



Beyond Comfort

by Greg Moawad
MBA President

As my wife will undoubtedly tell you, I have a 12-year-old living in my psyche. Despite being a grown man with a good education and a perfectly logical mind, I can't help but sometimes do things in life that even my three-

year-old son recognizes as bad ideas. Like bungee jumping. Or riding a motorcycle. Or picking up a hobby - competitive shooting - that involves gunpowder, spark and high pressure (literally and figuratively) in a "controlled" environment.

I wasn't born with an interest in those things, or my mom would never have trusted me enough to let me move out. I developed a taste for them after considering them and developing a commitment to truly try them. I can't tell you why I initially tried any of the potentially self-destructive activities noted above - other than to say it was to explore the unknown. In other words, so I could get a taste of something to see if it's for me. Those activities that aren't a fit can be relegated to the experimental bin of life - ask my orthopedic surgeon how well picking up motorcycling at 42 worked out - while those that I truly end up enjoying can be pursued. Hopefully safely. Whether it's a 14th bungee jump (I never made my 13th, by the way - it would have been bad luck) or a Sunday morning a month spent shooting lead at steel targets from closer than I care to admit, I have spent a stunning amount of time doing things that are potentially hazardous to me.

In light of this year's political season, I got to wondering: If, at 43, I am willing to try things that might honestly kill me, why then am I so reluctant to sometimes try things that don't stand the slightest chance of doing me harm - such as truthfully and honestly considering an opposing political position or argument? Why is it that I go through life, like many of us do, with a firmly-held belief that my political positions and thoughts, most often forged at a time when I was still young and impressionable, are the only/best way to view the world? Why am I sometimes reluctant not just to listen to but to truly hear and "try on" another point of view, to test my own thoughts and theories on an issue?

The dichotomy of these approaches - trying out potentially dangerous physical activities while refusing to truly try out ideas - struck me during a recent conversation with my son. He, at three, noticed a photograph of me on my office wall which shows me leaping from a perfectly good bridge with a bungee cord tied to my legs. I had my arms straight out in front of me, which, to a three-year-old made it look as

"Why am I sometimes reluctant ... to truly hear and 'try on' another point of view, to test my own thoughts and theories on an issue?"

"I can't tell you why I initially tried any of the potentially self-destructive activities noted above - other than to say it was to explore the unknown."

if I was flying. He looked at the picture and then at me - and asked what I was doing. I said I was jumping off a bridge. Completely earnestly, likely with his favorite superhero in mind, he said, "To save somebody?"

While saying, "Yes," would have been a lie, I realized that in a very real sense jumping from a bridge was serving me in amazing ways. Bungee jumping was initially a concept that terrified the rational portion of my personality. Eventually, after learning everything I could about the activity, I mustered the internal fortitude to get out and try it. Standing over the precipice that first time was frightening as all get out - a battle of wills between my desire to overcome my own fears and my logical, thoughtful psyche that didn't see the need to take the risk, no matter how small.

But I jumped - that first time and 12 more. And each time taught me something about my character, my personality and my ability to overcome. Truly trying on other people's ideas can do the same.

None of us will save anyone by constantly considering new political ideas or assessing differing points of view that are traditionally beyond our comfort level. But I would encourage you to try it. It's a whole lot safer than a lot of things you could be doing.

Another Successful Absolutely Social

Over 250 lawyers, judges, sponsors and law school students gathered at the University Club on October 23 for the fall Absolutely Social - The Grape Escape. The event featured wine tastings selected by Matt Levin and Albert Menashe. Cash and canned food were collected for the Oregon Food Bank - thanks to all those who contributed!

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To register for a CLE, please see pages 3 and 4 or go to www.mbabar.org.

DECEMBER

12.11 Tuesday
Insurance Coverage: Fundamentals and Hot Topics
Mickey Knapp
Megge Van Valkenburg

12.12. Wednesday
Representing Non-English Speaking Clients: Issues in the Law
Jessica Boell
Kevin Díaz
Peter Willcox-Jones

12.18 Tuesday
iPad Apps and Tips for the Courtroom
Kelly Andersen

12.19 Wednesday
Claim Prevention and Professional Responsibility
Steve Carpenter
Mark Fucile

JANUARY

1.24 Thursday
An Anatomical Look at Custody Evaluations
David Hobson
Robert Loveland, Ph.D

1.29 Tuesday
Multnomah County Presiding Court Update
Hon. Nan Waller

1.30 Wednesday
Controlling the Cost of Litigation
Bill Barton
John Hart
David Markowitz

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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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Calendar

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

DECEMBER

12.6 Thursday
YLS Drop-in Social & Toy Drive
Visit www.mbabar.org for details

OMLA Annual Meeting
Visit www.oregonminoritylawyer.org for details

12.11 Tuesday
Queen's Bench Holiday Luncheon
Visit www.owlsqueensbench.org for details

12.19 Wednesday
ZooLights
See p. 8 for details

12.24 & 25 Monday & Tuesday
Christmas Holiday

JANUARY

1.1 Tuesday
New Year Holiday

1.18 Friday
Oregon State Courts are closed

1.21 Monday
Martin Luther King Holiday

1.24 Thursday
OMLA Member Recognition Reception
Visit www.oregonminoritylawyer.org for details

FEBRUARY

2.8 Friday
PILP Auction
Visit http://law.lclark.edu/student_groups/public_interest_law_project for details

2.18 Monday
Presidents' Day Holiday

2.20 Wednesday
CEJ Awards Luncheon
Visit www.cej-oregon.org/events.php for details

2.23 Saturday
MBA 11th Annual WinterSmash
Visit www.mbabar.org for details

STOLL BERNE

is pleased to announce the following attorney has joined the firm



BEN LEEDY

Associate

With seven years experience in commercial real estate transactions, Ben adds depth to the firm's growing real estate and business law group. Ben frequently advises clients in connection with real property purchase and sale transactions, office, retail and industrial leases, and secured lending transactions, including loan originations, loan modifications, workouts and deeds in lieu of foreclosure.

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Insurance Coverage: Fundamentals and Hot Topics

Tuesday, December 11, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

The MBA presents a two-hour program on insurance coverage. Panelists representing both insurer and policyholder perspectives will discuss basic insurance coverage principles as well as recent developments and current trends. First party property coverage and third party liability coverage issues will be addressed. Any attorney encountering insurance coverage issues - whether frequently or only occasionally - should attend this program.

Our speakers are **Megge Van Valkenburg** and **Mickey Knapp**. Megge chairs Bullivant Houser Bailey's insurance coverage group and has represented insurers in coverage disputes for over 20 years. Mickey's practice focuses on representing individuals and businesses who have coverage disputes with their insurers. He has practiced law in Oregon for almost 30 years.

For more information:

Call Sim Rapoport of iBridge at 503.906.3933. For registration inquiries, call the MBA at 503.222.3275.

Representing Non-English Speaking Clients: Issues in the Law

Wednesday, December 12, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

NOTE: This class will be worth two Access to Justice credits.

