



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. April 2005 Volume 51, Number 4



Lawyers Who Give So Generously of their Time, Energy and Money

By Sylvia Stevens, MBA President.

Ahhh, spring. Flowers are blooming, birds are singing, warm breezes are wafting. Spring is a wonderful time of renewal, when even the familiar seems fresh and our possibilities seem boundless.

It is a great time to reflect on what is good in life, not the least of which is lawyers who give so generously of their time, energy and money for the betterment of the profession and the community.

On April 25, we kick-off the second annual Multnomah CourtCare Campaign, and I am confident that once again the MBA membership will make sure we meet our \$85,000 goal. Attendees and sponsors of February's WinterSmash bowling party generated over \$16,000 in support for CourtCare.

CourtCare was established and is maintained through the collaborative efforts of the MBA, the Oregon Judicial Department, Multnomah County and Volunteers of America Oregon, which operates the center. CourtCare offers free drop-in child care in the Multnomah County Courthouse for young children whose parents or guardians are involved in court proceedings. Since it opened in December 2001, Multnomah CourtCare has served as a safe haven for over 3,500 children. Approximately 40 percent of the parents utilizing CourtCare are survivors of domestic violence who are at the courthouse to obtain or defend restraining orders. Others are there in connection with a variety of civil and criminal matters, including domestic relations cases, STOP Court and FED proceedings. Not only does CourtCare protect children from inappropriate exposure to upsetting and emotional scenes, but it creates access to justice for litigants who cannot afford childcare. On-site child care also benefits other litigants and court personnel by eliminating disruptions and enhancing the quiet and orderly atmosphere of the courthouse.

The program receives funds every year from the county and the judicial department, as well as from the Oregon Women Lawyers Foundation. However, budget cuts and funding shortfalls mean that contributions from members of the Portland metropolitan area legal community are crucial to the continued success of CourtCare.

Fundraising committee co-chairs Mike Greene and Jeff Matthews are mobilizing the campaign, using the CourtCare Campaign's motto, "A Jungle Gym in the Jungle." They have recruited "CourtCare Coaches" at more than 40 Multnomah County law firms and law-related organizations that will engage in a good-natured competition to raise the most money overall or the most per capita. Last year, over 40 law firms and organizations participated. The *Proudest Pride Award* for the largest firm donation went to Davis Wright Tremaine for its \$7,500 contribution; Williams Dailey et al won the *Loftiest Leap Award*, for the largest per capita donation of \$173 per person.

A special mail campaign will reach out to smaller firms and sole practitioners, who last year contributed more than \$8,800.

Watch for CourtCare Campaign posters and information at your firm and please give generously. Please contact Mike Greene at 503.228.3015 or Jeff Matthews at 503.224.7077 if you would like to be a CourtCare Coach for your firm, to assist with the solo and small firm outreach or with any questions you have about the CourtCare campaign.

Annual meeting of the membership & Judges Reception

Wednesday, May 18
Portland Marriott Downtown
1401 SW Naito Parkway

Judges Reception 5 p.m.
Dinner 6:30 p.m.

Celebration of the profession & recognition of our colleagues

2004-2005 MBA President
Sylvia E. Stevens

2004-2005 MBA YLS President
W. Todd Cleek

Professionalism Award Recipient
Walter H. Grebe

Other honorees will include the MBA and YLS Award of Merit and Pro Bono Award recipients.

This event is an annual sell-out so prompt RSVP is encouraged.

Invitations are being mailed separately.

MBA and YLS Board Elections

Please look inside for your ballot to vote on new directors for the MBA and YLS boards. Profiles of candidates appear on Pp. 8 and 9. Ballots must be received at the MBA by April 29.

MBA CLE

To register for a CLE, please see the inserts in this issue or go to www.mbabar.org.

April

Mondays in April

YLS Commercial Litigation CLE Series at the Standard Insurance Building from 12-1 pm

Wednesday, April 6

Multnomah County Judges Trial Practices: Judicial Perspectives on Communicating with the Trier of Fact

Hon. Katherine Tennyson
Hon. John Wittmayer
Hon. Janice Wilson

Thursday, April 14

Clark County Practice and Procedure

Hon. Robert Harris

Tuesday, April 19

Voir Dire: Do You Know Who is in the Jury Box?

Peter Glade
Joyce E. Tsongas
Chris Dominic

Tuesday, April 26

Advanced Real Estate Transactions: The New Oregon Opinion Letter Accord

David W. Green
David P. Weiner

Thursday, April 28

Full Court Press: Advice on Dealing with the Media

Stephen Houze
Jeff Manning
Kateri Walsh

May

Tuesday, May 3

Current Developments in Small Business Tax

Joseph Wetzel
Heather Kmetz

Thursday, May 5

Annual Probate and Guardianship Update

Hon. Elizabeth Welch
Helga Barnes
Tim McNeil

Wednesday, May 18

Winning with Discovery in the Digital Age

John Stewart
Jeff Love
Kristin Cleveland

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Advertising is accepted; advertisers(ments) are not necessarily endorsed by the MBA. The editor reserves the right to reject any advertisement.

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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NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

MEASURE 37 SUMMIT. Course materials from the January 5, 2005 program of the Oregon Law Institute in cooperation with Miller Nash LLP in Portland OR. (*KF 5698 O7O73m)

CURRENT TRENDS AND PRACTICAL STRATEGIES FOR LAND USE LAW AND ZONING edited by Patricia E. Salkin. Published by the ABA Section of State and Local Government Law, 2004. (KF 5698 C87)

EMERGING ISSUES IN OREGON CONSTITUTIONAL LAW. Course materials from the Oregon Law Institute December 10, 2004 program in Portland. (*KF 4550 O7O73e)

HOW TO WORK WITH YOUR COURT: A guide for child welfare agency administration, 2d ed. by Mark Hardin with Diane Boyd Rauber. Published by the ABA Center on Children and the Law and the National Child Welfare Resource Center on Legal and Judicial Issues, 2004. (KF 9780 H37)

CREATING WINNING TRIAL STRATEGIES AND GRAPHICS by Christopher G. Ritter. Published by the ABA Tort Trial and Insurance Practice Section, 2004. (KF 8915 R57)

BLUE'S GUIDE TO JURY SELECTION by Lisa Blue and Robert B. Hirschhorn. Published by Thomson/West, 2004. (KF 8972 B58)

BROKER-DEALER REGULATION edited by Clifford E. Kirsch. Published by the Practising Law Institute, 2004. (KF 1071 B76)

HIPAA: A practical guide to the privacy and security of health data by June M. Sullivan. Published by the ABA Health Law Section, 2004. (KF 3827 R27 S85)

SCHOOL VIOLENCE: From discipline to due process edited by James C. Hanks. Published by the ABA Section of State and Local Government Law, 2004. (KF 4159 S36)

THE CONSTRUCTION CONTRACTS BOOK: How to find common ground in negotiating design and constructions contract clause, edited by Daniel S. Brennan. Published by the ABA Forum on the Construction Industry, 2004. (KF 902 C54e)

A GUIDE TO MERGERS & ACQUISITIONS, 2005 EDITED by Richard A. Goldberg. Published by the Practising Law Institute, 2005. (B1461)

CONTESTS FOR CORPORATE CONTROL, 2005: Current offensive & defensive strategies in M&A transactions edited by Dennis J. Block and Meredith M. Brown. Published by the Practising Law Institute, 2005. (B1462)

DOING DEALS 2005: Understanding the nuts & bolts of transactional practice edited by David M. Silk. Published by the Practising Law Institute, 2005. (B1469)

CALENDAR

For a longer version of the MBA calendar, please visit www.mbabar.org.

April

4 Monday, YLS CLE - Commercial Litigation Series continues Register at www.mbabar.org.

5 Tuesday, MBA Board meeting

6 Wednesday, MBA CLE - Multnomah County Judges Trial Practices See insert or register at www.mbabar.org.

8 Friday, Multnomah Lawyer deadline

11 Monday, YLS CLE - Commercial Litigation Series continues Register at www.mbabar.org.

12 Tuesday, YLS Board meeting

13 Wednesday, YLS PDC Seminar Branding: Not Just for Business Register at www.mbabar.org.

14 Thursday, MBA CLE - Clark County Practice and Procedure Register at www.mbabar.org.

18 Monday, YLS CLE - Commercial Litigation Series continues Register at www.mbabar.org.

19 Tuesday, MBA CLE - Voir Dire: Do You Know Who is in the Jury Box? See insert or register at www.mbabar.org.

21 Thursday, YLS Drop In Social with Multnomah County and Federal Judges

22 Friday, Judicial Practices Brownbag Discussion See Announcements for details.

25 Monday, YLS CLE - Commercial Litigation Series continues Register at www.mbabar.org.

April 25 - May 6 Monday-Friday, CourtCare Campaign: A Jungle Gym in the Jungle See p. 5 for details.

