to-the-point communication tool that cuts through the clutter to deliver - in 100 words or less - compelling language proven to promote compelling language proven to promote collaboration and establish and sustain productive employer-employee relationships."



George W. "Skip" McKallip Jr.



Jeffrey C. Misley

SUSSMAN SHANK  
The firm partners have elected **Robert L. Carlton** as managing partner. Carlton has practiced law with the firm for 20 years and has served in several management positions. He focuses his practice on debtor/creditor rights, bankruptcy and business litigation. He succeeds **Jeffrey C. Misley**, who served as the firm's managing partner for 10 years.

The partners also elected **George W. "Skip" McKallip Jr.** to a two-year term on the firm's Management Committee. Other committee members include Carlton, **Nena Cook** and McKallip.



Sherilyn Holcombe Waxler

WAXLER IMMIGRATION LAW  
**Sherilyn Holcombe Waxler** announces the opening of a new firm dedicated to providing immigration legal services to immigrants, their families and employers. She continues to practice in the areas of citizenship and naturalization, family and employment based immigrant-visas (residency), nonimmigrant visas, and deportation defense. She may be contacted at 503.281.0990 or shw@waxlerlaw.com.

CAMPAIGN FOR EQUAL JUSTICE ANNOUNCES CO-CHAIRS  
MBA Board Director **Susan Marmaduke** of Harrang Long et al will be the Campaign Statewide Co-Chair for Portland. She will be joined by Large Firm Partners Committee Co-Chairs **Joel Mullin**, Stoel Rives; and **Beth Skillern**, Bullivant Houser Bailey.



Pilar French

PILAR FRENCH  
Portland attorney and musician **Pilar French** celebrates the release of her new CD, "Alive," on October 17 at 8 p.m. at the Fez Ballroom. Doors open at 7. Tickets are available at [www.brownpapertickets.com/event/81695](http://www.brownpapertickets.com/event/81695). The album combines blues, pop and folk, with touches of jazz. The songs were written about perseverance; French's, and others. The CD is available to purchase at [www.cdbaby.com/cd/pilarfrench1](http://www.cdbaby.com/cd/pilarfrench1).

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

## New Legislation Affecting Employer Sponsored Health Plan

### Federal Law

#### New Subsidy for COBRA Beneficiaries

The American Recovery and Reinvestment Act was signed by President Obama on February 17. The act provides for a new subsidy for certain COBRA beneficiaries. The subsidy is 65% of the COBRA continuation coverage premiums for eligible individuals for up to nine months. The COBRA beneficiary will pay only 35% of the overall COBRA premium for that period.

#### Eligibility for the Subsidy

The subsidy is available to individuals (and their dependents) who were **involuntarily** terminated from their employment and became eligible for COBRA beginning September 1, 2008 through December 31, 2009. Persons who elected prior to the enactment of the act (but on or after September 1, 2008) will be eligible to receive the subsidy prospectively from the date of enactment through the maximum nine-month period. Eligible persons who did not elect COBRA between September 1, 2008 and the date of enactment will have the opportunity to elect COBRA on a prospective basis with the maximum duration of the coverage dating from the date that they could have first elected COBRA.

#### Mechanics of the Premium Subsidy

The act requires that the employer that is collecting the 35% premium simply not collect the remaining 65% and, instead, obtain reimbursement from the federal government. The plan or the employer that is collecting the premium will recoup the subsidy amounts by taking a credit against federal taxes withheld and reported on the quarterly 941 Form. In cases where the payroll taxes are not sufficient to cover the subsidy, the additional amount

will be provided as a credit to the taxpayer as if it was an overpayment of payroll taxes.

#### Electing a Different COBRA Option

An employer may allow a COBRA-subsidy eligible individual to change his or her health insurance coverage option when making a COBRA election. The new plan option must be made within 90 days of receipt of the COBRA election notice, must have the same or lower premiums and must be available to non-COBRA active employees under the plan.

### Oregon Law

#### HB 2116

Effective October 1, all fully insured group and individual health insurance premiums will become subject to a 1% premium tax. This new tax together with federal matching funds will help fund health insurance coverage for about 80,000 uninsured children and an additional 35,000 low-income adults. Beginning in October, all monthly premiums will adjust to accommodate this new tax.

#### New Mandates

All fully insured group health plans must provide coverage for the following services: Tobacco Cessation (SB 734); Marriage & Family Therapists (HB 2506); Hearing Aids For Children (HB 2589); HPV Vaccine (HB 2794), Traumatic Brain Injury (SB 381) and Telemedicine (SB 24).

#### Insurance Exchange

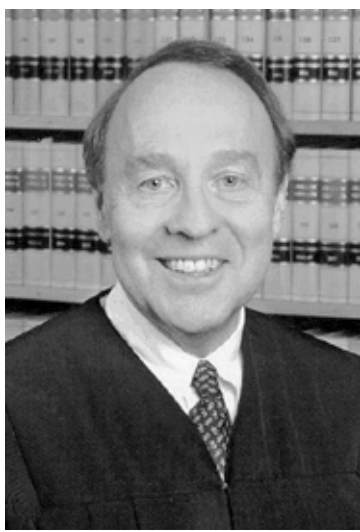
HB 2009 charges the Department of Consumer and Business Services with the responsibility of making recommendations to the 2011 Legislature regarding the viability of creating a state run insurance exchange. If created the insurance exchange would likely become the only place where individuals and small employers could purchase health insurance.



