



I am a Member of the MBA Because....

by Bob Steringer
MBA President

One of my New Year's resolutions for 2016 is to be more direct with people, so here goes: Please renew your membership in the Multnomah Bar Association, if you have not done so already. It's important. With the help of some of my friends from the MBA Board of Directors, I will tell you why that is so.

Raising the Bar

The MBA is an essential tool for building a local legal community that reflects our ideals of professionalism, access to justice and inclusivity. It is through the MBA that we express those ideals as both individual and collective responsibilities - as the cultural norms of our community. Four documents serve as our foundation:

- The **MBA Bylaws**, which express our Mission Statement as: "Lawyers associated for Justice, Service, Professionalism, Education and Leadership for our members and our community," and identifies the organization's purpose as: "To further the administration of justice, and to serve the public, and to maintain the dignity and honor of the legal profession."
- The **MBA Commitment to Professionalism**, which for more than 10 years has articulated our commitment to integrity, independence, honesty, civility, respect, fairness, diversity and inclusion.
- The **MBA Statement of Diversity Principles**, in which we commit to fostering diversity in our profession because all members of the bar should have the opportunity to participate equally and fully in our profession, and because we are better equipped to solve the problems of our clients when we achieve that goal.
- The **MBA Pro Bono Pledge**, in which lawyers and law firms pledge to serve the needs of persons with limited needs through direct service and by providing financial support to organizations like the Campaign for Equal Justice that support or provide legal services for persons of limited means.

The MBA serves to articulate these principles, promote their recognition in our daily professional lives and celebrate their achievement when reached.

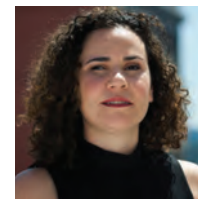


"I am a member of the MBA because it is a way I can further my commitment to professionalism - by participating actively in the MBA, we help build a community of lawyers who treat each other fairly and with respect, thus furthering our ability to ensure access to justice for all segments of our society." Akira Heshiki, MBA Board Treasurer.

"I am a member of the MBA because I get to be involved with other attorneys who share my values." Rima Ghandour, MBA Board member.

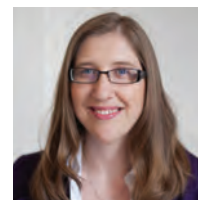


"The MBA forms community, which inspires collegiality, which leads to civility, which promotes service to our clients and legal community, all of which honors our profession." Marshal Spector, MBA Board member.



"I am a member of the MBA because it has given me the opportunity to form lasting relationships with lawyers and give back to the profession."

Amber Hollister, MBA Board member.

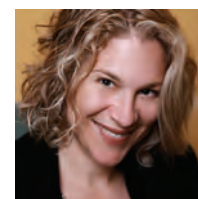


"I am a member of the MBA because it helps me meet many wonderful people outside of the litigation context, which in turn fosters a sense of community and professionalism when in litigation." Eric Dahlin, MBA Board Secretary.



"I am a member of the MBA because membership and involvement has connected me with lawyers in the community that I would not have otherwise crossed paths with."

Lissa Kaufman, MBA Board member.



Professional Development

MBA programming helps members build their skills in both the business and the art of law practice. It begins with the Young Lawyers Section, which introduces our newest colleagues to the profession through practical continuing legal education programs, business development networking and opportunities to serve the community. Members of all experience levels benefit from outstanding continuing legal education seminars, often offered in two-hour blocks to fit our busy lives and featuring practical wisdom from experts in their fields. To help grow our businesses, the MBA sponsors social networking events and seminars on the nuts and bolts of the law business, such as our program for solo and small-firm attorneys.



"As an MBA member, I have had the opportunity to meet local colleagues who practice in many different areas and on 'both sides of the v.' Regardless of their practice area, I have found my fellow members to share a desire to improve how those of us practicing in Multnomah County provide legal services to our clients and to the community at large. Through my relationships with fellow MBA members I have also been able to develop a strong referral network, which has a direct benefit on my own practice." Dana Sullivan, MBA Immediate Past President.

"I first joined the MBA to help my career. I belong to the MBA because I have made friends there I will have for the rest of my life." Todd Cleek, MBA Board member.



Continued on page 2

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.

JANUARY

1.20 Wednesday Criminal Practice in Multnomah County

Judge Ed Jones
Judge Eric Bergstrom
Judge Christopher Marshall
Judge Maureen McKnight
Traci Anderson
Michael Botthof
Brian Davidson
Bryan Francesconi
Jacob Houze
Brad Kalbaugh

1.21 Thursday What Family-Law Trial Lawyers Should Know About the Appellate Process

Judge Rebecca Duncan
Laura Graser

1.28 Thursday Direct Negotiation Strategies and Techniques

Lori Deveny
Chris Kent
Jenna Mooney

FEBRUARY

2.2 Tuesday The Top 10 Labor and Employment Updates for 2016

Judge John Acosta
Andrew Altschul
Damien Munsinger
Kathy Short

2.10 Wednesday Top 10 Electronic Discovery Tips

Tom Howe

2.17 Wednesday Mary Jane at Work: Employment Law Implications of Marijuana Use

Ben Eder
Matthew Ellis
Alex Wheatley

2.24 Wednesday Medical Record Discovery Issues in the Motor Vehicle Case

Angela Franco Lucero
Jason Posner

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SAVE THE DATE!

MBA 14th Annual WinterSmash

A Family Friendly Bowling Event

Saturday, February 6
5-8 p.m.
AMF Pro 300 Lanes
3031 SE Powell Blvd

NEW
LOCATION!

See insert and p. 2 for details.

A Multnomah CourtCare
Fundraiser



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DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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WinterSmash Benefits Multnomah CourtCare

A Family Friendly Bowling Event
Saturday, February 6
5-8 p.m.

Note New Location:

AMF Pro 300 Lanes
3031 SE Powell Blvd

The 14th Annual WinterSmash is slated for Saturday, February 6 from 5-8 p.m. at AMF Pro 300 Lanes (3031 SE Powell Blvd in Portland). We are excited about the new location and earlier start time this year. And, we are happy to announce a new registration category: Pin Setter, \$20 per person. If you want to cheer on your team and enjoy pizza and drinks but you don't want to bowl, this one's for you!

Lanes will be available exclusively for MBA members and their friends, colleagues and families for an evening of fun and food. Bumper lanes will be available for children. The event serves as the kickoff of fundraising efforts for Multnomah CourtCare.

CourtCare is a drop-in childcare program for families with no other childcare options, many of whom are struggling with poverty, substance abuse and/or violence. CourtCare is located in the downtown and east county courthouses.

CourtCare has served 80 to 100 children each month since opening in December 2001. These children are protected from witnessing disturbing courtroom scenes involving their families and do not disrupt courthouse business. Instead, they receive attention from qualified care providers in a cheerful environment full of toys, art supplies and books. Trained caregivers offer a nurturing, safe environment for children, as well as information for parents on other community resources they may need.

So, come enjoy the company of your colleagues, some good food, play a game you know you love and support a good cause. Tickets are \$40 for adults and \$15 for kids 3-12 years old. Price includes food, drink, shoes, balls, lane time

and the satisfaction of knowing you're supporting CourtCare. Prizes will be awarded for the highest and lowest individual scores, the group with the most participants in attendance and the group with the best bowling shirt. In addition, a trophy will be presented to the group with the highest team score. Raffle tickets will be for sale. The event promises to be a good time; don't miss this opportunity! Register via the insert in this issue or at www.mbabar.org.

Thank you to the WinterSmash sponsors.

King Pin Sponsor



Life of the Party Sponsors

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Stephen Houze - Attorney

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Contact Kathy Modie at the MBA at 503.222.3275 if you'd like to add your name to the sponsor list or donate a raffle prize.

MBF Special Donors

The MBA offers a special "thanks" to the following members for donating more than the suggested check-off amount to the Multnomah Bar Foundation when paying their 2016 dues.

Kenneth Baker
Jeffrey Batchelor
Peter Chamberlain
John Crawford
Peter Diamond
Paul Duden

Keith Garza
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Susan Jewell
Hon. Dale Koch
Elizabeth Madsen
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Julia Yoshimoto
Gregory Zeuthen

Calendar

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

JANUARY

1 Friday
New Year Holiday

8 Friday
February Multnomah Lawyer deadline

13 Wednesday
YLS Drop-in Social at Ecliptic Brewing
See p. 12

18 Monday
Martin Luther King Jr. Holiday

22 Friday
MBF Letters of Inquiry due
www.mbabar.org

2016 Pro Bono Award nominations due
www.mbabar.org

FEBRUARY

6 Saturday
WinterSmash

10 Wednesday
March Multnomah Lawyer deadline

15 Monday
Presidents Day Holiday

19 Friday
OHBA Annual Awards Dinner
www.oregonhispanicbar.org

26 Friday
CEJ 25th Anniversary Celebration Dinner
www.campaignforequaljustice.org

MARCH

10 Thursday
April Multnomah Lawyer deadline

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

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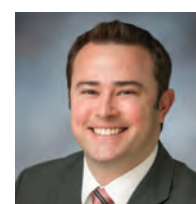
Continued from page 1



"I am a member of the MBA because I like to connect with other

lawyers who are engaged in our legal community." *Maya Crawford, MBA Board member.*

"I am a member because there is no better way to meet and build relationships



with other lawyers in this region." *Andrew Schpak, MBA Board member.*



"I am a member of the MBA because I believe involvement in the local

legal community is essential to becoming a better attorney." *Mackenzie Hogan, MBA Young Lawyers Section President.*

Membership Benefits

And finally, there is our version of the tote bag you might receive as a benefit for membership in other worthy organizations. Many lawyers join the MBA to participate in the MBA group health insurance plan. And as a member of the MBA, you receive the benefit of partnerships the MBA has developed with business service providers to offer discounted rates and useful resources to lawyers. Our expanding list of partners includes Bank of the Cascades (financial services), The Bar Plan (court bonds), LawPay (credit card processing), Legal Northwest (temporary and permanent employees), AKT (MBA Health Plan administrator), NAEGELI Deposition and Trial (court reporting and trial services), Office Depot (office products and solutions), Ruby Receptionists (virtual receptionist service) and UPS (shipping). We are continually looking for opportunities to partner with companies that will provide benefits to our members.