26 Tuesday, MBA CLE - Advanced Real Estate Transactions See insert or register at www.mbabar.org.

28 Thursday, MBA CLE - Full Court Press: Advice on Dealing with the Media See insert or register at www.mbabar.org.

29 Friday, MBA Board Election Ballots due

May

2 Monday, YLS CLE - Commercial Litigation Series continues Register at www.mbabar.org.

2-7 Monday-Saturday, Community Law Week See p. 10 for details.

3 Tuesday, MBA Board meeting

Tuesday, MBA CLE - Current Developments in Small Business Tax See insert or register at www.mbabar.org.

5 Thursday, MBA CLE - Annual Probate and Guardianship Update See insert or register at www.mbabar.org.

9 Monday, YLS CLE - Final Day of Commercial Litigation Series Register at www.mbabar.org.

10 Tuesday, YLS Board meeting

Tuesday, Multnomah Lawyer deadline

12 Thursday, MBA Golf Outing at Heron Lakes See Announcements for details.

18 Wednesday, MBA CLE - Winning with Discovery in the Digital Age See insert or register at www.mbabar.org.

Wednesday, MBA Annual Dinner and Judges Reception at Downtown Marriott Invitations will be mailed separately.

19 Thursday, MBA CLE - Drafting and Interpreting the Construction Contract See insert or register at www.mbabar.org.

24 Tuesday, MBA CLE - ERISA Litigation: What Every Insurance Litigator Should Know See insert or register at www.mbabar.org.

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Ethics Focus

By Mark J. Fucile, Stoel Rives.



Have License, Will Travel: Oregon Extends Reciprocity

Last month, we looked at temporary multijurisdictional practice under the new Oregon RPCs. But what if your practice regularly takes you into Washington, Idaho or Utah often enough that you would like or need to become licensed there? In years past, that meant taking another bar exam - no small decision, given the time and financial commitment involved.

In 2002, Oregon joined Washington and Idaho in addressing this problem through a novel reciprocal admission compact. Under the agreement, lawyers who have taken the bar exam in one of the three states and have practiced in those states for at least three years can be admitted in the others without taking another bar exam. Instead, a lawyer simply needs to complete an application form, pay the requisite admission dues and take 15 hours of approved CLE courses in local practice and procedure. Applications and additional information for Oregon lawyers interested in becoming reciprocally licensed in Washington or Idaho are available on their state bar Web sites at, respectively, www.wsba.org and www.state.id.us/isb.

Since 2002, Washington and Idaho have extended reciprocal admission to Utah. Utah, in turn, adopted a broad, "mirror image" reciprocity rule that allows out-of-state lawyers to be admitted there by satisfying the same prerequisites that the lawyer's "home" state requires of Utah lawyers. Oregon has now returned the favor. Effective February 1, Utah lawyers are now eligible for reciprocal admission here on the same terms as Washington and Idaho lawyers and, under Utah's "mirror image" reciprocity rule, Oregon lawyers are now eligible for reciprocal admission in Utah. Applications and additional information for Oregon lawyers interested in becoming licensed in Utah are available on the Utah State Bar's Web site at www.utahbar.org.

As an added benefit, Oregon, Washington, Idaho and Utah also have MCLE reciprocity.

Under that compact, lawyers can satisfy their CLE requirements in the other states by filing a form attesting that they have complied with their "home" state's CLE reporting requirements. More information on MCLE reciprocity is available on the OSB's Web site at www.osbar.org.

What about our neighbor to the south? Unfortunately, aside from in-house corporate counsel, California requires out-of-state lawyers to take its bar exam. One of the political impediments to extending reciprocity to California is that most states - including Oregon - require bar applicants to have graduated from ABA-accredited law schools. California has some law schools that are accredited by the California State Bar but not by the ABA. A segment of California lawyers, therefore, would be excluded from any reciprocity agreement predicated on graduation from an ABA-accredited law school. Until that political issue is addressed, reciprocity with California is unlikely. That leaves *pro hac vice* admission for litigators and California's "MJP" rule on transactional practice for business lawyers as the only options for temporary practice there. For those of us whose days as students are a fading memory, the bar exam remains a significant hurdle to regular practice in California.

California aside, reciprocal admission is expanding throughout the West. Washington and Alaska, for example, have reciprocal admission. So do Idaho, Wyoming and Utah. The ABA's Center for Professional Responsibility has a comprehensive national list of reciprocal jurisdictions at www.abanet.org/cpr/mjp-home. As lawyers' practices take them across state borders on a regular basis with increasing frequency, reciprocal admission offers an innovative, convenient and practical approach to multistate licensing.

ANNOUNCEMENTS

Have Lunch with the Judges

On Friday, April 22 at noon, at the request of the MBA's Court Liaison Committee, **Judges Henry Kantor, Jean Maurer and John Wittmayer** will host a brown-bag lunch to discuss their judicial practices and procedures. All MBA lawyers are invited to Judge Kantor's courtroom for this informative lunch. Samples of the MBA Judicial Practices Survey, which details the practices of the county's judges, will be available.

MBA Elections

Please look for the ballot for the 2005 MBA and Young Lawyers Section Boards of Director Election. Profiles of candidates appear on Pp. 8 and 9 of the issue. Ballots are due to the MBA office Friday, April 29, 5 p.m.

MBA Members go to *The Lion King*

The MBA has reserved a block of tickets for *The Lion King*, which is coming to Portland's Keller Auditorium this fall. Members may purchase tickets through the MBA for themselves, family, colleagues

and friends for as long as we have tickets available. The block of tickets are reserved for the Saturday, October 22 matinee at 2 p.m. and are for the "best seats in the house" that are currently available. You must purchase the MBA tickets by April 29. Tickets go on sale to the public on May 7. Watch for more details in an email to members and on the MBA Web site at www.mbabar.org.

MBA Golf

The first MBA golf outing for 2005 will be a scramble at Heron Lakes on Thursday, May 12. Tee times start at 12:30 p.m. and the cost is \$37 per golfer. For more information or to sign up, call Kathy at the MBA at 503.222.3275.

OCDLA Juvenile Law Seminar

The Oregon Criminal Defense Lawyers Association Juvenile Law Seminar is scheduled Friday-Saturday, April 15-16 at the Hallmark Resort in Newport. To register or for more information, please call 541.686.8716 or visit www.ocdla.org.

Queens Bench Luncheon

On Tuesday, April 12, recently appointed Multnomah County Circuit Court Judge Kathleen Dailey will speak at the Queens Bench Luncheon. Judge Dailey was formerly a partner with Williams Love O'Leary Craine & Powers and is also a former president of the OTLA.

Queens Bench luncheons are the second Tuesday of each month, 11:45 a.m.-1 p.m. at Jax Restaurant. The cost is \$12. Reservations are not required. Everyone is welcome.

For more information, please contact Shari R. Gregory at 503.226.1057 ext. 14, sharig@oaap.org or Barbara Smythe, 503.595.5300, barbara.smythe@klarquist.com.

Multnomah County Family Law Group Forming

Mark Kramer is forming a Multnomah County Family Law Group (MCFLG). If interested, please contact Mark at mark@kramer-associates.com.

The Corner Office

As attorneys, our word is our bond. We expect opposing counsel to abide by his/her representations or promises. Nonetheless, I'm sure that, at least once, you have found the words flowing from opposing counsel's mouth to be inconsistent (to be generous) with a prior verbal representation to you by counsel on the exact same subject.

More than once, I have muttered silently to myself that I should have recorded my conversation with counsel. Amazingly, in Oregon, it appears that such an act would be legal. As long as one party to the conversation consents (i.e. you), a person may record a telephone conversation occurring between parties located in Oregon. (ORS 165.543.) The other party needs not know of, or be informed that, the conversation is being recorded. This could lead to some interesting impeachment of an opposing counsel's revisionist history.

However, the more important question is SHOULD we be "secretly" recording our phone conversations with opposing counsel? I believe that we should not, and that it is unprofessional to record such a conversation without disclosing that you are doing so.

