



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. September 2005 Volume 51, Number 8



President's Column

By Kelly Hagan, Schwabe Williamson & Wyatt and MBA President.

"To the President and Members of the Multnomah Bar Association:

We, your committee heretofore appointed to report upon a method of nominating and electing judges without regard to politics, to be reported to the State Bar Association

at its adjourned session, May 17, 1910, beg to recommend the adoption of the following resolutions:

RESOLVED that the Multnomah Bar Association is in favor of the principle of nominating and electing judges without regard to their political opinions or affiliations, because judges are required to decide questions presented to them upon legal and not upon political considerations. * * * * *

Portland, Oregon - May 12, 1910

My first column in this space extolled nonpartisanship as a seminal value of the MBA. I argued that avoiding partisan politics was critical to accomplishing our members' common goals. At the risk of sounding a single note, I want to extend the theme of nonpartisanship to the question of how we elect Oregon's Supreme Court.

On July 29, 2005, the Attorney General received a certified ballot title for initiative petition #41. The initiative would create six judicial districts in Oregon, each of which will elect one associate justice to the Oregon Supreme Court. Judges must reside in the district from which they are elected. The Chief Justice would be the only member of the court elected statewide. The six districts are drawn much as you might expect: (1) a south-western district extending up the coast to Lincoln City; (2) the southern valley; (3) the northern valley; (4) the northern coast and the western-most portions of the three metropolitan counties; (5) the eastern-most portions of Multnomah and Clackamas counties; and (6) everywhere else, from Hood River to Burns and Sisters to Baker.

This initiative and similar measures are usually attributed to activists who seek through geographic diversity to tip the ideological makeup of the courts to the Right. If true, then these activists are out of step with mainstream conservative thought on the judicial branch. Congressional republicans have been heard in the past few months to threaten impeachment of judges who legislate from the bench. If regional affiliation is a surrogate for ideological leaning, then the sponsors of this initiative should not be heard to champion judicial restraint.

Whatever the motivation for Initiative 41, regional election of Oregon's Supreme Court Justices is a bad idea for a number of reasons. First and foremost, the concept of regional representation is inappropriate to judicial elections. Judges do not represent electors, they judge them. Judges do not campaign on political or jurisprudential platforms so that voters may choose the candidate most closely aligned with their own views. Unlike legislators, whose function it is to represent the interests of citizens who have at least

geography in common, judges are institutionally obligated to impartially apply a given body of law that knows no bounds save the state line. In short, to suggest that regional elections produce a more representative court is to misconstrue the judicial office.

Second, the concept of regional interests in judicial elections is mystifying. The residents of Jackson County do not have a greater or different interest in the impartial application of state law than do the residents of Multnomah County. Oregon law should and, owing to the Supreme Court's role, ultimately does have the same meaning wherever it is applied. Do different judges reach different conclusions about the meaning of the law? Of course they do, but not on the basis of the parties' addresses. Legal reasoning is not mathematics, but neither is it topography.

Third, statewide election of Supreme Court justices is appropriate to the statewide jurisdiction of our appellate courts. While a resident of Bend may have an appeal decided by a panel of judges all hailing from west of the Cascades, at least that Bend resident had the opportunity to vote for or against those justices. Legitimate government, and the perception of legitimacy, grows out of the opportunity to participate in the election of our governmental officials. Regional elections are antithetical to the appearance, if not reality, of political legitimacy.

My perspective on all of this is certainly less than Olympian. Like you, I have a position on the political spectrum and on the differing schools of thought concerning legal and constitutional interpretation. But I take as axiomatic in a democracy the sentiment expressed by the MBA board in 1910 that, "judges are required to decide questions presented to them upon legal and not upon political considerations." At bottom, the question is whether or not regional election of our justices will promote or degrade the nonpartisanship of the judiciary. In my view, it is not a close call. Regional election will, in Hamilton's words, breathe the "pestilential breath of faction" into our appellate courts.

I encourage you to oppose the placement of Initiative 41 on the November 2006 ballot, and to counsel your friends and neighbors to do likewise. We may not always realize it, but others look to us for guidance on these issues. Please guide them well.

The 2006 MBA Membership Drive Begins

Thank you for being a member this year. It is time to renew your membership through 2006, our centennial year. You will be receiving your renewal notice in the mail in the coming weeks. All you need to do is return your membership form with payment to continue to receive the wide range of benefits the MBA provides. Here are just a few reasons to remain a member:

- MBA Group Health Insurance Plan
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- Excellent, affordable and convenient CLE seminars
- Social events and committees that are fun and provide rewarding networking opportunities

If you would like more information about the benefits of MBA membership please call Noëlle Saint-Cyr at 503.222.3275 or visit www.mbar.org. We look forward to serving you in 2006.

Multnomah Bar Association "Absolutely social" social The grape escape

Tuesday, October 11
The Benson Hotel

RSVP via the insert in this issue. Featuring wine tastings from small Oregon wineries. Drop in after work and catch up with friends and colleagues.

MBA CLE

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

September

Wednesday, September 28

Planning and Ethics of Asset Protection: How to Avoid Burying the Money in the Backyard

Mark Fucile
Jonathan Levy
Aaron Wigod

October

Tuesday, October 11

Washington and Clackamas Presiding Courts Update

Hon. Thomas Kohl
Hon. Robert Selander

Friday, October 14

Fall YLS Family Law CLE Series begins: Marriage Agreements

Thursday, October 20

Fall YLS Family Law CLE Series continues: Laws Affecting Children

Tuesday, October 25

Anatomy of a Construction Lien: Getting it Done and Avoiding the Sinkholes

Alan Brickley
John Chambers
Nicolette Linse

Wednesday, October 26

Mandatory Arbitration Training

Hon. Edward Jones
Bill Gibson
Lisa Almasy Miller
Eric Neiman
Kent Whitaker

Thursday, October 27

Advance Directives

Cindy Barrett
Dr. Susan Tolle

Friday, October 28

Fall YLS Family Law CLE Series continues: Domestic Violence Law

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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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TIPS

Multnomah County SLR 12.025 allows parties to mediate cases under \$50K as a substitute for "mandatory" arbitration.

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NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

HANDBOOK ON ERISA LITIGATION, 2d ed. by James F. Jorden, Waldemar J. Pflepsen, Stephen H. Goldberg. Published by Aspen Law & Business, 1997- (KF 3512 J67)

DISCOVERY FROM CURRENT AND FORMER EMPLOYEES by Susan J. Becker. Published by the ABA Section of Litigation, 2005. (KF 8900 B36)

BUSINESS TORTS LITIGATION, 2d ed. edited by David A. Soley, Robert Y. Gwin and Ann E. Georgehead. Published by the ABA Section of Litigation, 2005. (KF 1250 B88)

EMERGING COMPANIES GUIDE: A resource for professionals and entrepreneurs. Edited by Robert L. Brown and Alan S. Gutterman. Published by the ABA Section of Business Law, 2005. (KF 1355 E46)

CHECKPOINTS IN CYBERSPACE: best practices to avert liability in cross-border transactions by Roland L. Trope and Gregory E. Upchurch. Published by the ABA Section of Business Law, 2005. (KF 889 T76)

A GUIDE TO JUDICIAL AND POLITICAL REVIEW OF FEDERAL AGENCIES edited by John F. Duffy and Michael Herz. Published by the ABA Section of Administrative Law and Regulatory Practice, 2005. (KF 5425 G85)

McELHANEY'S TRIAL NOTEBOOK, 4th ed. by James W. McElhaney. Published by the ABA Section of Litigation, 2005. (KF 8915 M34)

MEDIATION: A path beck for the lost lawyer, 2d ed. by John R. Van Winkle. Published by the ABA Section of Dispute Resolution, 2005. (KF 9084 V35)

LAWYER LAW: Comparing the ABA Model Rules of Professional Conduct with the ALI Restatement (Third) of the Law Governing Lawyers by Thomas D. Morgan. Published by the ABA Center for Professional Responsibility, 2005. (KF 306 M67)