Renew for 2016

If you have not already renewed your MBA membership, now is the time to do so. We hope you find that the MBA's impact on our legal community and on your individual practice is well worth the cost of membership.

Criminal Practice in Multnomah County

Wednesday, January 20, 2016
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$60
Non-members \$95

Criminal practice in Multnomah County can be complex, with different types of cases having their own associated dockets, programs, resolution options, and procedural pathways. Multnomah County's new chief criminal judge, **Judge Ed Jones**, has put together an outstanding panel to help practitioners learn everything they need to know about practicing in the county. The discussion will cover all types of criminal cases (with sub-panels covering misdemeanor, felony, and domestic violence cases), and will include, along with Judge Jones:

- Judges **Maureen McKnight**, **Christopher Marshall** and **Eric Bergstrom**
- Prosecutors **Traci Anderson**, **Michael Botthof** and **Brian Davidson**
- Defense attorneys **Brad Kalbaugh**, **Bryan Francesconi** and **Jacob Houze**.

For more information:

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

What Family Law Trial Lawyers Should Know about the Appellate Process

Thursday, January 21, 2016
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$60
Non-members \$95

Most family law cases stay at the trial court level, but not all do. Appellate issues can come up unpredictably. Whether your client might benefit from an appeal, or might benefit from avoiding an appeal, what happens in the trial court has a critical effect on the appellate lawyer's ability to either reverse a bad ruling against your client, or hold on to the client's win. Even attorneys who may never set foot in an appellate court need to have a practical knowledge of the appellate process, such as how to identify an issue that might interest the appellate court, how to structure the record to preserve it for appellate review, and how to coax useful findings of fact from the trial judge to encourage (or discourage) an appeal.

Join **Judge Rebecca Duncan** of the Oregon Court of Appeals and family & appellate lawyer **Laura Graser** as they discuss issues, such as:

- Using recent appellate cases, and the appellate standard of review, to frame your trial court arguments;

- Strategies and practice tips for optimizing the record in the trial court;
- Considering whether and when to bring an appeal, or a cross-appeal;
- Filing (and e-filing) - and serving - notices of appeal;
- The obligations of trial attorneys and trial courts to ensure that trial exhibits are available for appeal;
- What the trial judge rule on while an appeal is pending, and what judgment enforcement actions are permissible (or prohibited) while an appeal is pending;
- The types of issues that are most likely to result in successful appeals.

For more information:

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

Direct Negotiation Strategies and Techniques

Thursday, January 28, 2016
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$60
Non-members \$95

Reaching a great settlement through direct negotiation can help clients avoid the costs and time of mediation but can be especially challenging for litigators. The experienced panelists at this CLE, **Lori E. Deveny**, Attorney at Law; **Chris Kent**, Kent & Johnson, LLP; **Jenna L. Mooney**, Davis Wright Tremaine LLP, will provide practical advice for successfully advocating for clients in direct negotiations.

For more information:

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

The Top 10 Labor and Employment Updates for 2016

Tuesday, February 2, 2016
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$60
Non-members \$95

As always seems to be the case, the past year has produced some monumental changes in the area of labor and employment law. Oregon lawyers will once again need to adapt their practices to deal with the changes. Come to this presentation to learn the top 10 things that have changed or will be changing for 2016, including a case law update, new statutes and regulations, and other national and local trends on the horizon for labor and employment lawyers. This informative class will be taught by **Judge John Acosta**, federal magistrate judge for the US District Court for the District of Oregon; **Andrew Altschul**, a principal attorney at Buchanan Angeli Altschul & Sullivan LLP; and **Damien Munsinger**, an associate

attorney at Barran Liebman LLP. **Kathy Short**, a Senior Assistant County Attorney with the Multnomah County Attorney's Office, will serve as the panel's moderator.

For more information:

Call Will Glasson, Multnomah County Attorney's Office at 503.988.3138. For registration questions, call the MBA at 503.222.3275.

Top 10 Electronic Discovery Tips

Wednesday, February 10, 2016
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$60
Non-members \$95

Evidence Matters! Learn how to collect, review and present electronic evidence in all types of litigation. You will see demonstrations and real-world examples showing the use of computer, smartphone, and social media evidence in criminal, business litigation, employment, and family law cases. Learn the top 10 things litigators and their staff must know about Electronic Discovery.

- Updating client intake questionnaires and pleadings to deal with electronic evidence
- Preserving and collecting computer and smartphone evidence defensively
- Using smartphone (iPhone and Android) evidence in your next case
- Distinguishing your law firm with e-discovery best practices
- Culling electronic data based on issues in the case
- Obtaining social media (e.g. Facebook) and online "cloud" data
- Understanding the importance of text messages and email
- Using effective search and sampling strategies to find the evidence you need
- Performing cost-effective and efficient legal reviews
- Producing electronic evidence to the requesting party
- Persuading the judge or jury with electronic evidence

Presentation forms and materials include:

- Complete PowerPoint PDF File
- Electronic Discovery Case Law
- E-Discovery Client Intake Questionnaire
- Electronic Discovery Checklist.doc
- Pleadings and Forms
- Electronic Discovery Resources

A trial lawyer with a deep technical background, **Tom Howe** has over 25 years of experience in law and technology, and is a member of the Oregon and Washington bar associations. He has been referred to in articles as one of the leading e-discovery lawyers in the country, providing legal/technology consulting and expert witness services to some of the largest law firms, corporate legal departments, and e-discovery vendors in the United States. Tom is a regular keynote speaker at legal and technology conferences, and CLE classes across the United States and Canada, and has spoken at over 50 software-programming conferences worldwide. His practical and entertaining presentation style makes him highly sought after. In addition to speaking engagements, he has authored five books on law and technology.

For more information:

Call the MBA at 503.222.3275.

Mary Jane at Work: Employment Law Implications of Marijuana Use

**Wednesday, February 17, 2016
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$60
Non-members \$95

This past year, the use of recreational marijuana became authorized in Oregon. As a result, employers and employees face new challenges and conflicting pressures on how to deal with marijuana use and its effect on the workplace. This two-hour program will address the effects employer policies and procedures might have on the workplace culture, safety concerns, and public perception, as well as what rights employees have to engage in off-duty conduct now decriminalized by state law. This seminar will be invaluable to all employment law attorneys, whether they regularly represent employers or employees. **Matthew C. Ellis**, an employment law attorney representing employees, **Alex Wheatley**, an attorney with Fisher & Phillips LLP representing employers, and **Ben Eder**, a partner at Thuemmel Uhle & Eder with extensive knowledge of drug testing techniques and considerations, will address issues employers

and employees face with the use of marijuana by employees, such as:

- How to advise clients regarding employment policies focused on marijuana use in the workplace;
- How to navigate practical issues stemming from off-duty conduct;
- Common testing protocol issues, including what types of drug tests detect marijuana, how far back can they detect the presence of marijuana in the system, and how can employers implement testing procedures to fit their desired results.

For more information:

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

Medical Record Discovery Issues in the Motor Vehicle Case

**Wednesday, February 24, 2016
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$60
Non-members \$95

With any motor vehicle crash injury case discovery issues arrive regarding medical records and ORCP 44 Exams of the Plaintiff. This two-hour program will address discovery strategies, counter strategies, Requests for Production, Requests for Admission and the ORCP medical exam question. If you handle any motor vehicle cases, this seminar is for you. **Angela Franco Lucero**, a partner at Kranovich & Lucero, will present the defendant's perspective and **Jason Posner**, of the Posner Law Firm will present the plaintiff's perspective.

For more information:

Call Kyle Dukelow, Law Office of Kyle B. Dukelow at 503.288.1992. For registration questions, call the MBA at 503.222.3275.

