



# MULTNOMAH LAWYER

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community

February 2013  
Volume 59, Number 2



## On Constitution

by Greg Moawad  
MBA President

I haven't received any hate mail yet. At least none related to this column. Being six months in, I am mildly surprised. I anticipate that streak ends today.

In May of 1787, the Federal Convention convened in Philadelphia to revise the Articles

of Confederation, an agreement made amongst the 13 founding states that established the United States of America. What arose from that meeting, instead of an amended Articles of Confederation, was the United States Constitution.

What also emerged was a new form of government, never before seen – here or anywhere else. Historian Forrest McDonald described the uniqueness of the method of governance that the attendees selected: “[e]very previous national authority either had been centralized or else had been a confederation of sovereign states. The new American system was neither one nor the other; it was a mixture of both.”

In other words, the Constitution established that our country would be different. That we would allow for a centralized form of governance - the Federal government - while still authorizing constituent states to exhibit some independence, where appropriate. If you think back to law school: the Federal guarantees were the floor, with states having the ability to raise the bar in protecting rights.

And, of course, the states ratified the Bill of Rights in 1791 - the first 10 universal amendments to the Constitution. That was a significant document, obviously - but none of the Amendments were more important to the unique form of shared government established in the Constitution than the Ninth and Tenth Amendments: that any rights not addressed in the Constitution were reserved to the people, and powers not granted to the federal government nor prohibited to the states are also reserved to the states or the people.

With that, like a newborn, our country was thrust into life. From our first president forward, we grew from proverbial infancy in the early 1800s, to our awkward pimply kid/rebellion phase (late 1800s), into our personal growth/moving-out-of-our-parents'-house phase (think '60s space exploration).

**...none of the Amendments were more important to the unique form of shared government ... than the Ninth and Tenth Amendments....**

And that leads us to today. Where it pains me to say we've become a doddering elder, confined by our own fears. We've decided we might as well stay inside, where at least we won't feel that darn constant cold draft. (But that's another article - which I'll probably save for my last, as it would certainly become my last if I chose otherwise.)

Throughout that development, over 200+ years, we've had the Constitution. Acting as our conscience, that document has

**...the Constitution established that our country would be different. That we would allow for a centralized form of governance....**

stood steadfast, filling the role of a touchstone for us. When we needed guidance, we turned to it. When what we were after was not specifically contained in it, we amended it (see the Eleventh through Twentieth, the Twenty-Second through Twenty-Seventh Amendments). Or when it said something we didn't like, we amended it again (see the Twenty-First Amendment). Each time we amend the Constitution, last done in 1992, we require approval of either two-thirds of both the House and Senate, or a convention of states. (As an aside, given the deference to individuality our Constitution affords states, it is probably not a coincidence that our varied states have never successfully passed an Amendment, instead leaving such “progress” to elected officials.)

And yet, today, despite the constant support the document has provided us - the certainty it has given our society as the “law of the land” - we are told we stand as a country divided by the Constitution rather than united by it. We are told that nobody likes everything the document stands for. Whether it's the right to hate speech found in the First, the possession of guns found in the Second, the exclusionary rule found as an enforcement method of the Fourth, the right to privacy in the Ninth, or the income tax provision in the Sixteenth, there is something there to potentially challenge everyone. And those are just the Amendments.

The Constitution itself is apparently even more troubling to some. Considering the source, I was surprised to read Georgetown law professor Louis Michael Seidman's recent article in *The New York Times* entitled, “Let's Give Up on the Constitution.” In it, Seidman, who is actually a Constitutional law professor, urges America to abandon the document, saying he was “ashamed it took [him] so long to see how bizarre [the Constitution] is.” He urges America to toss the document, “with all its archaic, idiosyncratic and downright evil provisions,” in order to allow for more “mature and tolerant debate.”

**We are told that nobody likes everything the document stands for.**

Professor Seidman and those who think like him are wrong. Yes, the Constitution is a clearly aged document. Yes, it was written in a time in this country's history that no longer exists. And yes, it needs to better reflect modern thinking. But because of the document's framers, we have the ability to make any changes we see fit- through Amendments. Got a current problem you don't like? Engage in the same mature and tolerant debate Professor Seidman desires, and seek an Amendment. Heck, you can even seek an Amendment to amend the Amendment process.

But throwing out the document in its entirety does a disservice to everyone. Rather than being a nation of states we would become an association of nations. Think we're divided now? Come back and see me after Connecticut and Texas each pass their own versions of the United States Constitution. (An aside: there's the value proposition in the centralized Federal governance proposed in the Constitution.)

The founders gave us the ability to create what we wanted from this document. It's time to start doing it.

## mba|CLE

To register for a CLE, please see pages 3 and 4 or go to [www.mbabar.org](http://www.mbabar.org).

### FEBRUARY

**2.26 Tuesday**  
**In Your Facebook Technology and Subpoena Issues**

Judge Judy Matarazzo  
Erin Olson  
Kendra Matthews  
J.R. Ujifusa

**2.27 Wednesday**  
**Estate Planning in Uncertain Times**  
June Wyrick Flores  
Ted Simpson

### MARCH

**3.19 Tuesday**  
**An Employee by Any Other Name Proper Characterization of Staff and Contractors**

Jason Orme  
Kris Peterson  
Andrew Schpak

**3.20 Wednesday**  
**Annual Family Law Update**  
Judge Maureen McKnight  
Thomas Bittner  
Gary Zimmer

**3.21 Thursday**  
**The Life Cycle of a Law Firm Starting and Leaving a Firm or Retiring**  
Beverly Michaelis  
Dee Crocker

### APRIL

**4.9 Tuesday**  
**Clark County Presiding Court Update**  
Judge Richard Melnick  
Don Jacobs

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[www.mbabar.org](http://www.mbabar.org)

## MBA 11th Annual Wintersmash

A Family Friendly Bowling Event



**Saturday, February 23**  
**6-9 p.m.**

**20th Century Lanes**  
**3350 SE 92nd**

10 minutes from downtown Portland  
A Multnomah CourtCare fundraiser

Register via the insert in this issue or at [www.mbabar.org](http://www.mbabar.org).

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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.

### NEWSLETTER STAFF CONTACTS

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## DWT Partner Keeps Trailblazers on Time

When the horn sounds in the Rose Garden Arena signaling a substitution, or a time-out for a TV commercial, Eric Dahlin's two young daughters watching at home know their dad's hard at work. For more than a decade, Dahlin has been running the game clock at Portland Trailblazers home games.

"It's a little like being in trial," says Dahlin, a business litigation partner with Davis Wright Tremaine, "in that I have to be totally focused on the task at hand. There's always a fear I could do something that would screw up the game. That fear makes me focused."

Dahlin played varsity baseball in college, but it was during his years of travelling and working odd jobs before law school that he found himself in Cleveland, where he ended up in the public relations department for the Cavaliers. "It turned out I liked watching basketball more than baseball," he says.

After moving to Oregon in 1992, he contacted the Blazers' PR team to see if they needed any help. At the time they didn't, but they put him in touch with NBC's crew, who started using him as a runner during national broadcasts of Blazers' games from Portland.

"One of the things I would do is drive Magic Johnson around when he was in town to announce games for NBC," says Dahlin. "I would also sit behind him at the announcers' table, and if he needed anything, I'd run and get it. He had a very particular diet."

Dahlin continued coming up to Portland to work the games even after he had entered law school at the University of Oregon, where he also covered Duck football and basketball games as a reporter for the Associated Press. "I like the energy of being in the arena and sitting in the middle of the action,"



he says. "I like being around sports and enjoy high-level competition, though not in a typical fan way; I don't go and cheer."

After a Ninth Circuit clerkship, Dahlin returned to Portland, and joined DWT as an associate in 1997. He also reconnected with the Blazers. Since then he's done every variety of job at the scorers' table - from serving as a statistician for TV and radio broadcasts to running the shot-clock and scoreboard - as well as conducting post-game interviews of the players and coaches in the locker rooms. But his most consistent job has been running the game clock. In the past he would work the majority of the games. Since having his two daughters, now six and eight, he handles about a quarter of them.

He admits that manning the clock and horn isn't rocket science, but has its challenges and can be nerve-wracking at times. "It's mostly just keeping your eyes and ears open - which can be hard to do when the crowd gets really loud, players are in the way, and the game is on the line."

Sitting on the floor at center court provides a much different perspective on the game, he says. "I closely watch all the individual plays and can hear the coaches and players talk. But while I'm working, I'm so focused on making sure I'm doing my job I couldn't tell you the score within 15 points without looking up at the scoreboard. It's been a fun hobby, though."

## MBA and YLS Board Elections

The MBA bylaws provide for a slate of director candidates to be presented to the membership at least 60 days prior to the annual meeting. The slate of candidates will be printed in the March issue of the *Multnomah Lawyer*.

The bylaws also allow for nominations for the MBA and YLS Boards from the membership at large. A nominating petition, endorsed by the nominee and at least 10 other MBA members, **must be received by 5 p.m. on Friday, February 8, in the MBA office.**

Voting will close on Friday, April 5. Winners will be officially announced at the MBA Annual Meeting on Tuesday, May 28.

## Calendar

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

### FEBRUARY

**2.8 Friday**  
**MBA & YLS Board Election Self-Nominating Petition deadline**  
See below for details

**PILP Auction**  
Visit [http://law.lclark.edu/student\\_groups/public\\_interest\\_law\\_project](http://law.lclark.edu/student_groups/public_interest_law_project) for details

**2.15 Friday**  
**OHBA 7<sup>th</sup> Annual Award Dinner**  
Visit [www.oregonhispanicbar.org](http://www.oregonhispanicbar.org) for details

**2.18 Monday**  
**Presidents' Day Holiday**

**2.20 Wednesday**  
**CEJ Awards Luncheon**  
Visit [www.cej-oregon.org/events.php](http://www.cej-oregon.org/events.php) for details

**2.23 Saturday**  
**YLS Community Service Day with SOLVE**  
See p. 12 for details

**WinterSmash at 20<sup>th</sup> Century Lanes**  
See insert for details

### MARCH

**3.2 Saturday**  
**ACLU of Oregon Liberty Dinner**  
Visit [www.aclu-or.org](http://www.aclu-or.org) for details

**3.8 Friday**  
**OWLS Awards Dinner**  
Visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for details

### APRIL

**4.5 Friday**  
**MBA & YLS Board voting closes**

## webcheck

Local bar organizations are welcome to add their metro area events to the MBA online calendar at this link: <http://mbabar.org/Calendar/SubmitAnEvent.html>



## Forgotten Anything?

The MBA would like to remind those who have yet to renew their membership for 2013 to do so soon to continue to enjoy the benefits of membership.

Visit [www.mbabar.org](http://www.mbabar.org) to renew today.



## Letter to the Editor

MBA President Greg Moawad's criticism of Brazil's economy, rooted in a Milton Friedman/Heritage Foundation-inspired analysis, warrants a brief response. Yes, the delays in the judicial system are a concern. But this is a country which significantly shifted its economic focus in 2002 with the election of President Luiz Inacio Lula da Silva, simply put from the well-off to the poor. The government's radical investments in small-scale farmers has led to increased food supply, reduced hunger in rural areas and, crucially, stimulated internal demand. The United Nations World Food Program has lauded Brazil's Zero Hunger strategy as a program which is helping to feed hungry

people at a faster rate than any other program in the world. Malnutrition among children and infant mortality has been dramatically reduced. Social and cultural problems have also been addressed. For example, the government has acted to combat violence against women by creating a system where some local police stations are dedicated exclusively to addressing such crimes and their impact by providing psychological counseling, temporary shelter and hospital treatment for victims of domestic violence and rape. I suggest there is much that is positive that our far-richer country can learn from Brazil.