Telephone conversations are an opportunity for attorneys to talk frankly, off the record, to each other about a case. One of the main reasons attorneys talk freely

on the phone is that it is off the record, free from the constraints of posturing for clients and the fear of the potential admissions that a formal written document can create. Many cases get settled or deals negotiated in such "between me, you and the lamp post" conversations.

If opposing counsel suspected that such conversations were being recorded, the frankness would evaporate with negative results. Moreover, we would no longer be a group of professionals. Our word would no longer be our bond. If we cannot trust each other and the integrity of our profession, how can we expect the

public to do so? Besides, if you really need to confirm something with counsel, put it in writing.

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.

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Announcing CourtCare's 2nd Annual Fundraising Campaign April 25th through May 6th

During the last week of April and the first week of May, Portland law firms will once again be competing against each other to see who can raise the most money for Multnomah CourtCare. Last year's campaign raised over \$65,000. Last year's "Proudest Pride" award went to Davis Wright Tremaine for the largest firm contribution and the "Loftiest Leap" award went to Williams Love O'Leary Craine & Powers for the largest per capita contribution. In addition to the firm awards, individuals who contribute \$150 or more receive a "CourtCare Tiger"



certificate and single contributions of \$500 or more receive a "CourtCare Lions" certificate.

Multnomah CourtCare is Oregon's only full-time courthouse child care center, a project spearheaded by the Multnomah Bar Association.

It is operated by Volunteers of America Oregon. The State of Oregon and Multnomah County make yearly contributions to support this program, but without the support of Portland's legal community the doors would close. Since the beginning of the program in December 2001, CourtCare has served over 3,500 children.

This year, our goal is \$85,000. This would provide adequate funds so the free drop-in daycare facility can remain open for longer hours. The current hours of operation are 8:30 a.m.-4 p.m. Also, with



the additional funds, CourtCare could operate at full capacity with adequate staffing.

Each month CourtCare serves an average of 85 children ages six weeks through five years. The parents of most of the children who enter CourtCare are at the courthouse due to domestic relations-type issues, including domestic violence, restraining orders, custody and divorce hearings. Restless and frightened, young children can be a distraction to parents, judges, and court personnel. At worst, these disruptions can negatively

affect the parent's rightful access to legal services. Parents who use CourtCare are grateful for the service. Social service referrals are also made by the CourtCare staff to further assist these families in need.

Please support CourtCare this year by participating in your firm's CourtCare Campaign or by mailing an individual donation to the Multnomah Bar Association. You may visit the MBA's Web site for donor forms and additional information about CourtCare and this year's Campaign.

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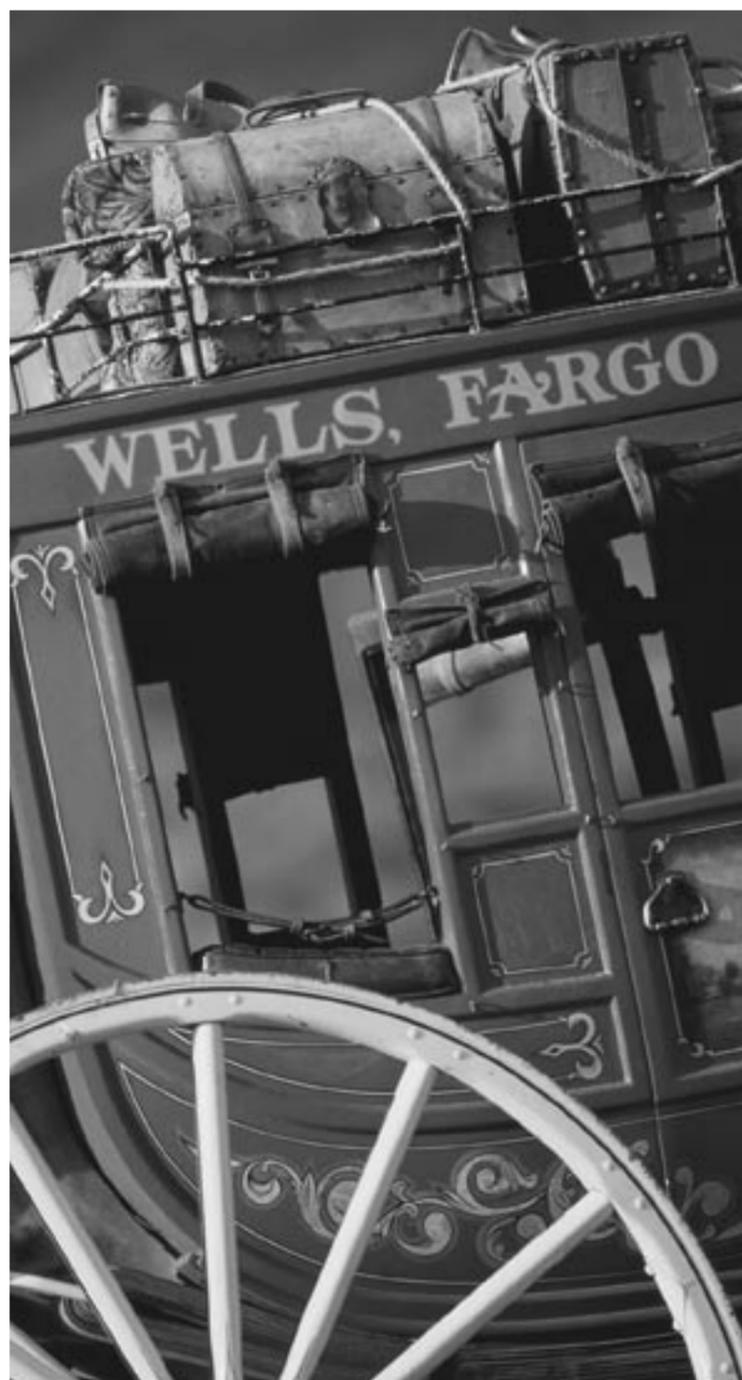
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The Eyes Have It

By Michael Dwyer, Dwyer & Miller and Court Liaison Committee Chair.



Josh Kadish

If you don't know him, ask around and you will quickly learn that Josh Kadish has a quick mind, dry wit, compassionate heart, and calm demeanor. These virtues serve him well at Meyer & Wyse, where he specializes in family law (including mediation), estate and probate, and business. But if we are to understand the real source of his success, we will have to look deeper.

At a bar luncheon recently, Kadish told the story of a woman in great distress who came to his office seeking counsel. After ten minutes, she stopped in the middle of her story and looked straight at him across the desk. She said she had met with four other lawyers, and felt lucky to have found him. "Why," he asked, "what have I done differently than the others?" "You are the only lawyer who looks at me," she replied.

Kadish wasn't bragging about his eyes, merely working his way up to a favorite subject: the power of nonverbal communication. In mediation, negotiation and family law classes at Lewis & Clark Law School, where he has taught for past 20 years, Kadish has studied and taught communication skills. He is currently having his students read Malcolm Gladwell's *Blink!*, in which the author stresses the role of intuition and subconscious "rapid cognitive processes" in our decision-making. Kadish notes that clients form their first impressions of us rapidly, and once held, these impressions are rarely altered.

In his own practice, Kadish is very conscious of the fundamentals of good communication and bonding with a new client - making eye contact, having a good handshake, and keeping the focus on the client. Once the client begins speaking, Kadish listens actively, not simply parroting back the client's words but also capturing the unconscious and emotional content of the client's speech. All this conveys a powerful message: I am here for you; you are important to me. "They want to know you are there to take care of their problems," Kadish says.

The study of nonverbal communication is not only fascinating; it seems a must, if (as the experts tell us) most of our communications are conducted at the nonverbal level. Nothing conveys interest and emotion as powerfully as our eyes. In a business situation we tend to like the person who wears a confident smile and makes pleasant, but not overly aggressive, eye contact. On the other hand, eyes that dart around the room, no matter what words are spoken, convey an unmistakable message of disinterest.

Given this level of awareness regarding human communications, it is hardly surprising that Kadish enjoys a satisfying personal life. He and Lisa Maas, a therapist, will soon celebrate their 30th anniversary. They met in the oboe section of their high school orchestra in Berkeley. Kadish went on the Haverford College and Stanford Law School before practicing law, but his passion for music has remained. In the past he has played the oboe professionally in orchestras and chamber ensembles. He has also cut a CD, which he describes as rock 'n roll for middle-agers. He sings now with four men in an *a capella* group and also in a choir with Lisa. More recently, Josh and Lisa have studied Spanish together, traveled to Costa Rica, and attended language school. They have also recently participated in a reading and discussion group on globalization.