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

NAME _____	ACCOUNT NUMBER _____
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ADDRESS _____	SIGNATURE _____
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OSB# _____	_____

Member Status:
 MBA Member
 Non-Member

Payment Options:
 Check VISA MasterCard
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Seminar Selection:

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

- 1/20 Criminal Practice in Multnomah County**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 1/21 What Family Law Trial Lawyers Should Know About the Appellate Process**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 1/28 Direct Negotiation Strategies and Techniques**
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 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 2/2 The Top 10 Labor and Employment Updates for 2016**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 2/10 Top 10 Electronic Discovery Tips**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 2/17 Mary Jane at Work: Employment Law Implications of Marijuana Use**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____
- 2/24 Medical Record Discovery Issues in the Motor Vehicle Case**
 Class Registration (\$60 Members/\$95 Non) \$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) .. \$ _____

Total due \$ _____


Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

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503.222.3275 ■ Fax to: 503.243.1881

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

Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.



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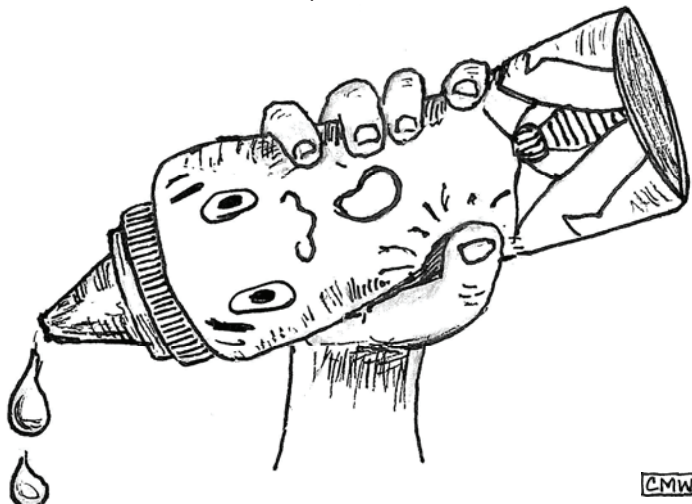
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mba | ANNOUNCEMENTS

Free CLE Webcast to MBA Members

The video webcast of the seminar entitled “Commercial Leasing - Landlord and Tenant Perspectives” is now available in the Members Center at www.mbabar.org. The webcast is worth two hours of general OSB MCLE credit.

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

Take a Matter that Matters

Sign the MBA Pro Bono pledge at www.mbabar.org/about-us/pro-bono.html and commit to taking at least one pro bono case this year.

MBA Judicial Brown Bag – March 11

Please join judges of the Multnomah County Circuit Court for a Brown Bag informal discussion. The topics of discussion will include civil case management, recent changes to the SLRs and UTCRs, and how things are going with Odyssey eCourt. Bring your lunch, questions, and suggestions to the downtown Multnomah County Courthouse, Room 130 (Jury Assembly Room), on Friday, March 11 at noon.

Local Lawyers and Judges Serve ABA

Mark Johnson Roberts and **Hon. Adrienne C. Nelson** have changed positions within the structure of the American Bar Association. Association officers are selected by the 69-member



Mark Johnson Roberts

Nominating Committee, which comprises the 52 State Delegates and 17 other members selected from other places in the Association. Johnson Roberts completed a full nine-year term as Oregon’s State Delegate in August, and Judge Nelson has been elected to replace him in that role. In November, ABA President Paulette Brown then appointed Johnson Roberts back to the Nominating Committee

as an “at large” LGBT member, giving Oregon two seats on the Nominating Committee and ten in the House of Delegates. The other members of Oregon’s House delegation are **Marilyn Jean Harbur, Akira Heshiki, Leslie S. Johnson, Christine M. Meadows, Katherine H. O’Neil, Attorney General Ellen F. Rosenblum, Andrew M. Schpak, and Jovita T. Wang.** This is a tie with the largest the Oregon delegation has ever been. In other ABA news, President Brown appointed Johnson Roberts this year to chair the ABA Commission on Sexual



Hon. Adrienne C. Nelson

Orientation and Gender Identity, which works for acceptance and inclusion for LGBT people throughout the justice system and in the larger legal community. OSB members with questions or concerns about the ABA’s work should contact any member of the delegation at any time.

Minority Lawyers Support Group

Beginning in January, OAAP Attorney Counselor Shari Gregory, LCSW, JD and George Finch, JD, are holding a support group for racial and ethnic minorities to have a safe and confidential environment to build support, camaraderie and community. This free and confidential group will meet at the OAAP for eight sessions on Fridays, 12-1 p.m. Participants will gain support for issues related to resiliency/empowerment, discrimination and authenticity, work-life balance, and developing professional resources. To join, please set up a meeting with Shari Gregory at 503.226.1057, ext. 14, or sharig@oaap.org,

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.

OPA Elects Board, Recognizes Members

At its November, 2015 annual meeting, the Oregon Paralegal Association elected a new board. President is Julianne Maguire, RP; Vice President, Leah Aldred, RP; Secretary, Jamie Lynn Summerfield; Treasurer, Mary VanKleeck, CRP; Emeritus Representative, Kristen Abram; Associate Representative, Tabatha Schneider; One Year Director, Alex Hopson; One Year Director, Marjorie A. Machem, CRP; Two Year Director, Kelley Chaney, RP; NFPA Secondary Representative, Brenna Dickey; Michele Davis, CP is continuing in the second year of her two-year board director position.

The following awards were announced: President’s Award, Holly Swofford; 2014 Outstanding New Member Award Winner (Less than five years), Mary VanKleeck, CRP; 2014 Outstanding Member Winner, Linda Odermott, RP; 2014 Outstanding Service Provider Award Winner, FreeLance Investigations, LLC.

The Many Faces of Human Trafficking

On Monday, January 11, at 10 a.m., the American Association of University Women Portland and YWCA of Greater Portland present a workshop featuring Hannah Horsley, Assistant US Attorney, and Oregon Foreign Born Human Trafficking Task Force Coordinator and Christopher Carey, Associate Professor in the School of Community Health at Portland State University. This event is free and open to the public. RSVP to Diane Winn, dgwinn@uci.edu or Suzanne Fleming, multiteach@aol.com. Donations of gloves, hats, socks, scarves and underwear will be collected for women living in the Salvation Army’s Female Emergency Shelter.

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Ethics Focus

Legal Capital Affiliated Businesses

by Mark J. Fucile
Fucile & Reising



With the changing landscape in law firm economics over the past decade, some firms are examining the possibility of creating affiliated businesses. For large firms, it may be to offer non-legal expertise to a broader array of customers than their law firm clientele. OSB Formal Opinion 2005-137, for example, addresses lawyer

...a lawyer cannot use an affiliated business to improperly solicit legal work....

participation in a separate business involving consumer legal self-help software. For solos or smaller firms, it may be a way to diversify the portfolio of activities that generate income for the lawyers involved. OSB Formal Opinion 2005-106, for example, discusses lawyer ownership of a tax preparation business. In this column, we'll look at two common risk management considerations from the law firm perspective when lawyers operate other businesses: the continuing regulatory reach over conduct that reflects negatively on a lawyer's fitness to practice law; and conflicts when customers of the affiliated business are also clients of the law firm. Before we do, two qualifiers are in order.

First, lawyers who are practicing across state lines in the Northwest and may wish to do the same with their affiliated businesses should look carefully at those other jurisdictions' versions of ABA Model Rule 5.7 - which deals specifically with affiliated businesses. ABA Model Rule 5.7 contains a definition of "law-related services" and provides general boundaries for when an affiliated business will - and won't - be subject to *all* of the RPCs based on the degree to which the affiliate is connected to the firm. Oregon did not adopt this rule when we moved from the old "DRs" to the RPCs in 2005. In our RPCs, that provision is simply listed as "Reserved." The report from the OSB committee that developed our version of the ABA Model Rules in the early 2000s mentions that it did not include

ABA Model Rule 5.7 "[a]t least in part because the OSB House of Delegates has indicated a desire not to pursue multidisciplinary practice issues[.]" Regardless of whether that remains true today, in the meantime Alaska, Idaho and Washington have all adopted versions of ABA Model Rule 5.7.

Second, other RPCs may come into play in particular circumstances. OSB Formal Opinion 2005-106, for example, notes that a lawyer cannot use an affiliated business to improperly solicit legal work in violation of RPC 7.3. In other instances, "material limitation" conflicts under RPC 1.7(a)(2) may arise, for example, if an affiliate customer is on the opposite side of litigation that the lawyer is handling for a client.

Regulatory Reach

RPC 8.4(a)(3) classifies as professional misconduct "dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law[.]" Importantly for present purposes, the dishonest conduct does not need to occur in the practice of law for there to be a violation of RPC 8.4(a)(3) - simply that it "reflects adversely" on the lawyer's fitness to practice law. Last year, for example, the Supreme Court disbarred a lawyer in *In re Herman*, 357 Or 273, 348 P3d 1125 (2015), for dishonest conduct in a manufacturing business. Similarly, in *In re*

...the dishonesty does not need to occur in the practice of law....

Hendricks, 306 Or 574, 761 P2d 519 (1988), the Supreme Court disbarred a lawyer involved in a fraudulent tax shelter scheme. Although these cases are extreme examples, they underscore the broad sweep of the Supreme Court's regulatory jurisdiction over lawyers for misconduct that "reflects adversely on the lawyer's fitness to practice law[.]"



