



Our New Courthouse is Coming

by Richard Vangelisti
MBA President

The *Oregonian* recently noted that the current Multnomah County Courthouse “would create one

huge, dusty pancake in event of an earthquake.” The courthouse is structurally dangerous and functionally obsolete.

The more than 1,500 people who use the courthouse every day are at risk. Its outdated design often requires judges, court staff, lawyers, parties, victims, jurors, witnesses and the visiting public - including schoolchildren - to share public hallways and elevators with criminal defendants. Many visitors to the courthouse are legally required to enter the building.

...the 100-year-old ... building is probably being supported by some benign invisible force.

I have taken the “courthouse tour” and witnessed the 100-year-old vintage construction. Much of the structural material is unreinforced, and the building lacks seismic bracing. In my opinion, the building is probably being supported by some benign invisible force.

Fortunately, the stakeholders in building a new and safe courthouse have made significant progress. In July the Oregon Legislature committed \$15 million for the Multnomah County courthouse project. This bipartisan commitment was part of a larger capital construction funding package for statewide needs in Senate Bill 5506. The financial commitment will assist Multnomah County in acquiring the land and continuing the planning process.

This progress is unprecedented in light of the historical arrangement that counties shall provide the courthouse while the state provides the judges and most support personnel.

Although Multnomah County is some years away from starting construction on the new courthouse, this initial funding is yet another significant step. In June Multnomah County held an industry forum to discuss a request for proposal for an owner’s representative. This representative will help Multnomah County with technical, financial and procurement planning. This work will be followed by land selection, financing options and then construction. Momentum continues to build toward replacing the 100-year-old courthouse.

In July, following the Oregon Legislature’s commitment, the Multnomah County Commissioners voted unanimously to approve a contract with the National Center for State Courts (NCSC). The NCSC will provide the county with the center’s national expertise in courthouse planning, operations, programming and layout.

Commissioners Deborah Kafoury and Judy Shiprack have been instrumental in leading Multnomah County’s effort to build the courthouse. They have made the new courthouse a public-works priority and forged a new partnership with the State of Oregon to ensure that it becomes a reality. Multnomah County has a web page dedicated to the new courthouse: <https://web.multco.us/communications/multnomah-county-courthouse>.

Presiding Judge Nan Waller and Court Administrator Doug Bray also have been tireless in their efforts on moving the project forward. The efforts by Doug Bray were recognized in part by his receipt of the

NCSC Distinguish Service Award. Justice David Brewer presented the award to Doug Bray at the MBA Annual Dinner last May.

Judge Waller has been working with the circuit court judges and county and state officials. She has been leading the process in communicating the operational requirements of the new courthouse. Most importantly she also has been a constant force in ensuring that the urgent need of a new courthouse continues to translate into meaningful progress - on siting, financing options and construction.

The new building will be a place in which those ... can focus solely on ... seeking justice.

This recent progress is remarkable considering the last 45 years of study. About 25 studies have been conducted on the courthouse since 1968. Some of these studies are maintained on the MBA website: <http://www.mbabar.org/Resources/MultnomahCountyCourtHouse.html>.

Over the years the MBA has played an important role in moving the issue forward through the leadership of its Board and Court Liaison Committee. In 2011, the MBA formed the MBA Courthouse Committee, and its first Chair was Sarah Crooks.

The MBA Courthouse Committee is charged with advancing the ongoing efforts to build a new courthouse. It is tasked with a wide range of work from co-planning with other stakeholders to developing an education campaign to seeking appointment of MBA members to other taskforces or groups working toward a new courthouse.

If you would like to become involved in the work of creating a new courthouse, please contact Bob Calo, who is the MBA Courthouse Committee Chair for 2013-14.

The MBA is committed to supporting the final effort to build a new courthouse. The new building will be a place in which those who enter its doors can focus solely on the human endeavor of seeking justice. They will no longer have to worry about their personal safety.

Battle of the Lawyer Bands A Charity Fundraiser for Multnomah Bar Foundation Civic Education Fund

Thursday, October 3rd
7-9 p.m.
Kennedy School, 5736 NE 33rd Ave., Portland

Bands comprised of at least one Oregon lawyer will compete for the title of “Best Oregon Lawyer Band.” Judges from the MBA legal community will decide the winner at the end of all the performances. Bring your family and friends and cheer for your favorite band! Crowd applause is a part of the judging criteria. Suggested donation: \$10.

One of these bands will be named Best Oregon Lawyer Band 2013!
autoRepublic • Bunny Lebowski and the Nihilists • Folsom • Habeas Corpse • Hollowdog • Kadish-Snyder Band

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If you would like to add your name to the list of sponsors, contact Kathy at the MBA.



The Over-the-Counter Jug Band
Best Oregon Lawyer Band 2012

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.