# Tips from the Bench

By Judge Jerome LaBarre, Multnomah County Circuit Court.

## Settle Your Case by Preparing for Trial Favorable Settlements Come From Transparent Trial Preparation



Prepare the verdict form early and send it off to the other side. Then talk to opposing counsel about stipulating to it. Be transparent and the other side will know that you are ready for trial. Also, discuss with them whether you can enter stipulations on matters that will shorten and simplify the trial. They may include such things as admission of trial exhibits into evidence or at least as to authenticity, admitted facts, telephone testimony of witnesses and other similar matters. Trial judges will love it. Plus, stipulations make everyone's job easier. This also shows that you are ready in a way that promotes settlements.

### 2. Trial Plan.

Something else that I frequently require is a trial plan. My case management plans set a date for the filing of this document along with the proposed verdict form, proposed jury instructions and other trial documents. The trial plan is a road map through the jury trial. Each side sets out a proposed calendar of all of the events in the trial along with time estimates for how long each phase will take. Trial phases include voir dire, opening statements, witness time estimates with a listing of witnesses by type (but not necessarily by identity, to protect Oregon's unique "trial by ambush" tradition), final arguments and all other parts of the trial.

For scheduling purposes the judge needs to get this kind of detail on long cases in order to effectively oversee the case. This helps everyone prepare for trial and it underscores for the other side that the only alternative to a trial is to get serious about settlement.

There is an old adage that we must hope for peace but prepare for war. Letting the other side know that you are *really* ready for trial may be the single best way to finally settle that tough case.

It's a reality today that over 99% of all civil cases filed in Multnomah County Circuit Court will settle. Approximately 15,000 civil cases are filed annually and on average just over 100 of those cases go to a jury trial. The truth is that after you file your case, it will most probably settle. While you can never be certain that any given case will settle, you can be certain that if your trial preparation is good – and the other side knows it – then your trial preparation will earn the most favorable settlement possible for your client.

As a settlement judge I frequently see lawyers on both sides who fail to maximize the settlement potential of their cases because they are obviously unprepared as they get near the trial date. And the other side can see it. With good trial preparation there is no downside. If you go to trial you are ready. If not, it helps you gain a good settlement.

As a trial judge presiding over large complex cases I have found that two documents really help the court and counsel understand what is needed to win at trial. These same documents can convince the other side to finally agree to a settlement.

### 1. Jury Verdict Form.

This could be the single most important court document in any case. It's what gets returned by the jury and determines whether you win or lose. It boils down your entire case to a small number of questions. It will guide you in trial preparation, help you develop a winning theme, and allow you to separate the wheat from the chaff in terms of witnesses and exhibits. A proposed jury verdict will also really signal to the other side that you are serious about trial.



By Chris Howard, Metro Public Defenders and Court Liaison Committee member.

Judge Maurer reported that three new judges have been appointed to the bench; Judges Rees, Lopez and Immergut, who each began their tenure on the bench conducting arraignments at the Justice Center.

The ramifications of HB 2287, establishing what Judge Maurer calls the "Judicial Stabilization Fund," were discussed. The legislation provides for many new and increased filing and appearance fees, which may be found at [www.mbabar.org](http://www.mbabar.org). Some of the specifics of how, when and where the fees will be paid have not been determined. The law is due to sunset in 2011. FEDs and small claims are not subject to many of the increases or new fees. The details as to whether, as in the case of filing fees for orders, the new fees apply on a per appearance (one fee) or per order signed (multiple fee) basis remain to be announced. Judge Maurer indicated that her review of the legislative intent was that the fees were to be collected on a per order basis. Doug Bray commented that a draft fee schedule would be found on the court Web site, and a final schedule will be posted once the Chief Justice has issued an order on the details of application.

Judge Maurer discussed the impending implementation of "eCourt;" for which Multnomah County is one of the pilot courts. Implementation in the county was set to begin September 23 in small claims and FEDs cases. Mid-December is the target date for civil cases to begin in this process.

Doug Bray explained that the system is "day forward" and as of the start up date for each area of practice, all filings on and after that date would be scanned into the system and then the paper copy destroyed. There will be a new statewide file numbering system. The only access to records will be through onsite kiosks at the courthouse until privacy issues have been resolved. After privacy issues have been addressed, offsite online access may be available.

Judge Maurer extolled the court's Web site, <http://courts.oregon.gov/Multnomah>, as a "wealth of information" and described some of the more informative pages,

including the bio sections on the judges and their practice tips. She also stressed the importance of the publication *Recommended Practice for Civil Jury Trials in Multnomah County Circuit Court* and noted that while it is not binding on the judges, it is a very useful guide.

Judge Maurer would like input from the bar on topics for the judges to write about in the "Tips from the Bench" column. To submit a topic, email [carol@mbabar.org](mailto:carol@mbabar.org).

### Report from the county liaisons

Washington County Bar Association President Elizabeth Lemoine introduced herself and noted that she would have bar news to report for the next meeting.