OBTAINING DISCOVERY ABOARD, 2d. ed. edited by Andre R. Fiebig. Published by the ABA Section of Antitrust Law, 2005. (KF 8900 O28)

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: law and explanation. Published by Commerce Clearing House, 2005. (KF 1511.5 C65)

THE RULE OF CAPTURE AND ITS CONSEQUENCES. Material from the Oregon Law Institute and Lewis & Clark Expedition Bicentennial Conference held April 7-8, 2005 in Portland. (*KF 562 O7O73)

THE LAWYER'S GUIDE TO ADOBE ACROBAT, 2d ed. by David L. Masters. Published by the ABA Law Practice Management Section, 2005. (KF 320 A9 M37)

ADVISING NONPROFIT ORGANIZATIONS. Material from the Oregon State Bar CLE program held on October 12, 1995 in Portland. (*KF 1388 O7O74a)

DRAFTING EMPLOYMENT DOCUMENTS. Material from the Oregon State Bar CLE program held on May 21, 1999 in Portland. (*KF 3455 O7O74)

FUNDAMENTALS OF TRIAL ADVOCACY: Effective strategy and persuasion. Material from the Oregon State Bar CLE program held on May 8, 1997 in Portland. (*KF 8915 O7O74f)

ESSENTIALS OF OREGON CIVIL TRIAL PROCEDURE. Material from the Oregon State Bar CLE program held on October 20-21, 1995 in Portland. (*KF 8840 O7O74e)

CALENDAR

For a complete MBA calendar, please visit www.mbabar.org.

September

5 Monday, Labor Day-MBA office closed

6 Tuesday, MBA Board meeting

9 Friday, Multnomah Lawyer deadline

Friday, LAF-OFF
For details, visit www.laf-off.org.

13 Tuesday, YLS Board meeting

16 Friday, MBA Annual Golf Championship
Register at www.mbabar.org.

22 Thursday, YLS Drop-in Social at RiverPlace Hotel
See details on p. 10.

26 Monday, OLAH fundraising drive begins

28 Wednesday, Multnomah Bar Foundation Board meeting

Wednesday, MBA CLE Planning and Ethics of Asset Protection
See insert or register at www.mbabar.org.

Wednesday, East County Social 5:30-7 p.m. at Gresham Heidi's
RSVP to noelle@mbabar.org.

October

4 Tuesday, MBA Board meeting

10 Monday, Multnomah Lawyer deadline

11 Tuesday, YLS Board meeting

Tuesday, MBA CLE Washington and Clackamas Courts Update
See insert or register at www.mbabar.org.

Tuesday, MBA "Absolutely Social" Social at The Benson Hotel
See details on p. 1.

14 Friday, YLS Family Law CLE Series begins
See insert or register at www.mbabar.org.

20 Thursday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Thursday, Legislative Open House at Multnomah County Circuit Courthouse

Thursday, Lewis & Clark mock trial at Federal Courthouse

22 Saturday, Lewis & Clark mock trial at Federal Courthouse

25 Tuesday, MBA CLE - Anatomy of a Construction Lien
See insert or register at www.mbabar.org.

26 Wednesday, Multnomah Bar Foundation Board meeting

Wednesday, MBA CLE Mandatory Arbitration Training
See insert or register at www.mbabar.org.

27 Thursday, MBA CLE - Advance Directives
See insert or register at www.mbabar.org.

28 Friday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Friday, BOWLIO
Details to be announced.

November

1 Tuesday, MBA Board meeting

2-4 Wednesday-Friday, OSB PLF Seminar, "Learning the Ropes"
For details, visit www.osbplf.org.

4 Friday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Friday, OSB Tent Show and Dinner
For details, visit www.osbar.org.

8 Tuesday, YLS Board meeting

9 Wednesday, MBA CLE Arbitration
See insert or register at www.mbabar.org.

10 Thursday, Multnomah Lawyer deadline

23 Wednesday, Multnomah Bar Foundation Board meeting

24-25 Thursday-Friday, Thanksgiving Holiday - MBA closed

Washington Personal Injury Trials

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Ethics Focus

By Mark J. Fucile, Stoel Rives.

Taking Stock: Investing in Clients Under the New Rules



Investing in clients has long been a dicey prospect. The disciplinary reporters are filled with cases that illustrate the conflicts—whether the lawyer handled the transaction involved for the client (*see, e.g., In re Brown*, 277 Or 121, 559 P2d 884 (1977)) or simply engaged in a business deal with a client where the client relied on the lawyer for legal advice (*see, e.g., In re Montgomery*, 292 Or 796, 643 P2d 338 (1982)). And because conflicts in this setting easily translate into breaches of the fiduciary duty of loyalty, unwaived conflicts can also easily translate into claims and fee forfeiture. *See generally Kidney Association of Oregon v. Ferguson*, 315 Or 135, 843 P2d 442 (1992) (discussing the relationship between violations of the professional rules and breaches of lawyers' fiduciary duties).

Neither the old rules nor the new ones *prohibit* a lawyer from investing in a client - either directly or in lieu of a fee. Rather, they both require clear disclosure and client consent. The new rules, however, express their wariness by making the consent requirements more exacting.

The old rule, DR 5-104(A), was comparatively general:

"A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, unless the client has consented after full disclosure."

The new rule, RPC 1.8(a), by contrast, is quite specific: "A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

"(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

"(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

"(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the

lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction." The new Oregon provision is patterned on the corresponding ABA model rule.

For lawyers or law firms considering business deals with a client, the ABA's ethics opinion on investing in clients - 00-418 - should be required reading. The opinion discusses in detail the concept of what's "fair and reasonable" to the client and when that's measured. On this last point, the ABA's ethics committee concluded that the reasonableness of an investment should be measured when the deal is done. But that's not a uniform view. The Washington Court of Appeals, for example, found last year in *Holmes v. Loveless*, 122 Wn App 470, 94 P3d 338 (2004), that the "reasonableness" requirement for an investment in lieu of a fee extends over the life of the fee agreement—even after the underlying legal services have been completed.

Although not a matter of ethics, the Professional Liability Fund also has rigorous coverage requirements when lawyers are considering a business transaction with a client. Exclusion V.8 to the PLF's basic plan excludes coverage for claims arising from business transactions falling within RPC 1.8(a) unless very detailed disclosure in a form specifically developed by the PLF is executed by the client. Exclusion V.8 also includes requirements for giving the PLF notice of the deal and the accompanying disclosure within 10 days of when the disclosure form has been signed by the client. Exclusion V.8, the PLF's model disclosure form and accompanying comments by the PLF are all available on the PLF's web site at www.osbplf.org.

The cases involving lawyer investments in clients display motives ranging from the best to the worst on the part of the lawyer-investors. What they all share, though, is the theme that this is an area fraught with potential conflicts and that lawyers' motives will be subject to microscopic scrutiny after the fact. In that context, a lawyer making an investment in a client needs to put a premium on clear and complete disclosure to the client up front.

ANNOUNCEMENTS

September East County Social
East County members of the legal community are invited to attend the next East County Social on Wednesday, September 28 from 5:30-7 p.m. at Heidi's of Gresham, 1230 NE Cleveland. The cost is \$10 and includes appetizers and a cocktail. Please call Noëlle Saint-Cyr at 503.222.3275 to RSVP for this event.

Seeking Interesting Case Histories
The MBA is researching its history and would like to find high-profile or interesting cases that members have handled over the years. If your firm has such information, please contact Judy Edwards at judy@mbabar.org.

New MBA Member Benefit
Members may now purchase tickets online for the Portland Opera and Broadway series, pre-public sales and at a 10% discount. Please go to www.mbabar.org and then Membership Benefits for details. Shows will vary throughout the year.

Complex Construction Litigation Changes in Multnomah County
The following announcement was provided by the OSB Construction Law Section.
Beginning July 1, Multnomah County began a new procedure for handling complex construction litigation. The court now allows parties to choose one of two case systems: (1) normal 12-month trial system with no trial extensions beyond the 12 month period; or (2) a new system that appoints a referee to assist with handling procedural matters that allows a longer period for such matters as discovery and ADR.