Register at www.mbabar.org.

mba|CLE

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

SEPTEMBER

9.17 Tuesday Meditation for Lawyers

Michael Dwyer
John Folawn

9.18 Wednesday Legislative Update

John Davis
Shemia Fagan

9.19 Thursday iPad Apps & Tips

Kelly Andersen

9.25 Wednesday Practicing in Oregon and Washington: A Guide to the Unwary

Kevin Coluccio
Mark Fucile
Jim Gidley
Jeff Mutnick

OCTOBER

10.8 Tuesday Preserving Your Case for Appeal

Jay Beattie
Helen Tompkins

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

In This Issue

Calendar.....	2
CLE Schedule.....	3
Announcements.....	6
Ethics Focus.....	7
Around the Bar.....	8
MBA Committees.....	10
Tips from the Bench.....	10
Profile: Judge Holmes Hehn.....	11
YLS.....	12
Classifieds.....	16
The Corner Office.....	16
Pro Bono Thanks.....	19
Multnomah Bar Foundation.....	20

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16th Annual MBA Golf Championship to Benefit Legal Aid

The Reserve Vineyards and Golf Club

Monday, September 23



Play the beautiful North Course and help raise \$20,000 for the Volunteer Lawyers Project (VLP) at LASO. Early bird registration is \$215 and ends September 9; after September 9, \$230. Entry fee includes greens fees, cart, range, door prizes, lunch, dinner and awards. Raffle and Mulligans benefit the VLP.

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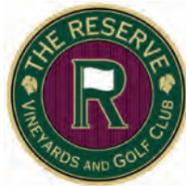
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Hubbs at 503.222.3275 or

pamela@mbabar.org.



Democracy Cup Engages Students in the Voting Process

Funded by a Grant from the MBF

by Amanda Tripp Johansson

Bus Project Foundation

Last year, the City Club of Portland report "Educating Citizens" found that our students are not adequately prepared to be engaged and responsible citizens. To help address this challenge, the Bus Project Foundation launched the Democracy Cup program, bringing the democratic process to life in high school classrooms around the



state and supporting leadership development experiences for both students and young professionals alike.

The Democracy Cup - a voter registration and civics engagement competition - celebrated its first year by reaching more than 11,000 high school students across Oregon in 2012. We forged a dynamic partnership with Portland Public



Third Place winners of David Douglas High School gear up to get students involved in the competition

Calendar

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

SEPTEMBER	OCTOBER
<p>9.2 Monday Labor Day Holiday</p> <p>9.7 Saturday Pro Bono Pedal See p. 13 for details</p> <p>9.10 Tuesday OAPABA Gala Dinner Visit oapaba.org for details</p> <p>9.11 Wednesday CEJ Party Under the Stars Visit cej-oregon.org for details</p> <p>9.19 Thursday SALC Taste for Justice Visit www.salcgroup.org for details</p> <p>9.20 Friday FBA District of Oregon Science & Technology Conference Visit oregonfba.org for details</p> <p>9.23 Monday MBA Golf Championship</p> <p>9.25 Wednesday YLS Wine Tasting Social See p.13 for details</p> <p>9.26-27 Thursday-Friday ACLU Civil Liberties Conference Visit aclu-or.org for details</p>	<p>10.2 Wednesday MBF Social See p. 9 for details</p> <p>10.3 Thursday Battle of the Lawyer Bands See p. 1 for details</p> <p>10.4 Friday YLS Wills for Heroes See p. 13 for details</p> <p>10.5 Saturday MBA Wine Crush See p. 15 for details</p> <p>10.19 Saturday OGALLA Annual Dinner Visit ogalla.org for details</p> <p>10.21 Monday OSB Pro Bono Fair Visit mbabar.org for details</p> <p>10.24 Thursday MBA Absolutely Social See p. 1 for details</p> <p>10.25 Friday CEJ Laf-Off Visit cej-or.org for details</p>

NOVEMBER

<p>11.2 Saturday BOWLIO Visit osbar.org for details</p> <p>11.19 Tuesday Bench Bar & Bagels Visit mbabar.org for details</p>
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School District, leading workshops and guiding student leaders at 14 high schools in Multnomah County alone. Our inaugural season came to a close with Grant High School taking home the Urban Division title with a whopping 234 registered new voters. Clackamas High School took second place and David Douglas won third place.



Democracy Cup 2012 Urban Division winners from Grant High School help register voters during National Voter Registration Day

Our hands-on classroom workshops help teachers fulfill their social science core standards and are led by volunteer Democracy Mentors, who help translate the message that every voice counts. After participating in a workshop, one student remarked, "I really like the energy and how good the explanations were. It makes me want to get all our community involved!" That's exactly what Oregon students achieved last year, collectively registering more than 2,000 new voters.

Democracy Cup would like to extend its heartfelt thanks to the Multnomah Bar Foundation for your continued support as we expand our program in 2013.

Whether you are a parent, an educator, or a rising leader, Democracy Cup has something for everyone. Our Mentors lead classroom workshops and guide high school students in their own leadership development. Please visit DemocracyCup.org to learn more about our work and consider applying to be a Democracy Mentor.