- Steven Goldberg



Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

## 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  
Plaza Conference 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.

## Estate Planning During Uncertain Times

Wednesday, February 27, 2013  
3:00-5:00 p.m.

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

With ballot measures failing to pass and the approaching federal fiscal cliff, it is a difficult time for estate planners to advise their clients regarding certainty in their estate and tax planning. This program will discuss some techniques for estate planning attorneys to use to assist their clients during these uncertain times. Our speakers are **June Wyrick Flores** from Ater Wynne and **Ted Simpson** from Harrang Long Gary Rudnick.

### For more information:

Call Heidee Stoller, Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

## An Employee By Any Other Name: Proper Characterization of Staff and Contractors

Tuesday, March 19 2013  
3:00-5:00 p.m.

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

Mischaracterization of employees as independent contractors is an increasingly audited issue for Oregon employers. Spend an afternoon with employment attorney **Andrew Schpak**, Barran Liebman and veteran CPAs **Jason Orme** and **Kris Peterson**, of Talbot, Korvola & Warwick, exploring the best practices for establishing employee classification. Learn about your client's exposure for an incorrect classification and what to expect when the Department of Labor or IRS call.

### For more information:

Call Todd Cleek, Cleek Law Office at 503.706.3730. For registration questions, call the MBA at 503.222.3275.

## Annual Family Law Update

Wednesday, March 20, 2013  
3:00-5:00 p.m.

World Trade Center  
Auditorium  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

On March 20 the MBA will hold its annual two-hour Family Law Update. **Judge Maureen McKnight**, the Chief Family Court Judge for Multnomah County, will be joined by **Thomas Bittner** of Schulte, Anderson, Downes, Aronson & Bittner and **Gary Zimmer** of Zimmer Family Law. Our speakers will provide family law practitioners with information on changes to Multnomah County Circuit Court procedures well as valuable updates on appellate case law.

### For more information:

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

## The Life Cycle of a Law Firm *How to Start a Firm, Leave a Firm, or Retire from the Practice of Law*

Thursday, March 21, 2013  
3:00-5:00 p.m.

World Trade Center  
Auditorium  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

Understand your liability exposure and ethical responsibilities when transitioning into or out of a firm. Tips and practical advice from the practice management advisors at the Professional Liability Fund.

**Beverly Michaelis** provides confidential practice management assistance to Oregon attorneys to reduce their risk of malpractice claims, enhance their enjoyment of practicing law, and improve their client relationships through clear communication and efficient delivery of legal services. **Dee Crocker** has been a PLF Practice Management Advisor since 1992 and has over 30 years of experience in the legal field, including 14 years as a legal secretary, three years as a secretarial supervisor to over 50 legal secretaries, and three years as a law office manager.

### For more information:

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

## Clark County Presiding Court Update

Tuesday, April 9, 2013  
3:00-5:00 p.m.

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

This year's Clark County Presiding Court Update will be presented by **Judge Richard Melnick** and local practitioner **Don Jacobs**, Attorney at Law. This class is designed for anyone who practices in Clark County, whether on a regular basis or only on rare occasions. Judge Melnick will provide valuable information regarding new practices or changes to existing practices within the Clark County Court system. Mr. Jacobs will focus on the aspects of a civil trial in Clark County and how it may differ from civil trial practices in the Portland tri-county area. If you currently practice in Clark County, or have been considering practicing in Clark County, this CLE is a must for you. This class is geared toward practitioners with all levels of experience.

### For more information:

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

## webcheck

To obtain MBA member rates for seminars and events, sign in as an MBA member first:  
<http://mbabar.org/Membership/Login.html>

## Annual Probate Court Update

Wednesday, April 24, 2013  
3:00-5:00 p.m.

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

The MBA presents the 2013 Annual Probate Update, featuring the following panel members: **Judge Katherine Tennyson**, Multnomah County; **Judge Rita Batz Cobb**, Washington County; **Judge Robert Herndon**, Clackamas County; and **Tim McNeil**, Davis Pagnano McNeil et al. Mr. McNeil will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the tri-county metro area. This CLE is a must for all probate practitioners and/or their staff.

**For more information:**

Call Todd Cleek, Attorney at Law at 503.706.3730. For registration questions, please call the MBA at 503.222.3275.

## In-House eDiscovery for Law Firms (Large and Small)

Wednesday, May 1, 2013  
3:00-5:00 p.m.

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

Recent legal trends and improvements of technology make it possible for law firms to control and manage their clients' electronically stored information internally, thus better protecting clients' sensitive information and reducing or eliminating dependence on expensive outside eDiscovery vendors. An incidental consequence of the inevitable evolution towards lawyer-management of eDiscovery processes is the opportunity to make in-house eDiscovery an additional profit center for law firms.

Differentiate your law firm by developing defensible and repeatable in-house capabilities to collect, review, produce, and present electronic evidence at trial. Incrementally bring more eDiscovery services in-house for better quality of work, control of the process, increased law firm revenue and cost savings for your clients. This CLE is very practical with many computer demonstrations.

**Tom Howe** has been a practicing attorney for over 25 years, licensed in Washington and Oregon. He helps law firms, corporations, and government

clients with electronic discovery. He has written four books (law and technology) and speaks at legal conferences throughout North America and technology conferences around the world.

**For more information:**

Call Heidee Stoller, Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

## Attend MBA CLE Classes Via Your PC

You may now attend most MBA CLE classes by streaming video from the comfort of your office, in real time or after the class.

To register for a class online, visit the MBA website at

<http://www.mbabar.org/Education/>

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Or register online and receive a \$5 discount. Self-study materials from past CLE classes may be downloaded at [www.mbabar.org](http://www.mbabar.org).

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Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

**Photocopy registration and mail or fax with payment to:**

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620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204  
503.222.3275 ■ Fax to: 503.243.1881

**Register online and order or download MBA self-study materials at [www.mbabar.org](http://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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 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

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## MBA Online Directory Do you use it?



Sarah Petersen

Sarah Petersen is one of MBA's talented, generous and much appreciated volunteers. She currently serves as YLS treasurer. Since joining the YLS Futures Committee in 2008, she has been involved in a variety of MBA projects and programs. She was instrumental in the redesign of the MBA website, which launched a little over a year ago. One website redesign feature that was important to her was the enhancement

of the online directory to include members' biography information, education, volunteer involvement and social media links. We recently asked her a few questions about the online directory.

### What was your goal for the members' online directory?

The goal for the directory was for members to have the opportunity to make their entries as complete or as simple as they wanted. We knew that many of our members wanted to link to their LinkedIn, Twitter or Facebook pages, so we made sure that the directory would allow people to add those links. It was important to us that the directory allowed members to add a photo of themselves, too. It is much easier to recognize someone at a Starbucks if you have only met them through phone conversations or email, when you can see what they look

like beforehand! Our overall goal was to create a tool that members would find easy to use and useful.

### Can you describe how to update your online directory profile?

It's very easy - the hardest part is remembering a password, so if you can do that, you'll have no problems. To update a profile, the member just needs to log in to the Member Center, found under the Membership tab. This page offers a few options, including Judicial Preferences, access to free handouts from MBA CLEs, and "Update My Profile." After the member clicks on "Update," she will see her "Profile" page. Adding or updating information in the directory is very simple; the "Profile" page offers several prompts to "click here" to add certain information, like practice areas, a bio, educational background, or memberships. When I wanted to update my bio information, I clicked on the "click here," entered my bio in the text box and clicked "OK," and the info was added to my profile.

### Why do you recommend that members update their directory profiles?

Updating your directory profile is as important as keeping your LinkedIn profile or your firm's website up-to-date. So many people begin their information or contact searches online that keeping everything accurate and up-to-date is critical for putting your best foot forward. This is one place where the MBA directory is a big help, because the contact information is updated on a regular basis via a link with the OSB, so even if you have not updated your MBA directory page, your current information - name, address, phone, email, bar number, etc. - will appear in the directory automatically. It's one more benefit of MBA membership.

If you have not kept your directory profile up-to-date, only the Bar's contact information will show up, without practice area, bio, education or any other personal information you would want to share. Go ahead: look up members of your firm and see who has been lazy

about advertising themselves! Just stop and update your own information first.

### How has updating your own profile on the members' directory benefited you and your practice?

Updating my profile has allowed me one more point of connection for people who might be looking for my contact information. The basic information is available through the OSB directory, but the MBA directory has allowed me to personalize my profile with more information about who I am and the work I do. Plus, it's fun to see what opposing counsel looks like before you meet for the first time.

See Sarah's profile at [www.mbabar.org/Membership/Directory/View/34219/](http://www.mbabar.org/Membership/Directory/View/34219/).

To update your own profile, log in at [www.mbabar.org/Membership/Login.html](http://www.mbabar.org/Membership/Login.html) and click on the "Update My Profile" link.

If you have questions about updating your profile, contact the MBA at 503.222.3275 or [mba@mbabar.org](mailto:mba@mbabar.org).

## mba | ANNOUNCEMENTS

### Battle of the Lawyer Bands 2013

Plans are underway for the 2<sup>nd</sup> Annual Battle of the Lawyer Bands event, which will be held in August. If you'd like help shape this year's event, please join us for our planning meeting on Friday, February 8 at noon at the MBA office. Please contact Kathy Modie at the MBA to RSVP or with any questions.

### Commitment to Professionalism

The MBA Professionalism Statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free professionalism statement at <http://mbabar.org/assets/documents/resources/freq-requested/profcertorder.pdf>

### Invitation for Public Comment on the Reappointment of U.S. Bankruptcy Judge Trish M. Brown

The current term of the Honorable Trish M. Brown, U.S. Bankruptcy Judge for the District of Oregon, is due to expire in December. The U.S. Court of Appeals for the Ninth Circuit is considering the reappointment of the judge to a new term of office of 14 years. The court invites comments from the bar and public about Judge Brown's performance as a bankruptcy judge. The duties of a bankruptcy judge are specified by statute, and include conducting hearings and trials, making final determinations, and entering orders and judgments.

Members of the bar and public are invited to submit comments concerning Judge Brown for consideration by the Court of Appeals in determining whether to reappoint her. Anonymous responses will not be accepted. However, respondents who do not wish to have their identities disclosed should so indicate in the response, and such requests will be honored.

Comments should be submitted no later than Friday, February 22 to the following address: Office of the Circuit Executive, PO Box 193939, San Francisco CA 94119-3939, Attn: Reappointment of U.S. Bankruptcy Judge Brown. Fax: 415.355.8901.

### 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.

### Oregon Paralegal Association Election Results

Effective November 1, 2012 through October 31, officers are: President - Kelley D. Chaney; Vice President - Brenna C. Dickey; Treasurer - Alisa M. Stewart; Secretary - Mellissa Middleton. Also on the leadership team are Mary Ann Ivie, Jeannie Lihs, Thomas Holmes, Michele Davis, Sonny Lambert, Mary McCourt, Diane Thompson and Joyce Kent.

## Member Resource Center

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

### Pro Bono Oregon Listserv

Receive a weekly summary of available pro bono volunteer opportunities in your email inbox every Thursday. Listings include the type of case and a brief description of the issue and do not include highly identifying facts or party names. Sign up by sending an email to [probonooregon-subscribe@mail.lawhelp.org](mailto:probonooregon-subscribe@mail.lawhelp.org).