For all cases filed after January 1, parties can stipulate to being part of the new referee system. In the absence of a stipulation, any party may file a motion asking the court to transfer the case into the new referee system. The motion must be filed no later than 30 days after the date the party is served with summons and complaint. The plaintiff must file a motion no later than 30 days after the last party is joined.

Under the referee system the parties will pay the referee's fees. The court gives the parties three options: (1) select a referee from the court's list of pre-qualified referees experienced in construction litigation; (2) stipulate to a referee; or (3) the court will select a referee. The referee operates on two simultaneous "tracks." Under the first track, which concerns procedural and discovery matters, the referee will work with the parties to sign a required case management order. Under the second track the referee will manage insurance coverage issues. The referee will also hear joinder motions and discovery motions and will make recommendations

and/or findings to the court, which will ultimately sign any order arising out of those motions.

For a more detailed description of this new procedure, sample order appointing the referee and an application form for those wanting to be pre-qualified referees, see the Construction Law Section Web site at www.osbar.org/sections/construction.html or contact Christopher Michali at the Multnomah County Presiding Court, 503.988.3846.

Vulnerable Adult Conference
The State of Oregon, in partnership with AARP Oregon, Oregon Mutual Bank and the Oregon Health Care Association, is hosting "Vulnerable Adults and the Criminal Justice System: Beyond the Basics," September 13-15 at the Eugene Hilton. The conference fee is \$175 and includes six meals and a hosted dinner Tuesday evening which features Attorney General Hardy Myers. He will discuss new legislation impacting vulnerable adults and crime victims. Continuing Legal Education credits are pending.

The goal of the conference is to give criminal justice professionals the tools they need to identify and prosecute crimes against vulnerable adults. In addition, the conference will train professionals on what makes older persons subject to abuse, including information on capacity and competence. To request conference information, please call Linda Good at 503.846.2774.

Queens Bench Luncheons
On Tuesday, September 13, Queen's Bench welcomes Kelly Anderson from Outside In. Kelly will talk about Portland's homeless youth and the services available to help them. Queen's Bench luncheons are the 2nd Tuesday of each month from 11:45 a.m.-1 p.m. at Jax

Restaurant. The \$12 cost may be paid by cash or check at the door. 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.

Oregon Women Lawyers Invites Nominations
Oregon Women Lawyers invites nominations for the 14th Annual Justice Betty Roberts and Judge Mercedes Deiz Awards, which recognize and celebrate the accomplishments of individuals in promoting women and minorities in the legal profession in Oregon. The recipients will be honored at the annual awards dinner on Friday, March 17, 2006, at the Governor Hotel in Portland. For details, visit www.oregonwomenlawyers.org and click on the Roberts Deiz Dinner link.

MBA Noon-Time Rides
Noon-time bike rides - short fast rides with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas 503.228.5222 with questions, or meet at the start.

Pacific Northwest Paralegal Association Elects Officers
The organization's 2005-06 board consists of the following officers and directors: President, Sandra D. Hatch, CLA; Vice President, Kristin Vermilyea, CLA; Secretary, Linda Roth; Treasurer, Pat Kopczynski, CLA; Associate Director, Shari Bynum; Region 2 Director, Linda Roth; Region 3 Director, Karen McKim; Region 7 Director, Kathy Morris; Membership Coordinator, Pat Kopczynski, CLA; and Parliamentarian, Jana Bauman, CP. Visit the organization's Web site, www.pnpa.org for more information.

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OLAH's Fundraiser Begins September 26

By Allyson Krueger, Barran Liebman.

Oregon Lawyers Against Hunger (OLAH) will launch its ninth annual two-week long fundraiser to benefit the Oregon Food Bank (OFB) on September 26, ending October 7.

During OLAH's annual fundraiser, firms compete for the Golden Can Award (highest contribution per capita) and the Silver Barrel Award (highest total contribution). Last year, Heller Ehrman et al won

the Golden Can with a per capita donation of \$267. Lane Powell continued its eight-year dominance of the Silver Barrel award last year by raising more than \$17,000.

Each dollar contributed allows OFB to collect and distribute about \$8 worth of food and fund programs that address the root causes of hunger. Oregon remains among the top states in the nation for hunger.

For more information about OLAH, contact Kathy Dent at 503.778.5338. For information about OFB, visit www.oregonfoodbank.org.

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has joined the firm as OF COUNSEL in our Portland office. Mr. Kelly will focus his practice on international law, government relations, public policy and alternative dispute resolution. Mr. Kelly has enjoyed a distinguished career at NIKE, Inc. since 1987, serving as Global Director of Public Affairs and General Counsel, among other

key roles. His background also includes eleven years in private practice and serving as Executive Director of Multnomah County Legal Aid Services, Inc. He received his J.D. from Georgetown University.

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The Latest Discovery Technology

By Marsha J. Naegeli & Troy S. Moody, Naegeli Reporting Corporation.

Discovery is a challenging and rewarding process. The rewards are frequently based on the speed and efficiency of data acquisition and its interpretation; the pitfalls are related to the lack thereof. Therefore, success in the discovery process is only as effective as the technology used to uncover and apply it.

The newest advances in the discovery process have recently been made in audio technology. You may ask, what's so important about audio technology. After all, reading the text of a deposition in the courtroom has been the format used by legal professionals for years. It is not that this method is unacceptable, it is simply under-convincing.

The audio portion of a deponent's testimony is critical to the discovery process. According to UCLA professor Albert Mehrabian, a pioneer in communications research, the format for presentation of information is the key to clarity and memory. His research shows that the rate of human retention for the spoken word is only a low 7 percent. This means that when attorneys read aloud from the text of a deposition, juries actually retain very little of the information presented. However, when the audio transcript synchronization is utilized, the listener becomes actively involved in a whole new way. The addition of tone alone increases a listener's retention rate to 35 percent. The manner in which words are spoken - including tone, inflection, volume and pauses - has a strong emotional impact on a jury and causes the rate of retention to increase exponentially.

A good argument with great facts is only as strong as the ability to present it effectively. The emotional impact and retention of information, the most valuable commodities in legal presentations, can be lost when an attorney is limited to reading aloud from portions of a typed transcript. It becomes even more difficult if accessing that information is slow and cumbersome.

Audio technology, in its infancy only a few years ago, has come of age. Attorneys now have the option of using the most effective tool of all: The voice of the witness. What if an attorney could relive every heart-felt sob, nervous stutter, angry moment or long pause that was not available with only the written transcript available? If a witness appears to be a nervous liar during the deposition process, the jury needs to hear him impeach himself through his own hesitations and stammering.

Using an audio recording known as the voice file, each deposition is recorded and synchronized to provide immediate access to the transcript information. This new option employs a digitized CD of the deponent's testimony which is

synchronized to the written transcript word-for-word. The audio file is linked to each word of the transcript using a unique software program, allowing simultaneous audio and visual access to any word or phrase. Also included in the package is an array of support programs for instant access to and extended manipulation of the textual material.

Attorneys can now review cases while commuting by using the latest innovation in CD recordings, thus making their day more productive. Naegeli Reporting Corporation provides this innovation free to our clientele with every transcript.

The old adage, "time and tide wait for no man" is still true today. Discovery can be a rewarding process, but only if there is significant opportunity to organize available information. Flexibility and speed of data acquisition are essential to this process. The issue for attorneys is simple: those who use the latest technology have more time to research the facts and plan an effective strategy. The ability to present data in a cogent manner is critical when influencing a jury and winning a settlement beneficial to your client.

The question should no longer be what technology exists, but how best to apply it.



Marsha Naegeli



Troy Moody

About the Authors
Marsha J. Naegeli, President and CEO of Naegeli Reporting Corporation, and Troy S. Moody, Director of Trial Technology for the firm, provide attorneys with a full complement of court reporting services which include Trial Presentation. Naegeli Reporting Corporation serves the Northwest market with offices in Oregon, Washington and Idaho.