Clackamas County liaison Andrea Anderly reported that the new Clackamas County Justice of the Peace position had been filled with the appointment of Karen Brisbin. Andrea agreed to act as Clark County liaison as well.

The MBA Web site Courts page, [www.mbabar.org/courts.htm](http://www.mbabar.org/courts.htm), was discussed. Mark Peterson agreed to review the page periodically and make recommendations for changes. MBA members have free online access to the court practices publication discussed by Judge Maurer; MBA-recorded audio CLEs are now available online for downloading.

Judge Maurer reported that the juror orientation video, narrated by Judge Wilson, was very well received. Each jury orientation is introduced by a member of the bench. The video is available for viewing on the court's Web site.

Eric Dahlin volunteered to head up coordinating the brown bag for fall 2009; having a panel of pro tem summary judgment judges would be appropriate for a future brown bag. That suggestion received strong support from committee members.

Discussion returned to the court and budgetary concerns. All agreed that the retention of the referees was important. Doug Bray pointed out that changes may occur if the tax increases are referred to the ballot and the voters do not approve these enactments and if there are continuing declines in the state's general fund revenue forecast. When the Legislature meets in special session in February, it will have to balance the state's expenditures once again to expected revenue. The court's budget reductions have forced some furloughs and that will have a detrimental effect on court services. Doug stated that if the budget forecast improves, the number of furloughs may decrease. To date, there have been no layoffs, but there has also been no hiring to replace unstaffed positions. Fourteen vacant positions have been lost from the court's administrative operations staff to achieve the \$1.2 million reduction imposed on the circuit court so far in the 09-11 biennium.

The Court Liaison Committee formed a subcommittee on court resources to explore ways that the bar can assist the court in dealing with manpower shortages.

Doug also gave an update about the level of support from the current Multnomah County Commissioners for the Gresham/East County Courthouse plan, instituted by the previous commission.

## NOTICE TO JUDGE PRO TEM APPLICANTS

The MBA Judicial Screening Committee reviews applications for pro tem and full-time judicial candidates for Multnomah County. The committee meets the third Tuesday of each month, typically September through June.

Judge pro tem candidates for renewal are asked to submit their applications at least four months in advance of the expiration date of their current appointment. There are two forms for pro tem candidates to complete; both may be obtained by visiting [www.mbabar.org/documents.htm](http://www.mbabar.org/documents.htm) or emailing Carol Hawkins at [carol@mbabar.org](mailto:carol@mbabar.org).

The committee must have sufficient time to process the applications, and the Oregon Supreme Court approves the appointments at one of its regular meetings.



## Profile – Judge Angel Lopez, Multnomah County Circuit Court

By Dana Scheele, Hoffman Hart & Wagner and Court Liaison Committee Chair.



Judge Angel Lopez

**Judge Angel Lopez**, one of the three recently appointed judges to the Multnomah County Circuit Court, has a warm, open and engaging manner which translates well to his new job on the bench.

The youngest of five children born to Mexican immigrant parents, Judge Lopez grew up in Compton, California. When he turned four, his father became incapacitated due to a

medical condition and the family subsisted on his father's disability income and what Judge Lopez's mother could bring in from her employment. Lopez described the tremendous opportunity he received at age 14 when he was accepted to a program called Project Open Future and was awarded a scholarship to attend a private high school. He described the contrast between attending high school in the inner city in Compton and then transferring to Midland, a private high school where he was a boarding school student. As his high school was located in a rural setting, he learned the value of team work to complete chores while working on the school's farm. Following high school, he attended Occidental College on a scholarship majoring in psychology.

Lopez went on to attend law school at Willamette University, the only place he applied, graduating in 1978. At that time, the only lawyer he knew was Bill Shepard, the father of a friend of his, whom he described as

tremendously influential in the Oregon legal community as well as a true professional. Over dinner at the Shepard home, Bill Shepard inspired Lopez to become a noteworthy attorney someday. He met his wife, attorney Wendy Squires, during his second year at Willamette University and fell in love with her at first sight. They married after law school.

After working for the OSB's Affirmative Action program immediately after graduating from law school, Lopez, craving some trial experience, went to work for the Metropolitan Public Defender's office in 1982. At Metro, he tried numerous jury trials in misdemeanor and felony cases before founding his own firm with his wife in 1986. Judge Lopez has held a number of leadership positions, including his tenure as OSB President in 2002, which he describes as excellent training for the bench, since presiding over meetings at the bar is much like presiding over a courtroom.

At first, Lopez was hesitant to pursue a position on the bench because of the solid reputation of his firm and his tremendous pride in having a Spanish-speaking law firm that could assist criminal defendants who only spoke Spanish. It was with his wife's blessing that he pursued a career on the bench, first with Governor Barbara Roberts and then with Governor Kulongoski. In 2008, Judge Lopez attended a dinner with Governor Roberts as well as an aide to Governor Kulongoski, Danny Santos. It was during this dinner that he got to know her better and she went on to write a letter of recommendation for him to Governor Kulongoski. Since taking the bench in mid July, Lopez has been busy in arraignments and with the criminal misdemeanor docket. He feels very comfortable in his new judicial position with colleagues he has known for years both in the prosecution and defense bars and feels excited to come to work every day.