Navigating the U.S. legal system is complex for anyone, and even more so for non-English speaking clients. Our speakers will address common problems in representing non-English speaking clients, and resources and tips to address those problems. Topics to be addressed include racial profiling, representing non-English speakers in depositions and at trial, choosing an effective interpreter and immigration issues to keep in mind during representation. Our speakers are **Kevin Díaz**, Legal Director, ACLU of Oregon, **Jessica Boell**, Immigrant Law Group and **Peter Willcox-Jones**, Cosgrave Vergeer Kester.

For more information:

Call Aukjen Ingraham, Cosgrave Vergeer Kester at 503.323.9000. For registration questions, call the MBA at 503.222.3275.

iPad Apps and Tips for the Courtroom, the Office, and on the Road

Tuesday, December 18, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

The iPad has revolutionized the practice of law for those attorneys willing to discover its vast potential, not only for use in trial but also for improving productivity in the office, at home, and on the road. This two hour presentation will explore numerous helpful apps and provide tips on how to use them most effectively, including how to use the Keynote app for opening statements and final arguments, the iAnnotate app for studying documents, the TrialPad app for presenting evidence in the courtroom, as well as how to use such apps as Errands, Dropbox, PDF Expert, Evernote, Pages, Notability, Penultimate, UPad, Adobe Ideas, Maps, Google Earth, OmniGraffle, Teleprompt+, Air Sketch, Jot! Whiteboard, and more.

The simplicity of the iPad and of these apps now make it possible for any attorney to organize and present information in an electronic format with no additional costs. In addition, this presentation will explore the emerging science of teaching (and learning) by harnessing the power of digital images.

This two-hour presentation will be led by attorney **Kelly Andersen**, who speaks on this topic regularly. Mr. Andersen has been practicing law in Oregon since 1979, and was named as an Oregon Super Lawyer in 2007, 2009 and 2010. He practices in Medford.

For more information:

Call Don Jacobs, Attorney at Law at 360.695.1624. For registration inquiries, call the MBA at 503.222.3275.

Managing Your Risk: The Intersection of Claim Prevention and Professional Responsibility

Wednesday, December 19, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

NOTE: This class will be worth two ethics credits.

This two-hour program will examine the intersection of law firm ethics and claims management. Attendees will learn practical ways to lessen the risk of both regulatory discipline and civil claims.

Our speakers are **Steve Carpenter** of the Professional Liability Fund and **Mark Fucile**, Fucile & Reising. A former civil litigator, Steve provides confidential assistance to Oregon attorneys who have a malpractice claim or who are concerned that they may have made

a mistake that will lead to a claim. Mark counsels and trains lawyers, law firms and corporate and governmental legal departments on professional ethics and attorney-client privilege issues, is retained as an expert witness in these areas, handles law firm-related litigation and defends lawyers before courts and regulatory agencies throughout the Northwest.

For more information:

Call the MBA at 503.222.3275.

An Anatomical Look at Custody Evaluations

Thursday, January 24, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This two hour class will examine what evaluators want to see from lawyers and what lawyers need to know from evaluators. The presentation will include an examination of how to prepare your client for an evaluation and how to prepare the evaluator for your case. In addition, there will be a discussion of how to prepare an evaluator for trial and how to present an evaluation to the court.

Our speakers are **David Hobson** and **Dr. Robert Loveland**. David has been practicing since 1985 and practices exclusively in the area of Family Law. Dr. Loveland is a licensed psychologist who has been conducting custody, parenting plan, and forensic evaluations for child protection or adoption issues since 1978. He has been recognized as an expert witness in these matters in jurisdictions across Oregon and Washington.

For more information:

Call Dan Margolin, Stephens Margolin at 503.546.6374. For registration questions, call the MBA at 503.222.3275.

Multnomah County Presiding Court Update 2013

Tuesday, January 29, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

In this two-hour update session the Multnomah County Presiding **Judge Nan Waller** and court staff will discuss the 2012 Supplemental Local Rules for Multnomah County Circuit Court and other issues unique to practicing in Multnomah County. This seminar is designed for attorneys at all levels of experience and questions are strongly encouraged.

For more information:

Call the MBA at 503.222.3275.

CLE Class Registration on next page

Nickel & Dimed: Controlling the Cost of Litigation

Wednesday, January 30, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

Both inside and outside counsel are facing growing pressure to lower the costs associated with litigation. Court rulings, opposing parties and other unforeseen actions make predicting the cost of litigation nearly impossible. However there are steps you can take, and tools you can employ, to control expenses. Three seasoned litigators, **Bill Barton**, Attorney at Law, **John Hart** of Hart Wagner and **David Markowitz**, Markowitz, Herbold, Glade & Mehlhaf PC, will discuss ways to contain costs including:

- Preparing staff for litigation
- Efficiently using experts
- Cost consideration of venue
- Using consultants efficiently
- Using motion practice cost effectively
- Using case assessments and budgeting to control costs
- Minimizing document management and discovery costs

For more information:

Call Shannon Armstrong, Markowitz, Herbold, Glade & Mehlhaf at 503.295.3085. For registration questions, call the MBA at 503.222.3275.

From Cuff Links to Handcuffs: What Business Lawyers Need to Know When the Feds Come Knocking on Their Clients' Door

Thursday, January 31, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

Federal prosecution of white collar crimes has increased dramatically over the last decade. A client's first instinct is to call a trusted business adviser when contacted by criminal investigators and prosecutors. Unfortunately, even seasoned civil practitioners may not know the intricacies of federal criminal practice. In this case, what you don't know may hurt you and your client.

Criminal defense lawyer **Samuel Kauffman**, a partner and Chair of the White Collar Defense and Investigation Group at Garvey Schubert Barer and Assistant United States Attorney **Michelle Holman Kerin**, from the Fraud Unit at the District of Oregon's United States Attorney's Office, will provide insight into the federal criminal process and offer advice about what to do when law enforcement contacts your client for information, help identify pitfalls that can ensnare clients and civil lawyers during a criminal investigation, and what you can do to avoid them.

For more information:

Call Bear Wilner-Nugent, Attorney at Law at 503.351.2327. For registration questions, call the MBA at 503.222.3275.

In Your Facebook: Cutting-Edge Subpoena Issues for a New Technological Age

Tuesday, February 26, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

Interested in obtaining records from Facebook or other social media sites? Does your client have Google search histories or bank records you would like to protect? Learn the ins and outs of subpoenaing these types of records from the legal experts: **Judge Judy Matarazzo**, Multnomah County Circuit Court, **Erin Olson**, Attorney at Law, **Kendra Matthews**, Ransom Blackman LLP and **J.R. Ujifusa**, Multnomah County District Attorney's Office.

For more information:

Call the MBA at 503.222.3275.

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

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

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available; an additional \$5 charge will apply.