The Corner Office

Frequently, lawyers have to decide whether to assert a technical defense or objection, which, if successful, could cause the opposing attorney embarrassment or exposure to a malpractice claim. These issues can be particularly challenging when the opposing attorney is a friend or a colleague with whom the attorney deals on a frequent basis. Examples of these "technicalities" could include objecting to your opponent's Rule 21 Motion because of the failure to consult, taking a default, or resisting the opponent's request to set aside a default in certain situations. What is the "professional" thing to do in these situations? There is no easy or pat answer.

While professionalism involves courtesy and consideration for one's opponent, a number of the principles set forth in the Multnomah Bar Association's Commitment to Professionalism can give some guidance in these situations. By keeping in mind that one of the basic principles of professionalism is fairly serving the best interests of the client and public, the following four principles are worthy of consideration in resolving the "technicality dilemma:"

- We will promote integrity and independent judgment. As officers of the court, we will work to support the effectiveness and efficiency of the legal system.
- We will be courteous, fair and respectful.
- We will only pursue litigation, engage in conduct, or take positions that have merit.
- We will represent our clients' best interests while seeking to resolve matters with a minimum of legal expense to all involved.

Let's go back to the Rule 21 Motion that was filed without prior consultation. The rules require such consultation, and judges at times have struck such motions where consultation did not occur before the motion was filed. While professionalism calls for the lawyer to be considerate of the opponent, professionalism does not include compromising one's loyalty to the client and to the client's cause. If there is a legitimate opportunity to win the case for the client, the lawyer needs to consider pursuing that avenue, even if it means

winning on a "technicality." If the discussion ended there, the attorney probably should object to the Rule 21 Motion on the ground that there was no consultation.

However, the analysis probably does not end there, because objecting to the failure to consult might not ultimately dispose of the case. The objection could trigger another round of briefing and raise the intensity level of the litigation. The other side might be able to file a motion for summary judgment or a motion for judgment on the pleadings or follow another procedural route in order to get the issue before the court. The ultimate result might not be winning the case at this stage, but rather actually making the litigation more expensive and more contentious. In addition, trying to win the case on a technicality in that situation is going to embarrass the opposing attorney. If the considered tactic is not successful, the case will probably be more contentious and more expensive for the client for that reason as well. The lawyer in each case should probably weigh the chances for success with such a move with the alternative of contacting the opposing attorney to discuss any concerns related to the failure to consult.

As for the default issues, similar considerations come into play. Where opposing counsel has made a technical error that opens the door for the default, the attorney might first want to consider the prospects for sustaining the default in the wake of the likely motion to set it aside. ORCP 71B allows courts great discretion to give relief from a default where the default was taken because of a party's mistake, inadvertence, surprise, or excusable negligent. Will your default order and judgment survive such a motion, or will it just generate several rounds of motion practice, increased expense for the client, and acrimony between the lawyers and potentially the clients?

The final question is to what extent can the lawyer decide to forebear from taking advantage of a technicality without consulting with the client. ORPC Rule 1.4 states:

Cont. on p. 13

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AROUND THE BAR



Dallas G. Thomsen

SUSSMAN SHANK

The firm has added **Dallas G. Thomsen** as an associate. Thomsen joins the business department.

TONKON TORP

Ten partners were named as America's leading business lawyers by *Chambers and Partners USA*® 2005-2006. The practice areas and the attorneys named include: employment law, **Victor J. Kisch**; corporate and M&A law, **Brian G. Booth**, **Ronald L. Greenman**, **Carol Dey Hibbs**, **Thomas P. Palmer** and **Kenneth D. Stephens**; litigation - general commercial law, **Don H. Marmaduke**, **William F. Martson Jr.** and **Daniel H. Skerritt**; real estate, **Joseph S. Voboril**.

DAVIS WRIGHT TREMAINE

In its third annual survey of the U.S. legal market, the prestigious legal directory *Chambers USA: America's Leading Lawyers for Business* (2005 - 2006) has once again recognized DWT as a leading firm for the following practice areas: general commercial litigation, corporate/M&A, employment defendant and real estate. Special recognition was also given to the firm's health law practice, which was ranked number one on a national basis.

In addition, six Portland DWT attorneys were recognized as leaders in their field in Oregon. The attorneys, as well as the practice area for which he or she is recognized, are: **David C. Baca**, corporate/M&A; **Carol Bernick**, employment defendant; **Eugene L. Grant**, real estate; **John F. McGrory**, **Robert D. Newell** and **Daniel O'Leary**, general commercial litigation.

STOEL RIVES

Stoel Rives attorneys are included in *Chambers USA: Guide to America's Leading Lawyers for Business* for outstanding capabilities in specific areas of business law. Chambers ranks Stoel Rives attorneys in five areas of law: corporate/mergers and acquisitions, employment, commercial litigation, real estate and environmental law. Stoel Rives tops the list of Oregon firms in the categories of corporate/mergers and acquisitions and in commercial litigation.

Lawyers and the area of law for which they were selected, include **Courtney Angeli**, employment, **Ruth Beyer**, corporate/M&A, **Paul Buchanan**, employment,

Barnes Ellis, litigation, **David Green**, real estate, **Dan Grinfas**, employment, **Henry Hewitt**, corporate/M&A, **Chris Kitchel**, employment, **Gregory Mowe**, litigation, **Joel Mullin**, litigation, **Margaret Hill Noto**, corporate/M&A, **Edward Reeves**, employment, **Lois Rosenbaum**, litigation, **John Thomas**, corporate/M&A and **Stephen Walters**, litigation.

BARRAN LIEBMAN LLP

Brenda K. Baumgart has been elected to the firm partnership. Her practice is focused in employment-related litigation, but includes appeals, complex commercial litigation matters, and employment-related advice work.

Todd A. Hanchett has also been elected to the firm partnership. He represents management in employment and labor law matters.

Jeffrey D. Jones represents management in employment litigation and providing advice in employment law matters.

Paula A. Barran joined The College of Labor and Employment Lawyers as a fellow. The College is a professional association honoring leading lawyers nationwide in the practice of labor and employment law. She has been practicing employment and labor law since 1980.

VANGELISTI LAW OFFICES

Richard Vangelisti was recently elected as President of the Oregon Chapter of the Federal Bar Association for the 2005-2006 term.

STOLL STOLL ET AL

The following firm attorneys have been recognized: **Robert Stoll**, **Gary Berne** and **Rob Shlachter** have been honored by *Chambers USA: America's Leading Lawyers for Business*. **Keith Ketterling** and **Tim DeJong** have been recognized by their peers as leaders in business litigation and intellectual property, respectively, in the *Portland Business Journal's* "Best of the Bar."



Brian Cable

DUNN CARNEY ET AL
Brian Cable has joined the firm as an associate. Cable will focus on business and commercial law with his primary areas of practice being corporate governance, securities, merger & acquisitions and corporate finance.



David J. Buono

David J. Buono has joined the firm to support a growing business practice. Buono, an attorney with 37 years of experience serving closely held businesses joins the firm as a partner and will focus on business and commercial law, specifically for the construction industry.

WINEMILLER WIESELMAN

Kristen Winemiller announces that **Jacob Wieselmann** joins her in the formation of Winemiller Wieselmann, located at 121 SW Salmon St. Ste 142, Portland OR 97204, phone 503.222.2510 and fax 503.222.2864. The firm will focus on white collar criminal defense and complex civil litigation. Wieselmann moves to Oregon with more than 20 years of experience in criminal and civil litigation, including health care, professional liability, construction and business litigation.

GARVEY SCHUBERT BARER

Jeffrey F. Nudelman, an owner in the firm's Portland office, was elected President of the University of Oregon Alumni Association. Nudelman has also been reelected to a second term as President of the Oregon Chapter of the American Jewish Committee. Both positions run through July 2006.



Gregory E. Struxness

ATER WYNNE

Gregory E. Struxness, chair of Ater Wynne's corporate finance group, has been elected chair of the firm. **Michael W. Shackelford** has been re-elected managing partner. Both will continue to serve on the firm's management committee.

Struxness focuses on general corporate and securities law, advising corporate officers and directors on general corporate issues, SEC reporting requirements and disclosure obligations, as well as mergers and acquisitions, public



Michael W. Shackelford

offerings, private placements and other financing transactions.