Meditation for Lawyers

Tuesday, September 17, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Today, meditation and mindfulness training is no longer a suspicious, touchy-feely subject. The scientific and medical evidence for the benefits of mindfulness practice continues to mount. Across the country lawyers and judges are receiving mindfulness training to improve mental acuity and combat the stresses of a challenging profession. In 2008, the MBA was a pioneer in this effort, offering a successful, daylong program on mindfulness training for 140 lawyers and judges. Since then many lawyers have participated in weekly mindfulness practice and have learned to incorporate new mental skills into their law practice. Our speakers are **Michael Dwyer** of Dwyer Mediation Center and **John Folawn** of Folawn Alterman & Richardson LLP. A panel of lawyers will speak about their meditation practice and experience and the impact on their professional lives.

In this seminar, you will learn:

- What is Meditation?
- Why Meditation is helpful to Lawyers
- Basic Instruction on Meditation
- How to Integrate Meditation into Your Law Practice and Daily Life
- The Medical and Scientific Support for Meditation.

For more information:

Call Michael Dwyer, Dwyer Mediation Center at 503.241.9456. For registration questions, call the MBA at 503.222.3275.

Legislative Update

Wednesday, September 18, 2013
12:00-1:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$35
Non-members \$55

Please join two lawyer legislators to learn about the developments that took place during the Oregon State Legislature's 2013 session. This CLE will cover recent changes to civil laws that may affect your practice or your clients' interests. Panelists include two members of the Oregon House of Representatives: **John Davis**, a business and real estate attorney at McEwen Gisvold, and **Shemia Fagan**, a litigation attorney at Ater Wynne.

For more information:

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

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

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

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

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

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

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

For more information:

Call the MBA at 503.222.3275.

Practicing in Oregon and Washington: A Guide to the Unwary

Wednesday, September 25, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This two-hour CLE will offer tips, tricks and shortcuts that will summarize the significant differences in state and local rules for practicing law in Washington and Oregon. Experienced litigators, **Jeffrey Mutnick**, Law Office of Jeffrey S. Mutnick; **James Gidley**, Perkins Coie LLP; **Mark Fucile**, Fucile & Reising LLP and **Kevin Coluccio**, Stritmatter Kessler et al will outline the local rules in federal court and the two primary counties, King and Multnomah, discussing each court's individual idiosyncrasies within their local rules.

For more information:

Call Jeffrey Mutnick, Law Office of Jeffrey S. Mutnick at 503.595.1033. For registration questions, call the MBA at 503.222.3275.

Preserving Your Case for Appeal

Tuesday, October 8, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Helen Tompkins, Attorney at Law and **Jay Beattie**, Lindsay Hart LLP will explain what trial attorneys need to do to properly preserve their cases for appeal. Jay represents appellants in civil appeals in business, tort and insurance-based matters. Helen represents appellants in all types of civil appeals from subordinated debentures to products liability to civil procedure, medical malpractice and family law. They have 50 years of shared experience – split evenly between them. Both work closely with trial attorneys during litigation. Given the recent changes in de novo review and the hyper technical issues that are raised on appeal, it is crucial for litigation attorneys to know the ins and outs of preservation.

For more information:

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

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 is 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 Cindy and Tatiana 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 United States, the European Union 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 United States 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. Indeed, 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. The attorney panelists will address a myriad of issues from the perspective of both plaintiffs counsel and defense counsel.

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 served as 2010-11 President of the Oregon Trial Lawyers Association (OTLA). His practice focuses on representing plaintiffs in personal injury actions. Both Kelly and Tom 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.

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<http://mbabar.org/Membership/Login.html>

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.

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

Photocopy registration and mail or fax with payment to:

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

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

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.

9/17 Meditation for Lawyers

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9/18 Legislative Update

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9/19 iPad Apps and Tips

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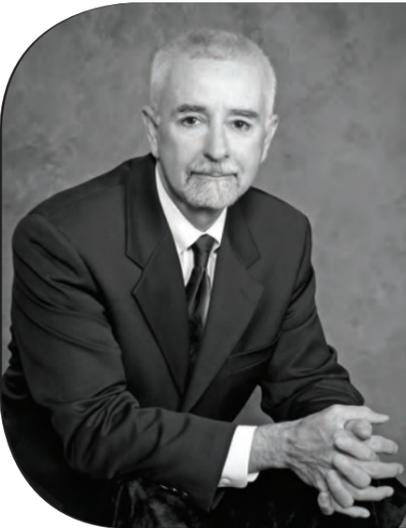
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mba | ANNOUNCEMENTS

MBA Seeks Public Member for Judicial Screening Committee

The MBA Judicial Screening Committee has a three-year term vacancy for a public member. Public member criteria are below:

Public members must work or reside in Multnomah County and be at least 21 years of age. No person may serve as a public member who is (1) a lawyer or former lawyer in any jurisdiction, (2) employed by a lawyer, (3) married to or a domestic partner of a lawyer, or (4) the parent, child or sibling of a lawyer. Desirable qualities of public members include integrity, honesty, discretion, familiarity with the legal system, and the ability to communicate effectively.

