



## Can You Do a Little?

by Eric L. Dahlin  
MBA Board Director

**Nobody made a greater mistake than he who did nothing because he could do only a little.**

- Edmund Burke

Have you ever wanted to give back to your profession and community by doing pro bono legal work, but thought there was not enough time in your already busy schedule to do so? Have you ever had spare time that you could potentially devote to pro bono work, but thought it would not be enough to do anything meaningful, and as a result you did not do anything? If so, you are not alone; there are many lawyers in the same boat. The good news is that there are plenty of opportunities for lawyers to do pro bono work that do not require substantial investments of time, while at the same time providing immeasurable benefits to the recipients of those services.

As a preliminary matter, here are some statistics that may surprise you, and which show the great need for pro bono legal services.

- The maximum annual income (with some exceptions) to be eligible to receive legal aid services is \$29,438 per year for a family of four, and is \$14,363 for a single person. Nearly 850,000 Oregonians - more than one in five - meet that requirement. Poverty rates in communities of color are even higher.
- There are currently 90 legal aid lawyers in Oregon, which equates to roughly one lawyer for every 9,444 poor persons (compared to one lawyer for every 340 people who can pay for legal services).
- Legal aid lawyers, and the pro bono attorneys who help them, are meeting less than 15% of the civil legal needs of the poor.
- This year, legal aid attorneys will directly serve about 22,000 clients in Oregon. About 80% of legal aid's clients are women - most with children to support. 41% of legal aid's cases are family law cases, usually helping victims of domestic violence to obtain and enforce restraining orders and create stable home environments for their children.

One way to get involved with pro bono work is through the Volunteer Lawyers Project (VLP), the pro bono program of the Portland Regional Office of Legal Aid Services of Oregon. The VLP serves low-income Oregonians through seven pro bono projects: the Domestic Violence Project; Pro Se Assistance Project (family law); Bankruptcy Clinic; Senior Law Project; Legal Aid Night Clinic; Low-income Taxpayer Clinic; and Pro Bono Oregon Listserv. The VLP provides training, mentoring, PLF coverage, and other support to volunteers. The VLP handled 2,128 cases in 2012.

Several VLP programs are primarily "advice-only" clinics, or require brief service after the clinic. For example, through the Senior Law Project, many clients are helped simply by the lawyer giving the client oral advice at the clinic, or perhaps brief follow-up service after

the clinic such as drafting a Power of Attorney or writing a letter to a landlord. Even cases through the Domestic Violence Project, where attorneys represent victims at contested restraining order hearings, have relatively short time commitments. Often a case is referred to the pro bono attorney a week or so before the hearing, and the representation ends once the hearing is over; thus, these are not cases that linger on a busy attorney's open case list. If you are interested in working with the VLP, please see the Pro Bono Attorney Information Form that is an insert to this issue of the *Multnomah Lawyer*. The VLP is - I cannot emphasize this enough - always interested in new volunteers.

Another option for finding pro bono opportunities is to contact one of the nonprofit legal services organizations that operate in Oregon, many of which will be represented at the annual Pro Bono Fair on October 21 at the World Trade Center building in downtown Portland. The Pro Bono Fair is an excellent opportunity for attorneys to learn more about these various organizations and to find a good match for their pro bono time. See page 2 for more information about the Pro Bono Fair.

It may seem trite to say "every little bit helps," but that rings true when talking about providing pro bono services because there is such a great need for help. As lawyers, we sometimes take for granted how much we know about civil procedure and the substantive law, and can easily forget how foreign, confusing and stressful the legal system can be to a first-time participant. Thus, taking a small amount of time to share your knowledge - even just a 30 minute meeting with a client to answer basic questions - can give a client relief and peace of mind, and perhaps even empower the client to confidently take the next step without assistance.

This column is not meant to suggest that all pro bono matters are quick and easy; they are not. There are plenty of pro bono cases that will be complicated and time consuming (but also rewarding and fulfilling), and the MBA certainly encourages its members to take on such big cases. But, the MBA also encourages all its members to do pro bono work, even if that means taking on a relatively small matter, because the combined efforts of the entire membership can make a big difference. Even if you can do only a little pro bono work, will you do so?

**It may seem trite to say "every little bit helps," but that rings true....**

**There are currently 90 legal aid lawyers in Oregon ... roughly one lawyer for every 9,444 poor persons....**

## mba|EVENT

### MBA Absolutely Social

The Grape Escape  
featuring Wine Tasting  
Thursday, October 24  
The University Club  
5-7 p.m.

Drop in after work and catch up with friends and colleagues.

See insert for details to RSVP.

#### Thank you, sponsors!

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## mba|CLE

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

### OCTOBER

**10.17 Thursday**  
**HIPAA Omnibus Rule Compliance**  
Cindy Hahn  
Tatiana Perry

**10.22 Tuesday**  
**Mediation is a Contact Sport**  
David Markowitz  
Jane Paulson  
Richard Spier

**10.29 Tuesday**  
**An Innocent Abroad Legal Lessons from Amanda Knox**  
Anne Bremner

**10.30 Wednesday**  
**Medicare: Why Should You Care?**  
Tom D'Amore  
Kelly Giampa  
Lynetta St. Clair

### NOVEMBER

**11.13 Wednesday**  
**Child Abuse Reporting**  
Amber Hollister

### DECEMBER

**12.10 Tuesday**  
**What's New in Lawyer Regulation, in Oregon and Beyond**  
John Gleason  
David Elkanich

**12.12 Thursday**  
**Is the Defense of Marriage Act (DOMA) Dead? - U.S. vs. Windsor and Beyond**  
Judge Beth Allen  
Beth Newsong

**12.18 Wednesday**  
**Sailing in the Sea of Change: the Affordable Care Act**  
Bruce Howell  
Anthony Behrens  
Michael Schopf

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## Celebrate Pro Bono

by Cathy Petrecca  
Oregon State Bar

The Oregon New Lawyers' Division and the MBA YLS invite you to attend the Annual Pro Bono Celebration and Fair on Monday, October 21 at the World Trade Center, 121 SW Salmon St. Three free CLEs will be provided in the afternoon prior to the Legal Services Providers Fair and the Pro Bono Challenge Award ceremony, which starts at 5 p.m.

This year, the following firms and individuals will be recognized for their large number of pro bono hours reported for 2012:

Large firm:  
**Stoel Rives**

Medium firm:  
**Barran Liebman**

Small firm:  
**Janet Hoffman and Associates**

Individual at a firm:  
**Bob Newell**

Solo practitioner:  
**Lana Traynor**

Active Pro Bono:  
**George Galloway**

The three free CLEs start at 3 p.m. The topics are:

- Effective Representation in Tax Controversy Cases,

presented by Legal Aid Services of Oregon

- Pro Bono for New Lawyers: Getting Your Feet Wet Without Drowning, presented by the MBA YLS
- Updates in Immigration Law, presented by Immigration Counseling Service and Catholic Charities/Immigration Legal Services

Those interested in attending the CLEs should contact Michelle Lane at the OSB at [mlane@osbar.org](mailto:mlane@osbar.org).

Lawyers looking for opportunities to engage in pro bono work will find at least 18 organizations looking for volunteers. Some of the organizations are Oregon Law Center, ACLU of Oregon, Elders in Action, Classroom Law Project, Small Business Legal Clinic and the Victim Rights Law Center.

Come join local members of the ONLD and the MBA YLS, along with their co-sponsors, the OSB, Legal Aid Services of Oregon, the Oregon Law Center, Barran Liebman LLP and Miller Nash LLP at this fun, educational celebration in support of lawyers who make a difference!

## Renew Your MBA Membership for 2014

Fall has arrived, and so too has the time to renew your MBA membership. Here are just a few reasons to continue with the MBA:

- Discounted MBA CLEs and an online library of programming available 24/7
- Socials, volunteer outings and other networking opportunities
- Stay informed via the *Multnomah Lawyer* newsletter, MBA ENEWS and the website keep you informed
- Members-only discounts from business service providers
- Access to the MBA group health insurance plan for you, your staff and your family

Renew today for 2014 at [www.mbabar.org](http://www.mbabar.org).

## 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).

### OCTOBER

#### 10.3 Thursday

**Battle of the Lawyer Bands**  
Visit [mbabar.org](http://mbabar.org) for details

#### 10.4 Friday

**YLS Wills for Heroes**  
Visit [mbabar.org](http://mbabar.org) for details

#### 10.5 Saturday

**MBA Wine Crush**  
Visit [mbabar.org](http://mbabar.org) for details

#### 10.8 Tuesday

**Queens Bench Luncheon**  
Visit [owlsqueensbench.org/monthly-luncheons.html](http://owlsqueensbench.org/monthly-luncheons.html) for details

#### 10.17 Thursday

**YLS Drop-in Social**  
See p. 13 for details

#### 10.19 Saturday

**OGALLA Annual Dinner**  
Visit [ogalla.org](http://ogalla.org) for details

#### 10.21 Monday

**OSB Pro Bono Fair**

#### 10.24 Thursday

**MBA Absolutely Social**  
See p. 1 for details

#### 10.25 Friday

**CEJ Laf-Off**  
Visit [cej-or.org](http://cej-or.org) for details

### NOVEMBER

#### 11.2 Saturday

**BOWLIO**  
Visit [osbar.org](http://osbar.org) for details

#### 11.7 Thursday

**US DC Historical Society Annual Dinner**  
Visit [usdchs.org](http://usdchs.org) for details

#### 11.14 Thursday

**East County Courthouse Meeting**  
See Announcements on p. 6 for details

#### 11.15 Friday

**MBA Judicial BrownBag**  
Visit [mbabar.org](http://mbabar.org) for details

#### 11.19 Tuesday

**Bench Bar & Bagels**  
Visit [mbabar.org](http://mbabar.org) for details

#### 11.28-29 Thursday-Friday

**Thanksgiving Holiday**

## MBA Bocce Ball Tournament

Members of the bar gathered on August 15 for the first annual MBA Bocce Ball Tournament. The tournament was held at the two outdoor grass courts located at the 200 Market Building, downtown. As competitors mingled, MBA Membership Committee members explained that in the game of bocce ball, which is also known as Italian bowling, players take turns tossing colored balls underhanded toward the target ball, in an attempt to get as close to the target ball as possible. Two teams per court faced off to get the tournament started, playing until one team in each court was the first to reach seven points. Play proceeded in this single-elimination fashion until only two skilled teams remained.