Shackelford's practice focuses on general corporate law and corporate finance transactions, including venture capital financings and mergers and acquisitions.

A new member of the firm's management committee is **Juliana Wellman**, chair of the global trade and intellectual property group. Continuing management committee members include **Jonathan Ater**, chair of the health law group and **Frank Langfitt**, chair of the litigation department.



Jennifer Kampsula

KELL ALTERMAN & RUNSTEIN

Jennifer Kampsula recently returned from touring the Marshall Foundation in Lexington and Williamsburg, Virginia, and Washington, D.C., as the 2004 General George C. Marshall Public Leadership Award Recipient. The Marshall Leadership Award is presented to a Clark County, Washington resident under the age of 35 with a four-year college degree who demonstrates leadership potential. Kampsula was

nominated by the American Cancer Society and her nomination was endorsed by Congressman Brian Baird.

LANE POWELL

Catherine S. Travis has been elected Vice Chair of the State Accident Insurance Fund (SAIF) Board. In May, Travis was appointed by Governor Kulongoski to serve on the SAIF Board.

Travis has more than 20 years experience in business reorganizations, workouts, debtor-creditor and bankruptcy law. In addition, she has more than 10 years' experience as a commercial arbitrator with the American Arbitration Association.

GEVURTZ MENASHE

Marshal Spector has been appointed chair of the Allocations Committee for the Jewish Federation of Greater Portland, where he oversees the distribution of funds raised during the Federation's annual campaign.

Shawn N. Menashe has been named to the junior board of the Make-A-Wish Foundation® of Oregon. Menashe has also been selected as the 2005-2006 Chair of the ABA's Family Law Section of the Young Lawyers Division.



Sarah Lowinger

MILLER NASH

Sarah Lowinger, an associate in Miller Nash's litigation department, has been elected to the board of the Juvenile Rights Project, Inc., where she will serve a three year term from 2005 to 2008.

Congratulations

to our long-time partner and friend, Met Wilson.



We celebrate Met's 40 years with Lane Powell, and wish him the best as he leaves to embark on a new adventure -- Wilson Dispute Resolution.

While he is no longer our partner, he will always be a colleague and our valued friend.

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Tips from the Bench

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



challenge on appeal. Defense counsel may expect negligence claims, bar complaints, and post-conviction relief proceedings if the defendant is subject to a written judgment that varies from what was announced in open court. The current forms used for felony sentences require counsel to review and initial the form. Counsel should be sure it is correct when counsel initials the form.

If I knew as a lawyer what I now know as a judge....

I have often thought that lawyers and judges could do their jobs better if they "walked a mile" in the shoes of the other. Of course, judges have had some experience as lawyers - or at least we hope so! But few lawyers get the chance to serve as judges.

In my nine years on the bench, I have seen many things in court and in written submissions from lawyers that I used to do as a lawyer - things I have learned as a judge are not very helpful. A few suggestions:

- Get your written materials to the judge early enough to be read by the judge.
- Keep your written materials short and to the point.
- Use headings in bold type in your memoranda.
- Don't string citations - give the judge the best case that supports your position. Quote from the cited case in your memorandum.
- Rarely rely on cases that are not from the Oregon Supreme Court or the Oregon Court of Appeals, and attach copies of out-of-Oregon cases when you must cite those cases.
- Pay the hearing fee before the time set for the hearing if you want to be on the record.
- Show up on time and call the judge's office if you will be delayed. If you are tied up in another court, ask the clerk there to email the clerk where you are going to be late.
- Don't object to testimony just because you might have a valid objection - think about whether the testimony is harmful to your case and only object when necessary.
- Don't treat the lawyer on the other side of the case like the enemy. He or she is probably just doing his/her best for their client, just like you are.
- Don't expect judges to sort out conflicts in your calendars when you argue about a new date for a trial or a deposition. It is up to the lawyers to work this out or at least clarify the issues before appearing before the judge.
- Be realistic about how long your matter is going to take in court. Other people have cases too, and they deserve to be able to predict when it will be their turn.
- Talk to the other lawyer and stipulate to as much as possible. Narrow the issues the judge must decide to those issues about which you have a legitimate dispute. This approach will save money for your clients and allow more time to concentrate on what is really important.
- Talk to each other about settlement before you arrive at the courthouse for the hearing or trial.

Reinstatement of Dismissed Family Law Cases

Family law cases are frequently dismissed for a variety of reasons - only later to have the parties, or one of them, seek reinstatement. The Petitioner may have delayed having Respondent served, or the parties may be trying to reconcile, or struggling over the terms of a settlement. Chief Family Law Judge Elizabeth Welch has announced a new policy on reinstatement of dismissed family law cases.

Effective immediately, after a family law case is dismissed, it may be reinstated only under the following circumstances: 1.) on the joint request of the parties; or 2.) upon presentation of a Stipulated Judgment; or 3.) on the request of the Petitioner if the Respondent has not yet been served. If it was dismissed for failure to serve the Respondent, it will only be reinstated if the reinstatement request is within one year of the date of filing.

Amended Judgments in Criminal Cases

It is not unusual in criminal cases for defense counsel, the DA's office or court staff to discover an error or unintended entry in either the form "Temporary Sentencing Order" that is prepared in the courtroom by the clerk, or the printed Uniform Criminal Judgment that is prepared subsequent to sentencing. It has been common practice in this courthouse for years to correct such errors when the printed Uniform Criminal Judgment is prepared or prepare an Amended Judgment later. These changes have usually been made without a subsequent hearing, and without the Defendant's consent or waiver of his/her right to be present. It may now be clear that this practice is not appropriate.

On July 27, 2005, the Court of Appeals issued an opinion in *State of Oregon v. Mathew Jacobs*. One of the several issues on appeal in Jacobs was the authority of the trial judge to sign an "opinion and order on sentencing" that was not what the trial judge announced in open court with the Defendant present. The Court of Appeals reaffirmed the long-standing principle that a defendant in a felony criminal case has the right to be present for sentencing, and that the sentence must be announced in open court in the defendant's presence. ORS 137.030(1). See also *State v. Bonner*, 307 Or 598, 600 (1989).

The DA's office should expect any changes to the sentence that are not announced in open court with the defendant present are subject to

MBA Committees



Stephen Williams



Julia Hagan



Lisa Umscheid



Jeff Crawford

Continuing Legal Education
Chair: Stephen Williams, Metro Public Defender, Inc.
503.225.9100

Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice ten years or more. The curriculum reflects areas in which MBA members practice.

Court Liaison

Julia Hagan, Gevurtz Menashe et al
503.227.1515

Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the judiciary and the court administrator. Provides constructive feedback to the judiciary.

Equality

Lisa Umscheid, Office of Metro Attorney
503.797.1544, Ext. 3128

Promotes equality in the profession and identifies ways in which the MBA can promote diversity in the practice of law through outreach to racial minorities.



Steven Blackhurst



Eric Dahlin

Group Health Insurance
Chair: Jeff Crawford, PLF
503.639.6911

Monitors quality, low-cost health insurance options for MBA members and surveys their satisfaction and preferences with the insurance program.

Judicial Screening

Steven Blackhurst, Ater Wynne
503.226.8439

Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.

Professionalism

Eric Dahlin, Davis Wright Tremaine
503.778.5293

Manages activities that promote professionalism in the legal community and assists with the nomination and selection process for the professionalism award.

Golf

Tom Melville, Attorney at Law
503.667.6173, Ext. 109

Plans, publicizes and conducts approximately four golf tournaments between April and September, including the MBA Members Championship Tournament, which benefits the Volunteer Lawyers Project at LASO.



Tom Melville

GOLF for PRO BONO

8th Annual Members Golf Championship and Awards Luncheon
Pumpkin Ridge Golf Club
September 16, 2005
Shotgun start at 7:45 a.m.

Invite your favorite clients and colleagues for a fun day of golf and support a great cause too.

Proceeds benefit the Volunteer Lawyers Project at Legal Aid Services of Oregon.

Space is limited to the first 32 teams, so sign up today!
For more information and a registration form, go to www.mbabar.org.