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12/19 Managing Your Risk

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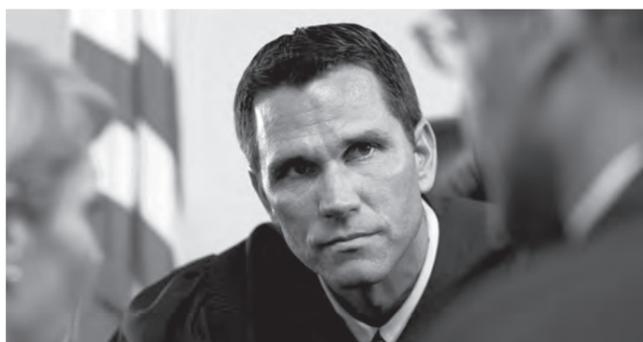
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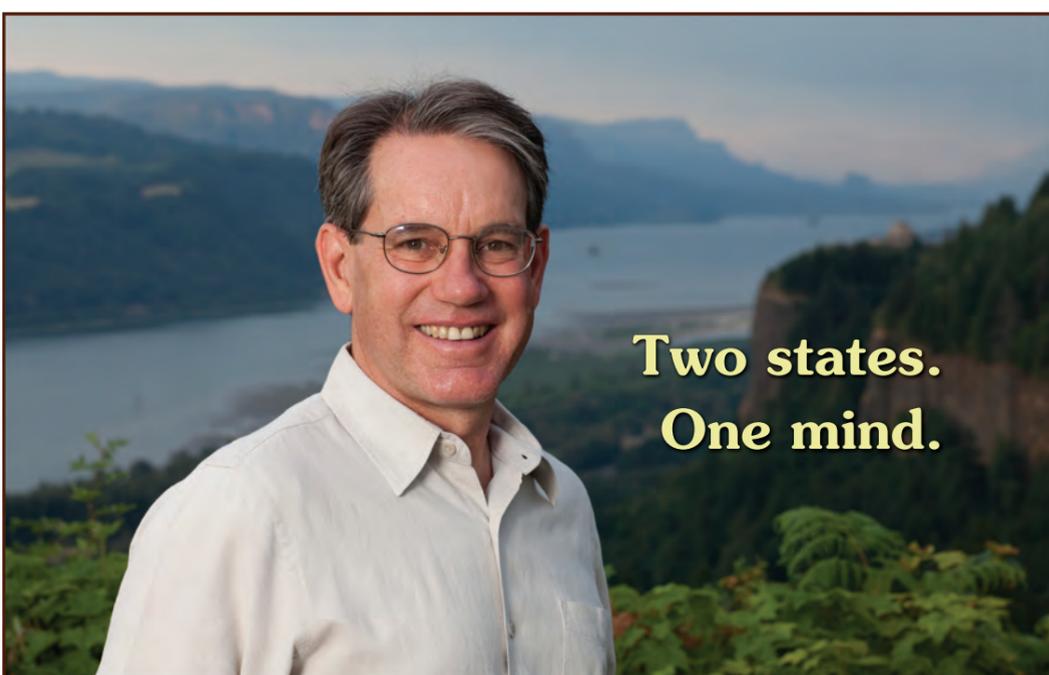
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Ethics Focus

Smoking Gun Receiving Property Stolen by a Client

by Mark J. Fucile
Fucile & Reising



Oregon has long had very specific guidance for lawyers confronted with clients who ask them to take possession of stolen property or other evidence of a crime: “Just say ‘no.’” When the Oregon State Bar comprehensively revised its ethics opinions in 1991, Opinion 1991-105 provided that succinct answer under the then-applicable Disciplinary Rules. When the OSB then undertook an equally

“...today’s ‘smoking gun’ might just as easily be a stolen email....”

comprehensive update of its ethics opinions in 2005 following the adoption of the Rules of Professional Conduct, Opinion 2005-105 retained this same simple answer. What has changed over the years, however, is that this topic is no longer the sole province of criminal defense lawyers. Although both the 1991 and the 2005 opinions use the example of a murder weapon, today’s “smoking gun” might just as easily be a stolen email that is playing out in the context of civil

litigation. In this column, we’ll look at Oregon’s approach to this issue and the changing context in which it may arise.

Just Say “No”

“...a lawyer ordinarily cannot accept evidence of a crime from a client....”

Both the 1991 and the 2005 opinions draw a distinction between information and evidence. They both counsel that *information* linking a client to a crime normally falls within the confidentiality rule - now RPC 1.6 - and generally cannot be disclosed. At the same time, they both conclude that a lawyer ordinarily cannot accept *evidence* of a crime from a client in light of Oregon’s broad prohibition on concealing evidence under ORS 162.295(1)(a). That statute, which has existed in its present form since 1971, includes concealing evidence within the crime of evidence tampering if an “official proceeding” is either “pending or to the knowledge of such person is about to be instituted[.]” The opinions reason that to do so would constitute conduct prejudicial to the administration of justice, which was prohibited under former DR 1-102(A)(4) and is now proscribed by RPC 8.4(a)(4). The two exceptions the opinions note are situations in which the lawyer either accepts stolen property to return it to the owner or accepts evidence to turn it over to the authorities. The 2005 opinion adds (at 258-59) that under this latter exception “[a] lawyer may ... deliver the weapon to the prosecutor anonymously or through an intermediary to avoid implicating the lawyer’s client.” The 2005 opinion is available at www.osbar.org.

Changing Contexts

As noted, both the 1991 and the 2005 opinions are framed against the backdrop of a murder weapon - literally and figuratively the proverbial “smoking gun.” In today’s “electronic” environment, however, the “smoking gun” might also be a stolen hard drive or illegally intercepted electronic data. Moreover, rather than arising in the classic setting of criminal defense, today’s backdrops may more likely be family, employment or commercial litigation. *Pittman v. Travelers Indemn. Co.*, No. CV-06-147-ST, 2006 WL 1643655 (D Or June 7, 2006) (unpublished), for example, examined (at *7) ORS 162.295 in the context of a personal injury case that included workers compensation and insurance coverage components as well.

For lawyers who do not practice criminal law, the key to handling this situation effectively is often recognizing the issue in the first place. For example, a

“...today’s backdrops may more likely be family, employment or commercial litigation....”

family lawyer may find him or herself grappling with this issue if a client has stolen a computer from a soon to be ex-spouse and the ex-spouse has both raised the asserted theft in the family law proceeding and reported it to the local police. Similarly, an employment lawyer may be dealing with a situation where the lawyer’s client is both accused of stealing company property in the form of electronically stored information and violating a non-compete in setting up a new business using that information. The family and employment lawyers in these examples need to be just as attuned to the legal and ethical import of electronic “smoking guns” as their criminal defense colleagues are to their more literal counterparts.

mba | ANNOUNCEMENTS

Sign the MBA Statement of Diversity Principles

The MBA Equality & Diversity Committee invites you to sign the Statement of Diversity Principles. Read the statement at www.mbabar.org/assets/diversitystatement.pdf, and demonstrate your commitment to diversity by signing the statement online at www.mbabar.org/AboutUs/DiversityPledge.html.

Noon Bicycle Rides

Take a noon break for a short, fast ride with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or just meet at the start.