While the competitors casually sipped their drinks and carefully measured their throws, previously eliminated players observed the game intently. The last two teams standing continued to play neck and neck, but ultimately the victors were Chris Fowler, Robert Hakari, and Annie Smith, all of McCarthy & Holthus LLP. Chris, Robert, and Annie will no doubt be devoutly practicing their skills in preparation to defend their title in next year's tournament.

Many thanks to Northwestern Mutual and Farleigh Wada Witt for sponsoring the event. If you or your firm is interested in sponsoring a similar event in the future, please contact Kathy Modie at [kathy@mbabar.org](mailto:kathy@mbabar.org).



Bocce Ball Tournament champions

## HIPAA Omnibus Rule Compliance

*Checklist for Law Firms and Other Entities that fall within the definition of a Business Associate*

Thursday, October 17, 2013  
3:00-5:00 p.m.

World Trade Center  
Sky Bridge Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

HIPAA Omnibus Rule compliance deadline was September 23, 2013. If you or any of your clients are business associates, have you (they) done everything to be in compliance? This presentation will cover the definition of a business associate and when a law firm may fall within that definition. Provisions of the Omnibus Rule that affect business associates will be discussed along with a checklist that business associates can use to confirm their compliance with the Omnibus Rule. The presentation will also touch upon business associate agreements and provisions important for that document from the business associates' perspective. Presented by **Cindy Hahn** (CIPP/US), Privacy Officer for Multnomah County, and **Tatiana Perry** (CIPP/US), a partner at Tonkon Torp. Both are Certified Information Privacy Professionals, a credential which is earned by taking two exams demonstrating a strong foundation in U.S. privacy laws and regulations and understanding of the legal requirements for the responsible transfer of sensitive personal data to and from the U.S. the EU and other jurisdictions.

### For more information:

Call Ryan Bledsoe, Tonkon Torp at 503.802.2120. For registration questions, call the MBA at 503.222.3275.

## Mediation is a Contact Sport How to Get the Best Possible Result for Your Client

Tuesday, October 22, 2013  
3:00-5:00 p.m.

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

"Mediation is a Contact Sport." So said the late Sid Lezak, former U.S. Attorney for the District of Oregon, and godfather of mediation of civil cases in Oregon. By this, he meant that mediation between represented parties, before lawyer-mediators, is not a touchy-feely process seeking an objectively fair resolution of disputes. This is not to say that mediators don't encourage consideration of the opponent's legitimate needs (legal, financial, and emotional) or that counsel should be disrespectful or insensitive to the other side. However, mediation is part of the litigation process, not separate from it. One of the best tactics in mediation is for counsel to make clear that he or she is ready, willing, and able to go to trial. Mediation is adversarial, and the preparation and tactics of counsel can make a big difference in the result. In this program, respected litigators **Jane Paulson**, Paulson Coletti and **Dave Markowitz**, Markowitz Herbold

Glade & Mehlhaf and experienced mediator **Rich Spier**, share leading edge ideas for effective representation of clients in mediation.

### For more information:

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

## An Innocent Abroad Legal Lessons from Amanda Knox

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

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

**Anne Bremner**, the attorney for Amanda Knox's family, will discuss lessons learned from Amanda Knox's four years in an Italian prison. Bremner, an experienced prosecutor and member of the American College of Trial Lawyers, will evaluate the role the media had in Ms. Knox's eventual release, legal rights of Americans abroad, Amanda Knox's trial counsel, and the effect one misguided prosecutor can have on the outcome of a trial.

### For more information:

Call Aukjen Ingraham, Cosgrave Vergeer Kester at 503.219.3837. For registration questions, call the MBA at 503.222.3275.

## Medicare: Why Should You Care?

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

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

The MBA presents a two-hour program on Medicare and the Medicare Recovery Act. Myriad issues from the perspective of both plaintiffs counsel and defense counsel will be addressed.

Any lawyer encountering Medicare issues - whether frequently or occasionally - should attend this program. Topics will include:

- What is Medicare and how does it affect my clients?
- What is the SMART Act?
- What is the process for addressing Medicare concerns?
- How do you "protect Medicare's interest" when a case resolves?

Our speakers are **Kelly Giampa**, Hart Wagner LLP, **Tom D'Amore**, D'Amore Law Group and **Lynetta St. Clair**, Hart Wagner LLP. Kelly's practice focuses on medical malpractice and long-term care defense. Tom's practice focuses on representing plaintiffs in personal injury actions. Both try cases involving Medicare issues on a regular basis. Lynetta's practice focuses on advising insurance and corporate clients regarding Medicare compliance issues.

### For more information:

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

## Child Abuse Reporting

Wednesday, November 13, 2013  
12:00-1:00 p.m.

World Trade Center  
Auditorium  
26 SW Salmon, Portland

Members \$35  
Non-members \$55

*Note: This class will be worth one hour of child abuse reporting credit.*

The MBA presents its annual seminar on child abuse reporting requirements. This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. Questions to be addressed include the following:

- What are the reporting requirements?
- How do I recognize reportable child abuse?
- What is it that I'm really supposed to do?
- What happens if I make a report of abuse?
- What happens if I don't report when I should have?

**Amber Hollister**, Deputy General Counsel of the OSB, will present a lively and practical discussion of the issues.

### For more information:

Call the MBA at 503.222.3275.

## What's New in Lawyer Regulation, in Oregon and Beyond

Tuesday, December 10, 2013  
3:00-5:00 p.m.

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland

Members \$55  
Non-members \$85

*Note: This class will be worth two hours of ethics credit.*

Rapid changes in technology, changing demands of clients, the disappearance of borders and globalization of the practice of law, are all trends that have spurred the reexamination and further evolution of the rules relating to lawyer conduct and admission.

Join **John Gleason**, Oregon State Bar Disciplinary Counsel and Director of Regulatory Services, and **David Elkanich**, partner at Hinshaw & Culbertson LLP, for a lively and frank discussion of their perspectives on the meaning and impact of recent changes to the Oregon Rules of Professional Conduct, recent Oregon disciplinary cases and formal ethics opinions of note, as well as national and global trends and developments in the area of lawyer admission and regulation.

### For more information:

Call Shannon Armstrong, Markowitz Herbold Glade & Mehlhaf at 503.295.3085. 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>

## Is the Defense of Marriage Act (DOMA) Dead? U.S. vs. Windsor and Beyond

Thursday, December 12, 2013  
3:00-5:00 p.m.

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

In *U.S. v. Windsor*, the United States Supreme Court held Section 3 of the Defense of Marriage Act (DOMA), unconstitutional under the Due Process Clause of the Fifth Amendment thereby giving married same-sex couples federal recognition. Multnomah County Circuit Court **Judge Beth Allen** and Portland Estate Planning attorney **Beth Wolfsong** will present a two-hour CLE addressing the implications of this landmark case, the federal executive response post-Windsor, and what this means for Oregon lawyers who practice in state and federal courts especially in the areas of family law, estate planning, civil rights, federal benefits, and/or taxation.

**For more information:**

Call Michael Hallas, McKinley Irvin at 503.953.1032. For registration questions, call the MBA at 503.222.3275.

## Sailing in the Sea of Change: The Affordable Care Act

Wednesday, December 18, 2013  
3:00-5:00 p.m.

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

Join veteran health care practitioner **Bruce Howell**, Schwabe Williamson & Wyatt, **D'Anne Gilmore**, from the Oregon Insurance Division and **Michael Schopf**, from Cover Oregon for their informed perspectives on anticipated implementation, use and enforcement of the new health care legislation. Learn what to expect for your clients and practice as we move into this new era of health care law.

**For more information:**

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

## Alternative Fee Arrangements

Thursday, December 19, 2013  
3:00-5:00 p.m.

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

Are you wondering how contingent, flat, and everything-in-between alternative fee arrangements (AFAs) could fit your practice? Hear from in-house and outside civil counsel, an ethics expert, and a criminal practitioner about how to price and document your AFA. Our speakers are **David Wang**, in-house counsel, Vestas Wind Systems, **Marc Alifanz**, in-house counsel, Knowledge Universe (Kindercare), **Dayna Underhill**, Partner, Hinshaw & Culbertson, **Kieran Curley**, Managing Partner, Miller Nash, and **Richard Oberdorfer**, Owner, Oberdorfer Law Firm LLC.

In this seminar, you will learn:

- Ethics traps to avoid with AFAs
- What in-house counsel are looking for in AFAs both transactional and litigation
- How to price AFAs in both simple and complex matters, and “expect the unexpected”
- How to make a contractual or statutory fee claim with an AFA in place

**For more information:**

Call Seth Row, Parsons Farnell & Grein at 503.222.1812. For registration questions, call the MBA at 503.222.3275.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. 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).

### Registration Form

Receive a \$5 Discount when registering online at [www.mbabar.org](http://www.mbabar.org).

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- MBA Member  
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**Payment Options:**

- Check  VISA  MasterCard  
 American Express

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:**

Multnomah Bar Association  
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.

**10/17 HIPAA Omnibus Rule Compliance**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**10/22 Mediation is a Contact Sport**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**10/29 An Innocent Abroad - Legal Lessons from Amanda Knox**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**10/30 Medicare: Why Should You Care?**

- Class Registration Online (\$50 Members/\$80 Non)  
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 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**11/13 Child Abuse Reporting**

- Class Registration Online (\$30 Members/\$50 Non)  
 Class Registration (\$35 Members/\$55 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**12/10 What's New in Lawyer Regulation, in Oregon and Beyond**

- Class Registration Online (\$30 Members/\$50 Non)  
 Class Registration (\$35 Members/\$55 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**12/12 Is the Defense of Marriage Act (DOMA) Dead?**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**12/18 Sailing in the Sea of Change: The Affordable Care Act**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**12/19 Alternative Fee Arrangements**

- Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**Total due** ..... \$ \_\_\_\_\_



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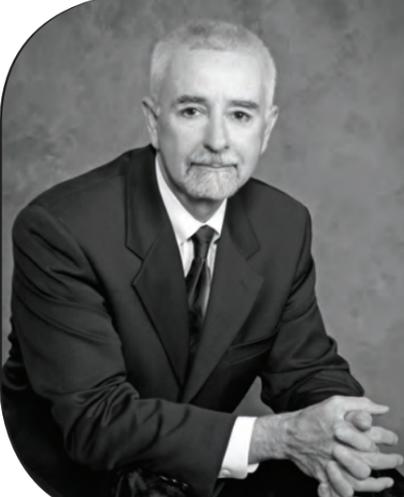
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## mba | ANNOUNCEMENTS

### MBA Membership Drive

Sign up as a new MBA member during the fall drive and receive two months' benefits for free. If you join now, your MBA membership is good through the end of 2013 and through all of 2014. For more information, visit [www.mbabar.org](http://www.mbabar.org).