Lopez describes his judicial philosophy as striving to be well versed on the issues that arise in his courtroom, being well prepared and making the litigants feel that he is ruling fairly and treating them with respect. To attorneys appearing in his courtroom, Lopez says he expects them to treat each other with honor and respect and he will let all parties and attorneys in his courtroom have their say and provide them with a thoughtful audience. Although his background has been in criminal litigation, he looks forward to handling civil matters and being on the civil motion panel. He requests that any attorneys appearing before him provide him with their materials well in advance of the hearing so that he has the necessary time to prepare.

Lopez feels that his experiences over his many years of practice as well as his love for the job have made him a natural fit for the bench. He truly feels as if he has "come home" with his appointment to the Multnomah County Circuit Court.

## Guy Walden Celebrates 10 Years with MBA

By Judy A. C. Edwards, MBA Executive Director.

The MBA and I are fortunate indeed to have such dedicated and smart people working for the bar. Guy, who is one of those shining stars, brought many strong skills to the organization when he joined the MBA 10 years ago. Since that July in 1999, he has expanded and sharpened his talents through hard work and a keen interest in serving our members.

Guy's six years at associations previous to the MBA made him an ideal candidate – his skills and the needs of the bar were a good match. Most of those early working years were in Washington D.C., at technology-related trade associations, "during an exciting time for technology." Primarily, he focused on information privacy legislation and issues and employee monitoring legislation related to the 90s health care, pre HIPAA.

The best mentor/career advice he received was: "Always put the members first, if you always put the members first most problems

resolve themselves, and get to know the angry/upset member. If you can keep those customers happy then you'll do right by the membership as a whole."

His toughest professional decision: "gave up job security for career development to allow me to move up early." He was hungry to learn more about technology and being a technophile, he was fascinated with everything that was happening at the time. The World Wide Web wasn't mainstream then. "The downside of a tech assoc is that about one-third of the membership changes or goes out of business every year. Their associations struggle to remain relevant to members because today's mainstream tech becomes yesterday's news quickly. It required constant reinventing ourselves and chasing members. It's nice to be in a more stable environment. How do you serve your members when their business needs are constantly changing?"

When Guy's not slaving away at the MBA as our Associate Executive Director, he likes being outside, snow skiing, paddling his sea kayak and hiking. Because his family is "scattered around the planet," he has visited some pretty interesting places, all over Europe many times and Southeast Asia. His first plane trip was as an infant and growing up as a British/American citizen, he spent time every other year in Cardiff, Wales with extended family, grandparents, aunts, uncles and cousins. He's enjoyed the travel so much because it "shows you how much people of different cultures have in common." Moving to the west coast gave him the opportunity to see a lot of the US for the first time.

His parents balanced his privileges of travel with the importance of a strong work ethic. So, his first employment positions were cooking in a restaurant and working as a painter. He did so many painting jobs, that for Guy, "pain is part of the word" and he refuses to paint again. All through college he painted for summer jobs, even going to Costa Rica to volunteer to work for the Monteverde Institute building a school house at a village in a cloud forest where he ended up painting. While there, he learned Spanish from the construction workers, but perhaps not the formal language his parents might have preferred.

Guy has made many contributions to the MBA, plays a key role in the organization and we are lucky to have him on staff. Thank you Guy!



### 2010 MBA Membership Renewal is underway

Fall has arrived, and so too has the time to renew your MBA membership for 2010. To continue to receive the wide range of benefits the MBA provides, simply take a few moments to renew online at [www.mbabar.org](http://www.mbabar.org). Here are just a few reasons to continue your membership:

- Excellent, convenient and reasonably-priced CLE seminars;
- Social events and committees that provide rewarding ways to network with other attorneys;
- Resources such as the *Multnomah Lawyer*, the e-newsletter and the Web site keep you up-to-date with news, events, online forums and a member directory;
- Exclusive member discounts from LexisNexis, Legal Northwest, Office Depot, Bank of the Cascades, The Naegeli Reporting Corporation and others; and
- Comprehensive, member-negotiated group health, life, long-term care and disability plans structured specifically for lawyers and firms.

For further information, please call 503.222.3275 or visit [www.mbabar.org](http://www.mbabar.org). We look forward to serving you in 2010.

# Sign up Now for the MBA Mentor Program

By Kim Griffith, Cosgrave Vergeer Kester and YLS President-Elect.

Take advantage of one of the finest services the MBA offers its newer members - a six-month mentorship with a seasoned attorney. Go to [www.mbar.org](http://www.mbar.org) by December 1 and answer a few questions about the type of mentoring you could use right now in your career. With our patented, peer-reviewed, Professionalism Committee technology, we will match you with a mentor in January 2010. After the MBA Mentor Program kick-off party, you and your mentor design your relationship to suit your needs and availability. In June, we thank you for participating with another party. That's all there is to it. Contact Kimberly Griffith at [kgriffith@cvk-law.com](mailto:kgriffith@cvk-law.com) if you have questions. If you participated in the past, you are welcome to do so again. A few words from satisfied customers:

"[O]n more than one occasion, I met with my mentor after a particularly frustrating day and time and time again she offered great advice to help me evaluate how to handle situations in a positive way. One of the most helpful aspects for me was Ruth's candidness about her professional life. Ruth was willing to discuss difficult situations she encountered in her legal career, past and present. She was open to answering questions about how she felt during these trying times and how she problem-solved in a way that addressed both her professional goals and personal needs. This balance between family, friends, community obligations and career was a frequent topic at our meetings. Ruth illustrated to me that a reasonable balance, while maintaining one's sanity, is possible." *Sheri Osher, 2009 Mentee of Ruth Pekelder*

"The MBA Professionalism Committee devotes hours of thoughtful analysis to pair prospective mentees with the mentors who volunteer for the program. I am convinced that for some unknown reason they always give me the best of the crop. My mentees have been newly minted attorneys with interesting histories, thoughtful questions, and an enthusiasm



Todd Cleek, 2008-09 Professionalism Committee chair with Ruth Pekelder and Sheri Osher



Todd Cleek with Dick Ginsburg and Olivia Horgan

for learning. They share their fears, their triumphs, their doubts and their frustrations. They are considerate of my time, appreciative of the directions I suggest, and they laugh at my jokes. I have discovered that you do not need to be particularly old or wise or professorial; that simply by virtue of having been around these blocks a couple of times, we have insights and a perspective that can be of use to those joining this path. The new attorneys I have had the delight to know have taught me about myself, about the practice of law, and about substantive issues in ways that no one else could. I initially volunteered to be a mentor because I thought maybe I could be of some use. I continue to participate because I come away from each relationship enriched and encouraged." *Ruth Pekelder, 2009 MBA Mentor of the Year Award Recipient, as Mentor to Sheri Osher*

"Serving as a mentor in the immigration law field gives me great satisfaction. I remember being overwhelmed as a new

lawyer and sometimes not knowing where to begin to find an answer ... and, indeed, sometimes not knowing what needed to be answered. Immigration clients have much at stake. It was a relief when I was able to call another lawyer - when someone was available. As a mentor I try to always be available. After years of practicing immigration law, I know there are few easy answers. "We are in the never-never land of the Immigration and Nationality Act where plain words do not mean what they say," *Yuen Sang Low v. Attorney General*, 470 F.2d 820, 821 (9th Cir. 1973). As a mentor I can walk a new lawyer through the facts and the law to arrive at a logical analysis of the case. And because no two cases are alike, it will be a learning experience for me. We need more lawyers in the immigration field. It is a challenging field with many rewards. As a mentor I can share the enjoyment of this field of law." *Dick Ginsburg, 2009 MBA Mentor of the Year Award Recipient, as Mentor to Olivia Horgan*



## YLS and Equality Committee Organize Legal Professions Day

By Josh Ross, Stoll Berne and YLS Futures Committee member.

This summer, members of the YLS Futures Committee and the MBA Equality Committee joined forces to plan a visit for participants of the Portland Multnomah Youth Corps. Youth Corps, coordinated through the mayor's office, offers a series of interventions - career-focused courses and site visits in various industries - for targeted high school students during the summer months. As part of its goal to promote a more diverse bar, our committee worked with the mayor's office, a number of local law firms, and volunteers from the bench and bar to organize a "legal professions" day designed to allow students to explore and learn more about law-oriented professions.

On July 15, about 20 ninth-graders from Reynolds High School visited Davis Wright Tremaine (DWT), where students met with volunteer lawyers, paralegals, legal assistants, legal recruiting and IT staff, and law librarians. The students had the opportunity to ask candid questions in small groups of each of the volunteers. During the discussions, the volunteers discussed what they most enjoy (and do not enjoy) about their work, their career paths, and the "ins and outs" of their professional lives. The students also took a tour of DWT's facilities and saw the operations of a law firm first-hand. Later, the students visited Judge Adrienne

Nelson's courtroom, where they heard about life in court from Judge Nelson and attorney Michael Rees from Metro Public Defender. Over lunch, Judge Nelson shared inspiring stories with the students and reminded them that hard work pays off.

Members of the planning committee hope to see the MBA continue working with Youth Corps in years to come. Collin McKean, co-chair of the YLS Futures Committee and a member of the planning committee said, "We hope that after actually seeing what the practice of law looks like, the students will seriously consider a career in the legal field and start working toward that goal." Lainie Decker, the former YLS board liaison to the Equality Committee, added that the program provided "our committees the opportunity to work together toward the common goal of reaching out to young people from diverse backgrounds which will hopefully, in the long term, help further diversify the bar."

The YLS Futures Committee and the Equality Committee thank all of the volunteers, DWT for hosting the event and Stoll Berne and Gevurtz Menashe for sponsoring the group lunch. If you are interested in volunteering with Youth Corps, please contact Josh Ross at [jross@stollberne.com](mailto:jross@stollberne.com).

### YLS Drop-in Social – October 8

The YLS and Schwabe, Williamson & Wyatt are sponsoring a drop-in social on October 8, from 5:15-7:15 p.m. We'll be gathering in the upstairs area of Clyde Common, located at 1014 SW Stark St. in downtown Portland (in the Ace Hotel Building). Come enjoy happy hour after work with friends, colleagues and other young lawyers.