Panel Discussion Educates Community about Minority Bar Associations

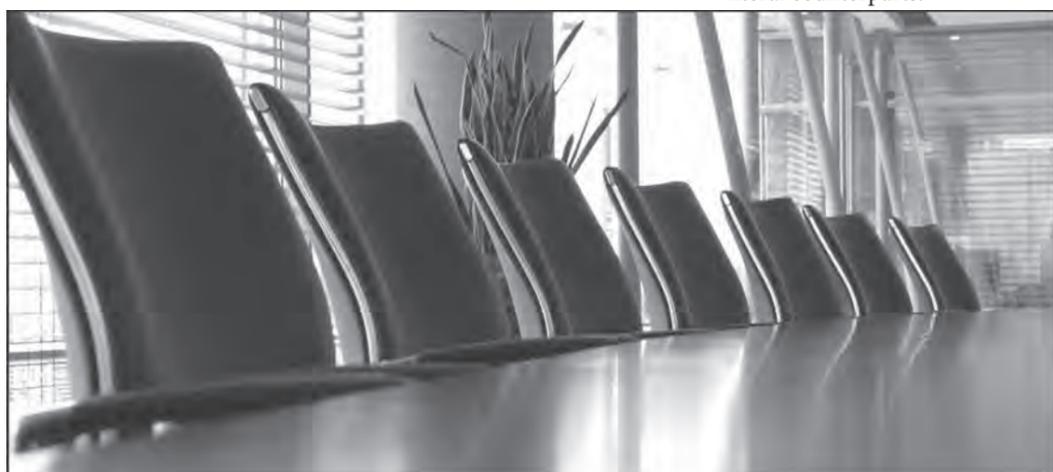
On October 17, Schwabe Williamson & Wyatt hosted a diversity panel discussion featuring the presidents of three distinguished ethnic minority bar associations. The panel participants included Román Hernández, a shareholder at the host firm and past national president of the Hispanic National Bar Association; Simon Whang, Assistant Attorney General, Oregon Department of Justice and Oregon Asian Pacific American Bar Association President; Ali Seals, associate at the host firm and Oregon Chapter of the National Bar Association President; and Peter Ricoy, a senior counsel at the firm and Oregon Hispanic Bar Association President.

Over 50 individual attorneys, members of the judiciary, law students, and other community leaders attended the event and learned more about these three ethnic minority bar associations. Panelists described their respective bar association’s different programs, how they collaborate with the other bar associations on items of mutual interests, how they interact and collaborate with their respective national bar associations, and other areas of discussion related to diversity in the legal profession.

9th Circuit ADR Committee Presents Awards

The Hon. Susan Leeson, a retired Oregon Supreme Court justice now working as a federal court mediator, and the Willamette University College of Law were honored recently for individual and institutional achievements in the field of alternative dispute resolution. Justice Leeson received the 2012 Robert F. Peckham for Excellence in ADR Award, while the law school received the 2012 Ninth Circuit ADR Education Award. The awards were presented during an October meeting of the Ninth Circuit ADR Committee.

Justice Leeson is credited with rejuvenating the Oregon federal court’s mediation program. The ADR Education Award was accepted by Richard Birke and Sukhsimranjit Singh, the director and associate director, respectively, of the Willamette University College of Law’s Center for Dispute Resolution.



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Tips From the Bench

Interactive Family Law Forms

One Step Closer to eCourt

by Judge Maureen McKnight
Multnomah County Circuit Court

The Family Law Department took a step on the road to eCourt in September with initiation of web-based interactive forms for restraining orders. Individuals seeking orders under the Family Abuse Prevention Act (FAPA) now have a choice. They can continue the existing practice of filling out a 17-page packet of forms by hand - or use an interactive web program on the TurboCourt website. The TurboCourt program guides individuals through a series of questions with drop-down menu choices and radio-button options to click, plus text fields into which they can type text. These answers then populate the forms that the litigant prints out and files after signing the petition.

“...the litigant sees only questions ... and options for answers, and the particular answers given determine which branch of the logic tree will be followed....”

Unlike fillable forms, the TurboCourt product does not present the forms on screen and have the user tab between fields to type in answers. Instead, the litigant sees only questions - a few per screen - and options for answers, and the particular answers given determine which branch of the logic tree will be followed in a specific case. For example, if the filing party answers “no” to the question of whether the parties have joint children, the program asks no questions about children and skips over entire areas of inquiry.

The advantages of the interactive forms process to the litigant are several. First, individuals can access the web program at any time, from any location with an internet connection. Whether a person is just considering applying for a restraining order or already convinced this step is the right one, the interactive forms process avoids the time crunch of obtaining the forms in room 211 and scrambling to get them filled out before the noon deadline, sometimes with restless children in tow. Content can be saved on the TurboCourt site, protected through user name and password, and the forms accessed again (and again) when time allows. A progress bar (with grayed-out sections made inapplicable by the answers



“Another major benefit is the presence of dozens of FAQs and links that provide explanations to terms and processes relevant to the specific page.”

given) shows the individual where she is in the process. For individuals without children, for example, this means skipping over entire “branches” in the logic tree, a result not possible on the paper forms, where litigants must read every section to know whether it applies.

Another major benefit is the presence of dozens of FAQs and links that provide explanations to terms and processes relevant to the specific page. Advocates at the Gateway Domestic Violence Services Center have reported that these FAQs have made it possible to stretch an advocate’s services out over several petitioners simultaneously. This is a reduction in staff time the court hopes to replicate when interactive forms are developed outside the FAPA arena, in common family law matters such as marital dissolution, custody, and modifications, areas where court staff is repeatedly asked for procedural information. Finally, litigants who have already completed a filing using the TurboCourt program can use those pre-existing answers for later filings in the same case. The FAPA TurboCourt program has paths for obtaining, challenging, modifying, and dismissing restraining orders.

“Benefits to the court include the reduced staff time providing assistance, plus the basic legibility of the text.”

A litigant who has already filed on one of those paths through TurboCourt (for example, in obtaining a restraining order) can access the program again on a different path (for example, in modifying the order) and the caption, address, and other information previously given will automatically populate the modification forms. The captions will be correctly filled out and only updated and additional information need be provided.

Benefits to the court include the reduced staff time providing assistance, plus the basic legibility of the text. Judges handling the busy FAPA docket

News from the Courthouse

by Dan Duyck
Court Liaison Committee member

Presiding Judge’s Report

Doug Bray reported. He said that the second public meeting sponsored by Commissioners Shiprack and Kafoury on the need for a solution to the “courthouse problem” was held on October 24. The meeting was well attended and included representatives of the trial bar, MBA, and the architectural and contractor community as well as members of the public. There seems to be a consensus that an upgrade of the courthouse is needed. Generally, there are three recognized options: 1) remodel the existing courthouse while the court continues to function within the building; 2) remodel the existing courthouse with court functions temporarily relocated during construction; and 3) design/build a new courthouse. A December decision is anticipated from the Board of County Commissioners on whether to take action and, if so, which option to follow.

Doug Bray reported that roughly 100 civil foreclosures have been filed each month in 2012, a 430% increase over 2011. It could be that the rate

will increase further after the appellate courts publish guiding opinions in pending appeals and federal questions.