All three of their children sing as well, when they aren't excelling in other areas. Nathan, their oldest, works for a grassroots nonprofit organization focused on children; Seth is a junior at Pomona College; and Jonathan is a junior at Wilson High School.

Oddly enough, while Lisa points out that her husband is a fine cook, a good-natured spouse, and a highly ethical man, she does not count his eyes among his chief virtues. In fact, she says her husband used to make terrible eye contact. "Let's just say he has improved a great deal over 25 years," she said. The improvement hasn't been due to

greater self-esteem or increased confidence, she says, "he's just more connected to people now."

Kadish has learned that it is important to achieve the right balance in eye contact. Look too long and hard, he says, and we might offend; we might be deemed to be staring or too aggressive. Look too little, gazing from side to side or at the floor or at the other people walking past, and we risk a negative reaction. And by all means, make sure a smile comes complete with wrinkled eyes. Phony smiles are detected by the failure of the eyes to join in the merriment.

We place such great emphasis on the eyes in Western culture that when we disagree we often say we can't see eye-to-eye. On the other hand, we tend to think we can read a person's soul through the window of his or her eyes. Maybe this is what the client who stopped her story was responding to. Not just that Kadish was making eye contact with her, but rather that she was reading in his eyes his genuine decency and compassion.

At any rate, your intrepid reporter had to check these magnetic peepers out for himself. Kadish was the only lawyer I knew who could land a new client merely with the power of his eyes. So over coffee, I asked Mr. Kadish to let me have a look. He politely removed his glasses. "What color are those things?" I asked, ever so delicately. Kadish thought. "I don't know," he said, "maybe hazel."

MBA Members go to
THE LION KING
 The MBA has reserved a block of tickets for **THE LION KING**, which is coming to Portland's Keller Auditorium this fall.
 Tickets are reserved for the Saturday, October 22 matinee at 2:00 p.m.
 MBA tickets must be purchased by April 29. Tickets go on sale to the public on May 7.
 Look for more details in an email to members and on the MBA Web site at www.mbabar.org.

ONE DAY
 AT A TIME.

NOW,
 ONE EVENING
 AT A TIME.

Chemical dependency can cost your clients their families and jobs. Getting help shouldn't. Now the proven power of Hazelden Springbrook's Intensive Outpatient Program is more convenient than ever in suburban Portland. They'll get the holistic care they need that fits their lives—four nights a week for six weeks, with an easy pay-as-they-go plan. To help them get back to living each day. Call 503-443-3800 or 866-866-4662. www.hazelden.org/springbrook

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 Residential Services in Newberg, Oregon
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Help Survivors of Domestic Violence

The YWCA of Greater Portland wants your old cell phones. As part of a national program, the phones are refurbished to dial only 911 and are distributed to women survivors of domestic violence around the country. The YWCA receives an average of four dollars for each cell phone donated and can use the money for its local women's shelter, YWCA Yolanda House (for women and children who are escaping abuse).

It's easy to donate: Simply bring your old cell phone to the MBA office – we have a box to collect these donations for the YWCA.

AROUND THE BAR

Around the Bar reports on members' awards, honors, moves, transitions, etc. Submissions are subject to editing and are used on a space available basis.

SCHWABE WILLIAMSON & WYATT

London-based Chambers & Partners, publishers of the Chambers USA directory of leading business lawyers, has named Schwabe attorney **Thomas Dulcich** for recognition as one of their "Leaders in their Field" in the 2005 directory.

Attorney **Darien Loiselle** was named a 2005 merit board director at the Associated Builders and Contractors (ABC) Pacific Northwest Chapter's annual leadership banquet. ABC is a trade association devoted exclusively to the open shop philosophy. Loiselle represents clients on construction law, commercial litigation and insurance defense.

Firm shareholder **Tim Haslach** was among 14 individuals honored with a "Heart of Gold" Award at the Providence Child Center's 12th Annual Heart of Gold

Dinner. The "Heart of Gold" Award is conferred upon individuals who improve the lives of children with special needs through advocacy and action. Proceeds from the dinner benefit the Center for Medically Fragile Children at Providence Child Center.

Haslach, a former swimming champion, and his wife, Kathryn, were members of Karen Gaffney's English Channel Relay Swim Team. The team swam the rough, 21-mile stretch of water between Dover, England, and Calais, France, on July 23, 2001, to raise awareness and support of young people with Down syndrome and other developmental disabilities. Gaffney is the first person with Down syndrome to swim in a relay across the Channel. Haslach swam ashore in France to conclude the relay team's swim, lasting 14 hours and 11 minutes.

DAVIS WRIGHT TREMAINE

Gregory Chaimov has joined the firm, where his practice will focus on advising business clients in their dealings with governments at all levels.

New firm partner **Wendell Kusnerus**, focuses his practice on credit recovery and bankruptcy, finance and commercial



Jesse D. Lyon

transactions. New partner **Jesse D. Lyon**, represents clients on business transactions and complex regulatory matters in the food and beverage, hospitality, winery, agribusiness and real estate industries.

DANIEL MARGOLIN

Daniel Margolin has formed his own firm and is now at 621 SW Morrison Ste 1425, Portland OR 97205, phone 503.595.5590, and email daniel@pdxlaw.com. His practice areas are criminal, civil litigation, appeals, domestic relations, contract work (research and motion drafting).



Charles Schrader

JORDAN SCHRADER

Charles Schrader, shareholder in the firm of Jordan Schrader, has recently launched his own blog site at www.constructionlaborlawblog.com targeted to construction labor law issues.

NAY & FRIEDENBERG

Portland elder law attorney **Tim Nay** has been elected Secretary of the National Alliance of Medicare Set-Aside Professionals. Nay, also a clinical social worker, is the past chair of the OSB Elder Law Section and current president of the Oregon chapter of the Alzheimer's Association.

Left: Karen Gaffney's English Channel Relay Swim Team



Darien Loiselle



Gregory Chaimov



Tim Haslach



Wendell Kusnerus



Oregon Court of Appeals Says "Yes" to OFLA Retaliation Claims

By Elizabeth A. Semler, Sussman Shank.

In an earlier article, I wrote about *Fink v. Guardsmark, LLC*, where the U.S. District Court for the District of Oregon ruled that OFLA does not provide an employee with a claim for relief for retaliation based on an employee's assertion of the right to take a leave under OFLA. *Fink v. Guardsmark, LLC*, 2004 U.S. Dist. LEXIS 16970 (D. Or. 2004).

It is clear, however, that the Oregon Court of Appeals disagrees. In *Yeager v. Providence Health Systems Oregon*, 195 Or. App. 134 (2004), the appeals court reversed the trial court's dismissal of plaintiff's lawsuit on the same grounds; i.e., OFLA does not provide a remedy for a retaliatory termination.

In *Yeager*, plaintiff was fired when, at the end of an approved one-month OFLA leave, she told defendant that her doctor would not release her to return to work until February 18, although her leave was to end on February 11. Plaintiff claimed that her employment was terminated "in substantial part because she had taken leave under OFLA." The trial court held that plaintiff's allegation

of retaliation did not state a claim for relief under OFLA.

The Court of Appeals reversed, finding that relevant statutes and administrative rules clearly show the Oregon legislature intended to provide a civil remedy for an unlawful practice under OFLA. Because BOLI has promulgated a rule making it an unlawful employment practice to retaliate against an employee for "inquiring about OFLA leave, submitting a request for OFLA leave, or in any way invoking the provisions of OFLA," the Court of Appeals held that there is "a civil remedy for retaliatory discharge under OFLA."

As *Fink* and *Yeager* demonstrate, OFLA is a developing area of law. The statute is slowly being interpreted by the courts, and employers and attorneys need to make efforts to keep abreast of developments.

Elizabeth A. Semler is an attorney in the Employment Law Department of Sussman Shank. She may be reached at 503.227.1111 or lizs@sussmanshank.com.

Divorce? Two words: "Best Lawyers"

The 2005-06 edition of "Best Lawyers in America" lists only seven family law attorneys in Portland. We have three of them: Albert A. Menashe, Eric C. Larson, and William J. Howe III.