Attorneys Derek Green and Collin McKean and paralegal Kristin Dunn visit with students



# Special Bankruptcy CLE and Pro Bono Clinic Opportunity

By Justin Leonard, YLS President.

Wish you knew bankruptcy law? Want to learn how to file a bankruptcy case from the pros while gaining the satisfaction of helping people in need? In light of our community's unprecedented need for pro bono bankruptcy services and through an exciting collaboration between our bankruptcy court, Legal Aid Services, the OSB Debtor-Creditor Section's Bankruptcy Clinic, and our MBA YLS Pro Bono Committee, you now have the opportunity!

We will be offering a special "bankruptcy-for-beginners" CLE on Thursday, November 12, 2009 from 4-6 pm at the bankruptcy court. The CLE will cover Chapter 7 bankruptcy filings from start to finish and will be taught by experts in the area. The interactive CLE, including substantial materials covering all aspects of a bankruptcy case, will be provided to attorneys free of charge, with the expectation that attorneys will use their new skills to volunteer at an evening pro bono bankruptcy clinic in 2009 or 2010. In this economy, the

need of low-income individuals and families has never been greater, and -- speaking from experience -- the joy of providing these clients a "fresh start" is indescribably great.

In addition to the November 12 CLE, we are presenting something new and exciting for the first fifteen attorneys who register: a condensed Saturday Session on the following Saturday morning, November 14, 2009, until 12:45 pm at the Lewis & Clark Legal Clinic downtown. After a repeat of the bankruptcy-for-beginners CLE program for those who did not attend the CLE on Thursday, these fifteen volunteers will each be assigned two Legal Aid Services clients to counsel that morning, using their new skills and materials. Meanwhile, experienced practitioners will circulate during the initial interview, answering questions and providing mentoring for the volunteers. Then, as the volunteers file and handle the cases from start to finish over the next few months, the experienced practitioners

will still be available to help through a special bankruptcy-clinic listserve or via phone. (In all, total time commitment is typically 3-8 hours per client, including the initial meeting.)

Imagine having the chance to learn a new area of the law with support of mentors while providing a pro bono service desperately needed and much appreciated. BestCase Solutions has agreed to provide software licenses for the volunteers to prepare and file the bankruptcy petitions using their advanced software. For those attorneys not admitted to practice in federal court, the bankruptcy court is seeking waivers of the \$200 fee for attorneys who want to do purely pro bono work.

To learn valuable skills and help give back to those in need, sign up for the November 12 CLE and/or one of the fifteen spots in the November 14 training/clinic by contacting Andreea Szabo of Legal Aid Services of Oregon at 503.224.4086 or andreea.szabo@lasoregon.org.

# How the MBA Screens Judicial Applicants Part 1

By Richard J. Vangelisti, Vangelisti & Kocher and MBA Judicial Screening Committee Chair.



This is a two-part article – watch for the second half in the November issue of the Multnomah Lawyer.

With over 4,400 members, the MBA relies on its volunteers to carry out many of its core functions. One of those functions is to safeguard the administration of justice. To that end, the MBA has committees that carry out various missions, including the Judicial Screening Committee (JSC), which screens applicants for the judiciary in Multnomah County.

The JSC is charged with the task of reviewing and investigating applications for judicial positions. In the case of an application for appointment by the Governor, the JSC votes on whether the applicant should be designated as "Highly Qualified." If an applicant seeks appointment to a judge pro

tem position by the Oregon Supreme Court, the JSC votes on whether the application should be "approved" or "disapproved." These JSC recommendations are obviously important to everyone involved. The MBA takes great care in appointing members to the JSC and uses an MBA Board-established process to ensure fair and accurate recommendations.

The JSC is comprised of 21 MBA members and three public members, appointed by the MBA Board. Members serve three-year terms, staggered so that approximately one-third of the members turn over each year. The JSC is appointed with attention to diverse backgrounds, experience and practice areas. JSC members disclose to the committee any relationship with a candidate that might affect the member's impartiality.

The JSC is a "screening" committee - not a "selection" committee. The role of the JSC is to independently evaluate the qualifications of applicants. Neither the JSC nor its individual members approach the process with any preconceived ideas about a particular type of judge that may be needed on the circuit court. For example, the JSC does not engage in any discussion or politics about whether the circuit

Continued on page 13

# MBA Membership - An Investment in Your Practice and Community And a free lunch too!

By Judy A. C. Edwards, MBA Executive Director.

Thank you for continuing your membership in the MBA and for volunteering to help make your organization and the legal community stronger and more visible. Here are just a few reasons to join the MBA.

\* **MBA works on your behalf to support courts year in and year out.** Threats to our courts' independence, financial operations and safe and efficient facilities affect all lawyers and their clients, no matter how lawyers practice - as a sole practitioner, member of a firm, in-house counsel, government lawyer, public defender, district attorney or public interest lawyer.

\* **MBA leadership adopts and acts on important policy decisions that strengthen the entire legal community.** For instance, stewardship of the judiciary is a core value of the organization. MBA leaders this past year attended and spoke at key state legislative hearings on court facilities, communicated with elected officials on judicial operations funding, met with Multnomah County Commissioners to stress the urgency of a new courthouse and strategized with key community leaders on concrete ways to advance the understanding of the importance of the judicial system.