Court funding was discussed with grave concern. Doug Bray emphasized that the 16% loss of funding this biennium has reduced staff in the courts but not the volume of work to be processed. This imbalance seriously impacts the ability of the court to perform its functions. For example, it takes much longer to get documents, including judgments, through all the steps and into the paper file. Staffing courtroom proceedings is also a daily challenge which leaves judges with no staff at times and hinders judicial productivity. The 2013-15 biennium does not look any better. To the extent that there are increases in state revenues, the increase in funds is being outpaced by inflation to even maintain the current service level. Additional loss of staff resources is a real probability.

There was a discussion about the East County Courthouse. Currently the courthouse is staffed by 1.5 judges with a focus on Gresham municipal court functions. It serves as a filing point for civil and domestic cases. An additional judge is slated to come on board next year. Also, a truancy court similar to that found

in Clackamas County will open in January. Additional expansion of functions, including hearings, FEDs, and probate, are slated but are currently on hold due to budgetary concerns. On a positive note, Doug Bray reported that the Rockwood Business Coalition has enthusiastically embraced the courthouse. The courthouse is seen as a positive addition to the community and will be helpful to business development.

The new civil case management system has reached the point where judges are now conducting the Trial Readiness Conferences as well as the Initial Case Management Conferences. The presiding judge and the Civil Case Management Committee continue to monitor the effectiveness and the efficiency of the changes for the trial bar and the court.

News from Other Areas

Keil Mueller reported that the Washington County Bar Association is contemplating reestablishing its own court liaison committee.

The MBA continues to seek liaisons from other local bar associations who are willing to occasionally attend the MBA Court Liaison Committee meetings to report on what is happening in their communities.

can read typed text more easily than the handwriting and creative spelling in the average 13-16 requests daily. While the 10-point font is smaller than the handwriting of most, the limited amount of space in text fields has shortened the answers of many applicants. TurboCourt is strictly a “print service only” at this point since we have not yet transitioned to e-filing, but having the FAPA forms available in an electronic format has allowed us to begin piloting with the Gateway Center the electronic delivery of filings and discussion of electronic transmission of orders to the sheriff for service.

Interactive forms are a significant component in the Oregon Judicial Department’s envisioned approach to address the needs of self-represented litigants while improving judicial efficiency. This direction was set in OJD’s procurement of a single service provider for eCourt, and the FAPA project - funded by a federal grant to the City of Portland - was developed by the Gateway Center in partnership with the Multnomah Circuit Court with that vision in mind. Representatives from Volunteers of America and the Oregon Law Center have also been instrumental in this initiative.

ZooLights and MBA and MBA YLS Social Wednesday, December 19 5:30-7:30 p.m.

The Multnomah Bar Association and the MBA Young Lawyers Section proudly present:
The 2nd Annual Night with a Million Lights!

Come join the MBA and MBA YLS at the Portland Children’s Museum and the Oregon Zoo for ZooLights on Wednesday, December 19, from 5:30-7:30 p.m. This event is open to all ages.

Questions? Contact Kathy at the MBA at 503.222.3275 or kathy@mbabar.org.

We look forward to seeing you on the 19th!

The MBA and MBA YLS will be set up in the Children’s Museum across the parking lot from the Zoo entrance. Come join us for refreshments and fun before heading over to the Zoo to enjoy the lights. Please watch for further emails regarding this event.

The MBA and the MBA YLS would like to thank our generous sponsors for making this event possible.

A big holiday thanks to Barran Liebman, Davis Wright Tremaine, Miller Nash and Harris & Bowker LLP.



Proposed Amendments to the Federal Court's Local Rules

by Susan Marmaduke
LRAC - USDC Oregon Chair



The **Local Rules Advisory Committee for the US District Court for the District of Oregon** has proposed various changes to the local rules, including the following:

1. New LR 6 would apply the three-day extension to the response deadline for any item served under FRCP 5, regardless of the method by which it is served. It is intended to remove the incentive to serve papers, including discovery requests, by hand in order to deprive the receiving party the benefit of the three-day period provided by FRCP 6(d) for other methods of service.
2. New LR 26-6 would adopt a model order regarding e-discovery in patent

cases. Authored by the Federal Circuit's Chief Judge Randall Rader, the model order requires the parties to exchange basic documentation concerning the patent, the product or process accused of infringement, prior art, and the relevant financial information. It sets presumptive limits on the number of custodians and search terms for email production requests unless the parties agree otherwise or the court modifies the limits for good cause. The cost of any email discovery beyond those limits is borne by the requesting party.

Recognizing that a major cause of high costs is the pre-production review of documents that lawyers undertake to avoid disclosure of privileged documents, the model order states that, pursuant to Federal Rule of Evidence 502(d), the inadvertent production of work product or other privileged electronically stored information does not waive the privilege.

3. New LR 26-7 would adopt, with minor modifications, the Initial Discovery Protocols for Employment Cases Alleging Adverse Action prescribed by the Federal Judicial Center's pilot project providing a new pretrial procedure for certain types of employment cases. The protocols require the automatic exchange of certain information specific to employment cases alleging adverse action within 30 days of the defendant's responsive pleading or motion.

A nationwide committee of plaintiff and defense employment lawyers developed the Federal Judicial Center's pilot project. In evaluating whether to recommend adoption of the protocols by local rule in the District of Oregon, the Local Rules Advisory Committee consulted with experienced employment lawyers Chris Kitchel (former OADC president and chair of the nationwide committee's defense subcommittee) and Dana Sullivan (former OTLA president). Chris and Dana both expressed the view that the protocols would improve the discovery process and recommended their adoption.

These and other proposed amendments have been posted for review and comment at www.ord.uscourts.gov. Send your comments by December 7 to info@ord.uscourts.gov (subject: Comments to Proposed Local Rule Changes).

In Memoriam Merritt S. Yoelin

Merritt S. Yoelin, senior partner at Samuels Yoelin Kantor, died on October 15. His legal career spanned more than 45 years, and he was well known throughout the Pacific Northwest for his legal skills and tireless commitment to his clients, a deep understanding of the complexities around taxation and his commitment to community service.

Yoelin started his career as a certified public accountant, eventually working for the Chief Counsel's Office for the IRS. He was admitted to the OSB in 1966 and was a partner of the firm for more than 40 years.

Yoelin was committed to serving his local community, volunteering in a variety of leadership roles to support and advance professional and nonprofit organizations. He was a past president of the Estate Planning Council of Portland, and helped it to become the leading estate planning organization in the Pacific Northwest. He was a past treasurer for the Jewish Federation of Portland, past president of Congregation Neveh Shalom, and past president of the Kiwanis Club of Portland. He was also an active member with the American Jewish Committee, and had served on



the Contemporary Art Council for the Portland Art Museum. He was proud to serve with the Royal Rosarians, the official greeters and ambassadors of goodwill for the City of Portland and the Portland Rose Festival.

Yoelin received numerous awards and recognition throughout his law career, including the Maurice D. Sussman Memorial Award from the American Jewish Committee, and the Young Leadership Award from the Jewish Federation of Portland. He earned both a B.S. and a B.A. from the University of Denver, and an L.L.B. at the University of California at Berkeley. He was a member of both the Oregon and California State Bars.