### MBA Professionalism Award Nominations due Friday, November 1

The MBA Professionalism Award is one of the most highly regarded honors an attorney in our area can receive. You are strongly encouraged to nominate a member who meets the criteria for the award, which can be found on the nomination form inserted in this issue.

### Take a Matter that Matters

Sign the MBA 2014 Pro Bono Pledge at <http://mbabar.org/AboutUs/ProBono.html> and commit to taking at least one pro bono case next year.

### East County Courthouse Invitation

The beautiful East County Courthouse, located at 18480 SE 182<sup>nd</sup> Ave., has been open for over a year now. The facility includes three courtrooms, spaces for lawyers to meet with clients, parking and up-to-date technology. The court is ready to decide how it can best meet the needs of the East County community and bar. On Thursday, November 14 at 4 p.m., Presiding Judge Nan Waller and Judges Bushong, Frantz and McKnight invite you to the facility to provide feedback regarding the kinds of cases and services that the bar would like to see at the East County Courthouse, located at 18480 SE 182<sup>nd</sup> Ave.

### Judicial BrownBag – Noon, November 15

On Friday, November 15 at noon, plan to bring your lunch and join Multnomah County Judges at the downtown courthouse in Courtroom 208 for a discussion about the upcoming procedural and rule changes to accommodate eCourt implementation.

### 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.

### Multnomah County Presiding Judge and Former Commissioner Receive Award

Sen. Gordon and Sharon Smith will present Judge Nan Waller and former Multnomah County Commissioner Lisa Naito with the Gordon and Sharon Smith New Freedom Award at a dinner to be held at the Portland Downtown Waterfront Marriott on October 10.

Created by National Alliance on Mental Illness (NAMI) Oregon in 2009 to honor the mental health advocacy efforts of former U.S. Senator Gordon Smith and his wife Sharon, the New Freedom Award is presented annually and recognizes an individual or individuals for their leadership on mental health issues.

More information about the dinner is available at [www.namior.org](http://www.namior.org) or by calling 503.230.8009.

### USDC Historical Society Annual Meeting & Dinner

The U.S. District Court of Oregon Historical Society invites you to attend its annual meeting and dinner on November 7 at the Governor Hotel, featuring author Phillip Margolin's keynote address about *Holmes v. Ford*, an 1853 case that inspired his upcoming novel *Worthy Brown's Daughter*. The society will also present Lifetime Service Awards to Sidney Lezak (posthumously) and Norman Sepenuk. A social hour will begin at 5:30 p.m., to be followed by dinner at 6:30. Additional details, including a flyer with reservation information, are available at [www.usdchs.org](http://www.usdchs.org).

## webcheck

Sign the 2014 Pro Bono Pledge and commit to taking at least one pro bono case this year <http://mbabar.org/AboutUs/ProBono.html>.

## The Honorable Harl Haas In Memoriam

December 24, 1932 - September 21, 2013

Honorable Harl H. Haas Jr. was a trial lawyer who served Oregon as a State Legislator, Senator and was later elected Multnomah County District Attorney, where he served two four-year terms. During his tenure there, he created the nation's first rape victim assistance program. He also started Oregon's first court-ordered restitution program.

In 1985, Haas was elected a Multnomah County Circuit Court Judge. While on the bench, he founded the Sanctions Treatment Opportunity Progress (drug court) program, which offered people charged with nonviolent drug offenses treatment and a chance to have their drug convictions expunged.



Hon. Harl H. Haas Jr.

Haas is survived by his wife, Mary Lou; his daughter, stepchildren, grandchildren and his former wife.

### Buy a Court Bond from The Bar Plan and help fund the Volunteer Lawyers Project

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## Ethics Focus

### Electronic Ambush Covert Investigations through Social Media

by Mark J. Fucile  
Fucile & Reising



I was recently involved in a personal injury case that included a large claim for loss of consortium. The plaintiffs presented themselves as a devoted couple. There was only one problem: both of them had posted on various public social media sites that they had left their relationship 10 years before under very bitter circumstances. One of the defense lawyers

**...social media evidence is generally subject to formal discovery....**

discovered the postings (which the plaintiffs' lawyer hadn't known about) and used them to devastating effect during their video depositions.

This illustration highlights the crucial role that social media evidence can play in many cases today. This example also highlights that although social media evidence is generally subject to formal discovery (as long as it is relevant), it can often be at its most effective if it is gathered silently and sprung on an unsuspecting deposition or trial witness in an "electronic ambush."

The OSB earlier this year provided important guidance on gathering social media evidence in Formal Ethics Opinion 2013-189. This opinion, in turn, built on two earlier OSB ethics opinions: 2005-164, which addressed obtaining evidence from websites; and 2005-173, which discusses lawyer participation and supervision in covert investigations generally. All three opinions are available at [www.osbar.org](http://www.osbar.org). Opinion 2013-189 first addresses the

"no contact" rule - RPC 4.2 - and then turns to Oregon's special rule on the use of misrepresentations in covert investigations - RPC 8.4(b). We'll do the same.

#### "No Contact" Rule

Opinion 2013-189 reaches the same two conclusions on social media that Opinion 2005-164 did on websites. First, simply viewing a static web page that is publicly available is not a "communication" within the meaning of RPC 4.2. Both opinions use the analogy of reading a magazine article or book written by an adversary. Second, by contrast, RPC 4.2 prohibits interactive communication with a person represented on the subject involved (whether a party or a witness). Significantly, Opinion 2013-189 concludes that the prohibition extends to interactive requests for "friending" and the like with a person the lawyer knows to be represented on the subject involved. As Opinion 2013-189 notes, the "no contact" rule also applies to represented organizations (and OSB Formal Ethics Opinion 2005-80 discusses this topic in detail).

**...simply viewing a static web page that is publicly available is not a "communication"....**

By its terms, RPC 4.2 applies to both lawyers and nonlawyers working under the lawyer's direction: "a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented[.]" Therefore, the prohibition on direct contact would also apply to an investigator or paralegal working with the lawyer.

#### "Misrepresentation" Rule

As a result of a torturous and nationally unique history that predated electronic social media, Oregon has a special rule on the use of misrepresentations in covert investigations:

RPC 8.4(b). Under that rule "it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct." "Covert activity," in turn, is defined in the rule as "an effort to obtain information on unlawful activity through the use of misrepresentations

**...a lawyer cannot engage in misrepresentations him or herself....**

or other subterfuge." In short, a lawyer cannot engage in misrepresentations him or herself, but can supervise nonlawyers who do in the course of otherwise lawful covert investigations. Opinion 2005-173 discusses RPC 8.4(b) in detail and offers a number of useful examples in both the criminal and civil contexts.

Applied to social media or other web investigations, RPC 8.4(b) would allow a lawyer to supervise a nonlawyer investigator who may use misrepresentations (in this setting often called "pretexting") to gain access to a social media or other website as long as the investigation meets the definition of authorized "covert activity" under the rule. It is critical to underscore, however, that RPC 8.4(b) does not "trump" RPC 4.2. In other words, RPC 8.4(b) permits an investigator working with a lawyer to gain access to a site through misrepresentation of the investigator's purpose or identity but only if the contact involved does not include interactive communications with a represented person.

With an unrepresented person, Opinion 2013-189 finds that simply using one's own name in a "friend request" or the equivalent without disclosing the investigative purpose is not, in and of itself, a misrepresentation. It cautions, however, that if the person to whom the request is directed asks the lawyer the purpose of the request, the lawyer must answer truthfully (or withdraw the request). Non-lawyers working under a lawyer's supervision, in turn, would be governed in this situation by RPC 8.4(b) as discussed above.

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## Let's Celebrate Pro Bono! Monday, October 21, 2013 Annual Pro Bono Fair and Three Free CLEs

Please join us in celebrating the pro bono work of Oregon lawyers during the past year.

Three FREE CLEs will run concurrently from 3:00 to 5:00pm, followed by the fair, awards and social from 5:00 to 7:30:

**"Effective Representation in  
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**"Pro Bono for New Lawyers:  
Getting Your Feet Wet Without Drowning"**

**"Updates in Immigration Law"**

General and practical skills credits will be applied for. To register for the CLEs or for more information, contact Michelle Lane at 503-431-6384 or [mlane@osbar.org](mailto:mlane@osbar.org).



## Around the Bar



*John C. Pinkstaff*

### Lane Powell

Counsel to the firm **John C. Pinkstaff** was recently elected to serve as president of the board of directors for Child Advocates, Inc., Court Appointed Special Advocates for Clackamas County.



*Kelly Knivila*

### Stoel Rives

Partner **Kelly Knivila** has been elected to the Board of Trustees for the Randall Children's Hospital Foundation, which advocates and raises funds for the Randall Children's Hospital at Legacy Emanuel in Portland. The hospital offers an innovative approach to children's health care, where complex medical and surgical care is blended with a peaceful environment to promote health and healing.



*Charmin Shiely*



*Christiane Fife*

**Schwabe Williamson & Wyatt** **Charmin Shiely**, a shareholder in the firm, was recently appointed to serve on the board of the YMCA of Columbia-Willamette.

**Christiane Fife**, senior counsel was recently appointed to serve on the associate board of Start



*Anthony Burrell*



*Jeffrey Eden*

Making A Reader Today. Fife focuses her practice on product liability litigation, consumer warranty disputes, disability and life insurance coverage, and premises liability adjudications.

**Anthony Burrell**, an associate, was recently appointed to serve on the board of peer, a Portland-based nonprofit that creatively mentors homeless youth. Staff and volunteers build positive relationships with homeless and transitional youth through education, art and recreation to affirm personal worth and create more meaningful and healthier lives. Burrell is an intellectual property attorney who focuses his practice in the area of patents.

**Jeffrey Eden**, shareholder, joins the Product Liability Advisory Council as a sustaining member. Eden is the group leader for the firm's products litigation practice group.



*Steffan Alexander*



*Kristin Asai*



*Lauren Blaesing*



*Harry Wilson*

### Markowitz, Herbold, Glade & Mehlhaf

Four new associates have joined the firm: **Steffan Alexander**, **Kristin Asai**, **Lauren Blaesing** and **Harry Wilson**.



*James Walker*



*Jovita Wang*



*Tyler Anderson*

### Miller Nash

Firm attorneys have been elected to serve on local organizations. **James Walker** was elected to the Albertina Kerr Center Board of Directors; **Jovita Wang** was elected to the Oregon Asian Pacific American Bar Association Board of Directors and **Tyler Anderson** was named to St. Andrew Nativity School Board of Trustees. **Jeneé Hilliard** was named chair of the board for Serendipity Center, Inc., a nonprofit therapeutic school that



*Jeneé Hilliard*

is both an accredited alternative school and a certified children's mental health provider. Director of Legal Support Services **Elise Brickner-Schulz** was elected as president of the Oregon Area Jewish Committee board.