\* **A survey of members and non-members helped shape our priorities** and inspired MBA leaders to focus on those activities that are most important to lawyers. By working together on MBA committees, task forces and work groups, we are able to expand and improve services that lawyers need.

\* **The redesigned and revamped MBA Web site provides a considerable amount of information** to the legal community. Tips from the Bench are now searchable by topic area and links to members' Web sites were added to the online directory. The Courts page includes the latest information on court operations, fees, proposed SLR changes, judges' profiles and their preferred courtroom practices, jury verdicts, statewide and county reports on court facilities, photos of the Multnomah County Courthouse and links to local and state court resources. The new monthly communication, *Courthouse Watch*, shares courthouse facility plans in the county with our members.

\* **A new section on the MBA Web site - just for members** - provides free access to the MBA Multnomah County Judges Trial Practices materials, written materials from 74 MBA CLEs and links to 64 articles

focusing on today's issues in marketing, firm and practice management and technology. New, substantive articles are added continually. The Technology Corner includes an interactive forum for tech-related questions/answers and announcements. If you haven't explored the MBA Member Section, you are missing a lot.

\* **Member discounts on CLEs and events save you money, and will save you more as non-member rates go up.** You may pay for CLEs, events and membership online.

\* **You may now earn CLEs from the convenience of your office** by downloading past MBA CLE audio recordings and written materials.

\* **Because of your generosity, the MBA is able to continue operations of Multnomah CourtCare**, a free childcare program at the Multnomah County Courthouse.

\* **You make an important difference in the lives of people in crisis** by donating significant money, time and expertise to pro bono legal services for low-income citizens in our community. Finding a case to volunteer for is easier than ever



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**October 27 - Annual Pro Bono Fair and Awards Ceremony at the Oregon Historical Society, Portland**  
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if you participate in the MBA Pro Bono Pledge program, "Take a Matter that Matters."

It is an honor to serve as your Executive Director. To prove that sometimes there is a free lunch, I will take the first three members who call me saying they've read

this far in my article out for a free lunch on me! If you have any comments, suggestions, opinions or questions about the MBA, please contact me. The MBA staff is here to support you and the legal community. Email me at [judy@mbabar.org](mailto:judy@mbabar.org) or call at 503.222.3275.



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## MBA Screens JSC Applicants

Continued from page 11

court needs more “[fill in the blank] oriented” judges. Moreover, the JSC does not compare applicants to one another.

The JSC evaluates applicants only on the following published criteria, each of which receives equal weight, for evaluating candidates for permanent or pro tem judicial positions: (A) Integrity and character; (B) Judgment and intellectual capacity; (C) Experience including, but not limited to, trial experience; (D) Industry and diligence; (E) Judicial temperament, including whether the candidate would be courteous and considerate of counsel, parties, witnesses and jurors and whether the candidate is even-tempered; (F) Professional ability and knowledge of the law; (G) Non-discriminatory attitude and behavior regarding, but not limited to, race, ethnic origin, gender, age, disability and sexual orientation; (H) Contributions the candidate would make to the quality, character and diverse composition of the judiciary. ... (I) General reputation in the community; (J) Civic and community activities; and (K) Any other relevant facts that affect the applicant’s ability to serve competently in a judicial capacity.

The screening process is extensive. First, an applicant submits the appropriate application to the MBA. The applications for Governor-appointed and pro tem positions are provided on the MBA Web site, [www.mbabar.org/documents.htm](http://www.mbabar.org/documents.htm). A completed application provides extensive information, including work history/experience, membership in associations/organizations, and references, which include persons familiar with the applicant’s work. If an applicant for judge pro tem has tried cases within the last five years, they provide the names of the judge(s); and the same applicant must list opposing attorney(s) for cases resolved in the last two years.

Second, the applications are investigated by a JSC member or members. Investigations include verification of information in the application; research for any disciplinary history; if the applicant has been a judge, review for excessive rates of reversal; and confidential interviews with listed references or others who have information that pertains to the published criteria. If the application is for a Governor-appointed position, a subcommittee of the JSC consisting of at least three members interviews the applicant.

Third, after the investigation, the JSC as a whole meets to consider each application in light of the

published criteria. The JSC requires a quorum to act on applications - two-thirds of the committee for applications for Governor-appointed positions and one-half for the judge pro tem positions. At the meeting, the committee reviews the results of the investigation using the published criteria. Frequently, a number of committee members provide additional information about a particular applicant even though the committee members may not have been part of the investigation. This additional information is a product of the diverse make up of the committee members, across practice areas.

Finally, applying the published criteria, the JSC votes on the application. In the case of an applicant for a Governor-appointed judicial position, the committee first votes on whether an applicant is “Qualified”. An applicant needs more than 50 percent of the votes of the committee members present for a “Qualified” designation. Then, the committee votes on whether a “Qualified” applicant is “Highly Qualified,” in which case a vote of at least two-thirds of the committee members present is needed. Applicants who receive a “Highly Qualified” designation are placed on a list for three years. The list of “Highly Qualified” candidates is provided to the Governor, and subsequently made public.

If an applicant does not receive a “Highly Qualified” designation, this determination does not necessarily mean that the applicant is not qualified for a judicial position. The Governor always has the right to appoint an applicant who is not on the list of “Highly Qualified.”