A Fruitful Year for the MBF

by Edwin A. Harnden
MBF President

With the writing of this article, my service as MBF president is drawing to a close. As I look back on the good work the foundation has done this year, I am particularly proud of our award-winning video project, the advances we saw in civic education and engagement in the community, the dedication and commitment of the MBF Board and always, the generous support of the legal community.

Our civic education video series was created for a wide, general audience and is innovative, informative and interesting. The goals of the six-part video series are to help educate voters and future voters about democracy issues such as voting, the court system and civic engagement, to establish the MBF in the nonprofit community and to share the function and value of the foundation with the MBA membership. Our court system and courthouse videos won top honors at the national government programming awards and are reaching audiences beyond



Oregon. If you have not yet seen the videos, I encourage you to visit mbabar.org/Foundation/FoundationNews.html.

The MBF continued to promote civic education through \$31,000 in grants to local nonprofits whose missions are in alignment with our own. This year we made an impact on new Americans through a voter education program, on educators and students from kindergarten through high school via a law-themed filmmaking contest, a voter engagement competition and a program designed to foster understanding of the institutions of American democracy. The

insert in this issue provides more information about these grants.

I am grateful to the dedicated members of our MBF Board who have contributed countless hours of volunteer effort to advance the MBF mission: Thom Brown, Peter Glade, Judge Julie Frantz, Tina Hein, Leslie Nori Kay, Allyson Krueger, Sarah Ryan, Chuck Tauman, Judge Kathryn Villa-Smith, Tim Volpert and Jim Westwood. The commitment and good work of our board members was extraordinary, and I am very appreciative of their time and energy in reaching our MBF goals this year.

In the end, it is MBA members' generous support that makes it all possible. The MBF was born out of your passion for the rule of law and dedication to an independent judiciary. Your generous support of the Civic

Education Fund (originally the 100th Anniversary Community Gift Fund) has allowed us to give over \$250,000 in grants since 2006. The close of this year also marks the end of a successful three-year capital campaign and gives us an opportunity to thank our generous supporters on page 16.

Year end is a great time for giving and I encourage you to consider a year-end gift to the MBF. With your support, we can continue our good work into the new year and beyond. When you invest in the foundation, you are furthering the MBF's ability to advance civic education and engagement. Supporting the MBF is one of the best investments MBA members can make in the future of our profession and our community.

Thank you, and Happy Holidays.

VLP Donors Help Provide Access to Justice

The MBA thanks the following individuals, who donated more than the \$25 check-off amount when paying their 2013 MBA membership dues.

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To make a year-end donation to the MBF,
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in this issue or donate online at
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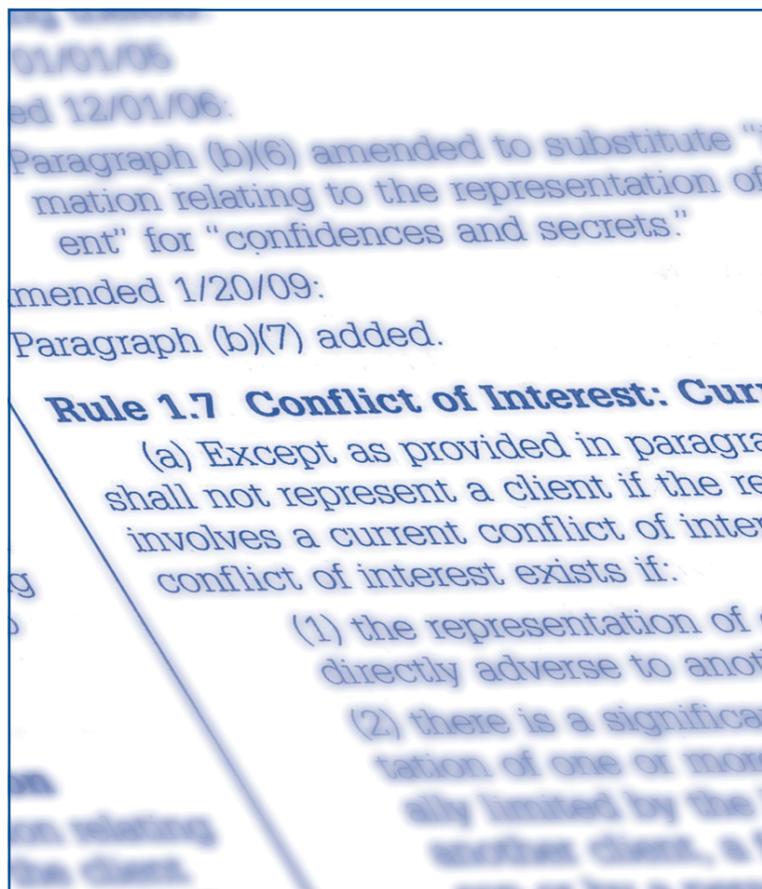
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Lauren Johnson



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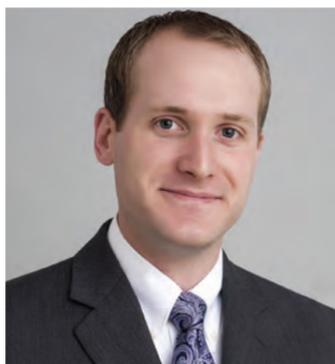
Miller Nash

For the third consecutive year, the firm has been named one of Oregon's Healthiest Employers by the *Portland Business Journal*. The award recognizes innovation and leadership in corporate wellness programs.

Lauren Johnson joined the firm's employee benefits team and **Maya Waldron** joined the litigation practice.



Peenesh Shah



Jordan Silk

Schwabe Williamson & Wyatt

Peenesh Shah and **Jordan Silk** have joined the firm as associates. Shah focuses his practice in the area of commercial litigation. Silk focuses his practice on complex civil litigation matters in the firm's product litigation group.

Markowitz Herbold Glade & Mehlhaf

Adam Starr has joined the firm as an associate. Starr is a commercial litigator specializing in real estate and business disputes.



Samuel Hernandez



Laura Salerno Owens

Metropolitan Chamber of Commerce, the Latino Network, and the Beaverton Education Foundation. He has been a member of the Oregon Army National Guard since 1999, and, with the rank of Captain, continues to serve as an Operations Officer and Plans Officer while practicing law full-time.

Laura Salerno Owens has been awarded the Oregon New Lawyers Division's Volunteer of the Year Award for 2012. The award was presented in November. Laura is a Ninth Circuit Lawyer Representative for the District of Oregon and is the co-chair of the Young Lawyers' Division of the Oregon Federal Bar Association.



John Isselmann

John Isselmann

Former Tonkon Torp attorney **John Isselmann** has joined The Greenbrier Companies [NYSE: GBX] as director of corporate relations and communications.

Isselmann reports to William Furman, President and CEO. In this role, he will lead the company's interaction with political officials and candidates and provide strategic direction on legislative matters. He will also act as the company's interface in local communities where Greenbrier has operations. As head of public affairs, he will direct Greenbrier's charitable contributions program and manage company media relations and internal communication programs. He will supervise the company's representation in various business organizations and coalitions as well as participate in Greenbrier's legal and human resources operations.