Conflicts When Customers Are Clients

RPC 1.8(a) governs lawyer-client business transactions. In *In re Spencer*, 355 Or 679, 330 P3d 538 (2014), the Oregon Supreme Court applied RPC 1.8(a) to a lawyer who ran an ancillary real estate brokerage business. The lawyer had been representing a client who was financially hard-pressed and advised her to purchase a home

RPC 1.8(a) contains a very high and exacting disclosure and consent standard for lawyer-client business transactions....

as part of a strategy to preserve assets in the event bankruptcy became necessary. He then assisted her in purchasing a home in his capacity as a real estate broker - for which he received a commission. The lawyer and the client later parted ways and the client filed a bar complaint against the lawyer. RPC 1.8(a) contains a very high and exacting disclosure and consent standard for lawyer-client business transactions and there was no dispute that the lawyer had not obtained the requisite conflict waiver before engaging in the brokerage transaction. The Supreme Court disciplined the lawyer.

The Supreme Court's approach is by no means novel. Comment 1 to ABA Model Rule 1.8, upon which Oregon's rule is now patterned, notes that "[t]he Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice." OSB Formal Ethics Opinion 2005-10 makes this same point using a similar example. Therefore, a lawyer who also owns a restaurant at which the lawyers' clients sometimes dine doesn't trigger the rule because the transaction is not "related to the practice of law." But, when there is a connection between the lawyer's practice and the affiliated business as it relates to a particular client, then the rule is triggered and the lawyer must satisfy RPC 1.8(a).

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Around the Bar



Andrew Schpak

Barran Liebman

Partner **Andrew Schpak** was honored with the 2015 Oregon New Lawyers Division (ONLD) Member Services Award. The award honors a member of the ONLD for his or her contributions to the division's membership and mission throughout the year. Schpak is an active member of the OSB New Lawyer Mentoring Committee, for which he was the committee chair from 2011-13.



Clay Creps



Drew Hagedorn



Sean Ray and Kyle Abraham



Allison Jacobsen

Kyle Abraham and **Sean Ray** have been named partners of the firm. Abraham practices both traditional labor law and employment law, and is one of the only attorneys in Oregon certified by the Association of Workplace Investigators to conduct workplace investigations. He serves on the board of the Portland Human Resource Management Association. As a member of the firm's litigation team, Ray represents management and owners in employment law matters across all industries.

Allison Jacobsen has joined the firm. She advises employers in all aspects of employee benefits.

Tonkon Torp

Clay Creps has joined the board of directors of the Portland Human Resource Management Association (PHRMA), the local chapter of the Society for Human Resource Management. Creps serves in the capacity of legislative affairs director. He is a partner in the firm's labor

& employment practice group. **Drew Hagedorn** has been elected president of the Oregon Transportation Forum. He previously served as vice president for this nonprofit, which brings together elected officials and leaders in the transportation community. Hagedorn is a partner of the firm, and chairs its government relations and public policy practice group.



Blerina Kotori



Christopher Pallanch

Blerina Kotori and **Christopher Pallanch** were elected partners. Kotori is a member of the firm's labor & employment and information privacy & security practice groups. She advises and represents employers. Pallanch is a member of the firm's litigation and financial services practices.



David Myers

He focuses on resolving complex business disputes.

David Myers joined the business department at the firm. His practice is focused on mergers and acquisitions, corporate and finance transactions, tax matters, and general corporate counseling.



Beth Plass

Mersereau Shannon

Beth Plass has joined as an associate in the firm's litigation group.



Heather Kmetz

Sussman Shank

Partner **Heather Kmetz** was named 2015 Mentor of the Year by the OSB Taxation Section's New Tax Lawyer Committee. The award honors Kmetz for the time and energy devoted to developing tax lawyers.

Kmetz chairs the firm's business group, where she assists individuals in establishing tax-sensitive wealth-preservation plans, including representation before the IRS, focused in the area of foreign account disclosure.



Jennifer Bragar

Garvey Schubert Barer

Jennifer Bragar and **Steven Nofziger** have become owners in the firm's Portland office.



Steven Nofziger



John Rothernich

Bragar's practice focuses on land use, real estate, municipal and environmental law. Nofziger's practice focuses on employee benefits and executive compensation, tax, and business matters.

Firm owner **John Rothernich** has been elected to serve as president of the board of directors of Outside In, a Portland-based nonprofit focusing on helping homeless youth and other marginalized individuals move toward improved health and self-sufficiency. As a member of the firm's litigation group, he regularly assists clients in resolving critical business disputes.



Linda Frischmeyer



James Sikora

Landerholm

After 18 years with the firm and more than 34 years in practice, employment law attorney **Linda Frischmeyer** retired from the practice of law at the end of 2015.

In October, **James Sikora** joined the firm to provide employment law expertise. Sikora's practice focuses on advising businesses on labor and employment law matters.

Boise Matthews

The partners of **Ransom Blackman** announce that the

firm is now known as Boise Matthews. **Whitney Boise** and **Kendra Matthews** will continue as partners; **John Ransom** will continue in an of counsel position. Founding partner **Marc Blackman** (1947-2014) will never be forgotten.



Keil Mueller



Scott Shorr

Stoll Berne

Keil Mueller is the newest shareholder of the firm. Mueller is a trial lawyer who represents corporate and individual clients in state and federal court, as well as in arbitration proceedings. His practice emphasizes all aspects of complex business litigation.

Managing Partner **Scott Shorr** has been appointed by Oregon Governor Kate Brown to the Oregon Court of Appeals to fill the position vacated by the retirement of Chief Judge **Rick Haselton**.



John Bachofner

Jordan Ramis

Shareholder **John Bachofner** was elected to the OSB Board of Governors, and to chair the bar's litigation section. Bachofner focuses his practice on litigation and jury trials involving business, insurance coverage, and bankruptcy and creditors' rights.

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

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Tips From the Bench

Little Things

by Judge Leslie Roberts
Multnomah County Circuit Court

“It’s the little details that are vital. Little things make big things happen.” - John Wooden

It would be good if everyone who practices in Multnomah County Circuit Court were well-versed, and refreshed, on the applicable minutia of filing and service and their periodic revisions. Some practitioners do stay current on rules - but many do not. Yet the little things can trip you up in really big ways.

Particularly in the changing environment of eCourt, knowing the new rules and refreshing your grasp of the old ones will prevent embarrassing and costly errors.

Motions

There is no point in a motion if it is never heard. To have a motion heard, the movant is responsible for calling the assigned judge’s chambers to set the motion. Otherwise, nothing happens. My poor judicial assistant has heard the outrage and bluster but it is the attorney who fails to know the rule who is at fault. My staff has no notice a motion has been filed unless the lawyer contacts us. The local rule covers setting motions, and in detail. It is the job of the moving party - no one else. Supplementary Local Rules for the Circuit Court of the State of Oregon for Multnomah County (February 1, 2015) 5.015.

Judge Copies on Paper

The omission of judge copies, delivered to the judge’s chambers, is more than discourtesy: it is a violation of rule. Suppl. LR 6.015. That hasn’t changed with eCourt. Unless a specific judge has said that email service is permitted or preferred, you provide written copies. (See the appropriate judge’s web page through the Multnomah Court web portal (go to “Quick Links – Judges). I don’t allow email. My web page points this out.) The same requirement is part of Suppl. LR 5.015 (6). The responding party must deliver a judge copy of the response or reply. Suppl. LR 5.017. Merely filing the response is not the “delivery” of a “copy” to the judge.

In the case of trial documents, the judge copies must be provided (on paper except for judges who wish it otherwise) by noon the judicial day before trial. Suppl. LR 6.015

In my court, if you haven’t given me a copy of your memorandum, you can’t expect me to read it. Why bother to write it?

Orders after Ruling

In the era of paper, you might file a proposed order at the same time as filing the motion. The judge got the motion at the same time and would not be misled to sign the order before the hearing. Those days are now past.

Orders can be presented for signing only after the ruling on the motion (unless otherwise ordered



by the court). Similarly, judgments and orders must be circulated before submitted. UTCR 5.100.

The logic of this is based on how Odyssey (eCourt) operates on the court side. Documents for a judge to assign appear in the judge’s “queue” – a web page with a succession of documents to sign. The queue typically contains only the order or judgment – not any supporting material. Unless the order or judgment itself recites when it was heard there is no way to tell on the face of it, whether it is ripe for signature. The judge must research the file to figure out whether the proposed order reflects a ruling that is filed prematurely. Thus the rule requires that an order be presented “after” the ruling.

This year, a new rule is in effect; an out-of-cycle change made to UTCR 5.100, requiring a certification as part of the judgment attesting that the judgment has been properly circulated (as is required, now, for orders) and is ready for signature by the judge. It is also a good idea to indicate within an order the date of the hearing. We do not see the cover letter that might have that information.

Ex Parte

Some motions, although they may be presented ex parte, nevertheless cannot be presented electronically; they must be presented conventionally. Suppl. LR 2.501. (Ex parte motions go to the presiding court, or its designee. If a judge is specially assigned to hear all motions whatsoever, such as the foreclosure panel judge, that judge is the designee for ex parte motions.)

Motions that can only be presented conventionally include 25 civil types of matters, and four types of criminal motions, plus 16 types of domestic relations matters. Know that exceptions exist and make sure that your motion can be submitted electronically. If you don’t, your order should not be signed.