GEVURTZ Attorneys at Law
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Portland, 503.227.1515
OregonDivorceLawyers.com

The firm you want on your side

MBA Board Elects Officers

Nominated for MBA Director



Kelly T. Hagan

The MBA Board elected the following officers for the term beginning July 1.

Kelly T. Hagan will advance to MBA President. He joined the MBA Board in 2001. Kelly is a shareholder with the Portland office of Schwabe, Williamson & Wyatt, PC where he chairs the firm's Business Department. His practice focuses on the formation, merger and acquisition of business entities, the conduct of transactions, medical staff disputes, antitrust matters and compliance with federal and state regulation in the health care industry. Formerly Legal Policy Advisor to the Commissioner of the Bureau of Labor and Industries, he also counsels employers on human resource issues.

Kelly chaired the Health Law Section of the OSB and the OSB's Joint Committee on the Medical Profession. He serves on the Task Force to Improve the Care of Terminally Ill Oregonians and the board of the Columbia Empire Volleyball Association. He provides considerable pro bono support to nonprofit organizations, including Youth Exploring Science (YES), which supports experiential science education by developing science fairs in the Northwest. Kelly is a recipient of the MBA's Award of Merit and the OSB's President's Membership Service Award. He has a B.A. from Stanford University and a J.D. from the University of Oregon School of Law.



Peter H. Glade

Peter H. Glade is the next MBA President-Elect. He is with the firm Markowitz Herbold Glade & Melhaf PC and has been a member of the MBA Board since 2003. He graduated from Lewis & Clark Law School and was admitted to the OSB in 1979 and the Washington Bar in 1985. He practices in the area of complex business and commercial litigation.

Peter served on the MBA CLE Committee from 1999-2002 and was chair in 2001-2002. He has presented at MBA and OSB CLE



Thomas W. Brown

programs and has participated in the Volunteer Lawyers Project at LASO. He is a member of the board of directors for the Portland Defense Consortium, a nonprofit organization of criminal defense lawyers who supply indigent defense services under contract with the Oregon Public Defense Services Commission.

Thomas W. Brown was elected Secretary. He is the managing partner of Cosgrave Vergeer Kester LLP, where he practices in the areas of appeals, insurance coverage, professional liability, arbitration and mediation. He earned a B. S. at the University of Texas at Austin in radio, TV and film and a J.D. at Lewis & Clark Law School.

Thom serves as Program Co-Chair for the MBA Managing Partners Roundtable and is on the Board of Directors for the Classroom Law Project, where he currently presides as chair. He also serves on the Board of Visitors for the Lewis & Clark Law School and is on the Executive Committee for the OSB Appellate Practice Section, which he previously chaired.

Nancie K. Potter will be the new MBA Treasurer. She is a partner with Foster Pepper Tooze LLP, where she practices in the area of complex business litigation. She graduated from Lewis & Clark College, receiving a B. A. in International Affairs, and she earned a J.D. from Lewis & Clark Law School.

Nancie served on the MBA Professionalism Committee for three years, and chaired the committee in 2003-2004. She also served on the MBA Court Liaison Committee and as MBA Liaison to the Multnomah County Courthouse Security Committee. She currently serves as Secretary of the OSB Litigation Section. Other volunteer activities include the Lincoln High School Foundation Board, which she has chaired.

Three four-year positions start July 1. **Please look for the election ballot inside this issue.**

J. Michael Dwyer is a partner at Dwyer & Miller LLP and practices in the areas of personal injury, family law and mediation. He graduated from Loyola Law School in Los Angeles and became a member of the OSB in 1989, California in 1977, Hawaii in 1982 and the Washington State Bar in 2000.

Michael is the current chair of the MBA Court Liaison Committee, past chair of the MBA Judicial Screening Committee and a volunteer with the MBA Mentor Program. He formerly chaired the Legal Services for the Poor Committee, a previous MBA committee that evolved into the Volunteer Lawyers Project, and has been a member of the OSB Procedure and Practices Committee. He is a Master with the Owen M. Panner Inn of Court and a member of the OTLA and Oregon Mediation Association.

David A. Ernst is the Shareholder-in-Charge of the Portland office of Bullivant Houser Bailey, PC and he practices in the areas of products liability and food and beverage litigation. He graduated from the Lewis & Clark Law School and became a member of the OSB in 1985 and the Washington State Bar in 1990.

Dave is on the Board of Visitors at Lewis & Clark Law School, is a past president of the Law School Alumni Association Board of Directors, Past President of the Oregon Chapter of the FBA, former chair of the OSB Government Law Section, former chair of the Ninth Circuit Lawyer Representatives for Oregon and a member of the OSB Uniform Civil Jury Instruction Committee. He also assists the Lake Oswego School District Foundation with fundraising.

Christine M. Meadows is a shareholder with Jordan Schrader PC and practices in the area



J. Michael Dwyer



David A. Ernst



Christine M. Meadows

of labor and employment. She graduated from Lewis & Clark Law School and became a member of the OSB in 1996.

She serves on the MBA Professionalism Committee and was formerly on the MBA Communications Task Force and MBA Budget and Finance Committee. She also served on the YLS Board of Directors from 1998-2002, where she served as its treasurer for two years. She also served on the YLS Membership Committee from 1996-1999, which she chaired in 1999.

Tips from the Bench

By Judge John A. Wittmayer, Multnomah County Circuit Court.



When your case settles after assignment to a judge
If your case settles after call and before the trial, your second phone call (after you call your

client) should be to the trial judge. Presiding court usually has cases "standing by" for assignment when cases settle. Therefore, the earlier you tell the trial judge your case has settled, the earlier a stand-by case can get assigned out for trial.

When your civil motion does not need to be decided, because you resolved either the motion or the whole case, please call the assigned judge directly. Do not assume that if you call civil calendaring the staff there will be able to notify the assigned judge. I can not tell you how many times I learned the motion was cancelled only after my assistant called the lawyers to ask why no one was here.

If the trial settles, we need to hear from the plaintiff's lawyer. If the motion resolves, we need to hear from the lawyer who filed the motion, not the lawyer against whose client the motion was filed.

UTCR 7.040 requires that parties immediately report to the court any resolution of any matter scheduled on the court's docket. Good manners requires the same thing.

Jury panels in Multnomah County

For trials scheduled to begin on Mondays through Thursdays, the

court generally has approximately 175 potential jurors available for jury selection. Because we do not currently start jury trials on Fridays, we do not bring "new" jurors to the courthouse on Fridays.

The jury summons advises the person that "[y]our term of service includes the date below [one specific day is listed in the summons], and it continues until the completion of any trial(s) for which you are selected. Some trials are short, so you may serve on more than one jury trial. Other trials are longer, so your service may continue beyond one day."

While you and I may read this jury summons and understand that the juror may be expected to be here for your long trial, many, many jurors come to jury duty expecting or hoping that they will only be here for the one day for which they have been summoned. The judges have different views on excusing potential jurors during jury selection if a juror asserts it would be a hardship to be here as long as your long trial will take. In my experience, it is possible, although difficult, to get a jury for a 10 or 12 day trial out of our regular jury panel.

Cont. on p. 11

YLS Board Elects Officers



Eric J. Waxler

The YLS Board elected the following officers for the term beginning July 1.

Eric J. Waxler will be the YLS President. He graduated from Lewis & Clark Law School and was admitted to the OSB in 1999. Eric is with Zipse Elkins & Mitchell and practices in the area of insurance defense. Eric has been a member of the YLS Board since 2003. He was a member of the YLS Pro Bono Committee and its chair in 2002-03.



David I. Bean

Catherine B. Brinkman will be the YLS President-Elect, and has been treasurer. She graduated from Lewis & Clark Law School and was admitted to the OSB in 2000. She is with Kilmer Voorhees & Laurick and practices in the areas of civil litigation and insurance defense. Catherine served on the YLS Service to the Public Committee where she coordinated the MBA/Multnomah County Animal Control Hearings Officer Program. She has been a speaker on the Professionalism Panel. She has also volunteered for the Classroom Law Project and served as a mentor for the Lewis & Clark Law School First-Year Partnership Program.

has been a member of the YLS Board since 2004 and chaired the YLS Membership Committee in 2003-04. She also served as the treasurer of the OSB Computer and Internet Law Section and currently chairs its website development committee.