*Tim Jones*



*Ken Ammann*

### Jones Ammann

**Tim Jones** and **Ken Ammann** have opened a new firm, which specializes in personal injury and wrongful death cases. The firm is located at 888 SW 5th Ave. Ste. 1100, Portland OR 97204, 503.374.1414. Salem office: 880 Liberty St. NE, Salem OR 97301, 503.364.6734.



*Corey Tolliver*

### Folawn Alterman & Richardson

**Corey Tolliver** has become a partner with the firm. Tolliver's practice includes legal and accountant malpractice, complex civil litigation, securities litigation, and all manner of business disputes. He can be reached at [corey@FARlawfirm.com](mailto:corey@FARlawfirm.com) and 503.546.4630.



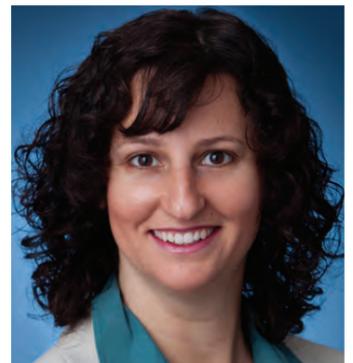
*Joshua DeCristo*

### JDC Law

**Joshua DeCristo** has founded JDC Law, LLC, where he will continue to focus on commercial and product liability litigation, as well as consumer product recalls, risk management, privacy and data security, and foreign manufacturing issues, with an emphasis on representing clients in the athletic and outdoor equipment industry.



*Cynthia Fraser*



*Jennifer Bragar*



*Bill Kabeiseman*

### Garvey Schubert Barer

**Cynthia Fraser**, a firm owner, was elected to the board of Project Lemonade - a new nonprofit that provides clothing for youth in foster care.

**Jennifer Bragar** is now an Oregon League of Conservation Voters board member.

**Bill Kabeiseman** was reappointed as the Multnomah County Board of Commissioners' representative to the Planning Commission.

*Continued on page 9*

# Foreclosure Help Oregon

by Hope Del Carlo



Foreclosure rates have skyrocketed in Oregon since 2008, sending individuals, families, and neighborhoods into crisis. Mortgage defaults have been raging in Oregon since at least 2008, and the end is not yet in sight. CNNMoney reported in August that Oregon's July 2013 foreclosure filings were 137% higher than those filed the previous year.\*

A bright spot in the crisis is the recent establishment of a new legal services program: Legal Aid Foreclosure Help. Oregon's legal services agencies have long maintained a strong focus on housing-related issues, but Foreclosure Help is a unique, concerted effort between geographically-remote partner agencies. Foreclosure Help is staffed by David Koen and Danielle Lordi of Legal Aid Services of Oregon, Michael Pijanowski of the Oregon Law Center, Faye Weisler of the Center for Nonprofit Legal Services in Medford, and Steve Kanaga of Lane County Legal Aid and Advocacy Center. Portland consumer lawyer Hope Del Carlo serves as the project's coordinator.

Established in November 2012, the project is funded by a grant through Oregon Housing and Community Services. Foreclosure Help assists both homeowners and tenants in homes facing foreclosure by providing brief advice on a range of foreclosure-related issues, and a limited amount of full-service representation in mediation and foreclosure proceedings. Potential clients are screened for eligibility by calling a statewide intake line staffed by foreclosure intake specialists who are ready to handle calls from borrowers who speak any language.

Foreclosure Help's staff attorneys serve low-income clients in-house, while moderate income clients (those with incomes of 200-400% of the federal poverty level) are referred to private pro bono attorneys for assistance. Attorney volunteers commit to giving a one-hour consultation to a referred client

at no charge. Beyond the initial consultation, volunteers have the option of providing additional representation, either on a pro bono basis or for a reduced or sliding scale fee.

Pro bono volunteers are provided with expert training and support on foreclosure avoidance, since foreclosure defense can be technical. The project hosts a monthly case clinic for its volunteers with an open format that allows participants to ask questions, share information, and get feedback on strategy and drafting. In addition, Foreclosure Help organizes CLEs on foreclosure topics, including a February 2013 training at the OSB Center on judicial foreclosure, featuring national experts Tom Cox and Nina Simon.

This project is a chance for concerned Oregon lawyers to have a real impact in our fellow citizens' lives. Stabilizing the housing market is fundamental to the safety and health of our most vulnerable citizens, but it's also a critical piece of Oregon's ongoing economic recovery, which affects all of us. To volunteer for the project, please call the Legal Aid Foreclosure Help intake line and ask for a volunteer application. In the Portland metro area, the intake number is 503.227.0198. Outside Portland, the toll-free number is 1.855.412.8828. \*[http://money.cnn.com/2013/08/15/real\\_estate/foreclosure-states/index.html](http://money.cnn.com/2013/08/15/real_estate/foreclosure-states/index.html)

## Around the Bar

Continued from page 8



Duke Tufty

### Wyse Kadish

Duke Tufty has joined the firm as an of counsel attorney. His practice will continue to focus on alcohol regulatory law and helping businesses in the Pacific Northwest understand the regulatory environment, obtain the right licenses and permits, and stay in compliance. He also regularly represents licensees in administrative proceedings to defend their license. For more information about his practice, visit his blog at [nwalcohollow.com](http://nwalcohollow.com).



Daniel Harris

### Harrang Long Gary Rudnick

Former Jackson County Circuit Court Judge Daniel Harris has joined the firm, where he will serve clients as a civil trial attorney, mediator and arbitrator.

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 submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to Carol Hawkins, [carol@mbabar.org](mailto:carol@mbabar.org).

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## Tips From the Bench

by Judge Marilyn Litzenberger  
Multnomah County Circuit Court

### 12 Person Juries and Expedited Civil Jury Trials

On June 11, Chief Justice Thomas Balmer signed an order amending UTCR 5.150.<sup>1</sup> The amendment concerns the Expedited Civil Jury Trial program. In the past, the rules called for a six person jury. Many lawyers cited that factor as a limitation to recommending the program to their clients. That barrier has been removed and the benefits of the expedited civil jury program have not changed.

Several states, not just Oregon, have adopted expedited or summary jury trials for civil cases - all for the same reasons. There are fewer and fewer lawyers who are proficient in trying civil cases to a jury. Ask any judge in this state or any other state for that matter. The civil jury trial is disappearing because the opportunities that were available for retiring members of the bar to learn the art of trial practice evaporated with the increased use of ADR, in particular court-annexed mandatory arbitration in lower value cases. Arbitrating a case requires different skills than trying a case to a jury, or even trying a case to the bench. Lawyers in practice for 25 years or less are not as well versed in the application of the evidence rules that apply to cases tried in a courtroom. As we know from our evidence courses in law school, memorizing the rules of evidence does not lead to a mastery of those rules in practice. Likewise, taking a discovery deposition is different than conducting direct examination of a witness during a trial. Trial is like any other skill: learning to be a skilled trial lawyer takes time and practice. The more practice opportunities, the more a trial lawyer can learn from his or her successes and mistakes. But lawyer training is not the only reason for concern.

The decline in jury trials has meant fewer cases that have the benefit of citizen input, fewer case precedents, fewer jurors who understand the system, fewer judges and lawyers who can try jury cases - and overall, a smudge on the Constitutional promise of access to civil, as well as criminal, jury trials.

### The Evolution of the Summary Jury Trial: A Flexible Tool to Meet a Variety of Needs.<sup>2</sup>

In 2011, the National Center for State Courts published a report discussing the features of summary jury trials. You can

<sup>1</sup> Chief Justice Order 13-036.

<sup>2</sup> Hanaford-Agor, P and Walters, N. *The Evolution of the Summary Jury Trial: A Flexible Tool to Meet a Variety of Needs*, NCSC (2012). [http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/better-courts/1-3-evolution-of-the-summary-jury-trial.aspx#\\_ftnref2](http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/better-courts/1-3-evolution-of-the-summary-jury-trial.aspx#_ftnref2).



read the report at the NCSC website.<sup>3</sup> Work is beginning on a follow-up report to investigate reasons why lawyers and their clients have not embraced the opportunity to try their cases before a jury under rules that increase access to justice before the courts. Judges are not ready to give up on the presently underused expedited civil jury trial program, especially those who came from a civil litigation practice before the bench. We see the importance of training the present and next generation of trial lawyers and we see the impediments to civil litigants getting access to justice through the court system that are created by an inadequately trained trial bar. No one is pointing fingers or suggesting blame lies here or there. Make no mistake; inadequately trained judges also contribute to the problem. There is work to be done by both the bench and the bar if we want the civil jury system to retain its vigor of the past.<sup>4</sup>

### The OJIN Docket is a Public Record

In *State of Oregon v. Thomas*, A149826, slip opinion issued August 6, 2013, the Court of Appeals considered whether Oregon evidence rules required the defense to present a certified copy of prior conviction as the foundation for impeachment of a state witness under OEC 609(1). The trial court, relying on case law interpreting the predecessor statute, former ORS 45.600 (1979), and past experience with OJIN entries at times being unreliable, concluded that a mere printout from the OJIN (Oregon Judicial Information Network) was insufficient as a substitute for a certified copy of a conviction. *Id.* at \*4. The Court

<sup>3</sup> Hanaford-Agor, P. (Ed). *Short, Summary and Expedited: The Evolution of Civil Jury Trials*, NCSC (2011). <http://www.ncsc.org/~media/files/pdf/information%20and%20resources/civil%20cover%20sheets/shortsummaryexpedited-online%20rev.ashx>

<sup>4</sup> Most recently, the National Center for State Courts (NCSC) teamed with the American Board of Trial Advocates (ABOTA) and the Institute for the Advancement of the American Legal System (IAALS) to publish "A Return to Trials: Implementing Effective Short, Summary and Expedited Civil Action Programs," (2012). Their report can be found at [http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/better-courts/1-3-evolution-of-the-summary-jury-trial.aspx#\\_ftnref2](http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/better-courts/1-3-evolution-of-the-summary-jury-trial.aspx#_ftnref2)

Continued on page 16



## News from the Courthouse

by Tyler Volm  
Court Liaison Committee

### Presiding Judge's Report

#### New Courthouse

Multnomah County, the MBA, OSB, local judges and the Multnomah County Legislative Delegation were instrumental in securing passage of SB 5506, which, among other things, provides up to 50% of the funds necessary for courthouse construction under conditions specified in section 9 of the Act. In addition to creating the matching funds, the Act authorized \$15 million in state bond sales this biennium to be used for the purchase of a site for a new courthouse in Multnomah County.