I won’t list all the affected motions, but some I’ve returned unsigned because they were submitted online include a motion for writ of assistance (to enforce a previous judgment), a motion for disbursement of funds, and a motion for reinstatement of a case after Rule 7 dismissal. (Such a motion is dubious, anyhow, since a dismissal is a judgment for the opposite party; see ORCP 71.)

Continued on page 13



News from the Courthouse

by Shane Abma
Court Liaison Committee

Presiding Judge’s Report and Courthouse Update - Judge Waller

New Courthouse

The design team continues to determine how best to configure the new courthouse. The board of county commissioners was briefed on whether it is more cost-effective to locate the four high-volume courts (small claims, landlord tenant, traffic, and parking courtrooms) as well as the district attorney’s office inside the new courthouse than to lease and remodel space in another downtown building. The architects are also working with the court and Multnomah County Sheriff’s Office to explore alternatives for improving security at the entrance to the new courthouse so that fewer people are bypassing screening with an ID card, yet still allowing for expedited entry for attorneys and others who work in the building on a regular basis. They will also be looking at who can bring firearms into the courthouse and whether that policy should be changed or updated.

Judge Alicia Fuchs’ Retirement

Judge Fuchs sent in her letter of retirement to the governor’s office. The screening of candidates for Judge Fuchs’ position is underway by the MBA with an expectation that the governor will make the appointment of a new judge sometime after the first of the year.

eCourt Changes

Judge Waller reminded the committee that changes and updates to the eCourt application are made at the state level. She understands that the timing of changes can be frustrating, but explained that the court is committed to communicating with the bar about any upcoming changes to be made as soon as the court is notified of the changes. Judge Waller is open to suggestions on ways to improve keeping the bar apprised of eCourt changes.

The court continues to hear of problems with court notices not

going to lawyers’ inboxes because of spam filters. Often an attorney will indicate to the court that the attorney did not receive a court notice, when in fact the record shows that it was sent, and often it is discovered that the notice went to a spam folder. The court asks that attorneys be mindful of this and make sure to configure spam filters to accept emails from the court. All court notices come from just five email addresses.

Judge Waller also reminded the committee that the upcoming UTCR 5.100 change takes effect in January, which will require a certificate of readiness to accompany proposed orders. This change will help the court process orders more efficiently.

Procedural Justice/Implicit Bias

The court is continuing its assessment of how well it incorporates the principles of procedural justice into its practices and procedures. The research on procedural justice shows that when litigants believe that they were treated respectfully, had an opportunity to be heard and understood the proceedings, they are more likely to accept the decision of the court, regardless of the outcome, and to comply with court orders. The court is currently doing an assessment of its criminal justice system. Judge Waller indicated that perhaps the bar can play a larger role in helping to implement procedural justice. A committee member noted that she had received many comments from colleagues indicating strong support for the court’s efforts in ensuring procedural justice.

Related to the procedural justice assessment, the court also continues to try and better understand the impact of implicit bias on the court and the justice system. As the court looks at ways to increase confidence in the judicial system, judges and court staff hope to use increasingly sophisticated research on implicit bias to develop tools that judges, lawyers and staff can use to reduce the impact of implicit bias in the justice system. The committee discussed possible future CLEs on this issue.

Family Court Update – Judge McKnight

Chief Family Law Judge McKnight provided an update on Multnomah County Circuit Court’s Family Law Department. Family law judges have been providing services in the East County Courthouse since July 2014, with a family court judicial officer going to that courthouse on Monday afternoons for ex parte and restraining order applications, and all day Wednesday for ex parte and hearings set from the trial assignment docket with east county addresses. The Family Court Services Office (which does mediations and evaluations) will also now be in the East County Courthouse on Mondays.

Judge McKnight reported that the court’s newest judge, Patrick Henry, took the bench in October. He has since had the opportunity to sit on a variety of dockets and assignments to give him a broad foundation of bench experiences.

The court was able to restore facilitation appointments as of October, which are one-on-one sessions for court staff to help self-represented parties with completing court forms and procedures. The use of facilitators is a statutorily-authorized assistance program that does not violate the rule against “unauthorized practice of law.”

The state court administrator is planning an upcoming training for family law facilitators. Judge McKnight hopes that the training will prioritize a focus on tools to recognize and respond to litigants who have been directly traumatized, as well as those vicariously affected by trauma. This will complement training provided by Multnomah County Circuit Court funded by the federal Department of Justice, related to domestic violence.

The court conducted a week-long feedback survey at all four court locations in September. The survey was administered to jurors, litigants, lawyers, and other visitors to the courthouse, to determine how they perceived their experience. The court received 399 responses. Portland State University is compiling the

Continued on page 13

Multnomah County's Justice Reinvestment Initiative

by Caroline Wong
Multnomah County District Attorney's Office
and Lindsey Marsh, Willamette Law Student (not pictured)



Faced with increasing prison populations and rising expenditures, Oregon was challenged to develop a unique approach to control prison expansion while still protecting the public. Oregon recently embraced a justice reinvestment initiative by passing House Bill 3194, which produced sentencing reform and provides formula grant funding to each county to implement local justice reinvestment strategies statewide. Justice Reinvestment is a growing national topic pertaining to decreased reliance on prison, subsequently generating cost-savings that can be reinvested in evidence-based strategies that increase public safety and improvements to the criminal justice system. Multnomah County was awarded a little over \$3 million for the 2014-15 biennium to create and implement its Multnomah County Justice Reinvestment Process (MCJRP) and programming. The county recently received additional state grant funding for the 2016-17 biennium.

The Multnomah County Justice Reinvestment Process

The goals of MCJRP mimic those of HB 3194: lower the use of prison beds while increasing public safety, hold offenders accountable, and reduce recidivism. MCJRP is designed to promote better-informed decision-making throughout the criminal justice continuum while providing necessary services to offenders placed on probation. The process focuses on whether an offender can be supervised safely in the community with intensive supervision and wraparound services, or whether prison is the appropriate outcome in that specific case. Decisions about whether to impose sentences of prison or probation are made based on professional judgment, which is informed by the personal and social accountability of the offender, victim input and impact, the nature and gravity of the underlying offense, and the use of a risk/needs tool to assess the offender's needs and likelihood of recidivism. Informed decision-making, in addition to determining program suitability and availability in the community, are utilized collaboratively in judicial settlement conferences or through other collaborative case management processes.

Cases are eligible for the justice reinvestment process when they carry presumptive prison sentences. Sex offenses, domestic violence offenses, offenses against children, and the majority of violent crime offenses are excluded from program eligibility. The Department of Community Justice plays a key role in Multnomah County's Justice Reinvestment Program. Eleven probation officers are dedicated to the program and are responsible for assessing defendants' criminogenic risks and needs early in the process using the Level of Service/Case Management Inventory tool. Assessment information gathered about participants individualizes treatment plans and helps connect offenders with the most effective interventions. The probation officers provide the assessment reports to the parties and the court, in addition to appearing and being a resource at assigned Judicial Settlement Conferences (JSC).

By using evidence-based practices and informed decisions, those present at the JSC discuss whether prison or probation is the appropriate course of action. If probation is deemed suitable, the parties discuss what type of programming will best address an offender's criminogenic needs. For example, those offenders with mental health issues might be best served through probation engagement with Multnomah County's Mental Health Court. Ultimately, matching the offender with appropriate probation conditions and services is a critical component of MCJRP in order to effectuate successful community integration among offenders.

Justice Reinvestment Intensive Supervision, Treatment Services and Programming

MCJRP eligible offenders who are not sentenced to prison or a specialty court program are sentenced to MCJRP Intensive Supervision. This program is designed to safeguard the community and increase offenders' compliance with the conditions of probation. A law-enforcement detail is dedicated to assisting probation officers with offender supervision, which is based on a collaborative model that builds relationships among offenders, probation officers, treatment providers and the judicial system.

The program also focuses on helping offenders become contributing members of society rather than increasing expenditures by spending time in prison. To accomplish this, services and treatment provided by justice reinvestment funding use evidence based interventions to target risk factors that are most likely to result in recidivism as well as lower barriers to rehabilitation. Crucial services funded by the grant award include intensive supervision of probationers,

alcohol and drug evaluations, inpatient and outpatient treatment services, mental health treatment, sober housing, employment development, parenting classes, and peer mentorship. Eighty% of MCJRP participants are high-risk offenders, many with unmanaged mental health and/or substance abuse issues. These offenders often require stabilization or further assessment to determine the appropriate level of care in treatment. Effective January 1, MCJRP funds a jail-based Treatment Readiness unit intended to prepare offenders for treatment success. This approach should maximize resources by increasing offender stability while decreasing treatment failures due to inappropriate treatment placements.

So far, most offenders have responded well to the program. These services provide positive impacts, both by improving offenders' lifestyles and contributing to positive outlooks on their futures. In a recent *Street Roots* article¹, MCJRP client Carole Hinojosa - drug addicted and homeless before starting the program - declared that MCJRP was her second chance. Her compliance with program supervision has helped her to stay clean and sober, get mental health services, and allowed her to fully pay back restitution to the victim of her crime.