David I. Bean will serve as the YLS Secretary. He graduated from Lewis & Clark Law School and was admitted to the OSB in 2001. He practices family law and general litigation at Meyer & Wyse. David has been a member of the YLS Board since 2004 and served on the YLS Pro Bono Committee. He is a member of the Owen M. Panner Inn of Court, Solomon's Legacy and the Campaign for Equal Justice Mid Size Firm Committee. He is also a Mock Trial Coach at Jefferson High School.

Anne E. Koch will serve as the YLS Treasurer. She graduated from Lewis & Clark Law School and was admitted to the OSB in 2001. She is with Motschenbacher & Blattner and practices in the areas of business transactions and litigation, intellectual property, and entertainment law. Anne



Catherine B. Brinkman



Anne E. Koch

Nominated for YLS Director

Three three-year positions start July 1. **Please look for the ballot insert inside this newsletter.**

John W. Belknap graduated from Lewis & Clark Law School and was admitted to the OSB in 2001. He is a judicial clerk for the Honorable Eric J. Bloch. John has served on the YLS Pro Bono Committee since 2001.



John W. Belknap

Emily M. Nazarov graduated from Pennsylvania State University, The Dickinson School of Law and was admitted to the OSB in 1999. She is with Markowitz Herbold Glade & Mehlhaf and practices in the area of commercial litigation. Emily serves on the YLS CLE Committee. She is also a member of the Gus J. Solomon Inn of Court, a volunteer attorney for Sponsors Organized to Assist Refugees, and a co-leader of a Legal Professionals Team for Stand for Children.



Emily M. Nazarov

Cally Warfield graduated from Willamette University College of Law and was admitted to the OSB in 1999. She is with Hoffman Hart & Wagner and practices in the area of professional liability defense. Cally serves as chair of the YLS CLE Committee. She is also a member of the Oregon Association of Defense Counsel and the Defense Research Institute.



Cally Warfield

Profile: Rick Haselton, Presiding Judge, Department 1, Oregon Court of Appeals

By Greg Silver, Metropolitan Public Defender and Court Liaison Committee.

"I feel incredibly fortunate. I have a terrific home life [and] I'm doing the work I want to be doing. How many people get to say that?" **Judge Rick Haselton** smiles with almost a sense of wonder. The comment, and his reaction to it, capture the spirit of a man who could have a deservedly large ego, but has chosen not to.

A native Oregonian, Rick Haselton and his older sister were raised by their mother in Albany after his parents divorced. His mother was a high school English teacher and Judge Haselton remembers that his bedtime stories were her lesson plans for the next day. Some children heard about the *Three Pigs* and *Little Red Riding Hood*; he learned about *Beowulf* and *Macbeth*. While he was in high school – presumably long after the bedtime stories had ended – his mother went back to college for her Ph.D. and later taught at Oregon State University.

Judge Haselton graduated from West Albany High School in 1972, where his debate partner

was a friend he had met while trading baseball cards in the 8th grade: future lawyer and gubernatorial candidate Ron Saxton. He went to Stanford University where he briefly toyed with the idea of going into medicine, until he took freshman calculus. "If calculus felt that way, I could only imagine what organic chemistry was going to be like."

He graduated *Phi Beta Kappa* from Stanford and went to Yale Law School, where he became active in a clinical program representing inmates at the Danbury Federal Prison. He was second chair on a matter for Watergate burglar G. Gordon Liddy, who was "very clear in terms of what he wanted." The judge's third year adviser was Robert Bork – another Watergate figure – whom the judge said was "unbelievably quick and funny." The Bork he saw in the Supreme Court confirmation hearings in 1987 "wasn't the man I'd gotten to know a little bit at the law school."

The new lawyer returned to Portland in 1979 to clerk for Ninth Circuit Court of Appeals

Judge Alfred Goodwin, an experience which is clearly a watershed event in his life. Judge Goodwin helped him learn to write "in ways I still can't explain" and also helped him discover how to take a straightforward, non-ideological approach to cases. Judge Haselton tries to give his clerks the same balance of responsibility and legal education his mentor gave to him.

In 1980, he became the 28th lawyer at Lindsay, Hart, Neil & Weigler, where he stayed for 13 years. He credits firm founder Dennis Lindsay as being someone who had a great influence on him as a lawyer. Lindsay Hart in the 80's was an exciting firm with young lawyers who were both politically and socially active in the community. It was also the breeding ground for many future Oregon judges including Rex Armstrong, Jack Landau, Robert Wollheim, Thomas Balmer and Janice Wilson; and future Oregon political figures

including Kevin Mannix and Ron Saxton. Portland lawyer Martha Spinhirne, now a Chief Attorney at Metropolitan Public Defender, clerked at Lindsay Hart while she was in law school. She remembers Judge Haselton as the "go-to-guy" at the firm whenever anyone needed to find a case or refine a point of legal analysis.

Although he was raised a Catholic, Judge Haselton had been on a long path since high school that gradually led him to convert to Judaism. It also led him to his wife, Sura. In 1987, he was having dinner with Portland lawyer Jeff Druckman and his wife, Erica Goldman. The three had met on their first day at Stanford 15 years earlier. At dinner, he was talking with Portland lawyer Emily Simon who, within a few minutes of what Judge Haselton jokingly calls "cross examination," determined that he was single, interested in meeting someone, and, while not Jewish, was seriously thinking of converting. Emily's conclusion: "Have I got the girl for you."



Judge Rick Haselton

Rick Haselton and Sura Rubenstein, the *Oregonian's* religion writer at the time, were engaged four months after they met. Emily performed a civil wedding with a Jewish betrothal ceremony in 1988. They had a religious ceremony in 1989 after Judge Haselton's conversion process had progressed to a point where he felt the ceremony was the appropriate next step. They are now happily raising their 14-year-old daughter – who has told her parents she does not want to be a lawyer – with a quiet but deeply-rooted faith.

Judge Haselton was appointed to the Court of Appeals in 1994 and has been the Presiding Judge in Department 1 since 2001. His judicial philosophy is similar to that of his mentor, Judge Goodwin: to view each case on its own merits without

Cont. on p. 11

Third Year Law Student Open House

An Open House for Oregon's Third Year Law students was held at Barran Liebman. MBA YLS volunteer leaders, MBA President Sylvia Stevens and Ed Harnden, Barran Liebman's managing partner, attended the event and welcomed the students. It was an opportunity for students to learn about the MBA YLS and to talk to local lawyers in a relaxed environment about what lies ahead for them.



Todd Cleek (far left), YLS President, talks with three law students.

The event was generously co-sponsored by Barran Liebman and Gevurtz Menashe et al.

What Partners Want from Associates *Getting outside your comfort zone* Third Part of a Series

By Gregory C. MacCrone, Attorney at Law and YLS Secretary.

So far in this series, I hope to have shown how clear, focused and relevant personal and interpersonal skills can enhance an associate's success. This issue's installment spotlights a single concept, and one more *intrapersonal* in nature.

"Can Do" Attitude and Flexibility

In Part Two, I discussed the importance of working within a team. Closely related to this teamwork ideal is the notion of personal and professional flexibility.

Be open to taking assignments from practice areas (or departments) outside the ones to which you are assigned. Adjust your expectations by taking assignments that may not appear to be interesting or desirable. You may find that these experiences not only give you the appearance of a team player, but they also expose you to new legal concepts that will make you a more rounded – and successful – lawyer.

Beyond simply being passively "open" to new fields of work, assert yourself in actively seeking them out by making your requests known. Let senior associates or partners know you would like to work on a case that would give you an opportunity to do something new. Suggest that you would welcome an opportunity to draft a business document or argue a motion, for example.

In addition to seeking out the exposure-granting assignments on the sexier projects perhaps outside your expertise, be quick to offer assistance during times of case crisis management even if you might consider the work "not lawyerly."

Michael "Mick" Seidl is a trial lawyer in the two-attorney Seidl Law Offices. Seidl confirms "It's really important that the associate have a 'can do, roll up your sleeves' attitude toward the work. Sometimes the associate may need to do work that could be characterized as a paralegal or secretarial task simply to properly serve the client.

"Coming from a small litigation firm perspective, it's important that associate attorneys are well-grounded in the practical aspects and realities of the practice. The associate will not normally have as much staff support as he or she would in a large firm. The associate may also be asked to take on tasks and research that are outside his or her 'comfort zone,'" Seidl says.

Jeffrey P. Foote of the two-attorney Jeffrey P. Foote & Associates firm drives the point home: "A willingness to perform even menial tasks is important. If something has to get out the door, we don't have a big enough staff that we can simply delegate. Sometimes I'm most valuable at the copy machine while my secretary types away," he says.