Profile: David V. Brewer, Chief Judge of the Oregon Court of Appeals

By Jennifer Oetter, Hoffman Hart & Wagner and Court Liaison Committee.

If your faith in the law is thin or if you have lost sight of why you chose the law as a profession, sit down for five minutes with **David Brewer**. His love of the law and commitment to the profession are infectious. His presence is both humble and commanding. He is passionate and committed but also kind and professional. And if the measure of a person is partly reflected in the words or deeds of those close to them, then he is as good as they come. He recently celebrated his 25th anniversary with his wife, Myrna. His children exhibit the same desire to learn and explore as their father. His son just got back from Romania and is on his way to teach in Korea, his daughter is on her way to study in Chile. And those who know Judge Brewer are enthusiastic in singing his praises.

Prior to our meeting, I'd been warned that he would probably not agree to be interviewed. When I asked why people thought he would be reluctant, he paused, and admitted that he was thinking of me as an old friend and simply trying to forget that he was being interviewed. You see, he explained, I just don't like these kind of things - never been the kind of person to inflate

my own self importance. Even so, it took quite a bit for this new friend to extract information.

David Brewer was born in Modesto, California on August 12, 1951. His father was a farmer and his mother a school teacher. He lived near Modesto until he was 15 and moved to Marin County where his mother had been given a position as a school administrator. After high school he attended California State University at Sonoma where he studied economics and received his bachelor of arts in 1974.

He chose the law, in part, because of his mother; it was what she had always wanted to do. He chose the U of O School of Law and recalls being "scared to death" that first day, certain that he was not smart enough to be there. So certain, that during his first semester he took the civil service exam and was prepared to begin work as an engineer in California. When he left for winter break, he packed everything into his 1964 Volkswagen bug (the hood tied down with a coat hanger) and headed home to California. But he came back. Even with his insecurities, he knew he had made the right choice - he loved every class, he lost track of time reading

law school texts and none of it ever seemed like work. And the friends he made in law school are among those he continues to count among his closest.

Out of law school he started working with Herb Lombard and stayed for the remainder of his years in private practice. It was a true general practice, taking anything that came in the door. Not surprisingly, he remains close friends with his partners from his civil practice.

He did not plan to become a judge; he loved his private practice. A group of lawyers from Eugene asked him to consider a vacancy on the Lane County Bench because of his business background. He agreed to "put in" but, out of concern for his clients, he resolved that if he was not appointed, he would not try again. He was appointed to the Lane County Circuit Court in 1993 by Barbara Roberts. When he got the call from then Governor Roberts, he thought it was a friend playing a joke until she reassured him that she was indeed the Governor.

When asked about memorable experiences in Lane County, he recalled his first criminal trial. A

teacher had been hit head-on by a meth dealer. After the trial, she was being threatened in the hall by the dealer's friends. Judge Brewer heard the commotion from his chambers and started to run out. His judicial assistant, Sharon, grabbed him by the collar and said, "Kid, you just got here, don't go home with blood on your dress." He got the message: the role of a judge is different.

His appointment to the Court of Appeals happened in much the same way as his Circuit Court appointment but to him, was an even greater surprise. Prodding from colleagues combined with his thirst for new experiences and knowledge prompted him to apply. He has been at the Court of Appeals since 1999 and now serves as its chief. As a judge, his work ethic is well known. As the chief, the judges describe him as one of the best "managers" they've worked with.

He is a man who allows his conduct to speak for itself. When asked to reflect on his career, Judge Brewer is not forthcoming about the "big" cases, he truly believes that every case is important and that every person deserves the chance at justice. To learn that he worked with both sides to reach a plea agreement in the Kip Kinkel shooting case, or that he facilitated a settlement in the litigation



Judge David V. Brewer

surrounding the new hospital in Springfield, or about his special appointment by the Supreme Court to conduct pre-hearing investigations in the PERS litigation (only a few of his high profile cases), you will have to do some outside research.

At this point in his career, when passion for the law and justice might be waning, Judge Brewer's is insatiable. He is distinctly aware of the challenges facing the preservation of an independent judiciary and is not daunted. He appreciates the role of a judge is an important and unique one in preserving and promoting democracy. He remains committed to and actively involved in ensuring that legal services are available to all. He is an inspiration, albeit a reluctant one.

Galerie d'Art Sylvie Platini Exhibits at MBA

Through the generosity of Jean-Luc Laminette, Director of Galerie d'Art Sylvie Platini on Broadway, the MBA board room walls have had a beautiful display of oil, water and pastel paintings as well as fiber art for over a year. Since there is no budget for MBA owned artwork, Jean-Luc was asked if he would consider exhibiting some of his fine art at the MBA and he accepted the invitation.

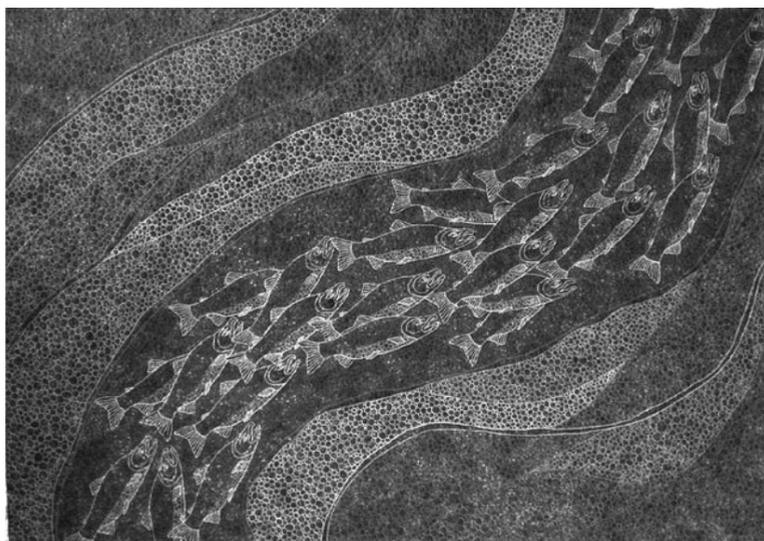
We thank the Galerie d'Art Sylvie Platini, which is a French gallery located on the Lake of Annecy near the Alps and the US branch at 507 SW Broadway, opposite the Marriott Hotel. All artists represented by the gallery

are internationally known and include European contemporary figurative painting and sculpture, with one exception, Barbara Shapel, who is a prominent Northwest fiber artist. Her work is currently on exhibit in the MBA board room.

Barbara Shapel focuses exclusively on fiber art. Her two-sided quilts, where the back is the reflection of the front, offers the viewer a different perspective of the same piece. She is an award winning quilter and her work is in many private collections and has appeared in a number of shows and locations. Besides the MBA Board room,

her quilts can be seen at the Galerie d'Art Sylvie Platini and Brown's Gallery in Boise, Idaho.

The artist's statement: "Light, line, color, texture and fabric fascinate me. I am particularly fascinated by the changes in the look of the quilt as varying amounts of light pass over the surface of the piece. The creation of surface texture is achieved through the use of a variety of threads and thread colors. Some of my work features densely quilted patterns which are achieved with little or no marking done on the surface of the quilt - it is like drawing with an electric needle instead of a pencil."



Quilt by Barbara Shapel, "Migration"

Multnomah Bar Foundation Formed

By Robert J. Neuberger, Attorney at Law, Multnomah Bar Foundation President and MBA Past President.

As part of the celebration of the 100th anniversary of the Multnomah Bar Association, the MBA Board has reestablished the Multnomah Bar Foundation in order to bestow a gift from the legal profession to the community. In keeping with the 100th anniversary's celebration of *A Century of Service*, the charge of the Multnomah Bar Foundation is to raise sufficient monies to fund programs befitting the centennial celebration. The mission of the foundation is to "promote community understanding and access to the justice system." A suggested motto for the foundation is "Because Justice is for Everyone."

Much thought and effort has been devoted by the MBA Board in determining whether to reestablish the foundation, and to then reconstitute it. **Penny Serrurier** of Stoel Rives has generously devoted many hours of time and effort, and provided counsel for the necessary paperwork such as the incorporation application, charter and obtaining appropriate governmental approvals - including necessary approval from the Internal Revenue Service so that contributions to the foundation are tax deductible.