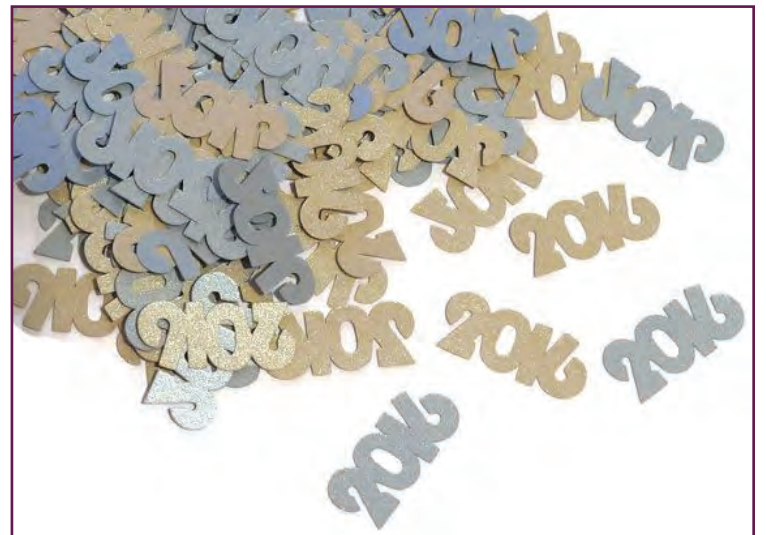
Victim Assistance and Grant Funding

Supporting crime victims is an important component to House Bill 3194. While other states have implemented similar forms of justice reinvestment programs, a unique aspect of Oregon's program is its dedication of 10% of all grant funds to community-based victim services programs. These services may provide victims with access to shelters, counseling and support groups, safety planning, and help in obtaining protective orders, as well as court and medical accompaniment. Since these services are not specifically tied to the victims of offenders under the MCRJP program, there is a greater ability to aid a broader population of victims.

After a careful assessment, Multnomah County's Local Public Safety Coordinating Council has identified the following three service providers to receive grant funding during the next biennium to best assist crime victims:

- Impact NW: Provides treatment for child welfare-involved families and children exposed to domestic violence.
- Lutheran Family Services NW: Offers treatment and services for victims of non-domestic violence or sex assault crimes, with a focus on immigrants and communities of color.
- Oregon Crime Victims Law Center: Funds two attorneys embedded at the Gateway Center to assist victims; one attorney will be bilingual (Spanish).

¹ Emily Green, *Human Investment: The Politics of Trying to Keep People Out of Prison* (Street Roots, 2015).



Happy New (Membership) Year!

If you have yet to renew your MBA membership for 2016, please take a few minutes to do so online at www.mbar.org or contact the MBA office at 503.222.3275.

We look forward to serving you in 2016.



MBF Invites Letters of Inquiry for 2016 Grants

by Pamela Hubbs
Office and Foundation Administrator

Local nonprofits interested in receiving 2016 grant funding for programs that promote understanding of the justice system, the importance of voting, the political process or civic involvement are encouraged to submit a letter of inquiry to the Multnomah Bar Foundation (MBF) by January 22. Grants are awarded to 501(c)(3) organizations whose programs increase civic education and involvement and understanding of the rule of law. Priority is given to new projects that utilize MBA volunteers in the geographic area served by the MBA.

Criteria for letters of inquiry, deadlines and other information about the grants program may be found at <http://mbabar.org/foundation/grants.html>. Grant awards will be announced and funded in May.



Thanks to the generous support of the legal community, the MBF Civic Education Fund has awarded over \$320,000 in grants since 2006. In 2015, the MBF granted a total of \$37,750 to Bus Project Foundation, Elders in Action, League of Women Voters of Oregon, League of Women Voters of Portland, the MBA Young Lawyers Section, Northwest Family Services, Oregon Tradeswomen, Inc., and Sponsors Organized to Assist Refugees.

For more information, please contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).

Preliminary Data

Although the program is in its early stages, the data analysis of the program has indicated that it's been successful in reducing prison bed usage to avoid the necessity of expanding prison capacity. According to Oregon Crime Justice Commission data, since the start of the justice reinvestment initiative, Multnomah County has led the state in prison bed reduction for property and drug crimes.

Between July and June 2015, Multnomah County sent 231 fewer of those offenders to prison than in the same time frame two years prior. Better informed decision-making and intensive supervision with wraparound services also seem to be a benefit, as Multnomah County has not seen a significant increase in probation revocations for those given a chance at local supervision.

Pro Bono Young Lawyers Section

Ask the Expert

Dear Experienced Attorney:

I've been practicing for a couple of years now and sometimes I feel like I am impeding the progress of a transaction by simply doing my job. I don't want to hinder deals, but to help my client, I need to raise all legal issues, right?

Wrong. Raising all possible legal issues and discussing them with your client, or worse, with opposing counsel, can kill a deal. Young lawyers often do three main things that hinder a deal's progress.

First, young lawyers often strive to raise every possible legal issue. This is a mistake. As a young lawyer, there is certainly a learning process during which it is important to learn to identify all of the potential legal issues surrounding a particular situation. Some of the scariest deals occur when the lawyer does know if he or she has identified all of the issues. However, once you are able to identify the legal issues for yourself, as a lawyer, it is equally important to be able to take the next steps and move past identifying all possible issues, to identifying those that your client cares about and finally, to finding solutions for your client.

Second, young lawyers forget to listen to their clients and instead approach each situation as a law student (or young associate) spotting issues for an exam. The first step to becoming a good lawyer is

listening to your clients. What are their goals? What are their sensitivities? A good lawyer does not just understand what the law is, but understands the clients' goals and sensitivities and provides advice that is consistent with both. Often, that requires wading through the issues and identifying the risks associated with the transaction, but not raising each and every legal issue. The less-effective lawyer raises legal issues with which the client is not concerned, complicates the transaction as a result, and may end up killing the deal. Clients want an advisor to help solve their problem. To do that, lawyers must help clients understand the risks, understand the likelihood of each risk, prioritize those risks, and provide solutions.

Finally, young lawyers incorrectly focus on beating the lawyer on the other side. Your job as a lawyer is not to beat opposing counsel, but to accomplish your client's goals. Of course, accomplishing those goals may require some reasoned arguments to change opposing counsel's mind, but it is a mistake to allow yourself to lose sight of your role in the transaction.

Being a good lawyer is a balancing act that requires a great deal of knowledge, but the real difficulty lies in evaluating your client's goals and the associated risks to achieve solutions.

Craig W. Russell Pro Bono Spotlight

by Joshua D. Stadler
YLS Pro Bono Committee

If anyone needs an advocate to stand by their side, it is a victim of domestic violence. This was a lesson that Craig W. Russell learned all too well growing up in Soldotna, a small town of around 4,000 residents in Alaska's Kenai Peninsula, about 150 miles southwest of Anchorage. More than half of adult women in Alaska have experienced domestic violence, according to the 2010 Alaska Victimization Survey.

Legal Aid Services of Oregon's Domestic Violence Project (DVP) matches pro bono attorneys - most of whom are not family law practitioners - with victims of domestic violence for representation in contested Family Abuse Prevention Act restraining order and stalking protective order hearings. The cases tend to involve an expedited timetable and narrow issues, and require a court appearance for what amounts to a "mini-trial" before a family law judge with opening statements, testimony of witnesses, admission of evidence, and closing arguments. The DVP offers an excellent volunteer opportunity for young lawyers seeking litigation experience.

For Craig, who moved to Oregon in 2011 with his wife Kendra (an attorney at Blunck & Walhood LLC in West Linn) to attend Willamette University College of Law and was admitted to the OSB in 2014, the DVP has

offered just such an opportunity. It has allowed Craig to connect with his Alaskan roots by standing alongside victims of domestic violence while also fulfilling the ever-pressing need of a young litigator to obtain real courtroom experience. Domestic violence is, sadly, just as prevalent in Oregon; for example, one in seven women aged 18-64 in Multnomah County is physically abused by an intimate partner each year, according to the county's Department of Community Justice.

Since completing the preparatory CLEs to participate in December 2014, Craig has represented about one client each month in contested restraining order or stalking protective order hearings in Multnomah, Washington, and Clackamas counties. The cases provide him with the chance to familiarize himself with the local bench, gain invaluable experience, confidence, and comfort in the courtroom, and learn how to apply the Oregon Evidence Code to real courtroom situations. Such opportunities are not necessarily abundant - but are hugely valued by law firms and clients alike - for young litigators in private practice. Besides his DVP practice, Craig has otherwise mostly practiced in the area of insurance defense in personal injury cases where clients are, understandably, often reluctant to hand over the reins of active



Craig W. Russell

litigation to young lawyers with little real courtroom and case management experience.

Craig's DVP cases have furthered his development as a well-rounded young litigator, but they have been immensely rewarding for a different, more personal reason, too. As dissimilar as are small-town Soldotna and big-city Portland, they share one unfortunate similarity: both are beset by the scourge of domestic violence. Through the DVP, Craig is able to contribute to giving voice to those who too often have been voiceless and empowering those who have long been disempowered. As much as it has been fulfilling for Craig to represent business entities in private practice, the DVP helps to keep Craig connected - face-to-face - with clients who are experiencing far-too-real, real-life problems.