Interested parties will find a public member application on the News Section at mbabar.org. Completed applications may be returned to Carol Hawkins, carol@mbabar.org or Guy Walden, guy@mbabar.org.

September is Open Enrollment Month for the MBA Health Plan

Those not currently enrolled in the MBA Health Plan can sign up this month, so now is a good time to compare your existing plan to the MBA's. While the MBA plan is not immune from the continued rise in premiums, MBA premium increases are below the national average and the plan remains competitive for many MBA members. You may review a summary of current rates at www.mbabar.org, or call Northwest Employee Benefits at 503.284.1331 with questions.

Party Under the Stars – Wednesday, September 11

Are you a young lawyer, law student, or new member of the legal community? The Campaign for Equal Justice Associates Committee and the MBA YLS invite you to the Party Under the Stars! This is a fun event with free pizza, beer and wine, held on Perkins Coie's beautiful outdoor deck. You can enter to win fabulous raffle prizes. You will also learn more about Legal Aid's work. Please plan to attend on September 11, from 5:30-7:30 p.m. RSVP at www.cej-oregon.org.

Ring in the Jewish New Year with Attorney General Ellen Rosenblum - Tuesday, September 24

Solomon's Legacy Committee of the Jewish Federation of Greater Portland invites you to ring in the Jewish New year with Attorney General Ellen Rosenblum from 5:30-7 p.m. at the Thirst Bistro on the Waterfront: 0315 SW Montgomery St. #340 Portland. Ellen has practiced law for 14 years, served as a federal prosecutor, & has 22 years of experience as a judge. Tickets: \$15. To register, go to www.jewishportland.org/solomonslegacy.

Noon Time Rides

Multnomah Bar Association noon time bicycle rides - short fast rides with hills. Meet at SW corner of Pioneer Courthouse Square (Yamhill & Broadway) between Noon and 12:10 p.m., Monday and Thursday. Contact: Ray Thomas 503.228.5222 with questions, or meet at 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.

"Both Judge Waller and Lisa Naito have worked tirelessly and effectively on behalf of individuals and families battling mental health issues," said Smith. "NAMI Oregon has chosen very wisely in recognizing them for the positive and life-changing difference they have made and continue to make."

More information about the dinner can be obtained at www.namior.org or by calling 503.230.8009.

OAPABA Gala Dinner September 10

This dinner at the Benson Hotel will honor Judge Lynn Nakamoto. The keynote speaker is the Hon. Ellen Rosenblum. Cocktail hour begins at 6 p.m. and the dinner begins at 7 p.m. More details are available at oapaba.org.

FBA – Innovations in the Law: Science & Technology

A special District of Oregon Conference is scheduled Friday, September 20, 8:30 a.m.-5:30 p.m. at OMSI, presented by the Oregon Chapter of the Federal Bar Association, the Ninth Circuit Lawyer Representatives and the U.S. District Court of Oregon.

Law, science and technology, and market forces are all evolving at a rapid pace. From piles of emails and electronic discovery, to iPads in the court rooms, to drones in the sky, each moment of a lawyer's daily life contains a wealth of digital information.

A distinguished panel of industry leaders and innovators from Google, Intel, LegalForce, Nike, OHSU, Popvox, and Tradmarkia will address the questions: Who aggregates data and why, and how can the hard-working lawyer keep up? How can technology help speed the delivery of legal services when courts and law enforcement are underfunded? When clients work in a high-tech industry, how do their expectations of the practice of law change? A dinner follows the seminar. Visit www.oregonfba.org for details.

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Ethics Focus

What Can You Say? Talking with Unrepresented Persons

by Mark J. Fucile
Fucile & Reising



Lawyers frequently cross professional paths with a wide variety of unrepresented persons. Sometimes, they are opposing parties who are “unrepresented” by counsel but who are representing themselves pro se. Other times, they are potential occurrence witnesses who don’t have lawyers. Both categories are covered by RPC 4.3, which addresses dealing with unrepresented persons (including pro se parties) and is patterned on its ABA Model Rule counterpart. In this column, we’ll examine both sides of that same coin.

Pro Se Opposing Parties

When dealing with pro se opposing parties or other persons whose interests the lawyer either knows or reasonably should know conflict with the lawyer’s client (or the lawyer’s own interests), RPC 4.3 is both specific and succinct: “[t]he lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel[.]” Comment 2 to the corresponding ABA Model Rule explains that this strict

limitation is intended to prevent lawyers from taking advantage of unrepresented persons whose interests are adverse. OSB Formal Ethics Opinion 2005-16 offers a pair of illustrations, one from the civil context and one from criminal practice. On the former, Opinion 2005-16 concludes that a lawyer for a party injured in an automobile accident cannot write the driver at fault and advise the driver to instruct the driver’s insurance carrier to accept a policy limits demand. On the latter, Opinion 2005-16 concludes that a criminal defense lawyer cannot advise a witness who may share culpability for the crime to assert the Fifth Amendment when called before a grand jury. With both illustrations, the key fact leading to the prohibition is that the lawyers involved are giving advice to an unrepresented person whose interests are adverse.