Christopher Parnell

Dunn Carney

Dunn Carney is pleased to announce that **Christopher Parnell** was elected to the OSB's Executive Committee of the Debtor-Creditor Section.



Daniel Rowan

Bullard Law

Daniel Rowan has joined the firm as an associate, where he will specialize in public sector law, collective bargaining, and labor arbitration.

Garvey Schubert Barer

Gary Grenley was recently elected to join the Lewis & Clark Law School's Board of Visitors. An owner at the firm, Grenley's practice focuses on prevention, resolution, arbitration and litigation of business and commercial disputes, with special emphasis in the areas of securities, real estate, antitrust, financing, trade regulation, and other complex business-related matters.



Keith Dubanevich



Benjamin Leedy

Stoll Berne

Keith Dubanevich has joined the firm as a shareholder, where he concentrates his practice in complex dispute resolution. He has extensive experience

handling multi-state antitrust cases, class action consumer litigation and securities disputes.

Benjamin Leedy has joined as an associate, where he will add his seven years' experience in commercial real estate transactions to the firm's growing real estate and business law group. He frequently advises clients in connection with real property purchase and sale transactions, office, retail and industrial leases, and secured lending transactions, including loan originations, loan modifications, workouts and deeds in lieu of foreclosure.



Daniel Peterson

Cosgrave Vergeer Kester

Daniel Peterson has joined the business litigation practice group as an associate. His practice encompasses all areas of commercial and real estate litigation, with particular experience protecting creditor's rights and pursuing remedies, both inside and outside bankruptcy court.



Darin Sands

Lane Powell

Darin Sands has been elected to shareholder, effective January 1, 2013.

Sands focuses his practice on complex litigation, which includes complex commercial disputes, counseling clients on electronic discovery policies and protocols, representation of clients in electronic discovery disputes, class action defense, international antitrust investigations and litigation, and internal investigations.

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

Job Young Lawyers Section

New Year's Resolutions

by Duke Tufty
YLS President



Making New Year's resolutions is an ancient tradition dating back to the Babylonians and Romans. A resolution is simply a commitment to achieve a personal goal or reform a bad habit. Most of us have many possible resolutions to choose from.

To me, resolutions reflect a resilient optimism. An optimism about ourselves, our potential, and the world. Today, about 40% of Americans start the year with New Year's resolutions, but studies have shown that just over 10% succeed. There are three things you can do to increase your chances of keeping your resolutions.

1. Be specific,
2. Record and share them, and
3. Seek support and accountability.

Easy, right? Just like buy low and sell high, or eat less and exercise more. Setting and achieving goals is not for the faint of heart. One more way to increase your odds is to set fewer goals and really focus on what's most important to you.

I want to share with you the MBA YLS New Year's resolution and use these guidelines to increase our chance of succeeding.

Be specific. The YLS wants to develop better ways of connecting you with other members of the local and state bar, with members of the business and civic community, and with each other.

Record and share. Check. We just published our goal in the *Multnomah Lawyer*.

Seek support and accountability. We need your help. We will be sending out a short survey via email shortly after the publication of the December edition of the *Multnomah Lawyer*. Please complete the survey so the MBA YLS can meet its 2013 New Year's resolutions. We truly cannot do it without you.

Thank you for your ongoing support. Best wishes from the MBA YLS for a safe, happy Holiday Season.

Put Down That Bucket of Cookie Dough and Do Something

Introducing the OSB Legal Job Opportunities Task Force

by Andrea Johnson
YLS Futures Committee member



Everyone knows it, and there's no way to sugar-coat it anymore. The job market for young lawyers is currently dismal and shows little sign of a meaningful rebound in the near future. Add the fact that legal salaries are often no match for the staggering piles of debt that most law students have accrued by graduation, and life for young lawyers starts looking pretty grim.

If you're not one of these unlucky young attorneys yourself, chances are you know someone, or several people, who are. There is plenty of commiserating, eye-rolling, and even anger shared among young lawyers these days as many begin to feel helpless after months of sending resumes and enduring a steady flow of rejection letters. Yet, don't we constantly hear from the public interest community that the legal system is inaccessible to so many people? Are there ways

to help increase access to legal services and provide sustainable job opportunities for recent law school graduates at the same time?

The OSB formed the Legal Job Opportunities Task Force in June of this year to address questions such as this. The task force has been charged with examining the impacts of the lack of job opportunities on the legal profession as a whole, as well as developing a plan of action to address the issue. Members of the group include representatives from each of Oregon's three law schools, firms of various sizes, and the judiciary.

The task force held a summit conference on October 30 to discuss its key proposals for addressing the gap between the number of new lawyers and the number of available jobs. The proposals included:

- **Substantial expansion of the OSB Modest Means program.** This would help connect lawyers in need of work with the large and growing community of people in need of legal services who cannot afford to pay typical hourly fees, but who can pay something. The task force notes that this group of potential clients is large and is growing.

Some ideas for promoting expansion of the program include improving the development and distribution of lists of available attorneys and providing discounted PLF fees, model forms, and free CLEs for modest means attorneys.

- **Improving access to law office management expertise.** As many new attorneys find starting their own practice to be the only viable way of finding legal work, there is a growing need for support and innovation in law office management.
- **Establishing a program to match new attorneys with attorneys who will soon be retiring.** Many solo and small firm practitioners do not have succession mechanisms in place, and facilitating these connections could help provide job opportunities for newer lawyers, particularly in rural areas.
- **Continuing to improve practical skills training for new attorneys.** The ONLD and MBA YLS already offer free and low-cost CLEs concerning practical skills, but it remains challenging for new attorneys to get the hands-on experience they need to feel comfortable practicing on their own.

While the job market for new attorneys is not going to change overnight, it is refreshing to see the issue being taken seriously by a diverse group of representatives from the legal community and to see a focus on taking realistic actions to improve the situation. Young Oregon lawyers will be looking to the task force in the near future for reflections on the summit conference and next steps toward better legal careers.

Enter the CEJ Associates Committee "Why I Give" Contest

The Associates Committee of the Campaign for Equal Justice presents "Why I Give". Write the best short statement about why you give to the Campaign to support Oregon's legal aid programs and win an invitation to the Campaign reception at the governor's residence, plus recognition on the CEJ website, annual report, and annual luncheon. Learn more at <http://cej-oregon.org/why-i-give.php>.

The Young Lawyer Horoscope November/December - Sagittarius



The first part of your month you might find it difficult to focus. Clear your head by getting some fresh air. As the month progresses, you will likely find it is the right time to buckle down and make a decision that has been top of mind. As the month comes to a close, focus on communication in the office. It's the perfect time to start conversations with folks you do not always have the chance to speak with. It's the right moment to have a go for your initiatives, to benefit from professional or financial favors. Remember, your hard work will pay off and chance will be on your side.