Any attorneys interested in representing victims of domestic violence through the DVP can find further information online at <http://lasoregon.org/getinvolved> (under Portland Metro Pro Bono Opportunities) and www.oregonadvocates.org.

YLS Drop-in Social and Toy Drive at Portland Prime

by YLS Membership Committee

Young lawyers gathered together at the MBA YLS Membership Committee's annual drop-in social and toy drive on Wednesday, December 9 at Portland Prime. Committee members Amelia Forsberg and Anaiah Palmer coordinated the collection of the new and unwrapped toys that were generously given by the MBA community and then donated to Toys for Tots. Representatives of the United States Marine Corps were present to accept the donations.



YLS Board Members Kevin Parks, Tyler Bellis, Mary Tollefson, Mackenzie Hogan, Tyler Volm and Shayda Le

Andrea Meyer YLS Member Spotlight

by J. Mackenzie Hogan
YLS President

Andrea Meyer has been a rising star on the YLS Membership Committee since she joined. This year she has attended every meeting, attended every event, and helped out with the New Admittee Social. It was at the New Admittee Social that I had the distinct pleasure of meeting Andrea, and I can tell that she has a bright future ahead of her in the YLS.

Andrea is still new to the YLS, but that has not stopped her from diving in head first. I recently had the opportunity to ask her some questions about her involvement and I was completely blown away by her answers. As YLS president, it is important for me to know what kinds of things our members enjoy about the YLS so that we can continue to add value as our members grow and age. For Andrea, it wasn't the public

service, the CLEs (although this is something that she truly enjoys about the YLS) or the socials. "I am still pretty new to YLS, so one of the things I am most looking forward to is becoming a resource for attorneys newer to practice than me," Andrea said.

When asked what her favorite YLS moment has been so far, Andrea again reiterated the community aspect of the YLS:

"It's hard to say that one moment is my favorite. Rather, there are a number of moments that sort of fall into the same category that I would say are my favorite: by far, the thing I have enjoyed most about the YLS is getting to know other attorneys in the community. The YLS (and the MBA, in general) has so many events that make it easy to get together with other



Andrea Meyer

attorneys, either through volunteer opportunities or drop-in socials. It's always fun to meet new people, and it makes my job much more enjoyable when I get to work on a case with someone I've met at a YLS function."

Andrea works at Chenoweth Law Group and practices general civil litigation with a focus on business disputes, environmental issues and estate litigation. Given her attitude and outlook on practicing in Portland, I expect great things from Andrea.

What's in Your Pocket? Smartphones: A New "Safe Harbor" for E-Discovery

by Larry G. Johnson



Think for a minute: What computer do you use that has the most information about you in it? Your desktop at work? Your home PC? Your laptop? The firm's servers with all your emails?

The right answer probably is: "None of the above." Or to be precise: The answer is in your pocket or purse. It's your smartphone. And the reason may not be immediately obvious. Not only does your smartphone sync up with all your emails (regardless of where you wrote or received them), but it also produces and retains two very important data types: voicemail and text messages. And with proper forensic tools, your phone also retains deleted files of these data types that can be resurrected.

In other words, in your pocket are your most meaningful communications and information you exchange with others in your life. It's where you live.

That's why wise lawyers consider their client's smartphone first when preparing for e-discovery. This is especially true in family and employment law cases, where there are often valuable conversations between the parties via text messages and voicemails.

Voicemail is electronically stored information (ESI) that lawyers too often forget to ask for, or even know how to ask for. Yet for many phone users, that is where all their voicemail is. If you did not ask for and receive voicemail in your last case, you didn't do a complete job.

According to the Pew Research Center, "Nearly two-thirds of Americans own a smartphone, and 19% of Americans rely to some degree on a smartphone for accessing online services and information and for staying connected to the world around them - either because they lack broadband at home, or because they have few options for online access other than their cell phone." Given the convenience and portability of smartphones, the trend toward greater reliance on this kind of computer for personal and business data can only continue upward.

Accelerating this trend, even corporate America is relying more on their own employees' communication devices and

data. Many companies, such as Microsoft, are following a "BYOD" strategy: "Bring Your Own Device." Employees agree to be bound by company email and internet usage policies, but otherwise they use their own smartphones for both business and pleasure.

So, with just one small device, lawyers can easily access a ready repository of all the kinds of data used daily by people on a computer (and phone) that goes with them everywhere. On top of the three main communication data types previously mentioned - text message content, voicemails and emails (plus attached documents) - there are added bonuses on smartphones. These include:

- The photos and videos people take that are stamped with times and dates;
- GPS data from trips taken;
- Calendars with appointments and dates preserved;
- Internet sites visited and search terms used;
- Wi-Fi location information; and
- Shopping and social network information.

It is from such a cornucopia of information that Portland lawyer and technologist Tom Howe, for example, has developed a unique combination of technology and methodology for extracting all the data on smartphones to create PDF evidence reports for lawyers to review. He contends that "smartphones today often have the most compelling evidence."

Howe and other e-discovery providers have also simplified the data collection and preservation process with remote collection units. The law firm or client is sent the unit and it is used to preserve evidence by extracting information from phones and computers. Clients appreciate this convenience because they do not have to give up possession of their phone and computer for more than a few hours.

This approach with smartphones has created a paradigm shift from preserving a wealth of mostly irrelevant data on servers and desktops for litigation holds, and settling on key witnesses' smartphones instead.

Of course, just as bad facts can make bad law, complex cases often require complex e-discovery. But as one who has litigated cases for 40 years, I think preserving and producing ESI from smartphones as the default "safe harbor" in a case, whereby anything beyond that has to be justified (and possibly paid for) by the requesting party per federal Civil Rule 26(b) proportionality standards, would

do much to prevent many of the abuses electronic discovery is known to be prone to.

Ever since the Federal Rules of Civil Procedure were amended in 2006 to take into account the unique nature of ESI, discovery battles over what should or should not be legitimate stores of information to be preserved and produced have been waged across the land. Attempts have been made to standardize a process that lawyers can understand and follow, such as the Electronic Discovery Reference Model promoted at www.edrm.net. But like many things in our adversarial system, e-discovery continues to be a war of attrition in too many cases, especially if the judge refuses to intervene to establish a protocol to prevent costly and unnecessary e-discovery.

How refreshing and simple it would be to state simply that smartphones should be considered first as the sole ESI source used in the case for e-discovery, and perhaps leave it at that. In certain types of cases, such as family law and employment law, that would seem to be a no-brainer.

Adopting federal and state procedural rule changes entails a long and difficult process, but the solution for many courts is to adopt local rules and/or model orders to impose a rule of reason over e-discovery.

Of course, there is nothing to stop the parties in any given case from adopting their own guidelines as well as FRCP 29 and state equivalents. A good place in every case would be to start with the available smartphones and see what results are produced. At a minimum, staged e-discovery almost always makes sense, since the information obtained from the first round of production informs what you ask for in any subsequent rounds.

A final point: What if a party "does a Brady" and destroys his smartphone, what then? In most instances, the information on any smartphone is automatically synced or backed up on the user's PC, Mac or in the cloud.

Data these days are more "sticky" than ever. And smartphone users have yet to fully catch on to the fact that their good friend in their pocket could well turn out to be their worst enemy.

Larry G. Johnson is a lawyer in Newcastle, Washington, and has been a member of the Washington bar since 1974. He recently served on the E-Discovery Subcommittee of the WSBA Escalating Cost of Civil Litigation (ECCL) Task Force. Besides being a litigator for the past 20 years, he has served as a consultant and expert witness in e-discovery matters. He does business as Electronic Data Evidence (www.e-dataevidence.com).

Learn more at the February 10 Top 10 Electronic Discovery Tips class being taught by Tom Howe. See p. 3 for more details.

mba yls | EVENT

**YLS Drop-in Social
Ecliptic Brewing
825 N. Cook St., Portland
Wednesday, January 13
5:30-7:30 p.m.**

Please drop in to have a beer with others from the MBA at Ecliptic Brewing. Light hors d'oeuvres will be served.

No RSVP necessary.

Tips From the Bench

Continued from page 10

Be sure your motion is not on the list in Supp. LR 2.501 before submitting it electronically.

Service of Summons and Complaint

Service of process is covered by ORCP 7. Perhaps some lawyers struggle with its details, or rely on non-lawyers like agents for service of process or secretaries to get service done correctly. This can be an error with serious consequences. A default judgment does not bind a party never served.

The most frequent error I see in foreclosures is fumbled service on "all parties wherever situated who claim an interest" in the property or "unknown heirs." You cannot serve unknown people without an order of the court because you don't know the "address of the defendant." The rule specifically describes only one method for the court to allow: publication. ORCP D(6). The court has authority to allow a different method or methods; but originality could result in later challenge to the judgment. Alternate methods must be reasonably calculated

to give actual knowledge of the litigation. For instance, posting on the property is exceedingly unlikely (as compared to a commercial publication) to reach a lienor, or to notify an heir who was unaware that great-aunt Harriet had passed away.