At the same time, Comment 2 to ABA Model Rule 4.3 also notes that this limitation does not prevent a lawyer from negotiating opposite a pro se, preparing documents on behalf of the lawyer’s client that the pro se signs (such as a settlement agreement or a contract) or “explain[ing] ... the lawyer’s view of the underlying legal obligations” as long as “the lawyer has explained that the lawyer represents an adverse party and is not representing the person[.]” OSB Formal Ethics Opinion 2005-163, for example, concludes that simply suggesting a settlement to an

unrepresented party does not violate RPC 4.3. Opinion 2005-163 (at 451) captures the nub of the distinction:

“The mere suggestion of a ... compromise does not constitute giving advice to a person who is not represented. A ... lawyer suggesting a ... compromise, however, must be sensitive to the distinction between making the suggestion and advising ... about whether to accept the compromise.”

Unrepresented Witnesses

As Opinion 2005-16 illustrates, witnesses can fall into the strict restriction most often reserved for opposing pro se parties under RPC 4.3 if the interests of the witness and those of the lawyer’s conflict. Even if that’s not the case, RPC 4.3 still cautions that lawyers both need to avoid misleading an unrepresented person that the lawyer is disinterested and make “reasonable efforts” to correct any misunderstanding the unrepresented person appears to have in this regard.

A particularly sensitive area is to avoid “inadvertently” creating an attorney-client relationship with an unrepresented person. The Oregon Supreme Court outlined the standard for determining whether an attorney-client relationship has been formed in *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990). The Supreme Court in *Weidner* articulated a two-part test: (1) does the client subjectively believe the lawyer is representing the client? and (2) is that subjective belief objectively reasonable under the circumstances? *Weidner* notes that neither payment of a fee nor a written retention agreement is necessary to form an attorney-client relationship. With an unrepresented witness,

a lawyer needs to take care not to leave the witness with the impression that the lawyer is also representing the witness - or a court might very well find that to be the case later using the *Weidner* test.

The danger of “inadvertently” creating an attorney-client relationship is that it may lead to disqualifying conflicts. In *Admiral Insurance Company v. Mason, Bruce & Girard, Inc.*, 2002 WL 31972159 (D Or 2002) (unpublished), for example, several conversations that a lawyer thought were informal with an officer of a closely-held corporation were deemed sufficient under the *Weidner* test to create an attorney-client relationship between the corporation and the lawyer’s firm. That, in turn, led to the firm’s disqualification when it then sued the corporation

on behalf of another client. By contrast, the local federal district court in *Larmanger v. Kaiser Foundation Health Plan*, 805 F Supp2d 1050 (D Or 2011), dismissed a conflict-based claim by a corporate employee for breach of fiduciary duty against two law firm lawyers who had prepared the employee for her deposition on behalf of the firm’s corporate client in an earlier matter. The District Court concluded that the employee had failed to demonstrate that she had an individual attorney-client relationship under the *Weidner* test with the corporate counsel.

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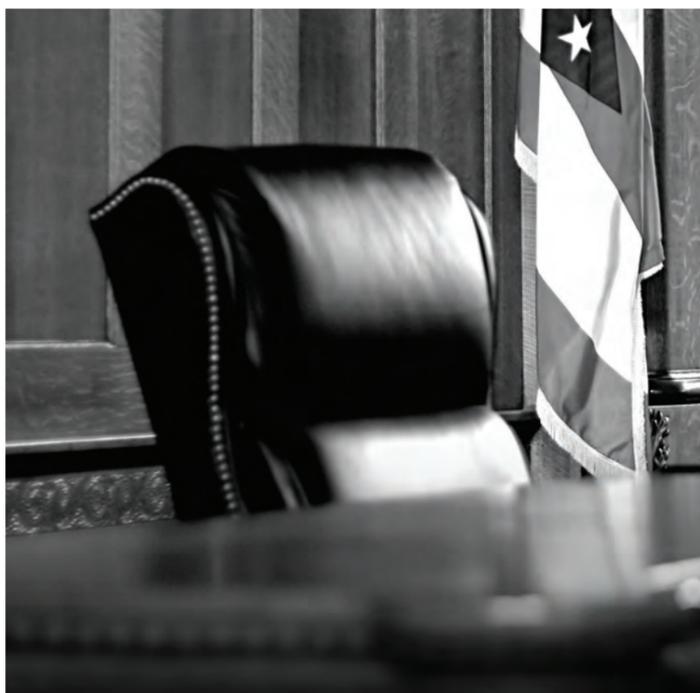
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Around the Bar



Ben Cox

Ben Cox

At its annual convention in August, the Oregon Trial Lawyers Association presented **Ben Cox** with its very first Outstanding Young Lawyer award. The award is given to a lawyer in practice for five years or less who demonstrates professional excellence in trial practice, service to OTLA and the community, and the advancement of legal ethics and professionalism.