Speed Networking Social Recap

On Wednesday, October 17, new and established Oregon attorneys met at the Rock Bottom Brewery in downtown Portland for a Speed Networking Social jointly hosted by the MBA YLS and the Oregon New Lawyers Division. The well-attended event was primarily organized by Ryan Vanden Brink of the ONLD, and Missy Healy and Dan Simon of the YLS. The Speed Networking format provided the opportunity to network with multiple new peers. It facilitated new connections, and experienced attorneys shared valuable tips of the trade with new attorneys, as participants quickly moved from conversation to conversation throughout the room. Overall, the success

of the event represented a strong collaborative effort between the ONLD and the YLS, and demonstrated both organizations' commitment to the development of new Oregon attorneys.

mba yls | EVENT

**YLS Drop-In Social and Toy Drive
Portland Prime
(located at the Embassy Suites)
Thursday, December 6
5-7:30 p.m.**

Celebrate the Season and mingle with your fellow Young Lawyers!

Please bring a new unwrapped toy for Toys for Tots and help bring holiday cheer to children in our area.

From High Holborn to SW 5th Ave

My journey from law school in England to the OSB

by Jaimie A. Fender
YLS Futures Committee member



My path to becoming an Oregon attorney could be characterized as “winding” at best. It all really began with first grade, when my father placed me in an experimental French immersion school in Eugene. Over the years, the school name changed several times but the cruel oppression of French grammar and my love for the language, nonetheless, stayed constant. I was in French immersion from first grade through high school. I then went to the U of O and double majored in Archaeology and French. I studied abroad for a year in Poitiers, France, and won a Global Graduates Scholarship which allowed me to work for the summer at the medial archive center for the Poitou-Charentes region. Over several months during my senior year at the U of O, I stalked (legally, yet irritatingly) the human resources director at the Organisation for Economic Co-Operation and Development (OECD) headquartered in Paris, France. The HR director ultimately relented. After graduating from the U of O, I quickly left for Paris and began working at the OECD as a researcher.

Like many international organizations, the OECD promotes job vacancies internally before advertising externally. One day I noticed a job posting on the OECD intranet for a project co-coordinator in the Outreach Unit for Financial Sector Reform (OFSR) within the Directorate for Fiscal, Financial and Enterprise Affairs (DAFFE). I ignored the Ph.D. requirement and skimmed over the desired 10 years working experience. All I could really see was “must be willing to frequently travel internationally.” I immediately applied. When I was called in for an interview, I thought they must have read my résumé as diligently as I read their job posting. When I was offered the job, I was flabbergasted! At the time, the OFSR was funded directly by the Japanese Ministry of Finance. The team was entirely comprised of Japanese diplomats on loan

from the Ministry to the OECD for a two-year term. While the OFSR team spoke English (and no French), they spoke American English. As it turned out, I was the only American who applied for the job. While there were many other candidates who were actually qualified for the position, the team members just could not understand their Cockney or Irish accents (“bully for me,” as they say).

I worked for OFSR until the end of 2003. It was a dream job. I traveled to China, Japan, Peru, Honduras, Costa Rica and throughout Western and Eastern Europe. I loved my job, but I knew my luck lightning would not strike twice. I would never have been able to climb the proverbial OECD ladder without a graduate degree; and while I enjoyed what I did for many years, I did not want to be in the same position 10-15 years later, earning the same salary.

The Director of DAFFE at the time was an American named William Witherell. He encouraged me to get a law degree in Europe – a degree that would be “easily” transferable to the US should I return, or it could be used as a graduate degree should I decide to stay within the international social policy environment. It seemed like sound advice. I researched European law schools and decided on London. After all, English Common Law is the foundation of the American legal system and easiest to apply back to the US.

The legal education in England is vastly different from the US model. Education is split into two parts: pure academics and pure practical skills, the thinking being why teach a student practical skills if they cannot grasp the academic foundation. Students can complete the academic

foundation at university, or there is the option I took, which is to do an intensive graduate level “conversion” course for those students who already have a university degree. Once you complete the academic foundation, you must then choose your career path - solicitor (transaction attorney) or barrister (litigator). I chose barrister and then I had to complete my practical education, which I did at BPP, a great school with a terrible name. All barristers have to join an Inn of Court (Grey’s, Lincoln’s, Inner Temple, or Middle Temple¹). I chose Inner Temple and was called to the Bar in November, 2008.

I returned to Oregon shortly thereafter to figure out my next step. I had clerked for a Portland attorney named Stuart M. Brown earlier during a summer of law school. I called Stu after returning to see if he needed a paralegal. Luckily he was busy and needed help. After a year or two, with the encouragement of Stu and my father, I decided to take the Oregon Bar exam. I had to apply to the Equivalency Panel of the OSB and demonstrate that my education was equivalent. It was a long but worthwhile process. I was given permission to take the exam (permission that had to be given more than once) and I passed the exam in February of this year. I just opened my own solo practice and I also do contract work for Stu. I married another Portland attorney (Christopher E. Fender) last August and we are expecting our first child in early March.

My journey was untraditional, but it has provided me with a unique set of skills, training, and perspective. Through it all, I’ve been able to see the challenges law students and aspiring attorneys from all over the world must face. Ultimately, after considering all my options and experiences, this legal community was where I wanted to be. My road was certainly winding but what an adventure it was!

¹ Fun fact: many of the dining scenes from the Harry Potter movies were filmed in Muddle Temple’s dining hall!

Brien Flanagan

Pro Bono Spotlight

by Michael Fuller
YLS Pro Bono Committee member

Frank Cosey sits on death row nearly 2,500 miles from the team of Portland attorneys fighting to spare his life.

Cosey was convicted of killing a 12-year-old Louisiana girl in 1990. After the penalty phase of his trial, which lasted only three hours, he was sentenced to death. The conviction was later upheld by the Louisiana Supreme Court.

Many in the legal community have come to question the constitutionality of Cosey’s sentence. They point to ample evidence suggesting Cosey suffers mental retardation and to the relatively short penalty phase of his trial.

Enter Portland attorney Brien Flanagan.

In 2007 after learning of the case through a local ABA seminar, Flanagan talked with Schwabe, Williamson & Wyatt management and eventually formed a team of firm attorneys to represent Cosey pro bono.

“We started really looking at whether his sentence was just, under the state and federal constitutions,” says Flanagan, who specializes in environmental law at Schwabe.

Over the past five years, Flanagan and his pro bono team have become intimately involved in the case. “I talk with him about once a month and have met with him various times,” says Flanagan of Cosey.

“The experts we’ve spoken with across the country all reach



Brien Flanagan the same conclusion - Cosey suffers serious brain impairments and mental retardation.”

The pro bono team explores various theories that may entitle Cosey to a new hearing. “The penalty phase of his trial raises several constitutional concerns related to the effectiveness of counsel,” Flanagan says, “and his impaired mental capacity raises serious Eighth Amendment concerns.”

While acknowledging his personal opposition to the death penalty led him to take on the project, Flanagan says, “Even lawyers who don’t always oppose the death penalty understand the importance of a fair and just trial and result.”

Asked if the life-or-death nature of case impacts the pro bono work, Flanagan said, “Yeah, knowing a life is in the balance greatly affects the whole team.”

For more information about other pro bono cases, contact Michele Meitl with the ABA Death Penalty Representation Project at meitlm@staff.abanet.org.

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by Pamela B. Hubbs
Office and Foundation Administrator

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