With this legislation now law (chapter 705 Oregon Laws 2013), Multnomah County has assigned its Facilities Manager, Michael Bowers, to take the following action:

- be "shovel-ready" by the 2015 Legislative Session (the date at which construction funding will be requested) and plan to have the new courthouse built within 5 years from that approval;
- to begin to retain professional services to support the design and construction of a court house with a capacity to serve the County for the next 50 years;
- to retain immediately the services of the National Center for State Courts to carry out the program plan for such a courthouse; and,
- to identify and acquire a location for the new facility.

As to the location for the future building, Judge Waller said that she has made clear her position that it must be within easy walking distance of the Justice Center and near "Government Square."

### Oregon eCourt implementation

Approximately 360 people, including judges and permanent and temporary staff, will be

involved in the implementation of Oregon eCourt:

- Staff are documenting current business process now, and then will be reengineering those processes to fit the new system.
- Data for 10 million cases currently stored in OJIN, 5 million of which are considered "active," must be converted to Oregon eCourt, which becomes the official "register" for the circuit court case and judgment information on May 12, 2014.
- Most staff going from one job to three jobs (current assigned work, learning Oregon eCourt, and testing converted data to assure accuracy in the move from OJIN to the new system).
- Trials will continue next spring during and through the implementation next May.
- Seven counties are up and running; e-file permitted.
- No additional e-filing fee - but rather across-the-board increase in filing fees by legislative action (HB 2562).
- Will look to MBA to hold CLEs/lunch bag session on the use of the new system for attorneys and their staff.
- Please forward feedback to Judge Waller.
- Will take six weeks to train Multnomah County staff; two weeks in smaller counties.
- Paper filings will be scanned and discarded; e-filing not mandatory yet.
- eCourts should help ease the recent cuts of 15% from budget.

Governor John Kitzhaber appointed Michael A. Greenlick to the Multnomah County Circuit Court on September 6. Greenlick plans to be sworn-in as a judge of the circuit court on October 16.

Proposed changes to the civil case management SLRs have been forwarded to the Uniform Trial Court Rules Committee for approval and to be effective on February 1, 2014:

- elimination of initial case management conferences ;
- assign motions judge to every case for all motions except

summary judgment when case is at issue or when requested at an ex parte appearance;

- continues the Trial Readiness Conferences (TRC) for selection of a trial date;
- same expectation for trial date certainty and continued limitations on motions to delay trial beyond the trial date selected at the TRC.

Judge Waller noted that there have been only a few expedited civil jury trials so far in all of the circuit courts, and they have all been in Multnomah County. There have been no expedited jury trials in other counties. Judge Waller said that she believes the use of the master calendar makes it possible for all civil and criminal cases to be assigned out for trial on dates set, and the bar can rely on this certainty.

### East County Courthouse

- Legislature didn't fund additional staff; there is a referee docket with a sitting judge and clerk.
- Need to increase general circuit court presence and family law presence in the east county.

### Judge Waller announced the following Chief Judges for the Circuit Court:

- Chief Civil Judge is Steve Bushong.
- Chief Family Judge is Maureen McKnight.
- Chief Criminal Judge is Julie Frantz.

Judge Waller closed by stating that the circuit court did not lose anymore staff in its allocation of resources for the current biennium, but the legislature imposed a 2% holdback of the appropriated funds. The fate of those funds, about \$1 million for the court's share, will be decided in the 2014 session. In the last biennium, in 2012, these "hold back" funds were reassigned from the Judicial Department and she is concerned that a similar reassignment will happen again.

## Second Season of Service A profile of William Kwitman

by Sarah Radcliffe  
Legal Aid Services of Oregon

As the baby-boom lawyers approach retirement, legal services organizations hope to welcome a cohort of experienced and highly skilled retired volunteers. Studies have noted that baby-boom lawyers represent the “largest, healthiest, and wealthiest generation of lawyers to approach senior status.”<sup>1</sup> These lawyers are poised to contribute to the community during retirement; they have the time and financial wherewithal to do so, and many of the attorneys that attended law school during the 1960s and 1970s were motivated by public interest ideals.

At Legal Aid Services of Oregon (LASO), we are privileged to work with a number of dedicated and knowledgeable retired volunteers. One of these volunteers is William Kwitman. Bill spent most of his legal career (28 years) working with Oregon’s Professional Liability Fund. Upon retirement, he has enjoyed spending time with his grandchildren, but he also generously gives his time outside his family circle. Bill is active with his synagogue and handles two to three clinics per month through LASO’s Senior Law Project. At each clinic he meets with about six seniors seeking help with a variety of

<sup>1</sup> Esther F. Lardent and Reena N. Glazer, *A Blueprint for a Big Bang: Tapping Transitioning Baby-Boom Lawyers to Transform Access to Justice*, Pro Bono Institute, 3 (2008).

legal problems including wills, advanced directives, powers of attorney, consumer issues, and landlord/tenant disputes. Some require advice only, but Bill retains about half of the cases for further assistance. He has helped 82 clients since he began volunteering in May 2012.

Bill recalls one client, an elderly woman who had worked for many years as a hospital receptionist, who needed help renewing her Oregon ID. She needed a birth certificate in order to renew the ID, but she could not obtain a birth certificate because she was raised by her grandparents, and they had given her a different name. With a notarized statement, she could file a name change petition and subsequently get the birth certificate, but notaries require an ID. Bill helped the client navigate this apparent catch-22 involving multiple agencies. He escorted her to her credit union, where staff agreed to notarize her signature, and the Multnomah County Circuit Court, where she filed a name change petition. With Bill’s coaching, she was able to obtain a birth certificate and ultimately, and Oregon ID - a valuable and essential item in today’s society.

When asked why he volunteers, Bill quoted former Attorney General Griffin Bell, who said that “lawyers should not only tithe their money but should also tithe their time.”



William Kwitman

Listening to Bill talk about his clients, it is evident that he cares genuinely about the individuals he represents, and has taken the time to understand their lives and backgrounds. His clients couldn’t be more appreciative. One client explained, “I was terribly stressed by my experience with my former landlord. William Kwitman was knowledgeable, sensitive, and concerned. He took the time to write a letter to my former landlord citing laws which he ignored and fees he could not legally charge me. I thought I had no hope as I couldn’t afford an attorney. I never expected this busy man to do any more than give me advice. He has been truly wonderful.”

Attorneys considering volunteering during their retirement should note that the OSB offers an “Active Pro Bono” status at a reduced rate. And, certified pro bono programs can extend PLF coverage to volunteers. For more information about volunteering with the Volunteer Lawyers Project at LASO, contact Sarah Radcliffe at 503.224.4086 or sarah.radcliffe@lasoregon.org.

## Law Firm Legal Aid Clinics

by Maya Crawford  
Legal Aid Services of Oregon

When it comes to pro bono service there is no “one size fits all” clinic or project. A project that works well for an in-house counsel attorney might not work for a solo practitioner. Similarly, new attorneys and seasoned professionals often have different needs when evaluating a good pro bono project fit. For this reason, civil legal services providers endeavor to provide a menu of options for attorneys to get involved in pro bono. One such menu option that legal services providers have found to be successful is the large firm legal aid clinic. Given their size, breadth of substantive legal expertise, and internal administrative support, large law firms are uniquely positioned for successful firm wide collaborations with legal aid programs.

The Oregon Law Center (OLC) and Legal Aid Services of Oregon (LASO) are fortunate to have long standing partnerships with a number of Portland area large law firms. OLC coordinates clinics with Tonkon Torp, Lane Powell, Cosgrave Vergeer Kester,

and Schwabe Williamson & Wyatt. LASO has coordinated a clinic with Stoel Rives for over 15 years, and is happy to announce that in 2013 Dunn Carney Allen Higgins & Tongue joined the collaboration on the Legal Aid Night Clinic. This effort was spearheaded by several Dunn Carney attorneys, including Elissa Boyd and Elizabeth Knight.

The Legal Aid Night Clinic takes place twice a month, one time staffed by Stoel Rives attorneys and another by Dunn Carney attorneys. When asked about why Dunn Carney wanted to partner with LASO, Elizabeth Knight responded that the relationship with LASO makes involvement with pro bono easier for many of the firm’s attorneys. Knight explained that, “Dunn Carney has always believed that attorneys have a professional responsibility to provide access to justice, whether through pro bono work, support of the Campaign for Equal Justice, or otherwise.” Over the past two years, however, the firm has worked toward formalizing its pro bono commitment.



Elizabeth Knight

The firm now has a written pro bono policy that includes matching billable hour credit for a certain number of pro bono hours. The clinic partnership with LASO was sought as part of this effort. Knight stated that, “LASO arranges for space, screens and schedules the clients, and provides mentoring on poverty law issues. Making clinic participation easy is key to getting attorneys involved.”

Speaking personally, Knight (who has staffed clinic sessions herself), said that she found participation in the clinic to be a positive experience. She stated that, “working on clinic cases takes us out of our comfort zone, and provides us with an opportunity to work on cases that we do not see in our day-to-day practice. It has given me

## 2013 MBA Professionalism Award Nominations Due November 1

The MBA Professionalism Award is one of the most highly regarded honors an attorney in our area can receive. Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, who regularly goes well beyond minimum ethical and professionalism standards, who constantly mentors others and works to improve the quality of our practice as a whole? We strongly encourage you to nominate him or her for the 2013 MBA Professionalism Award. Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Esteemed award recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H.

Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O’Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunck, Edwin A. Harnden and Thomas W. Brown.

Former nominees may be and often are re-nominated. To propose an outstanding attorney for this year’s award selection process, please complete and return the nomination form included in this issue of the *Multnomah Lawyer* and available at [www.mbabar.org](http://www.mbabar.org) or contact Kathy Modie, Professionalism Committee staff liaison, [kathy@mbabar.org](mailto:kathy@mbabar.org) for more information.

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*Watch for the nomination form  
in the January issue.*

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Pro Bono Awards**

**Senior Project Volunteer  
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**Michael E. Haglund  
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For Young Lawyers in LASO, OLC,  
or MBA YLS pro bono projects.

**Pro Bono Award of Merit**

For exemplary pro bono work.

perspective and respect for the type of work legal aid does. Clinic clients are living on the edge, and resolving their legal issues can be like peeling an onion. The work is very rewarding.” Knight also commented on how the issues that clinic clients face can often be addressed with something as simple as a phone call or a letter. “Lawyers are problem solvers. By knowing how the system works and providing some advice and brief service we can make a big difference.”