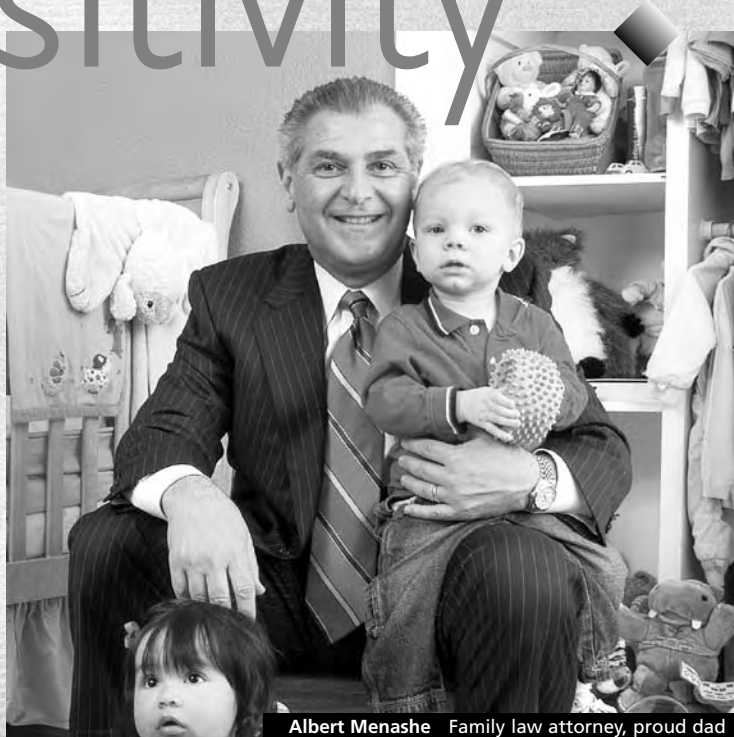
A few years ago the MBA changed its judicial screening process. Formerly, applicants were first deemed “Highly Qualified” (or not), and the “Highly Qualified” candidates were voted on to create the “Most Qualified” in a comparison within the pool of applicants. Those deemed “Most Qualified” were on the list that was sent by the MBA president to the Governor. Under the former process, candidates needed to reapply for each judicial vacancy. Now, all applicants deemed “Highly Qualified” keep their status for three years and need not undergo further evaluations within that time period when other vacancies arise. Additionally, the applicants do not compete among themselves for a “Most Qualified” designation.

Next month’s article will cover the screening process for pro tem judicial applicants.

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*Moving forward...*

Robert L. Carlton was elected to succeed Jeff. Bob has been a lawyer with Sussman Shank for 20 years, during which time he has held several management positions. His dedication, talent and experience are sure to serve him well as he guides the firm in the face of a rapidly changing business environment and into our 50th anniversary in 2010.



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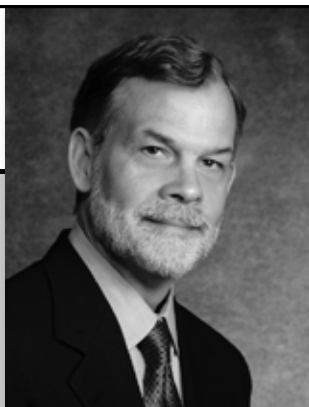
Jonnel Covault, *Moment's Rest*, 2004

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## Elders in Action Seeks Volunteers

By Pamela B. Hubbs, Office and Foundation Administrator.

*“Working together to ensure that quality of life never depends on age”*

The Multnomah Bar Foundation (MBF) provided a grant to nonprofit Elders in Action to create their Civic Education Awareness Project (CEAP) to educate and inform the public through a series of

60 hour-long presentations to be offered in Multnomah, Clackamas and Washington Counties. For each presentation, an Elders in Action volunteer will partner with an MBA member to speak to the community.

August saw Elders in Action board members, legal professionals and community volunteers gathered for the inaugural meeting of the CEAP Steering Committee. MBA members **Collin McKean**, **Gevurtz Menashe** et al and **Wesley Fitzwater**, Fitzwater Meyer, sit on the committee

and are developing scripts and materials to enhance the presentations and will assist with volunteer recruitment and training.

“The CEAP will join forces with the MBA and other experts in law to share information and material with the public on how to improve general understanding of the legal system and how to use this information to become more informed consumers,” said Leslie Foren, Director of Operations for Elders in Action.

Presentation topics include:

- Consumer Protection/Safety (ID theft, mail fraud)
- Contracts “Before you Spend, Talk to a Friend”
- Advance Directive, Power of Attorney “Your Future, Who Decides?”
- Legal Resources for Everyday living (Bankruptcy, Taxes, Social Security)
- Elder Abuse Restraining Orders

The CEAP is seeking attorneys to volunteer for the speaker’s bureau. If you are interested in becoming involved in launching

this new program, please contact Leslie Foren, Director of Operations at Elders in Action 503.595.7532 or [leslie@eldersinaction.org](mailto:leslie@eldersinaction.org).

To learn more about the MBF and the programs it funds, contact Pamela Hubbs at 503.222.3275 or [pamela@mbabar.org](mailto:pamela@mbabar.org).



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