Eva Kripalani



Steven Wiker

Metropolitan Family Service

Metropolitan Family Service (MFS) has appointed **Eva Kripalani** as the organization's new Chair of the Board of Directors, and **Steven Wiker** as the new Vice Chair. Kripalani is the owner of Eva Kripalani Legal and Consulting Services, a legal and business consulting firm. She provides guidance to corporations in areas such as law department management, corporate governance, business transactions, ethics and compliance and business process domains such as contract management. Wiker is a partner at Tonkon Torp and counsels clients in complex commercial litigation, intellectual property, media communications and technology, energy, corporate governance, real estate and finance issues.

MFS, a leading social service agency in the Pacific Northwest, works with people of all ages to help them move past barriers that are most often associated with poverty or social isolation.



Owen D. Blank

Tonkon Torp

Business attorney **Owen D. Blank** has been elected to the board of the Oregon Jewish Community Foundation (OJCF). Blank, a partner, represents family-held businesses, national and international corporations, nonprofit organizations and charitable foundations on a variety of matters including mergers and acquisitions, real estate and sports matters. Long active in the Portland community, Blank has served on the boards and advisory panels of many local organizations.

The OJCF is dedicated to creating, promoting and facilitating a culture of giving, and serves as the guardian of permanent funds available to safeguard the quality of Jewish communal life in Oregon and Southwest Washington.



Brenda L. Meltebeke



Douglas D. Morris

Ater Wynne

Brenda L. Meltebeke, Chair of the Emerging Business Group, has been re-elected as chair of the firm. **Douglas D. Morris** has been newly elected Managing Partner.

Meltebeke began serving as chair in 2011. Her practice focuses on entity formation, general corporate and securities law, including venture capital financings and mergers, acquisitions and divestitures. She chaired the Business Group from 2001-09, and has chaired the firm's Emerging Business Group since 2009.

Morris's practice focuses on mergers and acquisitions,

corporate finance, securities, and general corporate representation of private and publicly held high technology and high-growth companies. He chaired the Business Group from 2009-13.



Nancy Erfle

Gordon & Rees

Nancy Erfle joined the firm as a partner in the Tort and Product Liability Practice Group. She brings 23 years of wide-ranging state and federal product liability litigation experience to the firm. Erfle focuses her practice on defending pharmaceutical and medical device manufacturers, automotive manufacturers, agricultural chemical manufacturers, aviation manufacturers, and companies involved in business disputes. She has served on national litigation teams and as lead local and regional counsel in automotive and pharmaceutical mass tort cases.



Marshal Spector

Gevurtz Menashe

Marshal Spector returns to the firm, as an "Of Counsel" attorney. Spector brings 23 years of experience in Oregon family law cases. He will continue his family law practice of divorce, custody, support, and modification cases, as well as Premarital Agreements and other family law matters.



Marie Eckert

Miller Nash

Partner **Marie Eckert** has been elected to the board of directors for Literary Arts. While on the board, Eckert will help manage the organization and advance its goals to support writers, engage readers, and inspire the next generation with literature.



Wayne D. Landsverk

Partner **Wayne D. Landsverk** has been elected as a Fellow into the College of Labor and Employment Lawyers and elected to secretary and chair-elect of the Labor Lawyers Advisory Committee for CUE, Inc. Landsverk has been a lawyer for 39 years, helping clients in all areas of employment and traditional labor law.

As a Fellow in the College of Labor and Employment Lawyers, Landsverk receives a prestigious distinction shared by some of the best and brightest labor and employment lawyers throughout the U.S. and Canada. Fellows serve to promote achievement, advancement, and excellence in the practice of labor and employment law.

Miller Nash celebrated its 140th anniversary this month by announcing the establishment of the Miller Nash Legacy Fund, a charitable fund established to enable the firm to pursue its philanthropic goals for many years to come. The fund, managed by The Oregon Community Foundation, will support nonprofit organizations throughout Oregon and Washington through annual grants.

The Miller Nash Legacy Fund will initially be funded by firm contributions of \$140 for every attorney and staff member currently employed by Miller Nash, thus seeding the fund with \$35,000. Additionally, the firm has set up a program to match individual employee contributions of up to \$140 per person, bringing the firm's potential contribution to \$70,000 this year. Each year thereafter, the firm will contribute additional money to the fund, as well as offering the attorneys and staff opportunities to contribute.



Joshua D. Stadler

Dunn Carney

Joshua D. Stadler has joined the firm as a litigation associate. His practice will focus on employment, environmental and commercial litigation.

Stadler has represented Fortune 500 corporations in state and federal trial and appellate courts, as well as clients in

investigations conducted by the US Department of Justice, the Environmental Protection Agency and other regulatory enforcement agencies.