LASO and OLC also find the large firm clinic partnerships to be rewarding. Having law firm coordinators recruit volunteers from within the firm is a huge benefit, as is the fact that within the firms the clinics have access to so much knowledge and expertise. The clinic model is very efficient, and legal services providers hope to maintain the great relationships for years to come.

# Pro Bono Young Lawyers Section

More than 50 riders turned out to participate in the 3<sup>rd</sup> Annual Pro Bono Pedal fundraiser held on Saturday, September 7. Following the 10-mile ride around SE Portland, everyone joined the after-party at Coalition Brewing Co. for live music, food and refreshments. Thank you to our riders and volunteers for making this the best year yet!

The YLS Pro Bono Committee would also like to thank the following sponsors for their generous support:



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Bunny Lebowski and the Nihilists provided entertainment

## Why You Should Volunteer

by Anthony Estrada  
YLS Pro Bono Committee



When I graduated law school and passed the Bar exam, in 2011, I entered a difficult job market. Many competent and qualified individuals were competing for a limited number of positions. Fortunately there were steps I could take to set myself apart from others. From the time I was certified to practice law I began volunteering with a number of organizations.

There are many reasons to volunteer. These benefits are applicable to everyone entering into the practice of law, not just those seeking to bolster their resumes. I would like to share a few of these reasons.

### Client Interaction

Whatever plans you make for your career - big firm, solo, in house counsel - whatever practice areas you select, you will be working with other people. You will likely work with clients. There are many volunteer opportunities out there which will put you in client interaction situations. For example, St. Andrew Legal Clinic provides legal services to low-income individuals in the field of family law. They often need attorneys to assist with client intake. This is valuable practice. It enables you to develop interviewing techniques you will practice

throughout your career: asking effective, open-ended questions, learning to listen (which we think we already do, but can all improve upon), steering clients back on course when they've strayed from the point (an underrated skill that becomes a necessity when you are pressed for time). It is not too early to practice these skills.

### Courtroom Experience

Whether or not you plan on being a litigation attorney, it will benefit you to get into a courtroom. You will hone your organizational skills, learn to synthesize evidence and testimony into an appropriate presentation, and familiarize yourself with the rules of court. Perhaps most importantly, you will get to work with opposing counsel. I cannot overstate how important this is. You will get to review their work product and watch how they make objections, interview witnesses and handle themselves in general. You will also come into contact with judges. Portland is a relatively small legal community and judges here remember the attorneys who come before them. New attorneys who demonstrate that they are eager to gain experience by volunteering their time on behalf of others make an excellent impression. In my experience, judges realize how daunting it is the first few times one practices in a courtroom. So long as you come prepared and respectful, they will be surprisingly patient and helpful to you in your professional development.

Legal Aid Services of Oregon is often in need of attorney volunteers, particularly in their Domestic Violence Program. A restraining order case is a

great way to get your foot in the courtroom.

### Establishing a professional network

This benefit ties in with everything that has been covered up to this point. Between your interactions with supervising attorneys, opposing counsel and judges, you will have begun developing a professional network, whether or not you were aware of it. This network will serve many possible functions - legal resource, support system, employment aid. We are fortunate to practice in a collegial community. You'd be surprised how many people are willing to share their knowledge and time with you. So long as you are respectful of this privilege it will pay huge dividends.

Volunteering will help you expand your network faster than you might expect. Print out some business cards (they're incredibly cheap through services like Vistaprint) and begin handing them out to your new professional contacts.

### Confidence boost

Each of the benefits of a pro bono practice that I have mentioned above can be boiled down to one advantage - feeling comfortable. Pro bono work can help you, as a new attorney, feel comfortable in a courtroom, comfortable talking to others, and comfortable presenting yourself to the community as a "lawyer." Confidence is important. This does not mean arrogance. It means feeling relaxed in your skin while practicing your profession. Every good attorney I have met has this confidence. It is a journey to get to that point, but volunteering will accelerate your growth along the path.

There is no substitute for experience and volunteer experience is always available. If you're reading this article then you're ready to volunteer.

Finally, it is important to remember that it is ok to ask a partner for guidance. Partners are not as scary as they seem, and I am told that some of them have even been known to smile. Even the most senior partners were once first-year associates. I can guarantee you that the partner who assigned you the task would rather take five minutes to point you in the right direction than take hours trying to fix something that was done incorrectly.

All associates run into situations that stump them (even I run into them occasionally), but that doesn't mean you are not cut out to be a lawyer. Ask the question, get some guidance and show your partner you can deliver.

Yours truly,  
Awesome Associate

Send your questions to Awesome Associate at [mbabar.org](http://mbabar.org).

## Ask the Associate

Dear Awesome Associate,  
A partner just assigned me a task that I have never done before and I have no idea how to proceed. HELP!

Your friend,  
Lost Associate

Dear Lost,

You are currently facing one of the biggest challenges that new associates encounter when they first start practicing. You want to prove to your partner you can handle the task at hand and don't want to tell the partner you have no idea how to proceed. Take heart, you are not the first associate to be in this position and you certainly won't be the last.

It is possible that your firm has a form bank and has the exact form you are looking for.

Chances are, the project you were assigned is not the first of its kind your firm has tackled. If you spend a few moments searching the forms your firm has on file you will likely find a good starting place.

If you are still stuck, consider asking another associate for help. An associate who has been with your firm for a few years will likely have a few tricks for locating the right form or maybe, if you are really lucky, that associate did a similar project when they were in your shoes and can tell you exactly where you need to start. An older associate can also give you a few helpful hints of what certain partners are looking for when they assign certain tasks.

## Ian Simpson Pro Bono Spotlight

by Valerie Berg  
YLS Pro Bono Committee Chair

Ian Simpson has not followed the “typical” post-law school path. After receiving his Juris Doctorate in 1997 from Willamette University, followed by a Masters Degree in urban and regional planning, Ian chose to spend his post-law school career as an administrative hearings officer for the City of Portland. In fact, it was not until a couple of years ago when Ian began volunteering with Legal Aid’s Senior Law Project that he used his legal degree to gain one-on-one experience helping individual clients.

For the past two years, Ian has volunteered at the Impact Northwest Clinic, listening to and addressing the legal issues and concerns of low-income senior citizens. Ian spends three hours once a month meeting up to six clients (who each receive a free 30-minute session with him to tackle legal concerns). Choosing the Senior Law Project was as easy decision for Ian, who frequently interacts with senior citizens in his non-professional life and felt compelled to help this vulnerable population. The involvement with the Senior Law Project has led him to confront a variety of issues, including elder abuse, loan and consumer protection issues. Additionally, Ian has helped seniors protect their interests by drafting important legal documents such as wills, advanced health care directives and powers of attorney. And while the majority of his representation and assistance to the senior citizen clients is usually finished during the initial meeting, Ian has spent additional time working on wills and seeing through a probate case that has been ongoing for almost one year.

More than just providing an opportunity to gain knowledge of and experience with a variety of legal areas to which he likely never would have been professionally exposed, volunteering with the Senior Law Project has helped Ian learn how to interact with and address individual clients’ unique situations. More importantly, the clinic has provided him the opportunity to help low-income individuals who would likely be unable to afford legal services without the volunteer attorneys. Helping has been rewarding for Ian, especially since he has come to understand that many of his low-income senior citizen clients have a hard time understanding legal complexities, are frequently intimidated by the legal system and are vulnerable to being taken



Ian Simpson

advantage of more easily. Ian has enjoyed volunteering so much, in fact, that after having helped 40 to 50 senior clients in the last two years, he has no plans to stop volunteering anytime soon. Rather, Ian is working to increase his volunteer activities and expand services for low-income senior citizens.

In the spirit of continuing to help seniors, a while ago Ian contacted Maya Chamberlain at the Friendly House NW to discuss setting up a monthly clinic to focus on issues specifically facing gay senior citizens. Ian believes that gay senior citizens would benefit from having a clinic separate from the general monthly clinic hosted by Friendly House NW. Gay senior citizens, he believes, are often cautious about addressing certain legal issues, a characteristic derived from these individuals coming from a different time where homosexuality was not accepted socially or legally. But, with societal and legal changes, many gay senior citizens have come out later in life and need to address legal issues and concerns specifically related to such societal and legal changes. So, Ian’s thought is that providing a clinic staffed by volunteer attorneys with professional knowledge specific to issues facing gay senior citizens (e.g., DOMA, legal changes over time affecting homosexual individuals, etc) will open the door to help an entirely new group of individuals. While the new clinic is still an idea in the works, recent decisions on DOMA and Prop 8 have increased his motivation to reach this potentially underserved group of gay senior citizens. This vision to expand services to focus specifically on gay senior citizens’ needs, as well as Ian’s continued involvement with the Senior Law Project, deserves our admiration and thanks for constantly striving to help provide services to the underserved populations of our community.

## Getting to Know OGALLA

by Tyler Volm  
YLS Board

OGALLA, the LGBT Bar Association of Oregon, is an association of lesbian, gay, bisexual, and transgender lawyers, judges, legal workers, law students, and others who support the association’s purpose of promoting the fair and just treatment of all people under the law regardless of sexual orientation or gender identity. I recently sat down with OGALLA’s co-chairs Kevin Clonts, a commercial litigator with Rizzo Mattingly Bosworth and Trish Walsh, a commercial litigator and employment attorney with Farleigh Wada Witt to discuss OGALLA’s recent successes, their upcoming annual gala on October 19, and the 90s lesbian punk rock scene in Portland.

**Q: When did you get involved with OGALLA and what got you interested?**

**KC:** I got involved three years ago because I wanted to have more input on LGBT issues, and wanted to broaden the scope to include those outside of the legal community. TW joined two years ago.

**Q: What are some of OGALLA’s bigger initiatives this year?**

**KC:** We distributed “know your rights” cards at Pride events to educate members of the LGBT community about Oregon and Washington’s anti-discrimination and same-sex relationship recognition laws.

**TW:** We have also focused resources towards our Safe Schools subcommittee, which has been working in partnership with the Oregon Safe Schools and Communities Coalition and others to monitor implementation of and educate about Oregon’s Safe Schools Act, which requires school districts to have anti-bullying policies that specifically address bullying based on protected classes including sexual orientation and gender identity. OGALLA volunteers reviewed approximately 200 school districts’ policies across the state, resulting in an annual report. The organization has received good feedback from schools and community partners and looks forward to continuing this work.

**KC:** We also have a Judicial Endorsement subcommittee (which, for example, endorsed Judge Michael McShane’s appointment to the federal bench) and also have an Education subcommittee, which is working to prepare a CLE focused on LGBTQ youth in foster care in Oregon.