As an associate in a small or large firm, know that when you voice your aspirations you create in your more senior supervising attorneys a memory in the back of their mind that you are looking for an opportunity. When you get the opportunity, make sure you do a good job. The goal by all accounts is not to be set in your ways, but to be flexible and with a mind set on tailoring your practice methods to fit your firm. If you keep an open mind, you may learn there is a better way to do things while adding to the importance of your contributions to your firm.

The fourth installment will hone in on being "client-focused" and doing so in an efficient, cost-effective manner for both firm and client.

Community Law Week: Working Together for Our Community

By Katie Lane, Assistant County Attorney, Multnomah County Attorney's Office and YLS Service to the Public Committee.

Synergy. It's what makes being a member of the MBA YLS so much fun. Working alone, none of us would be able to organize a week of events designed to educate our community about the legal system, enrich the lives of our fellow citizens and inspire other lawyers to volunteer their energies to the public. But working together, the YLS Service to the Public Committee achieves these goals year after year by organizing and hosting Community Law Week. It is a week of activities that celebrates the American Bar Association's Law Day theme and provides our community with educational services.

The theme for this year's Community Law Week is *The American Jury*, which is rather fitting, if you think about it. Working together, a group of citizens serve as an important balance within American government to insure that justice is served and that the law is upheld. I hope you'll join us in celebrating *The American Jury*, and the MBA YLS, this Community Law Week, May 2-7, by volunteering your time to any one of the projects listed below.

Dress for Success

Donate clothes or become a firm captain in this clothing drive that benefits low-income women by providing suits and professional outfits for qualifying women who seek to develop their careers. Contact Marja Selmann, mselmann@martinbischhoff.com, or Tiffany Minus-Martinez, tiffany@stahancyk.com.

Tell it to the Judge

Join judges at the Lloyd Center Mall and encourage shoppers to speak with the judges about their concerns, comments or questions. Contact Craig Gabriel, craig@ransomblackman.com.

Legal Information Centers

Help your fellow citizens effectively use our legal system by answering basic questions and offering referrals. Contact Jeffrey Schick, jeffschick@dwt.com.

The Grand Jury Symposium

The grand jury process has had a big impact on our community in the last few years. Help the YLS organize this event designed to educate and encourage public discourse on the Grand Jury process. Contact Katie Lane, katie.a.lane@co.multnomah.or.us.

Volunteer

You can also sign up to volunteer for any of these programs by visiting the Community Law Week Web site at www.mbabar.org. Together, we are far more powerful than we are alone.

Meet Multnomah's Finest Judges!

Celebrate spring by joining your friends at the
Meet the Judges Drop-in Social

Fernando's Hideaway
824 SW 1st Ave.
5:00 p.m.
Thursday, April 21

The MBA YLS Membership Committee encourages young lawyers to take advantage of this opportunity to meet Multnomah County and Federal judges, as well as other newer lawyers. There will also be a raffle to benefit Multnomah CourtCare. If you have questions or comments, please call Membership Committee member Maya Crawford at 503.224.4086 or Julia Waco at 503.226.3083.



By Julia Hagan, Gevurtz Menashe et al and Court Liaison Committee.

Judges

Judge Ellis is currently working as a plan B judge. Judge Frankel is filling her vacancy for now as senior judge. The governor needs to fill Judge Deits' position on the Court of Appeals, Judge Gilroy's Clackamas County position, and Judge Frankel's position in Multnomah County, likely in that order.

Legislative Budget Hearings Update

The Governor's budget recommendation for all three branches of state government, which he is required by the Oregon constitution to create and submit to the legislature, cuts \$24 million from the current operating level of the state court system. The Chief Justice is now facing an uphill struggle to convince the legislature that the state court system should continue to be funded at a level which will permit current programs to operate into the next biennium. The budget hearings are centered on trying to get the Legislative Assembly to restore some or all of the nine percent the Governor removed from the Chief Justice's budget.

Eastside Courthouse News

A meeting was held for East County lawyers to discuss the new courthouse which will be built in Gresham to replace the current facility. This is a three year project from site to completion, with operation projected for 2008.

Chief Justice's Task Force for Court Facilities

The Chief Justice has convened a committee to see if a permanent funding solution can be found to finance needed construction upgrades of court facilities. The task force met on March 1; the main focus was on establishing a way to leverage the state's borrowing power as a possible source for funds for courthouse financing statewide. Currently, counties are required to build state court facilities out of their own resources. County resources are shrinking and, statewide, the unmet need for remodeled or new court facilities is growing. Counties no longer have the funds to pay up front for capital construction projects, and voters are very resistant to approving additional general obligation bonds for court facilities.

OSB Task Force on E Filing

The OSB Board of Governors has established a Task Force on Electronic Filing of Court Documents in the state's circuit courts. The model for such a filing system is found in the U.S. District Court, and the OSB Board of Governors would like to see something similar in the circuit court. At the same time, the Oregon Judicial Department is just concluding a year long strategic planning effort for its investment in information technology. The conclusion of the strategic planning process is that the state courts need to move into the digital age and electronic filing should be an immediate priority for the investment of resources. These two groups, which have cross membership, should speed the implementation of some form of electronic filing, at least for civil actions, in the circuit courts. Even with this impetus, the resulting system may well be a year or two away.

Current OJIN Capability Limits

Court notices can presently be sent via either email or postal notification, not both. Several smaller counties already provide email notification, i.e., Lincoln County. A major issue is that there is no integrated database between OSB and other counties so attorneys need to notify each county individually in order to receive notices. The committee notes that if the OSB attorney address database becomes the central statewide database used by OJIN, difficulties may be resolved.

The Court Liaison Committee recommends to the MBA Executive Committee that the MBA work to establish the OSB database as the official database for the OJIN system, and that they move with all deliberate speed to accomplish this.

Jury Verdict Reports

Preliminary 2004 Multnomah County Civil case reports on judgment awards from jury verdicts were reviewed briefly by the committee. Reports are not yet available on OJIN for practitioners. Judge LaMar will likely post the report on her Web site once it is in usable, final, form. A code for "OJIN language" is needed in order to decipher information. The committee is still looking to obtain functional, useful reports and will review further revisions of the proposed report at the next meeting.

Judicial Feedback

A link to the form and an explanation of the process for submitting feedback to judges are available on the MBA's Web site. The March *Multnomah Lawyer* included an article regarding the opportunity for members to give judges feedback.

Judicial Practices

The Judicial Practices Survey is available for sale through the MBA. The committee discussed Multnomah County judges providing ongoing brown-bag meetings to promote the publication and disseminate the information.

CourtCare Fundraising

The WinterSmash was successful, raising approximately \$16,000. Over 190 attended, 40 of which were children under age 12. Last year's net was \$5,100. Sponsorship participation was key to this event's success. Fundraising will continue with individuals and law firms during the annual campaign, which runs from April 26 to May 6, 2005. The overall fundraising goal for this year's campaign is \$85,000.

Tips from the Bench

Cont. from p. 8

If you have a trial that is expected to take three weeks or longer, you should approach the presiding judge a couple of months in advance of your trial date. Request that the presiding judge pre-assign the case to a trial judge so that the trial judge can order a special jury panel for your long trial. Unlike regular jury panels, special jury panels are generally summoned for Fridays only. It generally takes four or five weeks advance notice to get a special jury panel ordered. When a special jury panel is summoned, the jurors are notified on the summons how long your trial is expected to last.

PRO BONO VOLUNTEERS

Thanks to the following lawyers, who recently donated their Pro Bono services via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project and Attorneys for Youth. To learn about pro bono opportunities in Multnomah County, check out the Pro Bono Opportunities Handbook available at www.mbar.org/docs/ProBonoGuide.pdf.

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Profile - Judge Haselton

Cont. from p. 9

any predetermined ideology or goal to influence him. "When I approach a case," Judge Haselton says, "I'm really not

trying to make law. The idea is to take the matter on its own terms. If law ends up being made in the process, that's fine. But that's not the point of what we're about."

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That philosophy fits well with the discussions he and some other jurists have on their carpool rides to Salem. Occasionally, someone will begin to discuss the legacy of appellate court judges. "I don't think I'll have a legacy," Judge Haselton says, "because I don't think anyone will be able to pin down some constant theme or thread that I'm about. And by me, that's just fine."