Laura Maffei



Jay Waldron

Schwabe Williamson & Wyatt

Laura Maffei and **Jay Waldron**, firm shareholders, received an "Outstanding Legal Service Award" from Northwest Pulp and Paper (NWPPA).

The award was presented by Chris McCabe, the Executive Director of NWPPA, and Kathryn VanNatta, the Director of Government and Regulatory Affairs at the organization's 13th annual meeting. The award was for providing more than 10 years of outstanding legal service to NWPPA. This is the first time an award of this kind has been presented.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All 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.

Annual Pro Bono Fair
Monday, October 21

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

Three free CLEs will run concurrently followed by the fair, awards and social. Join us to have fun and learn about the different pro bono organizations in our community. For more information, contact Michelle Lane at 503.431.6384 or mlane@osbar.org.

mba|EVENT

MBF Social Celebrates Supporters, CourtCare and Civic Education

Wednesday, October 2
Stoel Rives LLP
900 SW Fifth Avenue, Suite 1900
Portland
5-6:30 p.m.

Join us and celebrate our generous supporters, CourtCare and the good work being done by our grant recipients. Meet our grantees and catch up with colleagues over refreshments.

RSVP to Pamela Hubbs at 503.222.3275 or pamelah@mbabar.org.

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Samuels Yoelin Kantor LLP is pleased to congratulate Eric J. Wieland on his advancement to Partner with the firm.

Since joining Samuels Yoelin Kantor in 2006, Mr. Wieland's primary areas of practice have included tax law, estate planning, trust and estate administration, business planning, and retirement and employee benefit plans.

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2013 Multnomah CourtCare Campaign Raises over \$90,000

Over \$90,000 was raised during the campaign to fund the free childcare program at the Multnomah County Courthouse this year.

The CourtCare Campaign raised about \$55,000 from large firms and organizations, \$13,000 from small firms and \$18,000

from February's WinterSmash benefit bowling event. The MBA contributed \$5,000.

The MBA wishes especially to thank **Amy Angel**, Barran Liebman LLP, for chairing the campaign for the last two years.

The **CourtCare Proudest Pride Award** for the largest donation from a firm went to **Davis Wright Tremaine**. The **CourtCare Loftiest Leap Award** for the largest donation per capita went to **Buchanan Angeli Altschul & Sullivan**.

CourtCare Lions, individuals contributing \$500 or more

- David Baca
- Ruth Beyer
- Sarah Crooks
- Kieran Curley
- Peter Glade
- Michael Greene
- James Hennings
- Molly Honore
- Lisa Kaner
- Susan MacKay
- Susan Marmaduke
- Michael McGrath
- Steven Naito
- Hon. Gregory Silver
- Michael Silvey
- Bob Steringer
- Renee Stineman
- Hon. Diana Stuart
- Hon. Katherine Tennyson
- Hon. Janice Wilson
- Hon. Merri Wyatt

CourtCare Tigers, individuals contributing \$150 or more

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- Andrew Altschul
- Amy Angel
- Courtney Angeli
- Kenneth Antell
- David Artman
- Joanne Austin
- Gary Barnum
- Steven Bennett
- Carol Bernick
- Paul Bierly
- Douglas Bray
- Paul Buchanan
- Hon. Stephen Bushong
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- Charles Corrigan
- David Criswell
- Eric L. Dahlin
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- Kristin Winnie Eaton
- Amy Edwards
- Edward Einowski
- David Ernst
- Emily Fox
- Hon. Julie Frantz
- Ryan Gibson
- Richard Glick
- Hwa Go
- Gersham Goldstein
- Eric Grasberger
- Ward Greene
- Phillip Grillo
- Dan Grinfas
- Kimberly Hanks McGair
- Helen Hirschbiel
- Martha Hodgkinson
- Michael Knapp
- Kevin Kono
- Teresa Kraemer
- David Krieger

Continued on page 15

THE LAWYERS' CAMPAIGN for EQUAL JUSTICE

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Tips From the Bench

Connecting Probate to the World of Civil Practice

by Judge Katherine Tennyson
Multnomah County Circuit Court

If you are a lawyer engaging in civil litigation in Multnomah County, chances are increasing that you will encounter issues traditionally thought of as reserved for probate territory. As more baby boomers age into incapacity, their issues will extend beyond typical trust administration or will contests. As a practical matter, lawyers should be on the lookout for these issues in order to provide adequate representation to their client.

Representative Parties/ Diminished Capacity

Depending upon the type of case, certain rules ensure legally competent parties are on all sides. ORS 130.305 or ORCP 27 are two such rules. If a party is incompetent, certain actions cannot occur without the proper appointment of a representative. For example, ORCP 69C(1)(d) and C(2)(a) set forth requirements prior to the entry of a default judgment. Oregon Rules of Professional Conduct also provide guidance to lawyers representing clients with diminished capacity. Familiarity with RPC 1.14 is a must for lawyers in private practice.