### Update Your Directory Listing on the MBA Website

The MBA website includes an expanded online Membership Directory and members may now update their photos, include a bio, add links to social networking sites and update practice area information online. To update your listing, login to the Members Center where you may use the email address currently on file in the MBA Directory as your user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

### MBA Member Discounts

#### LawPay

Reduced merchant credit card set-up fees and month-to-month contracts.  
1.866.376.0950  
[www.affiniscap.com/mbabar](http://www.affiniscap.com/mbabar)

#### Appaloosa Business Services

Member-only discounts on website design and hosting services.  
Paul Tichy 503.336.1388  
[www.spottedhorse.com](http://www.spottedhorse.com)

#### Bank of the Cascades

Generous array of benefits specifically designed for attorneys.  
Elise Bouneff 503.499.5931  
[www.botc.com](http://www.botc.com)

#### The Bar Plan Online Court Bonds

MBA members can purchase a court bond online with 24-hour turnaround time.  
Cathy Ahearn or Deborah Eller at 1.877.553.6376  
[www.mba.onlinecourtbonds.com](http://www.mba.onlinecourtbonds.com)

#### Legal Northwest Staffing Specialists

Special pricing for support staff hiring.  
Anneke Haslett 503.242.2514  
[www.legalnw.com](http://www.legalnw.com)

### LexisNexis

Special packages and pricing exclusively for MBA members.  
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### MBA Insurance Plans

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[www.mbabar.org](http://www.mbabar.org)

### Naegeli Deposition and Trial Experts

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### Office Depot

Up to a 40% discount on select items.  
Jason Thorud 503.290.0273

### UPS

MBA members can save up to 26% on their express shipping courtesy of UPS.  
[www.savewithups.com/multnomahbar](http://www.savewithups.com/multnomahbar)

### Classified Advertising

In addition to publishing classified ads in the *Multnomah Lawyer*, the MBA posts all classifieds at [www.mbabar.org](http://www.mbabar.org). To obtain a quote, email your ad text to Carol Hawkins at [carol@mbabar.org](mailto:carol@mbabar.org).

## Ethics Focus

### Delicate Advice: Counseling a Client to Breach a Contract

by Mark J. Fucile  
Fucile & Reising



With the difficult economic times of the past few years, lawyers have sometimes been confronted with providing delicate advice: counseling a client to breach a contract. Circumstances vary, but the recent past has provided many ready examples of situations where it may be in the client's economic interest to breach a contract because the attendant damages or other penalties may be less than the cost of seeing the contract through to completion. The OSB has had an ethics opinion on this subject for over 20 years, first under the ...the recent past has provided many ready examples of situations where it may be in the client's economic interest to breach a contract....

former Disciplinary Rules as Formal Ethics Opinion 1991-92 and currently under the Rules of Professional Conduct as Formal

Ethics Opinion 2005-92 (which is available at [www.osbar.org](http://www.osbar.org)). Both provide the same nuanced answer: "Yes, qualified." In this column, we'll look at both aspects and also touch on some related areas.

#### The "Yes" Part

Formal Ethics Opinion 2005-92, like its counterpart under the former DRs, relies on the broad right lawyers have to counsel clients on the legal consequences of possible conduct. RPC 1.2(c), which is at the core of the current ethics opinion, puts it this way: "[A] lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

#### The qualification on "illegality," however, can be more difficult given the comparatively broad spectrum of conduct that might be considered "illegal"....

#### The "Qualified" Part

Formal Ethics Opinion 2005-92, again like its counterpart under the former DRs, qualifies the scope of a lawyer's ability to counsel clients by noting that a lawyer cannot help a client defraud others or engage in otherwise illegal conduct. RPC 1.2(c) also supplies the underpinning for this aspect of the opinion: "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent[.]" The qualification

for fraud is self-explanatory - as long as the lawyer realizes why the client may be seeking the advice involved. The qualification on "illegality," however, can be more difficult given the comparatively broad spectrum of conduct that might be considered "illegal" by statute or regulation. In *Milavetz, Gallop & Milavetz, P.A. v. United States*, \_\_\_ US \_\_\_, 130 SCt 1324, 176 LEd2d 79 (2010), for example, the U.S. Supreme Court concluded that law firms fall within the

#### ...lawyers need to carefully consider the factual and legal context involved before advising a client to disobey obligations....

limitations on pre-bankruptcy advice imposed by the federal Bankruptcy Abuse Prevention and Consumer Protection Act. Moreover, it is important to note that Oregon's rule is broader than the corresponding ABA Model Rule on which it is based, with Oregon RPC 1.2(c) using the word "illegal" and ABA Model Rule 1.2(d) using the word "criminal." With each qualifier, lawyers need to make sure they fully understand both the factual and legal context in which their advice is being sought.

#### Related Areas

Formal Ethics Opinion 2005-92 is limited to advice on breaching a contract. Closely related areas, however, can often surface under analogous circumstances. In *Reynolds v. Schrock*, 341 Or 338, 142 P3d 1062 (2006), for example, the Oregon Supreme Court recognized a qualified privilege from liability (to third persons) for a lawyer rendering otherwise lawful advice to a client on breaching a fiduciary duty to another party. Similarly, RPC 3.4(c) generally prohibits

a lawyer from disobeying "an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists[.]" In *re Tambllyn*, 298 Or 620, 695 P2d 902 (1985), although decided under the former DRs, addressed this last point in dismissing a bar complaint against a lawyer for

advising a client to disregard a court order the Supreme Court later determined was void. As with the qualifiers discussed earlier, lawyers need to carefully consider the factual and legal context involved before advising a client to disobey obligations in these other equally sensitive areas.

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## Around the Bar



Sarah J. Ryan



Jeffrey S. Perry



Yael Livny

### Jackson Lewis

**Sarah J. Ryan** has joined the firm as a partner. Her practice focuses on employment law and complex commercial litigation. She may be reached at Sarah.Ryan@jacksonlewis.com.

**Yael Livny** has joined the firm as an associate. Her practice focuses on labor and employment law and litigation. She may be reached at Yael.Livny@jacksonlewis.com.

### Smith Freed & Eberhard

Over the holidays, **Smith Freed & Eberhard** members began a “change war” – and in five days, raised over \$1,800 in change for the Campaign for Equal Justice.



Alex P. Sutton

### Gevurtz Menashe et al

**Alex P. Sutton** has been named a shareholder of the firm, where he has been an associate attorney since 2004. His practice focuses on a broad range of family law issues.



Timothy B. Hering



Adina Matasaru

### Dunn Carney et al

**Timothy B. Hering** and **Jeffrey S. Perry** became firm partners. Hering is a litigator whose practice focuses on real estate, business transactions and financial services. Perry practices tax and corporate law.

**Adina Matasaru** won the recent Campaign for Equal Justice “Why I Give” Award for writing a brief poignant statement about why she gives. Her experience living in Romania as a child influenced her and makes her passionate about supporting legal aid for vulnerable citizens.



John T. Witherspoon

### Harrang Long et al

**John T. Witherspoon** has been named a firm shareholder. A member of the firm’s Closely-Held Business team, he focuses on the practicalities of adding value to the client’s bottom line. He may be contacted at 503.242.0000 or john.witherspoon@harrang.com.



Hal Scoggins



L to R: Steve Bennett, Vince Sliwoski, and Mark McCulloch from Farleigh Wada Witt

### Farleigh Wada Witt

**Hal Scoggins** has been elected president of the Portland law firm. He will continue to serve on the executive committee with **Brad Stanford**, **Kim McGair**, and **Michelle Bertolino**. He has been with the firm since 1991 and assumes the role of president from **Mark Wada**. Scoggins continues to focus his practice on financial services.

**Farleigh Wada Witt** has been joined by **Powers, McCulloch & Bennett**. The two longstanding Portland law firms united in January, to strengthen their capabilities and better serve the business and financial communities.

**Mark McCulloch** and **Steve Bennett** are now firm shareholders, and **Vince Sliwoski** is an associate. McCulloch will continue to concentrate his practice in civil litigation, professional malpractice, personal injury, and non-custody divorce proceedings. Bennett will focus his practice in business transactions, real estate, and estate planning. Sliwoski will maintain a diverse practice that includes business transactions and disputes, intellectual property, and real estate.



Peter Mohr

### Tonkon Torp

Water and environmental lawyer **Peter Mohr** has been elected to the Oregon State Parks Foundation Board of Trustees.

Mohr is a member of the firm’s Water Law, Energy, and Environmental & Natural Resources practice groups. Much of his legal practice focuses on assisting public and private sector clients with matters involving water supply and management permitting, compliance, protection and transactions.

**Inga Deckert** and **Jeffrey Woodcox** have been elected to the firm’s partnership, in January.

Deckert has been a member of the firm’s Government Relations & Public Policy Practice Group since 2007.



Dallas DeLuca



Joseph Franco

### Markowitz Herbold et al

The firm is celebrating its 30th year in business and kicked off its anniversary year by announcing the promotions of three attorneys to shareholder: **Chad Colton**, **Dallas DeLuca** and **Joseph Franco**.

Colton is a business trial lawyer who focuses on complex business cases such as shareholder and partnership disputes, claims involving corporate fraud and fiduciary obligations, bet-the-company litigation and contract disputes.

DeLuca represents businesses and executives in the resolution of commercial disputes before federal and state courts and arbitration panels. He brings international experience and a practical business perspective to his civil litigation practice.

Franco is an experienced trial lawyer who has successfully tried multi-million dollar cases and handled all aspects of discovery, motion and appellate practice. Although he currently focuses on complex civil litigation, Franco has significant experience in the areas of legal malpractice and insurance coverage disputes.



Timothy J. Fransen

### Cosgrave Vergeer Kester

**Timothy J. Fransen** has joined the firm’s Financial Services Practice group. His work continues to focus on representing consumer financial services providers in litigation, primarily defending claims for wrongful foreclosure and violations of the Fair Credit Reporting Act, Fair Debt Collection Practices Act, Telephone Consumer Protection Act, Real Estate Settlement and Procedures Act, Oregon Mortgage Lender Law and Oregon Unlawful Trade Practices Act.



Chad Colton

The *Around the Bar* column reports on MBA members’ moves, transitions, promotions and other honors within the profession. The submission deadline is the 10<sup>th</sup> 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.

## webcheck

To update your profile in the MBA Online Directory, log in at [www.mbabar.org/Membership/Login.html](http://www.mbabar.org/Membership/Login.html) and click on the “Update My Profile” link.

# American College of Trial Lawyers

## Trial Experience Project and Expedited Jury Trial Program

by Walter H. Sweek



I write to report on and solicit interest in two programs available to young lawyers interested in acquiring jury trial experience. Collectively known as the Trial Experience Project, the American College of Trial Lawyers' (ACTL) committee has developed internship opportunities with the Multnomah County D.A. and the Metropolitan Public Defender (MPD) in Washington and Multnomah Counties. The makeup of the committee now includes non-ACTL members, including appellate and trial court judges, local lawyers and lawyers around the state.

The D.A. Program is a month-long internship, with the intern spending virtually full time in the D.A.'s office handling a docket of misdemeanor jury cases to conclusion. The MPD Program is a different, but similar commitment: The Multnomah MPD requires one day a week (20% time commitment) for six months, again with a docket of misdemeanor jury cases. Washington County MPD is slightly modified: 1-2 days a week for 90 days with a docket of 12-20 cases.

These programs have been in place for almost four years and a substantial number of young attorneys have participated. The waiting list for placement is running out and we seek new applicants. We also seek the return of those attorneys who were unable to be placed in the past and who dropped off the list.

To project the value of the program, I am including testimonials from three young attorneys who participated in these programs: Matt Donohue (MPD), Aukjen Ingraham and Anna Sortun (Multnomah DA). As these testimonials note, the intern receives training before starting, jury trial experience, and exposure to a large number of sitting judges.

In conclusion, those interested should contact Elden Rosenthal for the D.A. Program positions and Steve Houze for the MPD Program placements. You will need to furnish a current resume and a short letter expressing interest in the program of choice.