Non-Testamentary Estate Planning, or Who Gets the Money in the Bank Account?

By Helen Rives Pruitt, Meyer & Wyse.

It is not unusual for clients to believe that their estate will be controlled by their will and subject to probate. However, there are other ways to transfer property at death without a will or the probate of their estate. One of the common ways to transfer property outside of probate is by the use of joint accounts. The use of joint accounts may have unintended results and

“...use of joint accounts may have unintended results...”

cause disputes among families regarding the final disposition of a parent's estate. In 2003, the Oregon legislature amended ORS 708A.470 to address one of the frequent problems with joint accounts.

In a typical case, an elderly parent is single and concerned that she may become incapacitated and will need someone to pay her bills from her bank account. The parent has more than one child. One of her children lives close by and is willing to help the parent as needed with managing the parent's finances. The parent and the child go to the bank to add the child as a signatory to the bank account. Typically, the banker sets up a joint account, making the child the owner of the remaining funds in the account at the death of the parent. Meanwhile, the parent has a will that states that the parent's estate will be divided in equal shares among all of her

children. The parent has also expressed to all of her children and others that she intends all of her assets be divided equally among the children. Under these circumstances, who inherits the money in the joint account when the parent dies?

The prior Oregon statute provided:

“Sums remaining on deposit at the death of a party to a joint account belonged to the surviving party as against the estate of the decedent, unless there is clear and convincing evidence of a different intention in the bank's account records at the time of death.”

This provision meant that, unless the parent had stated in writing on the signature card or other bank paperwork a contrary intent, the child became the owner of the account even if the child agreed that the account was to be divided among all of the children. If the parent had stated a different intent, the banker

“...the child became the owner of the account...”

should have recommended a different account arrangement such as adding the child as an agent on the account as allowed under ORS 708A.515. This arrangement prevented the child from becoming the owner of the account at the parent's death, but also caused the account to

become an asset of the parent's probate estate, unless the parent also made a further designation on the account. The parent could have created a payable-on-death (P.O.D.) account to pay to named payees at the parent's death. In my experience, most people have not been this sophisticated when they set up their bank accounts and most of them have created a joint account with one child.

In addition to the obvious problem of one child receiving an unequal share of the parent's estate, there is a potential gift tax problem for the child listed on the joint account who wanted to fix the problem by “giving” his siblings equal shares from the bank account. Under federal gift tax law, if a person gives another person more than \$11,000 in one calendar year, that person is deemed to make a taxable gift. That gift must be reported on a federal gift tax return and uses part of the donor's lifetime exemption from estate tax to make gifts. Take for example, a situation in which the parent's account balance is \$150,000 at her death and she is survived by three children. When the child who is the “joint owner” on the account writes checks to the other two for \$50,000 each, that child is making two taxable gifts of \$39,000 each or a total of \$78,000, using \$78,000 of the child's lifetime exemption amount. As a consequence the amount that the child can transfer tax free to his family in the future is reduced by \$78,000.

As amended by the last legislature, ORS 708A.470 has created more flexibility in the distribution of joint accounts at death. It now provides:

“(1) Sums remaining on deposit at the death of a party to a joint account are rebuttably presumed to belong to the surviving party or parties as against the estate of the decedent. *****

“(6) The rebuttable presumption under subsection (1) of this section may be overcome by evidence that: (a) The deceased party intended a different result; or (b) The deceased party lacked capacity when the joint account was established.

The new statutory language provides that the deceased party's intent may be proven by evidence other than a written statement in the bank's records. But be aware that subsection (5) of the statute provides: “A right of survivorship arising from the express terms of the account *** cannot be changed by will.” This suggests that the presumption that the deceased party intended a different result must be established by documentation other than the party's will.

The statute now allows the child who is the surviving joint owner and acknowledges that the parent's intent was to distribute the account to all of the surviving children equally, to hold the account as a constructive trust and to distribute the account in

equal shares without creating a gift tax issue. Where the surviving joint owner disputes that the deceased party intended a different result, the statute still leaves the deceased party's other beneficiaries with the burden of proving a different intent, but it allows more latitude for the evidence that may overcome the presumption. The amended statute also acknowledges that the deceased party may have lacked capacity when the account was created, making the joint account designation ineffective. In that case, the account would become part of the deceased party's probate estate.

When advising your clients about setting up an account with someone to assist with their bill

“...it is still best to designate the second signer...”

paying, it is still best to designate the second signer as an agent (ORS 807A.515) rather than a joint owner unless the client wants that second signer to own the balance of the account at her death. The client can still have the account pass to her beneficiaries through a P.O.D. account designation and avoid including the account in a probate estate. In that event the client's wishes need to be clearly stated in the bank's records.

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MBA Third Annual WinterSmash Raises \$16,000 for CourtCare

Truly: Bowling for Dollars

By Gregory C. MacCrone, Attorney at Law, YLS Board Secretary and MBA Fun Committee.

MBA members, their friends and families and numerous Portland law firms and businesses came out in force on February 26 to raise \$16,000 for CourtCare.

Valley Lanes in Beaverton was the venue and by all accounts, bowlers young and old had a fun, fun time. Pizza, popcorn, pretzels, vegetable trays and drinks were generously provided by Harrang Long Gary Rudnick PC, the event's *King Pin Sponsor*.

Barran Liebman LLP took home *The Big Lebowski* honor for the firm with the greatest turnout. Their 30 bowlers, all with matching firm bowling shirts and each monogrammed with the bowler's name, also won for best shirt.

CourtCare is a collaborative project between the Volunteers of America Oregon (VOA), your MBA, the Oregon Judicial Department and Multnomah County. In a

converted Multnomah County Courthouse jury room, CourtCare serves as a fully-staffed and certified drop-in center for children and infants. It offers childcare services to parents or guardians tending to court business.

More than 100 children a month, and over 3,500 children since the operation began in 2001, have visited the center.

Over 190 people attended this year's event which was organized by the MBA Fun Committee. The Fun Committee is chaired by Jeffrey Matthews, with members Simeon Rapoport, Michael Bloom, Lori Deveny, Allyson Krueger and Gregory MacCrone.

Kay Toran, the VOA president, deemed the results "wonderful" and "fabulous."

"CourtCare is the winner as a result of [our] partnership with the MBA. The children of families conducting business in the courthouse are safe and better cared for, and we can give a big thank you to the lawyers in Multnomah County for making this happen.

"We cannot thank enough the MBA, the lawyers, and their families for bowling to keep our kids safe!" said Toran.

The MBA, VOA and CourtCare deeply appreciate the sponsorship of the following firms and businesses.

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Barran Liebman bowlers.



Ed Harnden, Andrew Schpak and Chrissa Stephens of Barran Liebman with "The Big Lebowski" award.

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Open Enrollment months are March and September of each year. New MBA members can enroll themselves and employees within 30 days of joining the MBA.

A Century of Service

The MBA celebrates its 100th anniversary in 2006. Mike Bloom chairs the main committee; members are pictured to the right. Five sub-committees have formed and chairs selected. They are: Events, Julie Vacura and Wally Sweek; Community Gift, Lynn Nagasako; Fundraising and Communications Mike Greene; Historic, Don Marmaduke; and Publications and Communications, Lori Foleen.

We are gathering several fun and interesting facts about MBA milestones, members, cases and trends in law. If you would like

to join in, please contact Judy Edwards at 503.222.3275 or judy@mbabar.org.

Minutes of the formation meeting of the MBA state, "An informal called meeting of the Attorneys of Portland was held at the Abington Bldg. on Sat. Eve. Jan. 27th, 1906, to discuss the feasibility of the organization of a Multnomah County Bar Association. About forty members responded to the Call and were in attendance from whose number L.E. Crouch was chosen Temporary Chairman and R.B. Fisher Temporary Secretary.

"A general discussion was at this time had upon the possibility of an organization amongst the Multnomah Attorneys, and spirited speeches were heard, whose authors emphatically declared that such an association should be strictly non-partisan and non-political.

"After careful consideration and discussion a motion came from R.M. Mc.Cann that a Committee be appointed by the Chair to canvas the Portland Attorneys and urge upon them the necessity of such an organization and to solicit their attendance at a meeting to be

held later for the completion of the organization and this motion is seconded by Mr. Davis whereupon the Chair put the motion and it is carried."



Front row: Guy Walden, Kathy Maloney, Lynn Nagasako
Back row: Mike Greene, Don Marmaduke, Lori Foleen, Mike Bloom

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