The initial members of the Board are **Ruth Beyer, David Ernst, Michael Greene, Cathy Keenan, Jeff Matthews, Robert Neuberger, Robert Newell, Katherine O'Neil and Sylvia Stevens**. The MBA Board appoints members of the foundation board, who serve three-year terms.



Penny Serrurier

Cont. on p. 16

What Partners Want from Associates Don't let "business casual" be the work you produce

Seventh Part of a Series

By Gregory C. MacCrone, Attorney at Law.

"Time ripens all things; no man is born wise," said Miguel de Cervantes, author of the seminal *Don Quixote de la Mancha*.

Cervantes' protagonist had hands-on answers to the problems he saw troubling society. Unfortunately, for Señors Quixote and Panza, his solutions often went horribly wrong; hence, such expressions as "quixotic" came to describe one who was idealistic, but often impractical.

Learn From Your Mistakes

Associates need not suffer such trials of impracticality.

One "means to success is learning from your mistakes. Expect to make them, but recognize the circumstances around each mistake and anticipate similar situations in the future and learn from them," offers Reuel K. Fish of McMinnville's Cummins Goodman Fish Denley & Vickers.

It is important to consider the missteps and oversights we have made and to reflect on the things we could do to improve our performance.

By admitting you are unable to spend immediate research time on Partner A's CLE chapter because of Partner B's more pressing, deadline-intensive matters, you allow yourself the grace of less stress. Moreover, you establish the opportunity to succeed by actually exceeding an expectation and completing both projects.

Truth be told, most mistakes are of the non-lethal variety even in law practice. Not only are they not often fatal, they are often unavoidable. You are going to make them just as your supervising attorney did and continues to do.

While it is a nice thought, it is impossible to eliminate mistakes in all the things we do. The goal, then, should be to recognize that "mistakes happen" and will continue to occur with greater complexity and consequences even as we mature. Instead of seeking to lower our "mistake quota," far more is to be gained by learning more quickly from the mistakes we do make.

Jerome Lidz, the hiring partner at Harrang Long Gary Rudnick "expect[s] the associate to learn something from every project he or she works on."

This might happen by becoming more self-assured and more able to seek answers from others. Generally, it is not how many mistakes you have made, but how many of the same mistakes you have made. Make the decision to change habits that no longer (or never have) served your best professional and interpersonal

interests. Focus on strengthening your weak points.

As associates, the importance of recognizing and taking responsibility for your gaffes of time management, of trial strategy, or of client maintenance cannot be overstated. More than pop-psychology pabulum, taking ownership and control of your failures and successes implies true-life dominion over your happiness and sadness, over your personal and professional life.

Giving More than Lip Service to Details

While an attorney recruiter, probably 90% of the resumes I read or persons I interviewed mentioned their "attention to detail." It was particularly ironic when one could quickly spy numerous typographical or formatting errors in their written materials.

If the devil is in the details, then for attorneys - who are often said to have a certain kinship with the devil - in our detail-focused profession, the devil is in the details of the words we speak and write on a daily basis. Perhaps aside only from one's time slips, an oral or written presentation is the only proof of the effort and energy put into an assignment. Both written and oral work product need to be meticulous and precise.

Occasionally difficult to resist, at no time should any informality of atmosphere (i.e., the fact you are wearing khakis) engender informal work product. Walk away from your work, take extra (or different) time to complete it, or ask a friendly colleague to proofread your work. Read your work backwards, if necessary.

As Randal A. Johnson of Ater Wynne said, "commas matter." Mistakes matter, too, but it is how you deal with the mistakes that matters more. A careless typo may seem insignificant in light of the hours spent on a project, but that typo may detract more from your finished product than your thoughtful analysis, debates in the



shower, or sleepless nights will add.

Clients pay law firm (and particularly large law firm) rates in order to receive top-notch work product. This exacting standard demands that any presentation be as flawless as possible.

"Taking pride in your work product," is one way to hone this approach, says Ramon A. Klitzke of intellectual property firm Klarquist Sparkman. Ask yourself, "For what quality of work would I want to pay top dollar?" and then strive to deliver the goods.

Lewis Horowitz of Lane Powell offers that one of his firm's "biggest concerns is the 'candle power' the associate brings to the firm. We recognize, certainly, that different brains work in different ways, and we want our associates to bring it to the table."

Associates can "bring it to the table" by recognizing their mistakes, learning from them, decreasing their frequency, and taking affirmative steps toward alleviating them in the future by paying focused attention to their avoidance.

Something more than lip service is necessary, but associates who take the necessary steps will go far toward the goal of a successful and fulfilling law career without "tilting at windmills."

This is the final installment, but it is hardly the last word. Earlier on in this series, several readers suggested posing my thesis to associates themselves asking, "What do associates want from partners?" Or, "What does it take in a partner to help groom success in an associate?" I hope these articles have stirred some interest in this dynamic.



YLS Committee Year Begins

By Eric Waxler, Zipse Elkins & Mitchell and YLS President.

Welcome to what promises to be another productive year for the YLS. I am honored to serve as President of this truly impressive organization.

Last spring, the YLS Board solicited advice from a group of former YLS leaders, affectionately known at our "brain trust." We learned about the formation of the YLS in the early 1980s and how many of our programs were created. What it all has come down to is inspired young lawyers dedicated to improving their profession and advancing the cause of justice. Behind every committee, project and event, there is a small group of individuals getting things done.

This year will be no exception. Committee members will continue and attempt to improve established programs like Community Law Week and our drop-in socials. Others will build newer initiatives, including our Peer-to-Peer (P2P) Networking Groups and the annual Pro Bono Fair. The YLS Board views our most important job as supporting the inspiration and motivations of our committees and members. Our members should look to the YLS as a venture capitalist ready to invest in good ideas.

We are also prepared to invest in you as an attorney. Our Professional Development and Education Committee will offer CLE classes, aimed at addressing needs of young lawyers, along with professional development seminars,



which will provide training beyond the technical aspects of the law. The Membership Committee will organize events nearly every month to give you an opportunity to network (and commiserate) with your peers. If your desire is service, the Pro Bono and Public Service Committees stand ready to connect you with individuals and organizations in need of your skills. All of our committees provide leadership development opportunities. There will be no shortage of programs, projects and events to organize.

While the YLS Board has inherited a solid foundation, we will work to improve our organization. Because we believe that our leadership should reflect the diversity of our membership and larger community, outreach efforts are being made through OMLA to encourage their members to join our team. We will also seek to better recognize those who contribute their time to our projects by sending letters of appreciation to their bosses. Finally, we hope to increase the level of management support for pro bono, public and Bar service.

Whatever your interests or needs, the YLS is ready to help. Give me a call or shoot an email if you have input or questions. If not, please save me a seat at the next drop-in social.

Eric can be reached at 503.245.3211 or ewaxler@earthlink.net.

kick off fall with the YLS

The Multnomah Bar Association Young Lawyers Section is holding a Drop-in Social in the lounge at RiverPlace Hotel's Three Degrees Restaurant and Bar (1510 SW Harbor Way) from 5:30 to 7 p.m. on Thursday, September 22. This is a casual get-together and great opportunity to meet other young lawyers. Your boss will be happy you are networking and you get to leave work early. It's a win-win situation. Grab your friends and co-workers and head down to the river!

We'll see you there!

YLS Committee Descriptions



Aaron Denton

YLS Professional Development and Education Committee
Co-Chairs: **Aaron Denton**, Martin Bischoff et al, 503.224.3113 and **Raylyna Peterson**, Mitchell Lang & Smith, 503.221.1011

This new committee combines the efforts of the former CLE and Professional Development Committees by addressing the needs of attorneys in practice less than five years. The committee organizes all CLE seminars presented by the YLS and assists young lawyers in developing their careers. The CLE classes are structured into three series: the Family Law Series, the Young Litigators Forum and the Spring Series. Non-CLE topics include contract lawyering, client development, financial planning, and setting up a practice. The committee also facilitates the formation of peer-to-peer networking groups.