Finally, I mention another opportunity not discussed here in any detail. It is the Expedited Jury Trial Program, which provides opportunities for six-person jury trials for parties who agree on the placement of their cases into the program. For details, see UTCR 5.150 and UTCR Form 5.150.1a and UTCR Form 5.150.1b. Multnomah County Circuit Court adopted a special procedure for implementing the new UTCR. So far the program has been underutilized, with only 14 cases in the program to date. I am urging senior trial lawyers to increase their support of these programs for at least two reasons: to give young lawyers jury trial experience and also to fight the specter of the "vanishing jury trial."

### Testimonials

**Matt Donohue, Shareholder Markowitz, Herbold, Glade & Mehlhaf, P.C.**

"Several years ago, I realized I had a problem. As a newly-made partner, I had substantial experience arguing motions, deposing witnesses, doing discovery and settling cases. However, the lack of cases going the distance had left me with little opportunity to try cases – and I had never first-chaired a jury trial. This left me in a pickle. Clients were trusting me with their most important matters, but if it came to actually standing in front of a jury, I felt I could not say I was a "trial lawyer."

"The ACTL Trial Experience Project solved my dilemma. I signed up for the program in 2008 and was placed with the Metropolitan Public Defenders office (MPD). MPD trained me for a full day on criminal law and procedure, and handed me 12 misdemeanor cases to take to trial. I quickly fell in love. The group of lawyers handling misdemeanors took me under their collective wing, and I spent hours picking their brains on how to try and win jury cases.

"In my first jury trial, I defended Mr. Flavio Soriano Merino against charges he solicited prostitution outside a McDonald's restaurant on a June afternoon. Although we lost that first trial, the confidence I gained from finally handling all phases of a jury trial - from voir dire to closing - was immeasurable. I tried three more jury trials over the next six months, as well as a suppression hearing and numerous pre-trial appearances on behalf of my clients. Before each trial started, I told the judge that I was with the ACTL's trial program, and asked if he or she would provide me specific

feedback on my performance after the case ended. Every judge I asked called me into chambers after the trial and gave me detailed and constructive criticism on each aspect of the trial.

"Simply put, getting 'on-the-job training' by actually trying cases to a jury was the best education I could have received. My tour of duty lasted six months with the MPD, which was the amount of time it took to dispose of my initial 12 cases."

**Aukjen T. Ingraham, Senior Associate Cosgrave Vergeer Kester LLP**

"In September 2008, I was the first attorney to participate in the ACTL Jury Trial Experience Project DA for a Month Program, an updated version of the classic Multnomah County DA for a Day Program. I appeared in front of numerous judges, had two bench trials, one jury trial and a host of other motions and appearances. Because we only get to court a few times a month in the civil world, my time in the courtroom was crucial to developing advocacy and jury skills as well as simply getting to know the judges. I came away with confidence in my jury skills as well as a new understanding as to how the Multnomah County Court works, its challenges, and the population it serves.

"Through this program, I learned that voir dire is my favorite part of trial. Most of my

peers have never picked a jury or taken a verdict. Mock trials and trial colleges are helpful, but no substitute for down in the dirt experience. Jurors take the time out of their lives to make the justice system work. Lawyers owe it to them to know what they're doing. This program makes that happen."

**Anna K. Sortun, Associate, Litigation Department Tonkon Torp, LLP**

"Last March, I completed the Jury Trial Experience Program at the Multnomah County District Attorney's Office. I was assigned to the misdemeanor trial unit, where I worked for four weeks.

"When I signed up for the program, I had a few goals. Primarily, I hoped to gain more exposure to trial practice, especially jury trials. I also hoped to have the chance to try out different techniques in voir dire, opening and closing statements, and with witnesses. As side-benefits, I hoped to further my comfort in different courtroom settings, and also get to know some of the judges. The program met all of those goals.

"In the course of this month, I was assigned 18 cases for trial. Four of the cases resulted in actual trials, and two of those were to a jury. I likely would have had more trials, but the court did not hold trials during the third week of my program. I was also responsible for handling other hearings for the state, such as

motions to suppress evidence and plea hearings. The matters I handled involved possession of controlled substances, theft, hit and run, criminal trespass, unlawful possession of a firearm, driving with a suspended license, and interfering with public transportation. I appeared before eight different judges for trial and hearings."

"The month flew by. My first day, I received about a half-day of training in the office. After that, it was straight to court. I tried my first case to a jury on the Thursday of my first week.... Each day presented new learning opportunities. I especially liked the mornings. It was then that I would meet quickly with my witnesses - police officers, security guards, and other "civilian" witnesses filed into my office to prepare for the day's scheduled trial. I learned how to adjust a planned presentation on short notice, and how to improvise when witnesses did not testify as expected.

"I recently was a member of a team for a civil jury trial. My experience at the DA's office helped me give input on jury instructions, pre-trial motions, and voir dire. In short, trial is much less of a foreign concept to me now that I've been through several. I would recommend the jury trial program to any litigator hoping to gain experience inside a courtroom."

## The Corner Office PROFESSIONALISM

It struck me recently how many of my clients as of late have been sued by lawyers who were fresh out of law school. In my 15 years of practice, I cannot recall a time when I have worked with so many new attorneys who are mostly earnest and well-intended but could benefit from guidance and mentoring from a more experienced attorney. I had to stop and ask myself how, if at all, should I engage with these new attorneys during the course of litigation?

It's a legitimate question, but also one that I decided could not be answered quickly, particularly in the situations where I immediately recognized that my experience could have easily been used against a new attorney. Recently, a new attorney sent me a proposed settlement agreement that contained an obvious omission. The omission would not have affected my client's rights and inclusion of the provision would not have affected the opposing party. I decided to note the correction and explain why the provision was important, and the new attorney was grateful.

But what if in the future the new attorney omits a key settlement clause that would

benefit my client (and, by omission, be a detriment to his or her client)? Surprisingly, the effect of a disparity in legal experience and the ability of one lawyer to manipulate that disparity to the benefit of his or her client is not squarely addressed by the Oregon Rules of Professional Conduct. For example, is "competence" in Rule 1.1a license to manipulate an opposing new lawyer into doing something that will benefit my client? Or is Rule 1.1 suggesting that "competence" can be met if I educate the new lawyer, as long as I provide my client with the "knowledge, skill, thoroughness and preparation reasonably necessary for the representation?"

What is clear to me is the idea that "competence" is not tantamount to "compromise." A new lawyer once insisted to me that my four clients (all of whom were individually named defendants) could not attend the plaintiff's deposition (the plaintiff was not considered "vulnerable"). I tried to explain to the new lawyer that his position would not be upheld, but he refused to listen to me and a federal judge had to explain the situation to him. In fact, the federal judge ended up "explaining the situation" to

the new attorney many times during the course of the litigation. In the end, my client's situation and representation was not compromised, but they did end up spending more attorney fees to defend against the other attorney's bad and inexperienced posturing.

I am convinced that the OSB and MBA mentoring programs go a long ways to avoid having new lawyers "thrown out there" without any guidance. I also believe that extending a little compassion to the recent graduate can be professionally satisfying, and it can be done without compromising one's obligations to provide quality representation to one's clients. Even if our Professional Rules do not squarely address the issue, implicit in those rules, and an idea that is articulated in the MBA's Commitment to Professionalism is that lawyers will be "courteous, fair, and respectful" (emphasis added). Remember that the next time you're up against a new lawyer and remember what it was like for you at that stage of your career.

## Tips From the Bench

### First Year Anniversary - Civil Case Management

by Judge Marilyn Litzenberger  
Multnomah County Circuit Court



It has been a full year since Multnomah County implemented its “new” civil case management rules in response to feedback judges received from litigators. Every case subject to the new local rules has been (or will be) assigned a motion judge to hear pretrial motions, which means the parties now have direct access to a single judge for pleading and discovery hearings and for expedited matters. There is no need to contact the civil calendaring department once a motion judge is assigned, unless the motion is for summary judgment. Scheduling of motion hearings is done by calling the motion judge’s staff directly. This change is more efficient for both judges and litigants. The judge becomes familiar with the case facts by hearing one or more motions and the parties are spared the expense of educating multiple judges about the key issues in the case. When the case is called for trial, the presiding court will be aware of whether the assigned motion judge is familiar with the parties, has ruled on substantive matters and if that judge is available to try the case. The new rules come as close as possible to the one judge/one case model that members of the bar have requested for many years, considering the volume of cases tried in Multnomah County and the increased number of weeks judges are assigned to cover dockets that were previously handled by referees. The court will be conducting a review of the new rules over the next months and welcomes your comments, both positive and negative.

#### Benefits of Conferral before Case Management Hearings

One of the positive outcomes of the new rules, especially for newer lawyers or those new to the Portland legal community, is the built-in opportunity to meet and talk with the other attorneys involved in the case. Sometimes the initial case management conference is the first time the lawyers have met or spoken about the case. Experience tells us that cases are more likely to settle earlier when there is an occasion to discuss settlement in a setting that is not as adversarial as a deposition, or when clients are not present with the expectation that their lawyer will take on the theatrical role of the zealous advocate they’ve seen in the movies or on TV. When lawyers appear in person for a case management conference with a

judge, they have the opportunity to meet on neutral turf and this often leads to settlement. Since most cases that get to issue are settled rather than tried, earlier settlements are frequently the best outcome for the clients. The perceived need for extensive discovery before a case is ripe for settlement discussions or mediation is generally overrated. Even if a case doesn’t settle completely, conferring before a case management or trial readiness conference lends itself to resolution of outstanding discovery issues or scheduling problems that can happen when the lawyers have delegated those tasks to others in their offices.

#### Court-Annexed Arbitration Timeline

Cases subject to mandatory court-annexed arbitration should be resolved by the filing of an arbitrator’s award within approximately seven months from the date the complaint was filed. When extensions are requested to complete service of the summons and complaint, or an open extension is granted to file an answer, the transfer to arbitration is delayed and consequently the time allowed to complete the arbitration feels compressed. If you want to avoid having your arbitration-eligible case returned to the regular trial docket, follow the good advice given by experienced arbitrator Lisa Almasy Miller in the article she wrote for the July/August 2012 *Multnomah Lawyer*, “Mandatory Arbitration and New Case Management - A Sprint to the Finish.” Another available option is the Expedited Civil Jury Trial program. You can opt-in to this program at the Trial Readiness Conference that will be scheduled when your case is transferred out of the court-annexed arbitration program onto the regular trial docket. Once a case is designated as an expedited civil jury trial, it is assigned a trial judge who then meets with the parties right away to schedule a trial date and to memorialize any agreements the parties have made with respect to discovery and/or trial. You know who your trial judge will be four months before the trial and there is no need to appear for “call” because your case will be tried on the date you scheduled with that judge. Discovery must be finished 21 days before the

*Continued on page 11*



## News from the Courthouse

by Kevin Kono  
Court Liaison Committee member

#### Court Resources Subcommittee/Court Funding Working Group

Darin Sands reported the subcommittee heard presentations from three public-relations-type consultants from across the spectrum - political, consumer, and hybrid. They are looking for unique support regarding awareness of court funding, not to duplicate what the working group is doing. They are looking for a web presence and a different perspective. They expect to choose a consultant in the next few weeks. No next meeting date is set.

#### Presiding Judge’s Report

##### Courthouse

Judge Waller thanked all who participated in the online courthouse survey over September, October and November, 2012. She reported that the county commissioners voted to allow the courthouse project to be evaluated for selection as a part of Governor Kitzhaber’s plan to pursue a public/private model utilizing a performance-based infrastructure (PBI) delivery method for several projects in Oregon with Partnership BC, Inc, as the private partner. The PBI delivery method is a way of managing large public infrastructure projects which utilizes private enterprise efficiency for the design, construction and, if desired, the maintenance of the constructed facility. It results in cost and time savings over traditional publically managed large infrastructure projects while providing a return on the investment to the private partners. The Multnomah County Commissioners will receive the evaluation of the courthouse construction or remodel project’s “fit” to be considered as a PBI project in late February.