I assure you that substituted service in these cases is a total waste. It requires service at the defendant's residence; and obviously, you don't have that for persons "wherever situated." (Seemingly, process servers will reliably turn in invalid service on "persons unknown claiming rights etc." by pointless substitute service.)

Similarly, special rules govern service on a decedent. You can't serve a dead person by substituted service on a 'co-tenant' of a dead person. (It has been tried.) You could serve the heirs if you just need to reach real property (it passes directly to heirs at law). ORS 115.305-115.325 tells you how to present a claim against an estate.

Conclusion

Don't rely on non-lawyers or familiar practice to know the details of procedure. That carelessness will cost your motion, your argument, or your judgment. "Little things make big things happen."

News From the Courthouse

Continued from page 10

results of the survey, which the court will then use to improve its practices where possible.

The number of self-represented litigants continues to remain high, and the court is awaiting the results of a small study from IAALS (Institute for the Advancement of the American Legal System) to better understand why litigants choose to self-represent instead of hiring an attorney. Although the study will likely confirm that financial concerns are the primary reason, there may be other reasons as well, and knowing those reasons can better inform the court's response. Continuing that theme, the court is continuing its efforts and partnership to make the court's law library more accessible and a better resource for the public.

On January 1, the law allowing issuance of a kind of emergency protective order 24/7 went into effect. The new law authorizes issuance of a protective order - with the victim's consent - when a law enforcement officer responding to the scene of a domestic disturbance determines that a family or household member has been menaced or assaulted. The order expires after seven days and will prohibit contact. A family law judge will issue the order if the call comes in during regular court hours, and the "after hours" duty judge will issue it if the call comes in outside of regular court hours.

As a means of resolving cases more quickly, the Family Law Department hopes to potentially utilize experienced family law attorneys (who have pro tem judge appointments) to help with settlement conferences. More information on this possible project will come next year.



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The Corner Office PROFESSIONALISM

Diverse Bench and Bar in 2016

The season for New Year's resolutions is the perfect time to highlight an important MBA Professionalism Statement tenet: "We will support a diverse bench and bar." We all support this goal in principle, but what next? The following list includes 10 specific and doable suggestions for turning good intentions to support a diverse bench and bar into reality.

1. Join a specialty bar organization and actively participate in its events. One way to do so is to volunteer on a committee. Many, if not all, of the specialty bar organizations have some sort of awards/endorsement committee to advance diverse lawyers in our profession. For instance, OAPABA, OC-NBA, OGALLA, OHBA, and OMLA formed the Oregon Judicial Diversity Coalition through which these organizations collaborate to schedule judicial endorsement interviews for state and federal judicial vacancies to help diversify our bench.
2. Get your employer/firm involved in the OSB Diversity & Inclusion Department's (D&I) programs. Their support can specifically include financial sponsorship of the Opportunities for Law in Oregon programs, volunteering as speakers, etc., at D&I events, and inclusion in D&I's handbooks of potential employers for its summer clerkship and fellowship programs.
3. Nominate and support diverse attorneys you know for awards, recognition, or for leadership positions within bar sections, committees, and organizations, such as the House of Delegates, Board of Governors, Justice Betty Roberts and Mercedes Deiz Awards, the MBA Professionalism Award, etc.
4. Mentor, formally or informally! Join a mentorship program such as the MBA Mentor Program, OSB's New Lawyer Mentoring Program, a mentoring program through one of the Oregon law schools, the PSU Explore the Law Program for undergraduate students interested in the law, or by serving as a resource to someone you know or meet. If your mentee is interested in an area of law that doesn't cover your specialty, but you know someone who practices in that area, connect those two with an introductory email or coffee.
5. As a supplement to mentoring one-on-one, learn more about professional development programs administered by the specialty bars, such as OMLA's Inspiring Minority Attorneys Toward Growth and Excellence Program, a retention program for racial and ethnic minority attorneys that have just been admitted to Oregon, and consider volunteering your time, whether it is to speak on a panel or just to help behind the scenes.
6. Attend at least one specialty bar organization's annual fundraising/award event and/or sponsor a law student or young lawyer to attend, so that he or she can be inspired by the professionalism and excellence of our members.
7. Donate to specialty bar organizations. Many, if not all of them, provide scholarship and/or grant opportunities for law students, applicants to the OSB, and lawyers.

8. Coach a mock trial team at an under-represented high school through the Classroom Law Project. If you can't commit to coaching, there are one-time volunteer opportunities as courthouse guides, mock trial judges, or law day facilitators. This is a great way to encourage and empower diverse young people to consider legal careers.
9. Attend more CLEs and conferences on access to justice and diversity issues, such as the Institute for Inclusion in the Legal Profession's annual Symposia on the State of Diversity and Inclusion in the Legal Profession. If you present CLEs, consider whether there is a diversity - or access to justice component to your practice, and implement that into a future CLE to build awareness of those issues among others in your practice area.
10. Hire diverse law clerks and lawyers. If your firm/employer has a hiring committee, encourage including people with diverse backgrounds in your firm as members of those committees to provide a variety of perspectives on employment decisions.

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

The MBA thanks the annual Family Law Update CLE presentation team

The CLE has been presented annually for decades by the Multnomah County Chief Family Law judge and a great team of lawyers.

Gary Zimmer has been a presenter since 1989 with help from his associates who gather the class materials.



Gary Zimmer (center) and associates

Bill Schulte presented until 2008 when Tom Bittner took his place.



Bill Schulte



Tom Bittner

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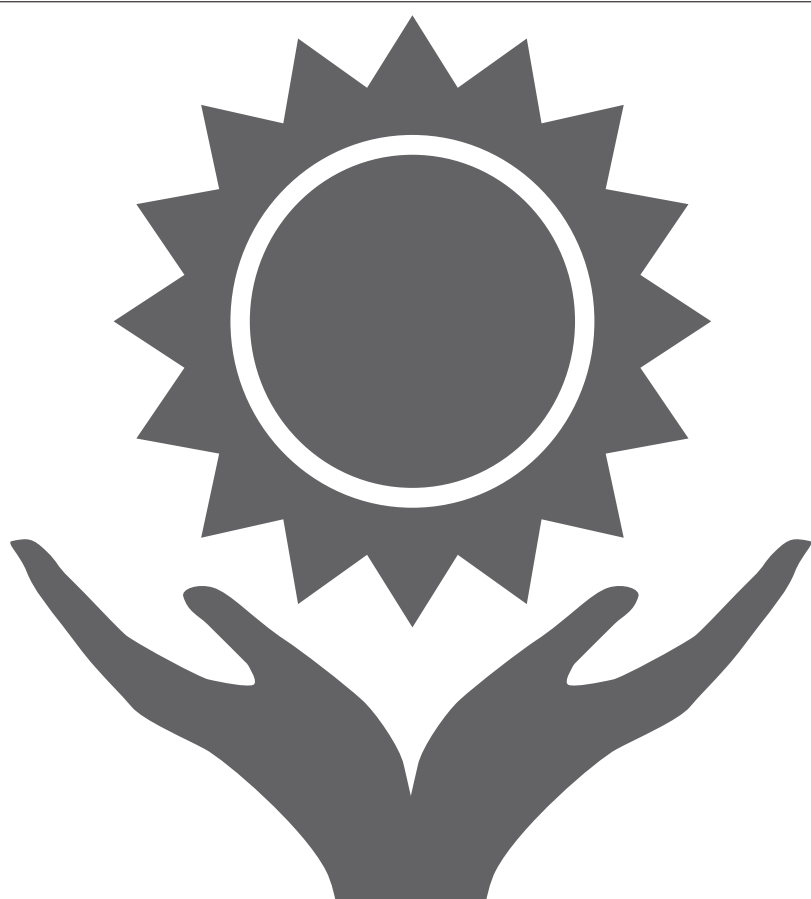


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Keil Mueller is a trial lawyer who represents corporate and individual clients in state and federal court, as well as in arbitration proceedings. Keil's practice emphasizes all aspects of complex business litigation, including shareholder and partnership disputes, securities and financial fraud litigation, contract disputes, and trade secrets litigation. Keil has successfully represented clients in jury trials and arbitration hearings, and has obtained favorable settlements on behalf of clients in numerous other disputes. *Oregon Super Lawyers* has recognized Keil as a "Rising Star" each year from 2012 through 2015. In addition, Benchmark Litigation named Keil as a "Future Star" for 2015 and 2016. Prior to joining Stoll Berne in 2008, Keil spent several years as a litigation associate in the New York office of Covington & Burling LLP.

NADIA DAHAB AS A NEW ASSOCIATE!



Nadia Dahab recently joined Stoll Berne. Her practice focuses on complex business litigation and class action disputes, and includes issues of consumer protection, securities fraud, and intellectual property. Before joining Stoll Berne, Nadia clerked for the Honorable Rives Kistler on the Oregon Supreme Court, the Honorable Mary H. Murguia on the U.S. Court of Appeals for the Ninth Circuit, and the Honorable Susan P. Graber, also on the U.S. Court of Appeals for the Ninth Circuit. Nadia is currently the Co-chair of the Young Lawyers Division of the Federal Bar Association and a coach for Franklin High School's "We the People" constitution team.

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