**Q: What are some of the organizational goals for the coming years?**

**TW:** One of our primary goals is to increase new membership by offering more opportunities

to work on subcommittees with a specific focus that furthers the organization’s broader goals.

**KC:** We would also like to increase the number of purely social events that we host. The organization was started in the early 90s in response to attacks on civil liberties by the Oregon Citizen’s Alliance. Lawyers were losing their jobs based on sexual orientation and many were not comfortable being “out” at work, and OGALLA provided a safe space where members of the LGBT legal community could come together to discuss the issues they regularly faced privately and often in isolation. We would also like to work with law schools to accommodate their established mentor programs, allowing law students to be paired with a mentor in the LGBT community.

We would also like to increase diversity in the judiciary, continue to educate legal and non-legal practitioners on LGBT issues, and continue the successes of the Safe Schools subcommittee.

**Q: What is the organization’s largest challenge?**

**TW:** We are an entirely volunteer-based organization, which means we have somewhat limited capacity. This is another reason it’s great to get new people to join OGALLA - there are lots of opportunities to get involved and we can always use more help on various committees and projects.

**Q: Tell me about the upcoming gala on October 19.**

**TW:** There will be a cocktail hour with a silent auction component, which raises money for the Bill and Ann Shepherd Legal Scholarship Fund, administered by the Equity Foundation which provides stipends to law students who have expressed dedication to LGBT justice work. Tina

Kotek, the speaker of the Oregon House of Representatives, and the first openly-lesbian speaker in the nation, will make the keynote address. We will honor Alec Esquiveland the Imperial Sovereign Rose Court for their respective service to the Oregon LGBT community. The event will be held at Hotel Vintage Plaza, and all are welcome and encouraged to attend.

**KC:** A common misconception about our membership is that you have to be a member of the LGBT community to join, and that is not the case. If you are for the advancement of equal treatment of the LGBT community, you should consider becoming a member.

**Q: Trish, I understand you have a punk rock background. Can you elaborate on that, and can we expect a performance at the gala?**

**TW:** After what was a difficult initial “coming out” period with my family in New York, I moved to Portland to attend Reed College in 1993 and shortly thereafter started an all-lesbian punk rock band called The Third Sex with one of my school mates. We toured and made records throughout the 1990s. As queer youth ourselves, we connected with a lot of young people around the country who were eager to have their experiences and challenges - like coming out to parents - reflected in the music they listened to. We will not be performing at the gala, but there will be plenty of entertainment.

**Q: Kevin, if the band opened itself up to male members, what role/instrument would you play?**

**KC:** I would be a groupie. Definitely a groupie.

For more information, to become a member (free to law students and newer attorneys), or to purchase a ticket for the gala, please visit [www.ogalla.org](http://www.ogalla.org).

### mba yls|EVENT

#### YLS Drop-in Social Rontoms

600 E Burnside St., Portland  
Thursday, October 17  
5:00-7:00 p.m.

Join the YLS Membership Committee from 5-7pm at Rontoms (600 E Burnside St, Portland) for a drop-in social. Stop by after work to catch up with your friends and make some new connections. Snacks will be provided. No RSVP is necessary. We look forward to seeing you there!

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## The Corner Office PROFESSIONALISM

### Enriching Your Career with Pro Bono Service

As lawyers, we are trained as advocates, problem solvers and trusted advisers. But one course that is not taught in law school is how to achieve career satisfaction. Although financial gains are important, lawyers who believe their work is advancing the public good are much more likely to report that they are happy. Because of this correlation, pro bono work has immense potential to enrich the professional lives of lawyers.

#### Pro bono work makes lawyers feel good.

It's no surprise that a recent ABA study found that providing free legal advice to persons of limited means gives lawyers a heightened sense of personal satisfaction. As Attorney General Ellen Rosenblum notes, "lawyers often report that the rewards and challenges of pro bono representation turn out to be the highlights of their legal careers." Lawyers overwhelmingly reported that they believed their pro bono clients really needed help and that taking on a pro bono matter was extremely gratifying. "Often pro bono clients have problems that would otherwise go unresolved, even though they are entitled to

legal relief," explains Campaign for Equal Justice Co-Chair Howard Arnett.

Lawyers have a tremendous ability to contribute to the public good by increasing access to justice. The recession has increased the ranks of the poor and unemployed, but legal aid organizations are seeing their funding and staffing shrink. Despite the sustained efforts of legal service organizations, we are meeting less than 20% of the civil legal needs of Oregon's poor. This means that clients with very serious legal needs, like families at risk of becoming homeless and people seeking protection from domestic violence, are facing the legal system alone. This significant gap in legal representation can have an adverse effect on vulnerable Oregonians, and can diminish judges and court staff's ability to effectively and efficiently administer justice. A pro bono lawyer can completely reverse the equation. With adept pro bono representation, the poor are empowered to resolve legal problems, judges are able to focus time and talents on decision making, and court staff can redirect energy toward improving the legal system as a whole.

#### Pro bono work is part of professionalism.

In addition to boosting the career satisfaction of lawyers, pro bono lifts up the legal community as a whole by strengthening our culture of professionalism. The OSB's Statement of Professionalism includes a commitment to "support pro bono activities." The OSB Bylaws include a pro bono aspirational standard which encourages, "each lawyer in Oregon to endeavor annually to perform 80 hours of pro bono services" including 20 to 40 hours of pro bono work "involving the direct provision of legal services to the poor."

Lawyers can "fly the flag" for pro bono by signing the MBA's Pro Bono Pledge. The Pro Bono Pledge seeks to build on our legal community's commitment to increase access to justice for all Oregonians, regardless of their economic status. Lawyers who sign the pledge agree to take at least one pro bono matter in each calendar year. Law firms who sign the pledge agree to adopt a written pro bono policy. Both lawyers and law firms agree to financially support legal service organizations of their choice. The driving hope behind the pledge is that we can create a ripple effect through contributions of time and money that breaks down the barriers to access to justice.

There are so many good reasons to provide pro bono service – making a difference for the clients we serve, improving access to justice, and strengthening our justice system are all on the list. But at least one of the reasons to provide pro bono service is entirely selfish. By taking pro bono matters, we enrich our own lives.

For more information on the Pro Bono Pledge or on how to get involved in pro bono services go to [www.mbabar.org/AboutUs/ProBono.html](http://www.mbabar.org/AboutUs/ProBono.html).



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A mid-size AV-rated downtown Portland law firm is looking for a litigation associate with two to four years' experience, excellent writing skills, and outstanding academic credentials (top 25% of law class). Oregon Bar membership required. Washington Bar membership a plus. Please submit a cover letter, resume and writing sample to Office Manager, Martin, Bischoff, Templeton, Langslet & Hoffman, LLP, 888 SW Fifth Ave., Suite 900, Portland, OR 97204 or email to adarling@martinbischoff.com.

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### Tips From the Bench

*Continued from page 10*

of Appeals disagreed based on its interpretation of the current version of the rule, which reads in pertinent part: "For purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record, \* \* \*." OEC 609(1). The court concluded that an OJIN register is a "public record" establishing convictions within the meaning of OEC 609(1). *State v. Thomas*, at \*2. The appellate court distinguished *State v. Jenkins*, 63 Or App 858, 666 P2d 869(1983)(prosecutor lack the legally sufficient documentation to back up his questioning, namely, a certified copy of the conviction) by noting that a printout of a witness's criminal history or "rap sheet" was materially different from a "certified copy of an OJIN register." *Id.* at \*4. The Court of Appeals also noted that its decision in *State v. Jenkins* was decided before OJIN was first implemented. *Id.*

This case is worth reading if you intend to question your opponent's witness with his/her prior conviction. For one, the case describes the foundational facts needed to establish that a document is indeed a public record, including citation to the legal authority that imposes a duty to make and keep the particular record. In addition, the case distinguishes between evidence that is self-authenticating under OEC 902 from evidence that must first be authenticated under OEC 901. Lawyers often proffer documents they characterize as public records and attempt to bypass the authentication requirement, touting that public

records are self-authenticating. But, that is not necessarily the case. OEC 902 makes public records self-authenticating if they are "sealed and signed" or "signed and certified." In *State v. Thomas*, the OJIN printout submitted was a certified copy; thus, it was self-authenticating. By contrast, the print out of the witness's criminal history in *State v. Jenkins* was neither "signed and certified" nor "sealed and signed" and, therefore, it was not self-authenticating. Moreover, in *State v. Jenkins*, nothing in the opinion indicates the proponent of the evidence introduced testimony or other evidence establishing the foundational facts needed to bring the document within the definition of a public record (e.g., a description of the activities of the office that created the document, the matter observed and reported was something the creator had legal duty to report, and a citation to authority imposing a duty to report the information contained in the document).

Remember: A document is not a *public record* or a *business record* or a *statement made for medical diagnosis and treatment* merely because a lawyer tells the court it is. As a lawyer once told me, "Judge, this isn't McDermott on Evidence, it's actually what the rule says. Let me read it to you." He's right. What is important is the text of the evidence rules themselves and the appellate courts' prior interpretation of those rules.

**PRACTICE TIP:** When you are arguing for the admissibility of a document as substantive evidence, couch your arguments in the law rather than in your own opinion as an authority on the law. The same advice holds true for any argument you make to the bench.

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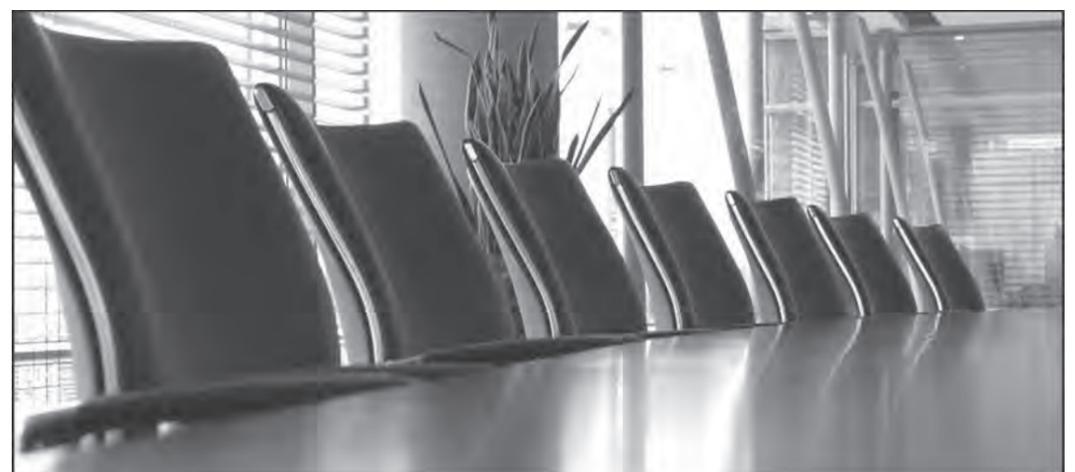
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Take the Pro Bono Pledge and find information on local pro bono opportunities and how to create a customized pro bono policy for your office. Download free CLE from the MBA member section.