Judge Waller said that some commissioners are working with the legislative delegation and the state treasurer to see if there are ways to have the state participate in funding the courthouse project and to use the state’s bonding authority for courthouse construction or remodeling. She said that Multnomah County is probably unique in Oregon because the courthouse is not also the center for county government. The courthouse’s space is fully utilized to carryout circuit court operations, including the vital collateral functions for investigation and prosecution, transporting and guarding parties in custody, and courthouse security.

#### 2013 Supplementary Local Rules

Judge Waller said that the 2013 Supplementary Local Rules (SLR) take effect on February 1. The 2013 rules and a compilation of the changes are available at <http://courts.oregon.gov/multnomah/Pages/index>. One change amends SLR 1.015 to state expressly that the abatement of a civil action can be for a period of time of less than two years. A period of abatement can’t exceed two years, but it can be less. Another change addresses expedited motions; there is no longer a separate “expedited motion ex parte time.” For cases filed before February 1, 2012, requests for expedited motions go to presiding ex parte. For cases filed on or after February 1, 2012, expedited motions go to the assigned motion judge if the initial case management conference has been held. If there has not been an initial case management conference, and no motion judge is assigned yet in the action, then the expedited motion goes to presiding ex parte, as well. Other changes affecting civil actions filed on or after February 1, 2012 are also made in the new rules.

#### Civil Jury Trial Rate

Judge Waller said she was told by the National Center for State Courts (NCSC) staff, who studied Multnomah County jury

trial data from 1998 through 2011, that the percentage of civil cases being terminated by a jury trial in Multnomah County is more than double the average observed by the NCSC in a 33-year project monitoring civil jury trial rates. Judge Waller said that she attributes this very high jury trial rate to the master calendar system, limiting individual judge assignments of cases, and adhering to OJD’s Standards for Timely Disposition. Keeping the majority of the civil cases on the master calendar under the presiding judge’s supervision, as the Chief Civil Judge, permits the cases to be assigned to a trial judge at the earliest possible time using the pool of judges available each day for assignment, she said. This combination of regular oversight, established time standards, and pooling judges in a master calendar process applies to the majority of civil actions and it results in a higher percentage of cases being terminated by jury trial and the trial occurring earlier in time when compared to other metropolitan areas in the United States, she concluded.

#### 2013 Legislative Assembly

Judge Waller said that Chief Justice Thomas Balmer has established his top four legislative funding priorities for the Oregon Judicial Department for the 2013 session:

- First priority is to maintain the Oregon Judicial Department’s current service level of funding (\$434.9 million in General Funds and Other Funds).
- The second priority is obtaining funding for programs already approved by the Legislative Assembly. These approved programs are the Oregon eCourt Project (\$5.2 million General Funds and \$24.8 million Other Funds) and the additional three judge panel for the Oregon Court of Appeals (\$3 million General Funds).

*Continued on page 11*

# Healthcare Reform 101

## The Exchange

by David O'Brien  
Group Health Committee Chair



The Patient Protection and Affordable Care Act (PPACA) is designed to provide more Americans access to healthcare and to lower the cost of its delivery. Despite the monumental effort to pass the legislation in 2010 and the controversial Supreme Court decision upholding the act in 2012, the fate of PPACA was unknown until President Obama won re-election last fall. Governor Romney had pledged to repeal it. Many still oppose it, but it is the law and the legislation's most substantial provisions will be implemented in 2014. That includes the establishment of state-based health insurance exchanges;

**PPACA is designed to provide more Americans access to healthcare and to lower the cost of its delivery.**

and the individual and employer mandates. This article, the first of a three-part series to educate MBA members on healthcare reform, addresses the health insurance exchange. Articles on the

individual and employer mandates will be addressed in later editions.

Since its passage in 2010, several PPACA provisions are operative. Of note: (1) limits have been lifted on annual and lifetime coverage; (2) children up to age 19 can't be denied insurance because of pre-existing conditions; (3) parents can keep their children on their health insurance plan until age 26; (4) insurance must provide free preventative care services such as mammograms and colonoscopies; and (5) a Summary of Benefits and Coverage (SBC) must be provided to the insured with very specific information prior to any open enrollment. The broker for the MBA's group health plan is Northwest Employee Benefits (NWEBI). Any member can go to the NWEBI website and find a detailed timeline of PPACA provisions at [www.nwebi.com/ppaca.pdf](http://www.nwebi.com/ppaca.pdf).

In 2014, each state will be required to establish a health insurance exchange. Essentially, an exchange is a state-based organization designed to give individuals and small businesses access to a marketplace of certified health plans. Each state is required to establish an exchange by January 1, 2014. This deadline is in jeopardy in many states, but Oregon is at the forefront of this regulatory movement and has already established its exchange, with preliminary federal certification, thanks in part to

a \$48 million dollar grant from the federal government. Oregon's exchange is called Cover Oregon. On its website ([www.coveroregon.com](http://www.coveroregon.com)), Cover Oregon states that it is "a central marketplace where Oregon individuals and employers will be able to shop for health insurance plans and access financial assistance to help pay for coverage. Starting in October 2013, [they] will serve as a one-stop resource that makes it easy to find the perfect plan for your unique needs."

**Cover Oregon "could serve as many as 700,000 uninsured individuals and small businesses...."**

Individuals and small employers with 50 employees or fewer employees will be eligible to enroll in the exchange as early as October 2013. In 2016, small employers will be redefined to include all employers with 100 or fewer employees. According to the Lund Report, an online news source focusing on Oregon's healthcare system, Cover Oregon "could serve as many as 700,000 uninsured individuals and small businesses - or more, if employers and individuals decide they would rather purchase insurance through the exchange." Only Qualified Health Plans (QHP) will be sold on the exchange. Insurance carriers that meet the qualifications established by Cover Oregon can sell a QHP there. Beginning in 2014, non-grandfathered QHP sold on the exchange will fall under certain actuarial values (the percentage costs covered by the plan) with assigned metal levels for naming: 60 percent for a bronze plan, 70 percent for a silver plan, 80

percent for a gold plan, and 90 percent for a platinum plan." These metal levels are designed to help consumers compare similar products. Any QHP sold on the exchange must cost the same as identical plans sold outside the exchange. Insurance carriers will be charged a fee (5% for 175,000 or fewer enrollees) to participate in the exchange. The cost of those fees will be spread among all the carrier's plans - within and outside the exchange.

The full impact the exchange will have on our membership remains unknown. We do know that Cover Oregon will be the only place where underemployed MBA members without insurance will be able to get financial assistance to purchase health insurance starting in 2014. Under the legislation, individuals can only obtain a tax credit or a cost-sharing subsidy for their health insurance through the exchange. Cover Oregon provides a calculator on their website which shows if an individual or family qualifies for financial assistance - [www.coveroregon.com/calculator.php](http://www.coveroregon.com/calculator.php). We also know that law firms with 50 or fewer employees (100 or fewer employees starting in 2016) will be able to give employees a defined contribution for health insurance to select any QHP in the exchange.

Much work remains to be done before MBA members purchase health insurance through Cover Oregon. Currently, there are no certified QHP plans to choose from and the cost of these yet-to-be certified plans remains unknown. Members looking to track the plans' progress can subscribe to Cover Oregon's mailing list and receive periodic

email blasts by following this link - <http://coveroregon.com/subscribe.php>. Despite the uncertainty, law firms will nonetheless be required to notify their employees of the exchange by March 1 of this year, even though Health and Human Services has yet to publish its model notice. Law firms participating in the MBA Group Health Plan will receive a compliance notice from Northwest Employee Benefits (NWEBI) to give to their employees.

While many struggle with the uncertainty and scope of the changes taking place, few debate the need for healthcare reform. Business owners providing health insurance to employees have known and struggled with escalating healthcare costs for years. Employees with health insurance have seen their coverage

**While many struggle with the uncertainty and scope of the changes taking place, few debate the need for healthcare reform.**

reduced while being asked to carry a greater share of the premium and deductible burden. Millions of Americans without health insurance have rolled the dice daily relying on little more than hope for coverage. Change is now certainly on the healthcare horizon and the MBA Group Insurance Committee will do its part to keep the membership informed of those developments.

*David O'Brien manages the human resource function at Hart Wagner. He currently chairs the MBA Group Insurance Committee, on which he has served since 2008.*

## Tips From the Bench

*Continued from page 10*

trial, which puts the case in a posture to settle and is intended to avoid expensive last minute settlements. Finally, the case only has to be presented to a fact finder once - there is no later appeal from arbitration. It's a great program once you become familiar with it.

### Multnomah County Supplementary Local Rule Changes

Proposed amendments to the SLRs became effective on February 1. Presiding Judge Nan Waller discussed these changes as well as other aspects of the "new" case management rules at the MBA's Annual Presiding Court Update CLE in January. The amended rules are posted on the court's website, <http://courts.oregon.gov/multnomah/Pages/index.aspx>.

## News from the Courthouse

*Continued from page 10*

- **The third priority** is to restore to the Oregon Judicial Department staff positions which were unfunded in the 11-13 Biennium reductions (62 FTE at \$7.7 million General Fund).
- **Fourth priority** is to increase judicial salaries. In 2012, the National Center for State Courts ranked Oregon as 46<sup>th</sup> out of the 50 states plus the District of Columbia based on annual judicial compensation (\$12.2 million General Fund).

Doug Bray noted that the Governor's Balanced Budget for the 2013-15 biennium includes a reduction of 3.5% in the OJD's total current service level budget and this reduction rates grows to 4.6% because the reduction cannot be applied to judge salaries or certain mandated expenses such as jury costs. If this level of reduction is added to the 15% in reductions reflected in the current service level budget going into the 2013-15 biennium, he said he does not know how the court will continue without closing major programs.

He said that the employees of the court are meeting daily case calendaring and courtroom staffing obligations only barely, but the underlying infrastructure that ensures documents are entered in OhJIN and placed in the file of the case in any timely way and all forms of public service have been eroded seriously by the reductions to date. The additional reductions included in the Governor's Balanced Budget will be devastating, especially with Oregon eCourt still 18 months in the future for Multnomah County.

**Legislative and Public Outreach** Judge Waller said that Chief Justice Balmer has put together a committee to educate the public on the funding crisis for Oregon's court system. Most people never go to a courthouse (unless they are lawyers or on jury duty). She also asked that MBA members take every opportunity to spread the word to legislators, if they have contact, and to their clients regarding the importance of a properly funded court system. Peter Richter suggested putting together a one-page bullet point sheet with specific examples of the impact on commerce. Judge Waller solicited examples for putting together such a sheet.

## MBA 2013 Mentor Program Kicks Off

The MBA Mentor Program, administered by the MBA Professionalism Committee kicked off the program year with a reception on January 14. Forty-one pairs are participating in this year's program, which matches YLS members with esteemed and experienced MBA

members for a six-month period. The mentors and mentees attended brief orientations before meeting each other and hearing about the importance of professionalism from Ed Harnden, the 2012 MBA Professionalism Award recipient.



*Ed Harnden and Traci Ray*



*Erica Menze, Matt Levin, Joel Sturm and Andrew Paris*

# Young Lawyers Section

## Just Say “Yes” to Law Students

by Duke Tufty  
YLS President

Since 2009, I have been speaking to law students about finding a job and networking as part of Lewis & Clark Law School’s “Jump Start Your Job Search” program. The daylong intensive workshop is designed to provide law students with a road map for finding a job and to cover some of the key elements of the job search.