Andrew Schpak

YLS Membership Committee
Chair: **Andrew Schpak**, Barran Liebman, 503.276.2156
The Membership Committee assists in the recruitment and involvement of YLS members by coordinating a variety of activities designed to increase professional and personal interaction. The committee also publishes the *New Admittee Survival Guide*.



Kelly Struhs

YLS Pro Bono Committee
Chair: **Kelly Struhs**, Davis Wright Tremaine, 503.241.2300
The committee coordinates several pro bono projects, including the Nonprofit Project and Attorneys for Youth, and encourages involvement in pro bono service. The committee publishes and distributes the *Pro Bono Volunteer Opportunities* handbook, *Domestic Violence Handbook* and *Juvenile Rights* handbook. Members also work with other local pro bono



Raylyna Peterson



Katie Lane

committees to organize the annual Pro Bono Fair.

YLS Service to the Public Committee
Chair: **Katie Lane**, Multnomah County Attorneys Office, 503.988.3138
The committee's projects give lawyers opportunities to become involved in the community. Projects include Community Law Week, Dropout Prevention video presentations at local schools, Dress for Success, coordinating volunteer hearings officers for Multnomah County Animal Services, and the Imprint Program, which pairs attorneys with middle school students.

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 more about pro bono opportunities in Multnomah County, check out the *Pro Bono Opportunities Handbook* available at www.mbabar.org/docs/ProBonoGuide.pdf.

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25 Years Later, the Volunteer Lawyer's Project Still Needs Your Help

By Cathy Keenan, Legal Aid Services of Oregon.

While the Volunteer Lawyer's Project (VLP) has undergone many changes during its 25-year history, its mission has always remained the same - to provide low-income clients with access to the legal system through the assistance of pro bono attorneys. The VLP was started in 1981 by the then newly formed MBA Young Lawyer's Section. Mike Haglund was the first YLS president and he remembers the early days of the VLP, "We started the VLP after attending an ABA conference and observing how many other metropolitan areas had organized pro bono projects. YLS members were very interested in pro bono work and the VLP was a way to get more lawyers involved with helping clients in need." Mike is proud of the lasting impact of the projects, "I am pleased that the YLS commitment to pro bono

has become institutionalized and that the VLP is still strong today."

The VLP has grown from a program with one part-time staff person to an integral component of the Multnomah County Office of Legal Aid Services of Oregon (LASO), which now serves close to 2000 clients per year. While many LASO staff members contribute to VLP operations, the program is primarily staffed by attorneys, Cathy Keenan and Maya Crawford.

The VLP's projects have changed over the years in order to respond to the changing needs of the client base. Currently the VLP works with close to 400 volunteer attorneys and oversees six pro bono projects, including the OSB Debtor-Creditor Bankruptcy Clinic, the Domestic Violence Project, the Pro Se Assistance

Project, the Senior Law Project, the Social Security Panel and the Stoel Rives Night Clinic. The legal assistance provided by volunteer attorneys ranges from brief advice to contested litigation. Also, the VLP is many times the last stop for clients, as there are such scarce legal resources for low-income clients.

Maya Crawford speaks with people every day who are seeking VLP assistance. "Most of our clients are intimidated by the legal process - they just have no experience with the system and they are usually in crisis. The legal process continues whether or not a client has an attorney and the results of pro se representation can be disastrous." Clients are extremely grateful even when full representation is not available. Maya explains, "VLP



Cathy Keenan and Maya Crawford

attorneys calm the fears of their clients by explaining the complex legal terms that we all take for granted. Pro bono attorneys play a vital role in our legal system."

The VLP relies on the bar not only for your volunteer support, but also for your financial support. The annual MBA dues check-off campaign and funds raised during the MBA's Member Golf Championship are a vital portion

of the VLP budget. When you receive your dues statement this fall, please remember all of the important work that your contribution supports. The staff and clients of the VLP thank you for your generosity and we hope to report back to you about the success of the program at our 50th anniversary.

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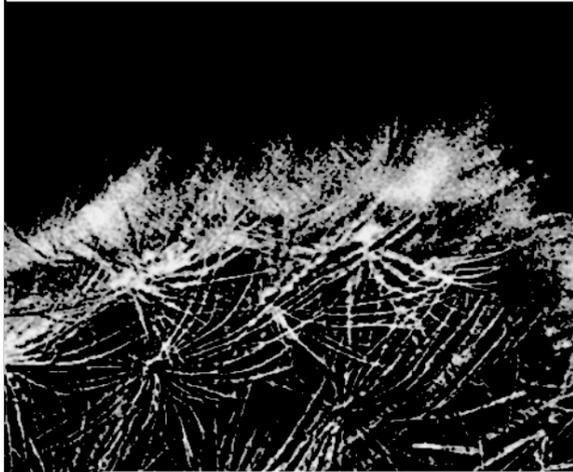
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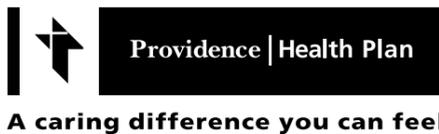
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The Corner Office (cont. from p. 6)

- “a. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

Each situation will require a consideration of these issues, and there is no hard and fast rule. With respect to the examples set out above, an argument can be made that it is not necessary for the lawyer to consult with the client in order to decide not to object to the Rule 21 Motion based upon the technicality and to decide not to take the default if it appears the default will not ultimately be sustained. However, if the lawyer decides to take the default and then the opposing or new counsel requests the lawyer voluntarily agree to set the default aside, that issue probably would call for a consultation with the client. It might be in the client's best interest to voluntarily agree to set aside the default, if there is a high likelihood the court would ultimately set it aside anyway. Otherwise, the client might incur additional expense, and it might take longer to conclude the case because of these additional steps added to the litigation. This will have to be evaluated on a case by case basis.

While professionalism in many ways connotes the concept of treating others the way we want to be treated, professionalism also requires that the lawyer perform his or her ethical and competence obligations to the client. It may be that the best decision is ultimately to not seek a disposition of the case on the technicality, but that decision should be based upon ethical considerations and whether the tactic is in the ultimate best interest of the client in the context of the whole case. In the adversarial context of litigation, professionalism means treating the opposing attorney and party honestly and with courtesy and respect, while not diminishing the quality of one's representation of the client.

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. 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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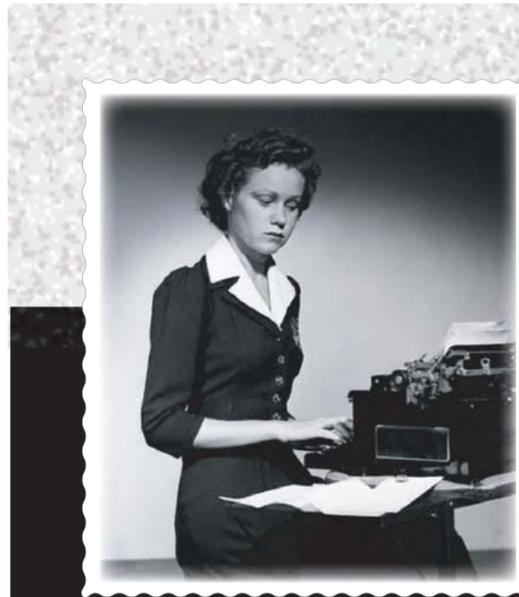
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Multnomah Bar Foundation Formed (cont. from p. 9)

The foundation board recently received notification from the Internal Revenue Service that the foundation has been approved as a 501(3)(c) charitable nonprofit. It is hoped that the board will be expanded to include members from outside of the legal profession such as educators, accountants, bankers and members of the business community.

While plans are not complete, the foundation board anticipates proposing fundraising for annual contributions and for the establishment of an endowment.

Left to right, back row: Ruth Beyer, Jeff Matthews, Dave Ernst, Cathy Keenan, Judy Edwards, Bob Newell
Left to right, front row: Michael Greene, Sylvia Stevens, Katherine O'Neil, Robert Neuberger



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