**[www.osbar.org/probono](http://www.osbar.org/probono)**

Record your pro bono hours for the Pro Bono Challenge and find information on pro bono in

Oregon that includes volunteer opportunities, certified pro bono programs, PLF coverage for pro bono, pro bono committees, active pro bono bar status and other pro bono attorney resources.

**[www.oregonadvocates.org](http://www.oregonadvocates.org)**

This one stop statewide website sponsored by the legal aid community in Oregon features a substantive law library as well as free CLE for pro bono attorneys.

Membership is free. Once you are a member you can also sign up for ProBonoOregon, a weekly listserv offering pro bono cases for attorneys.

**[www.americanbar.org/groups/probono\\_public\\_service.html](http://www.americanbar.org/groups/probono_public_service.html)**

The ABA Standing Committee on Pro Bono & Public Service is a national source for pro bono information and resources.

**[www.oregonlawhelp.org](http://www.oregonlawhelp.org)**

Oregon Law Help, sponsored by legal aid offices in Oregon, is designed to provide free legal

information to low-income Oregonians. Self-help handbooks are available for download by laypersons and feature applicable statutes, remedies, forms and sample letters. These handbooks are great primers for the basics in some common areas of law.

**[www.probonoinst.org](http://www.probonoinst.org)**

The Pro Bono Institute supports the pro bono work of law firms and corporate legal departments.

**[www.probono.net](http://www.probono.net)**

Pro Bono Net provides national resources for attorneys working to assist low-income clients.

**[www.211info.org](http://www.211info.org)**

211 provides assistance in finding health and community organizations in the Oregon and SW Washington geographical region. Professional intake staff is available 24 hours a day by dialing 211 on your phone or the referral system can be accessed through the website.



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## Congratulations!

Folawn Alterman & Richardson LLP is pleased to welcome Corey Tolliver as a partner with the firm. Corey's practice includes legal and accountant malpractice, complex civil litigation, securities litigation, and all manner of business disputes.

Corey can be reached at [corey@FARlawfirm.com](mailto:corey@FARlawfirm.com) and (503) 546-4630.

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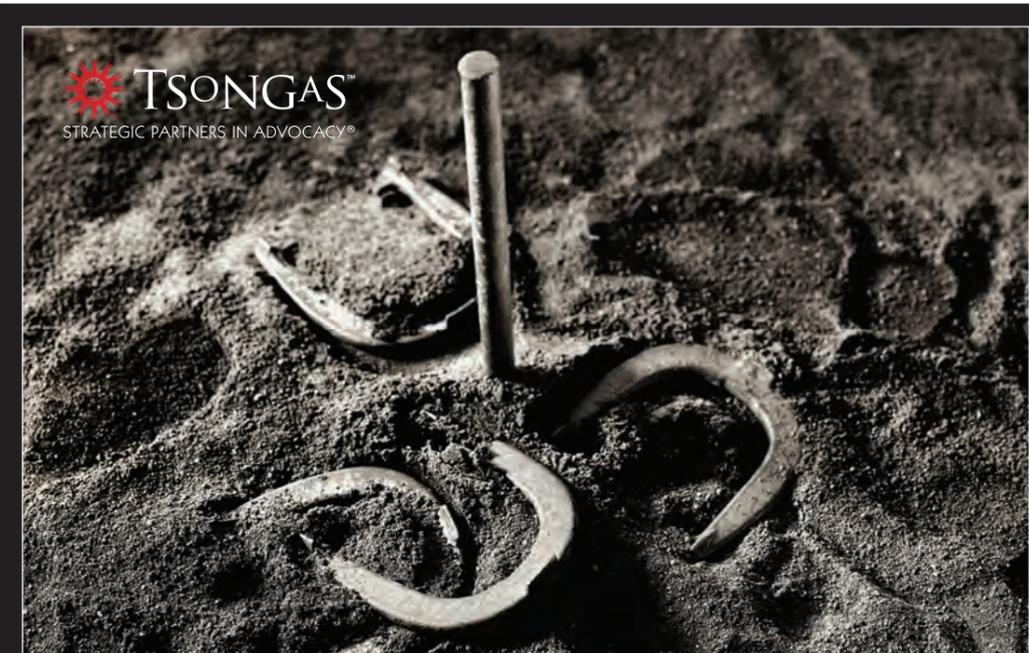
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## Welcome to our newest attorneys

Gordon & Rees is pleased to welcome Nancy M. Erfle and Kjersten H. Turpen to its Portland office.

**Nancy M. Erfle**  
nerfle@gordonrees.com

Nancy is a partner with the Tort & Product Liability Litigation practice group. Admitted in Oregon, Washington, and Montana, her practice is focused on litigation, specifically on the defense of pharmaceutical and medical device manufacturers, automotive manufacturers, agricultural chemical manufacturers, aviation manufacturers, as well as companies involved in business disputes. Nancy has been listed in *The Best Lawyers in America* since 2010 for her work in Product Liability Litigation.

**Kjersten H. Turpen**  
kturpen@gordonrees.com

Kjersten has experience representing clients in state and federal courts and before administrative agencies in a wide variety of areas including employment law, professional liability defense, and commercial litigation. Kjersten is licensed in Oregon, Washington, and California and is a member of the Multnomah County Bar Association, Oregon Association of Defense Counsel, and Oregon Women Lawyers.

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The BOWLIO theme is inspired by Dia de los Muertos, a Latino celebration that traditionally takes place on November 1st.

## REGISTER NOW for the 11th Annual BOWLIO

BOWLIO is a fundraiser and networking event for Opportunities for Law in Oregon (OLIO). OLIO is an Oregon State Bar Diversity & Inclusion program that promotes recruitment and retention of diverse law students from historically underrepresented communities.

**Saturday, November 2, 2013**

Check-in begins at 5:30 p.m.

Bowling from 6:00 p.m. – 9:00 p.m.

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Free pizza, snacks & non-alcoholic beverages will be provided.

\*ADA Accessible. Please contact Toni Kelich at the Oregon State Bar at least seven days prior to the event for ADA accommodations: tkelich@osbar.org.

**Registration:**

FREE for law and pre-law students and children (12 and under)  
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**Can't attend or don't bowl?**

Please consider making a \$25 or \$50 donation instead. You are welcome to make additional donations at the event.

**Two ways to pay your registration fee—or make a donation to OLIO!**

1. ONLINE: [www.osbar.org/diversity](http://www.osbar.org/diversity)
2. PHONE: (503) 431-6413, or toll-free in Oregon (800) 452-8260, ext. 413

*Since this is a fundraising event, no refunds are allowed. Thank you for your understanding.*

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*If you are interested in becoming a sponsor or have questions about this event, please email or call Toni Kelich, Diversity & Inclusion Coordinator, at [tkelich@osbar.org](mailto:tkelich@osbar.org), (503) 431-6338.*

## Pro Bono Volunteers

Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, and Children's Representation Project. To learn more about pro bono opportunities in Multnomah County, go to [www.mbabar.org](http://www.mbabar.org) and click on "About Us" and "Pro Bono."

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## Multnomah Bar Foundation

### Multnomah Bar Foundation Sets Ambitious Goal for Civic Education

by Pamela B. Hubbs  
Office and Foundation Administrator

*The mission of the MBF is to increase the public's understanding of the legal system, to promote civic education, public participation and respect for the law, to improve the quality and administration of the legal system, and to support programs and projects related to the MBF's purpose.*

Ed Harnden, MBF Past President and Development Committee Chair, set an ambitious goal this year: Raise \$50,000 from within the legal community to refill the coffers and continue to fund civic education grants in 2014. The foundation board and the legal community have responded with great generosity and donations to

the Civic Education Fund were at \$31,550 at the time of publication.

Since 2006, the Civic Education Fund has given over \$240,000 in 44 grants to advance civic education and engagement and increase public understanding of the justice system. MBF grants are far-reaching, making an impact through schools, voter forums,

voter registration programs, elder education seminars, student filmmaking contests, leadership training programs and citizenship classes. None of this good work would be possible without the strong support of the legal community.

As you plan this year's charitable giving and contemplate your budget for next year, please consider a donation to the MBF. Together we can do so much.

Thank you for your generous 2013 contribution to the MBF Civic Education Fund.

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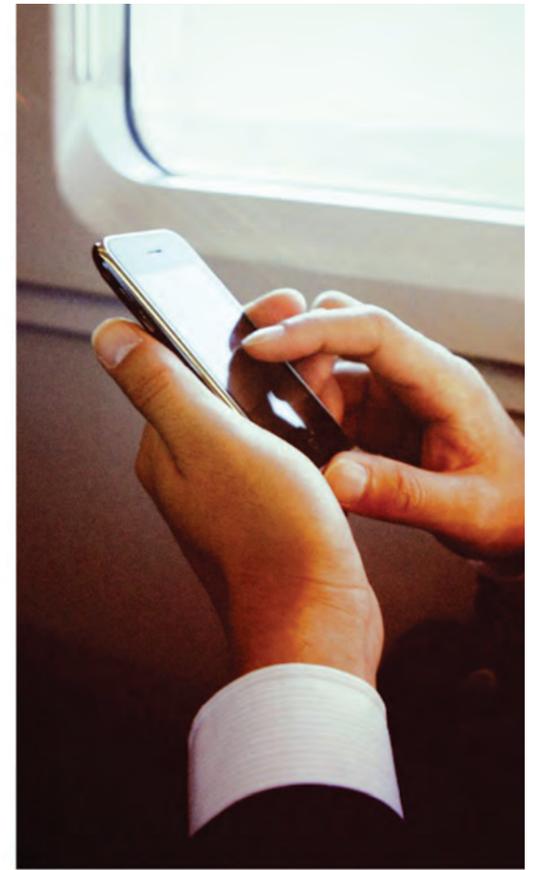
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Names of those who donate \$100 or more to the Civic Education Fund will be published in the December *Multnomah Lawyer* and on the MBA website. Visit [mbabar.org/foundation](http://mbabar.org/foundation) or contact Pamela Hubbs at 503.222.3275 for more information.



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