I’m always impressed by the students’ questions and their desire to think beyond law school about practicing law. After the program, I inevitably have numerous phone calls and email exchanges with attendees. Through these contacts, I’m reminded of how invaluable and irreplaceable early experiences with practicing and experienced attorneys are to law students.

In my experience, the attendees appreciate the importance of the basics: obtaining the best possible credentials, developing exceptional legal and practical skills, and building a network to find a job. However, many of the attendees struggle with how to figure out what kind of attorney that they want to become. Do they want to become litigators, business attorneys, family law attorneys, or practice in an area that they have never even heard of? Although the law school curriculum covers broad areas of substantive law, it provides only a rough outline of what lawyers actually do and the many practice areas that exist.

I encourage law students to review resources available from the Career Services Office, to go to the websites of law firms and governmental agencies, and to talk to practicing attorneys

to learn about practice areas and the practice of law. That being said, reading books and reviewing websites will never be as valuable as talking to a practicing attorney.

I recognize how valuable your time is and how many things are competing for your time: your job, your friends and family, civic and professional involvement, pro bono work, client development ... the list is always a long one.

I’m writing to ask you to say “yes” the when law students call you. Meet them for lunch. Or breakfast. Invite them to your office for coffee. If time does not permit an in-person meeting, talk to them over the phone or consider referring them to someone else who might have more time or be a better fit. Consider inviting them to an event that you are already planning on attending - it won’t take any additional time out of your day and you can introduce them to other attorneys too: a true win-win.

Each of you has something that is incredibly valuable that you can share with a law student: your experience and insight. In less than an hour, you can be one of the first to welcome a potential new member of our bar and provide guidance and information during a critical period in the life cycle of an attorney. The potential impact far exceeds the time involved, and, you never know, that student may become a future colleague or referral source. Please say “yes” the next time a law student asks to talk to you.

## The Young Lawyer Horoscope

The first month of 2013 flew by, and it is now more important than ever to have your finger on the pulse and your ear to the ground, alert to all the opportunities that surround you. Listen to your instincts when new challenges arise, and give yourself credit for making the right moves. Self-doubt has no place in your life. You know where you’re going and achieving your goals starts with believing in yourself. There are some game changing moments coming up, so be ready to make your move. Buy into your professional ambitions and expectations, and those around you will do the same!

## The YLS and the ABA

by Sean Ray  
YLS Board



The YLS Articles Editor sat down with ABA representatives Jason Hirshon (District Representative for Oregon and Washington), Andrew Schpak (ABA YLD Secretary-Treasurer), and Traci Ray (MBA YLS Delegate to the ABA YLD) to discuss all things ABA, including the upcoming New Admittee Meet and Greet on February 21, and some things that aren’t.

**Jason, I understand you are originally from Portland, Maine. What brought you out west to Portland, Oregon?**

**JH:** I guess I always wanted to live in Portland, just not in Maine. So here I am, in the perfect place, via Colorado and California for school.

**Did you stop at any other Portlands along the way?**

**JH:** Unfortunately, no.

**How many other Portlands are there in the U.S.?**

**JH:** I don’t know. I’m sure there are some others.

**What if I told you there were five?**

**JH:** Wow....

**I have no idea how many there are. I just made that number up. I love statistics. Listen, we have to fit this onto a single page for the paper, so I’ll only ask you for a few of the ways Portland, Oregon is better than Portland, Maine.**

**JH:** It’s warmer, better beer, much better skiing, and, most importantly, it’s a more laid-back legal community out here.

**Speaking of our laid back legal community, tell me about this ABA New Admittee “Meet and Greet” I keep hearing so much about.**

**JH:** It’s going to be held at 5 p.m. on February 21 at Paddy’s in the coveted and very exclusive private back room area. It’s shielded by a curtain, a la *The Wizard of Oz*.

**AS:** Over 25 states are hosting a Meet and Greet event on the same day. The event provides an opportunity for young lawyers and those newly admitted to the OSB to find out how to get involved in the ABA, hear from those who are involved, and actually sign up to be involved.

**JH:** Don’t forget to mention that the first drink is on the ABA. And appetizers will be provided courtesy of the fine folks at Barran Liebman LLP and Slinde Nelson.

**TR:** Hey Jason, I even think Portland, Maine may be hosting one of these Meet and Greet events....

**How did you get involved in the ABA, Jason?**

**JH:** Portland (the Oregon one) hosted an ABA Conference in 2006. I met Andrew there, got involved with a planning committee, and the rest is history.

**Where are you from, Andrew?**

**AS:** Los Angeles, California.

**Okay, so level with me. Is it true that Inglewood is really always up to no good? I mean, that sounds like a gross generalization.**

**TR:** Is that from *The Fresh Prince of Bel-Air*?

**(Scoffs). It’s Tupac. I can’t believe you didn’t recognize that, but I ain’t mad at cha.**

**AS:** Well, every time I went there, I was up to no good, so I’d say there must be some truth to it.

**Speaking of going places, how many ABA meetings have you attended?**

**AS:** Over 20.

**Is there any truth to the rumor that these meetings rival those notorious undergraduate spring break trips?**

**AS:** Yes and no. No, because there are plenty of CLEs and professional development programs to intellectually stimulate you, but yes in the sense that there are also fun social events where people meet up, hit the town, and have a good time.

**What are some benefits you have seen on a professional level from attending these meetings?**

**AS:** I probably receive more referrals than the average attorney my age thanks to the connections I’ve made at ABA meetings. I’m also more likely to know lawyers in any given city, which comes in handy when looking for local counsel to assist on a case. I’ve also received specialized leadership training and speaking opportunities at the ABA meetings that have been pretty enriching.

**Okay Andrew, I’ve heard that you scored tickets to a Warrant concert at the renowned Troubadour in L.A. by winning a radio-sponsored Pez-eating contest. This sounds too good to be true, like some sort of Chuck Norris legend. What really happened?**

**AS:** I was walking in a mall when I noticed a booth for Pirate Radio, which was an awesome L.A. rock station back in the day. I noticed they were having a Pez-eating contest, so I signed up. I was less than 10 years old, competing against adults, but that didn’t matter. The objective was to unwrap a package of Pez candy, load it into the dispenser, and then finish eating the candies one by one. I used the term “contest,” but it really wasn’t. I won the thing going away, and scored myself (and my dad) two tickets to Warrant. It was epic.

**It wasn’t the show that got Warrant banned from the Troubadour, was it?**

**AS:** I’m not sure, but if it was, I was too young to notice the behavior that got them banned.

**Traci, what is your role with the ABA?**

**TR:** As a board member of the MBA YLS, I am our delegate to the ABA YLD. I get to attend two or three meetings each year and bring ideas back to Portland to improve and enhance our local bar efforts.

**Is this “Meet and Greet” the type of event your husband would like to attend?**

**TR:** Absolutely. There will be food, drink, good company - and it’s family-friendly, so both he and our daughter may attend.

**You held a similar event last year, correct? Give us a brief recap of that event and how this year’s version will be bigger and better.**

**TR:** Last year we had about 25 lawyers, including Ed Harnden and Sarah Crooks (who have lots of ABA experience) attend. This year, we are expecting to double that number and hopefully get even more Portland lawyers involved with the ABA.

**True or False, Jason: if you were ever in a bar fight, it would be kind of nice to hear Nickelback playing on the jukebox in the background?**

**JH:** That’s probably how the fight started.

**Wasn’t your dad formerly the ABA President?**

**JH:** Yes he was. He was very prominent in the ABA for many years prior to that, chairing a variety of different sections and committees. In fact, I attended my first ABA conference with him when I was five years old.

**Do you see yourself following in your dad’s footsteps all the way to the top?**

**JH:** I’m just enjoying the moment in my present position. I’ll be happy to let Andrew run the show.

**Traci, you correctly predicted Chip Kelly would stay at Oregon.\* Any predictions for this event from the YLD’s very own Nostradamus?**

**TR:** My sources tell me that there will be some VIPs in attendance ... and that folks may get more than just one free drink.

**Alright, Andrew, moment of truth: are you for or against high-fives (offers AS a high-five)?**

**AS:** Oh, I am definitely a big proponent of high-fives (obliges the high-five).

**Fantastic. I think we’re done here, folks. Thank you all for taking the time to talk to me. This event sounds great, and I can’t wait to attend.**

**JH:** Did I mention the first round of drinks is on the ABA, and that Barran Liebman and Slinde Nelson are hosting the appetizers?

**Yeah, I think you did. Besides, I’m the one asking questions here, and I said we’re done.**

\* This interview was conducted before Chip Kelly pulled an about-face, ripped the hearts out of the collective Duck faithful a la that bad guy in Indiana Jones and the Temple of Doom, and decided to take his talents (and visor) to South Philly. It should not be read as any indicator of Traci’s fortune-telling prowess.

## My Client is Driving Me Crazy! Five Tips for Managing a Difficult Client

by Maya Fitas  
Markowitz, Herbold, Glade & Mehlhaf



Have you ever had a client who was completely exasperating? Have you ever come back to your office after a particularly tense client meeting and considered a career change? Most lawyers have experienced this type of frustration, and those who haven't are not telling the truth. Although it is easy to attribute poor client behavior to a personality flaw and gripe about it, many times these sorts of situations get out of hand because of a poorly managed lawyer-client relationship. I propose five tips that have helped me deal with difficult clients.

**1. Show your client that you are on her team.** Despite our best intentions, many clients - particularly those who have not worked closely with a lawyer in the past - approach the lawyer-client relationship with trepidation and distrust. If you are doing your job, you are asking the tough questions. You are reviewing a client's goals with a critical eye and recognize that her version of the facts may be skewed. You are giving candid advice that may not be the advice she came into your office to receive. A client once questioned whether I was "on her side" after a meeting where I critically questioned her about her stated goals. It caught me off-guard, but I quickly realized

that she needed me to affirm the obvious. A simple discussion explaining that you are your client's advocate first, and that you are using all of the information you are gathering to help achieve the best possible outcome will go a long way and put a potentially hostile client at ease.

**2. Create a work schedule.** At the outset, work with your client to create a realistic schedule, and stick to it. Make sure that both you and the client understand exactly what needs to be done and when. This is a two-way street. If a client is going to be involved in litigation, then the client needs to understand the time commitment required on her end for various tasks, such as responding to discovery requests and preparing for depositions. Difficult clients will become dreaded clients if they do not have ample time to complete their projects and to review your work product.

**3. Manage your client's expectations.** Make sure your client fully understands the costs of litigation and the realistic potential for a victory. If a client does not understand that there are limitations to what can be achieved, the client is bound to be distraught. If a client thinks that she can sue a business partner and gain \$200,000, but your assessment is much different, your client needs to hear your assessment. Don't let your client have false expectations about the outcome of her dispute.

**4. Fully explain the legal process.** Many times a client is difficult because she is in a situation that is completely foreign to her, and does not understand what is happening. I once had a client who initially refused to

turn over relevant documents to me because she could not comprehend why she would ever turn over documents to anyone - including her lawyer - that were not helpful to her case. As I continued my attempts to gather these documents from her, she grew increasingly aggravated and began to question me. Our communications became tense. I realized that I had taken her experience in civil litigation for granted. She did not understand the discovery process. And more importantly, she did not understand the repercussions for failing to abide by discovery rules. If a client is asked to do something she does not want to do, and she doesn't understand why she is being asked to do it, she will have a negative reaction and make your job more challenging. Surprises will turn a difficult client into a dreaded client. Fix the situation before it gets out of hand and educate your client about the process at the outset.

**5. Listen to your client and use the information you gain.** Be sure to listen to your client, even if what she has to say is rude or misplaced. Ask follow-up questions to make sure you understand exactly what is being communicated. Does your client have a personal agenda that is unrelated to the core legal issues? Does your client have a legitimate point, but a poor way of expressing it? Does your client have valuable insight regarding the psyche of the other side that will assist in finalizing a settlement? Avoid the urge to tune your client out on issues that you deem superfluous. The information you receive, once you've filtered it appropriately, may help you reach a positive outcome.

Despite your best efforts, conflicts will inevitably arise with some clients. In the majority of cases, it's not personal. Remember that they are under a tremendous amount of stress and are put into a situation that is completely alien to them. Empathy, communication and attentive listening skills will take you far as an advocate.

## Night with a Million Lights

On December 19, the MBA and the MBA Young Lawyers Section hosted "The 2nd Annual Night with a Million Lights!" at the Children's Museum to coincide with the Oregon Zoo's annual ZooLights presentation.

The family-friendly event also served as a canned food drive to benefit the Oregon Food Bank. Individuals who attended and brought a can of food received a \$5 gift card redeemable anywhere in the zoo. At the end of the event, we had two large boxes filled to the brim with nonperishable food items.

This year, we reserved the entire Children's Museum to serve as a staging area to launch people onward through the rain, to the twinkling lights of the zoo. By all accounts, the use of the Children's Museum was a smashing success. The shrieks of laughter coming

from the children as they ran around the museum and played with the wonderful exhibits were a testament to what this event is all about: families.

Everyone who came to the event, young and old, got to enjoy all of the lights of the zoo and the wonder of the Children's Museum, as well as hot chocolate, cookies and other tasty treats. The event was well attended by people of all ages. Many members of the legal community brought their entire families.

The event was a success, thanks to all who attended. In addition, this event would not have been possible without help from our generous sponsors. The MBA and the MBA YLS would like to thank Barran Liebman, Davis Wright Tremaine, Baker & Rickards LLC, Miller Nash and Harris & Bowker for their support.

## YLS Community Service Day with SOLVE

Help us improve our environment and join the MBA YLS Service to the Public Committee as we partner with SOLVE for a planting day at Baltimore Woods (6600 N Catlin Ave, Portland OR) on Saturday, February 23, from 9 a.m. - 1 p.m.

We will be planting native trees and shrubs to improve water quality and create natural wildlife habitat. Friends, family, and children (waiver required for children under 18) are welcome to join us. The event will happen rain or shine, so dress appropriately.

To sign up or for more information contact Kelvin Adkins-Heljeson at [kdadkins@gmail.com](mailto:kdadkins@gmail.com).

## Raife Neuman YLS Pro Bono Spotlight

by Michael Fuller  
YLS Pro Bono Committee

After graduating cum laude from Lewis & Clark Law School in 2009, Neuman hung out a shingle and later co-founded Portland-based Intelekia Law Group. "I was actually introduced [to the Somali community] through one of my first clients," says Neuman. "It was a tenants' rights issue that worked out great - and suddenly members of the community were coming to me with just about anything that had the whiff of a legal problem."

Referral by referral, Neuman slowly built connections within the Somali immigrant community. "A large number of the refugees come from Kenya and speak limited English," says Neuman. "I think in the small, daily interactions a lot of us take for granted, they face a constant threat of being taken advantage of. And with larger problems, they just want someone they can trust to steer them in the right direction."

Eventually Neuman expanded his work with the community to include pro bono projects. "As I learned more about the people, I became aware of their need for pro bono legal services," says Neuman.

He now serves as a board member for the African Youth Community Organization (AYCO) and helps with various pro bono initiatives. AYCO is a nonprofit group providing youth services to refugee children in the Portland area. They help pair immigrant students with afterschool sports programs.

AYCO's members are thrilled to have Neuman's support. "If anything, they give me too much



Raife Neuman

credit," says Neuman. "I help with whatever [AYCO] needs. Everything from getting 501(c)(3) status to drafting liability waivers," he says.

As recently as the day he was interviewed, Neuman volunteered a few hours helping AYCO draft documents necessary to obtain government grant funding.

For Neuman, community service is a duty. "The demand for pro bono legal services in our community far exceeds the supply," he says. "I feel like as lawyers, we have a duty to serve the underrepresented around us."

Although Neuman isn't compensated monetarily for his work with AYCO, he sees a real benefit in building trust in lawyers and the legal profession. "Especially in this economy, it's hard for lawyers to take on more pro bono work. But this is really when people need it the most."

For more information about AYCO, visit [www.aycoworld.org](http://www.aycoworld.org).

## Worker(s/s) Compensation

by Kevin Parks  
YLS Professional Development and Education Committee

Like an ever-growing number of young lawyers making the decision to hang their own shingles, I launched my solo practice by first drawing up a business plan. In identifying potential clients and opportunities, I focused my practice generally on jobs and homes, while simultaneously ignoring an entire area of law rife with growth potential: compensation of workers injured on-the-job.

Truth be told, I wasn't even sure how it's spelled. I'm still not entirely positive: Worker's compensation? Workers' compensation? In a practical sense, it would hopefully be more the latter than the former; however my own naïveté was but the first impediment to my delving into the practice area full bore.

I had heard it was complicated, enough so that attorneys specializing in the area should be consulted and employed in most every case. Is the work more akin to personal injury cases? Employment law? Administrative law? All of the above? None? Without having taken any law

school courses on the subject, I thought, "Who's to know?"

Steve Schoenfeld and Larry Schucht, as it turns out.

Steve started his own firm more than 20 years ago and has been representing workers ever since, litigating more than 1,000 cases. Larry has been specializing in workers' compensation for more than 25 years, the last 22 as a trial attorney with SAIF Corporation.

In short, they know their stuff. Steve and Larry have identified that their field is underrepresented by young attorneys and thus an opportunity exists to help groom the next generation, so to speak. As luck would have it, they just so happen to be presenting a two-hour CLE on Thursday, March 7, from 3-5 p.m. at Kells, with a social to follow. See insert for details.

Seems like a prime opportunity for young lawyers to glean some experience and expertise from two seasoned vets and explore an area of practice foreign to many of us, but brimming with possibility.

See you there?

# Non-Attorney Staff Placement Continues to Increase

by Aurora Moore  
Legal Northwest



As the job market continues its ongoing recovery, many firms in Portland are beginning to refill staff positions that had to be eliminated during the downturn. Although average salaries decreased slightly in 2012, due to additional entry and mid-level hires, senior-level staffing remained largely unchanged and the overall volume of available full-time, part-time and temp

and temp-to-hire positions has grown significantly in the last 12 months. Several area law firms are now starting to revisit the austerity policies that were implemented over the last few years. Where hiring freezes, salary caps, reduced bonuses and increased workloads once seemed commonplace, many firms, seeing a rise in their business, are stepping up to show their employees that their loyalty and willingness to work hard during tough times has not gone unnoticed. As firms solidify their annual budgets, many are including modest raises and conservative bonuses depending on the profitability of the practice. The need to hire additional personnel and alleviate the burden on existing staff is also reentering the dialogue and a noticeable

uptick in the availability of new openings is evident across the region. Firms have also displayed a renewed willingness to bring temporary employees on board for special projects, short vacation coverages and general overflow support. This proactive behavior is also indicative of an awareness that, as more positions become available and new opportunities for candidates increase, incentivizing current employees is essential to staff satisfaction and retention. While firms are still approaching hiring in a conscientious manner, it seems reasonable to believe that they also are moving forward with a sense of optimism that the clouds of 2008 are finally lifting.

Enclosed in this issue of the *Multnomah Lawyer* is

Legal Northwest's 2012-13 salary survey. Since 1996, Legal Northwest, in conjunction with the Multnomah Bar Association, has provided a complimentary annual salary survey as well as reduced placement fees and a quality of service guarantee. Rates for MBA members are often as much as 50% lower than those of other local agencies specializing in legal placement. For more information, please visit our website at [www.legalnw.com](http://www.legalnw.com). If you have questions about salary, staff retention or hiring, please email Aurora Moore or Anneke Haslett directly at [amoore@legalnw.com](mailto:amoore@legalnw.com), or [anneke@legalnw.com](mailto:anneke@legalnw.com), or call us at 503.242.2514. All inquiries will be held in strict confidence.

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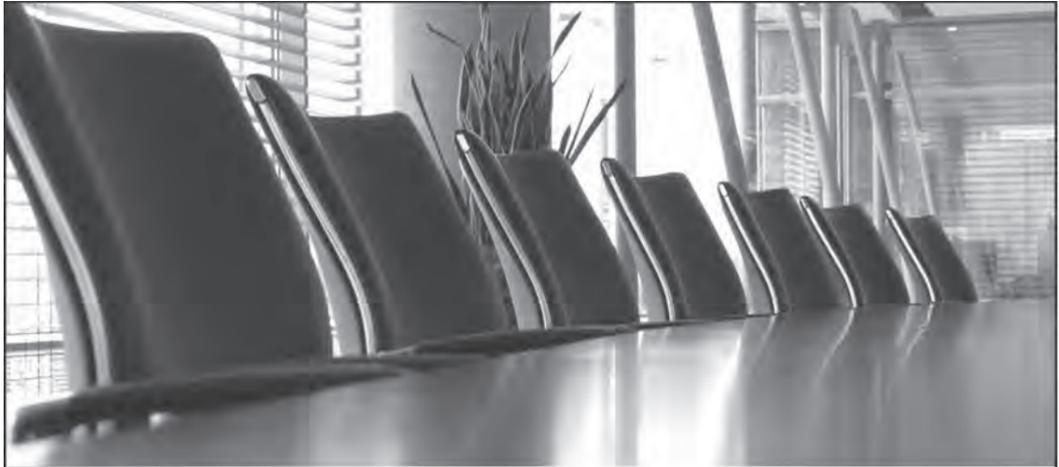
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*Continued on page 17*

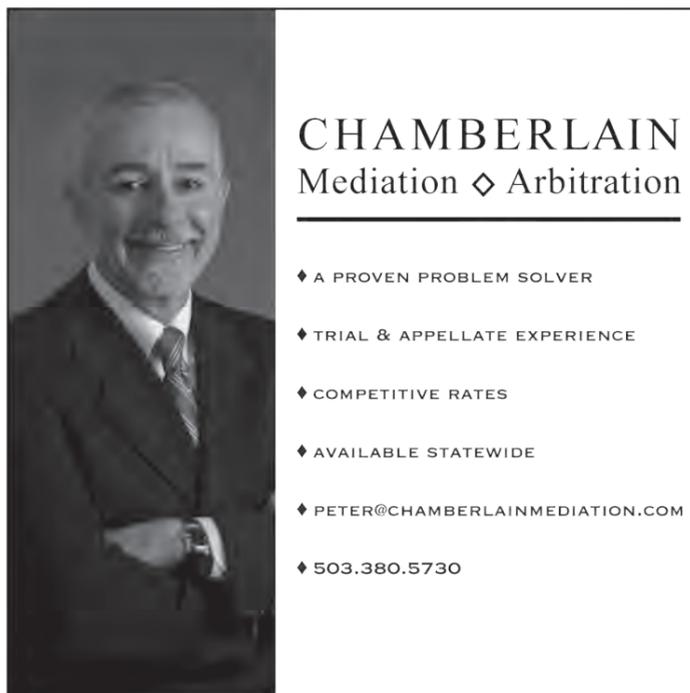


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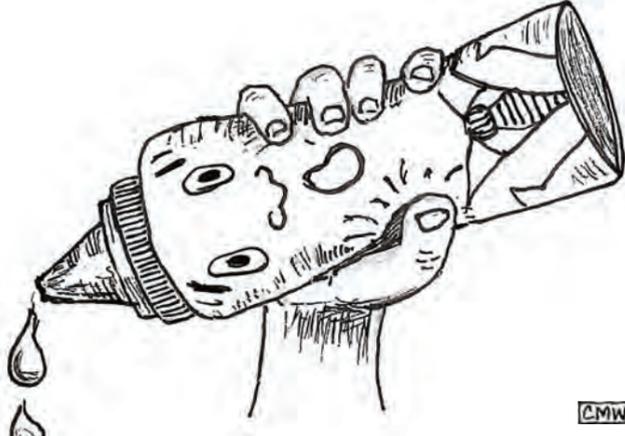
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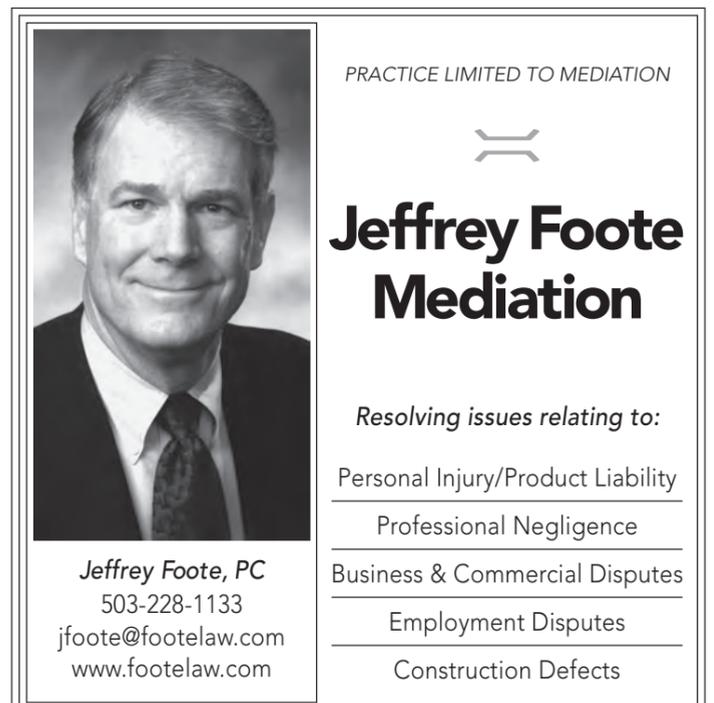
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*Continued from page 16*

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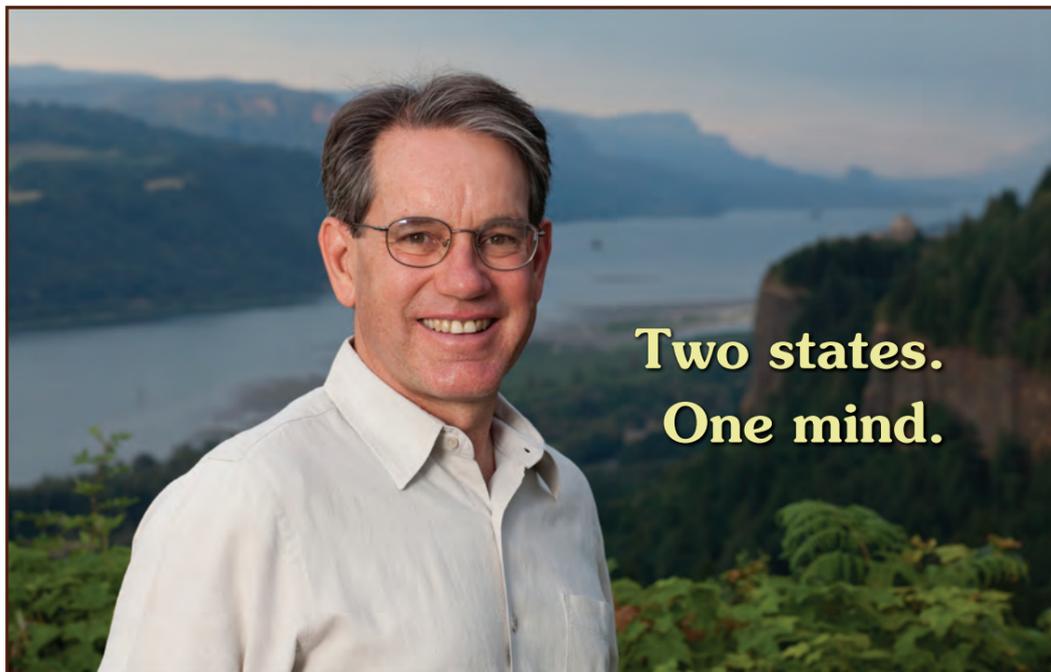
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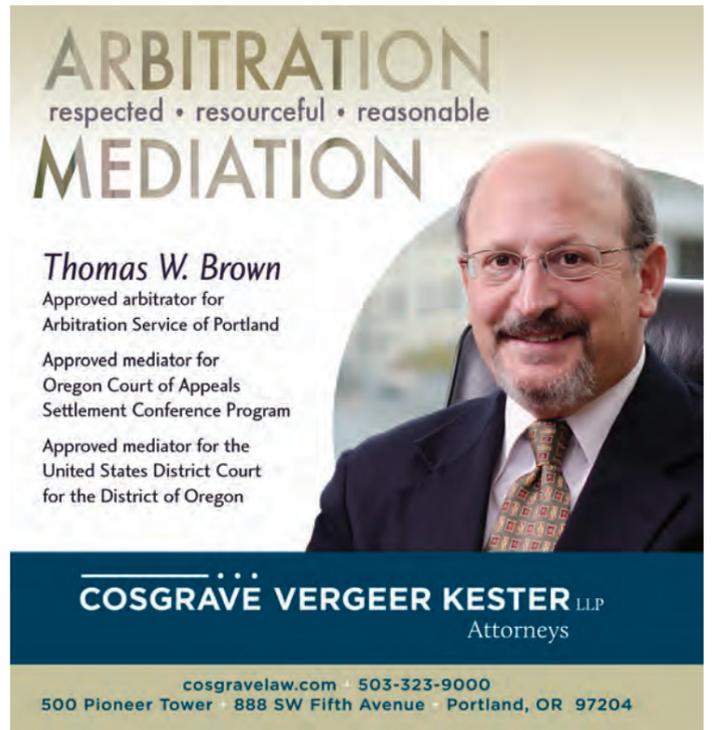
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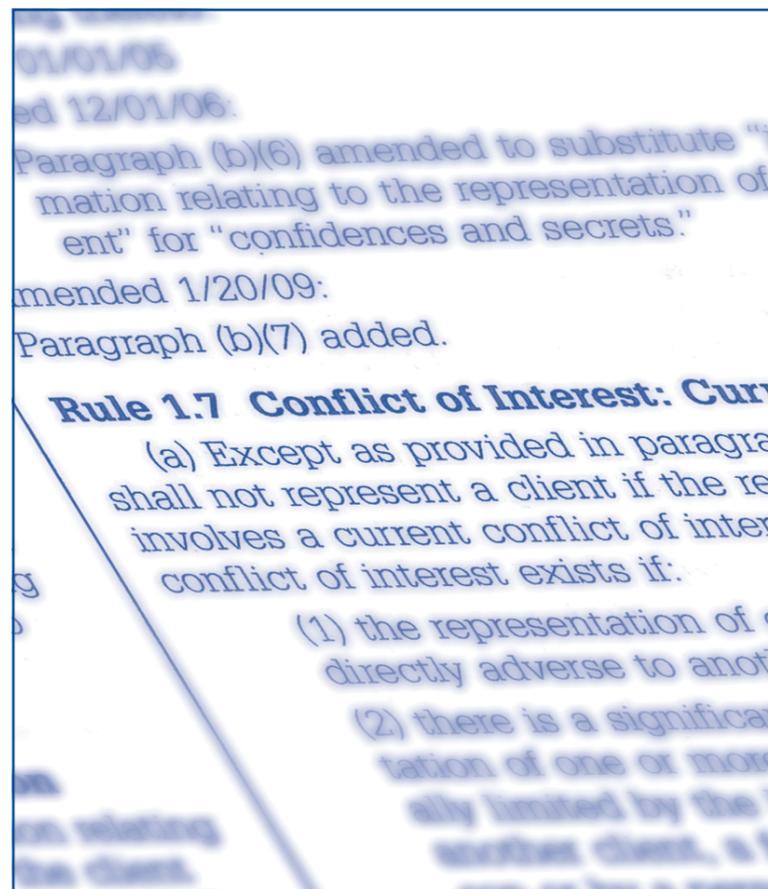


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Paragraph (b)(6) amended to substitute "information relating to the representation of client" for "confidences and secrets."

amended 1/20/09:  
Paragraph (b)(7) added.

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Robin M. Runstein is named partner.*



Robin Runstein's practice focuses largely on family law and she is one of two criminal defense attorneys in the firm. In her 6 years with the firm she has earned a stellar reputation within the legal community for her courtroom performance and as a highly skilled negotiator.

She earned her J.D. from New York Law School in 1995, is licensed to practice in Oregon, and was with the public defender's office and practiced on her own before joining Kell, Alterman & Runstein, L.L.P.

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## Multnomah Bar Foundation

### New Board Members Elected

by Pamela B. Hubbs  
Office and Foundation Administrator

The MBF welcomes new directors **Scott Downing**, **Bonnie Richardson** and **Brad Tellam**.

**Scott T. Downing**, Scott Downing PC, practices in the areas of family law, wills



Scott Downing

and estates, probate and real property. He is involved in the OSB Fee Arbitration Program, serves frequently as an arbitrator for fee disputes, was a member of the Task Force to Revise the OSB Fee Arbitration Rules in 2010 and involved in the Pilot Mediation Program. He was a volunteer attorney with the Senior Law Project at LASO and is a longstanding volunteer with the Boy Scouts of America, currently serving on the Process Review Committee at the Council level.

**Bonnie Richardson**, Folawn Alterman & Richardson, is a co-founder and managing partner



Bonnie Richardson

of her firm, practicing business litigation, legal malpractice and trust litigation. She served on the MBA Board from 2009-12, was secretary from 2011-12, served on the MBA Equality Committee, chaired the MBA CLE Committee and received the MBA Pro Bono Award of Merit for her work with the Oregon Law Center. Her other volunteer activities include serving as an arbitrator with the OSB Fee Arbitration

Program and co-chairing the OAPABA Advocacy Committee and the AFS Intercultural Programs' International Hosting Orientation Workgroup.

**Bradley F. Tellam**, Stoel Rives LLP, is a partner of the firm, practicing employment law, education law, appeals and legal ethics and professional



Bradley Tellam

responsibility. He frequently writes and speaks on ethics issues and is the firm's Counsel. Brad served

on the MBA Professionalism Committee, chairing it in 2007. He served on the Oregon Law Institute Board and was awarded the OSB President's Membership Service Award.

Continuing board members include **Hon. Julie E. Frantz**, Multnomah County Circuit Court, President; **Timothy R. Volpert**, Davis Wright Tremaine, Vice President; **Thomas W. Brown**, Cosgrave Vergeer Kester, Secretary/Treasurer; **Edwin A. Harnden**, Barran Liebman, Past President; **Christine L. Hein**, Wrenn Bender et al; **Leslie Nori Kay**, Legal Aid Services of Oregon; **Allyson S. Krueger**, Dunn Carney et al; and **Charles S. Tauman**, Charles S. Tauman PC. **Martha Hodgkinson**, Hodgkinson Street, is the 2012-13 MBA Board Liaison.

To learn more about the MBF, visit [mbabar.org/Foundation](http://mbabar.org/Foundation) or contact Pamela Hubbs ([pamela@mbabar.org](mailto:pamela@mbabar.org)).

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