Personal Injury Settlements for Minors and Incapacitated Persons/Wrongful Death

Generally speaking, the Probate Section is involved in the approval of financial aspects of personal injury settlements for minors and incapacitated persons and a personal representatives settlement of a wrongful death action. (ORS

30.070) Lawyers should take guidance from the requirements of SLR 9.055. Even when a civil case has been specially assigned to a general judge for trial or ADR, it is good practice to determine if the settlement reached must be approved by the probate court. These matters can be particularly complicated where the persons entitled to distribution of the proceeds of the settlement are minors as there are specific Supplemental Local Rules which must be followed and conservatorships for the minors may be required.

Sealing Documents

Typically, settlement agreements include a confidentiality provision. Most of those agreements do not need probate court approval. When approval is required, however, the terms of settlement become part of a public filing absent a legal reason to seal those terms. The least convincing, but frequently used, arguments for a motion to seal include these two: "because, judge, this is how we've always done it before" or "because, judge, we said we would." Those arguments will not yield the desired result. UTCR 5.160, effective of August 1, 2013 provides a roadmap for any request to seal. Failure to follow UTCR 5.160 is fatal to any request. A rough outline of that rules is as follows:

A party's motion must state:

1. The statutory authority for sealing the documents or materials
2. The reasons for protecting the documents or materials from the public
3. A description of the documents or materials to be sealed

Continued on page 19

MBA Committees

Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and the committee chair follows. If you have ideas or concerns about a particular area, please contact the chair, MBA President Richard Vangelisti at richard@vangelisti.com or the MBA staff at mbabar.org.



Todd Cleek

Continuing Legal Education

Chair: **Todd Cleek**, Cleek Law Office LLC, 503.706.3730
Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice 10 years or more.

Court Funding

Chair: **Richard Vangelisti**, Vangelisti Law Firm, 503.445.2101
Works to increase public and legislative awareness about the importance of a fully funded court system.



Dan Duyck

Court Liaison

Chair: **Dan Duyck**, Whipple & Duyck PC, 503.222.6191
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.



Robert Calo

Courthouse

Chair: **Robert Calo**, Lane Powell PC, 503.778.2104
Works to effectively support and advance the ongoing efforts to build a new Multnomah County courthouse or renovate the current courthouse.



Alan Galloway



Rima Ghandour

Equality & Diversity

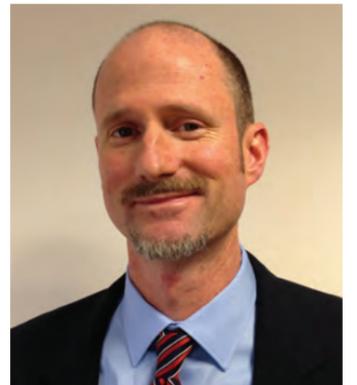
Co-Chairs: **Alan Galloway**, Davis Wright Tremaine LLP, 503.241.2300 and **Rima Ghandour**, Ghandour Law LLC, 503.345.9255
Promotes equality in the profession and identifies ways in which the MBA can promote a diverse bar.



Tyler Volm

Golf

Chair: **Tyler Volm**, Elliott Ostrander & Preston PC, 971.230.1067
Organizes golf outings, including the MBA Championship, which raises approximately \$20,000 annually for the Volunteer Lawyers Project at LASO.



David O'Brien

Group Health Insurance

Chair: **David O'Brien**, Hart Wagner, 503.222.4499
Manages quality, low-cost health and other insurance plans for MBA members.

Continued on page 11



Judge Amy Holmes Hehn Multnomah County Circuit Court

by Lisa Maxfield
Court Liaison Committee member

“My dad was Atticus Finch.” The daughter of a Jackson County District Attorney who later represented indigent defendants charged with murder, Amy Holmes Hehn knew as a young girl that she wanted to be a lawyer. “Watching my father, I could see his focus was on helping the people caught up in the legal system, rather than making money. I wanted to do the same.”

Amy Holmes left Medford in the late 1970s to attend Willamette University. It was there she met her husband, Paul Hehn. She knew he was “the one”

when he showed up for their first date announcing he was there to “pledge his undying love”. Thirty-one years later, it appears their initial instincts were spot on. They have raised two creative girls, both now embarking on interesting paths that appear to be skirting wide of the practice of law. She hopes, now that their daughters are ‘flying the coop,’ her husband will continue to



Paul’s fabulous 1990 Chevy 20 Van; a collaboration with a local artist who goes by the name “TLC” (The Lost Cause)

build his cherished, heavily adorned vehicles - amusing, cartoonlike spectacles in their Grant Park neighborhood and about town.

After completing her JD at Suffolk University, Holmes Hehn returned from Boston in 1985 to join the Multnomah County District Attorney’s Office. As a deputy district attorney for 25 years, she prosecuted a wide range of crimes, from petty theft to aggravated murder. Children and families always have been her primary interest. She served on the Multnomah County Child Abuse Team and headed, at various times, the Juvenile and Domestic Violence Units of the District Attorney’s Office. She is a nationally recognized advocate for juvenile justice reform and has served on a wide variety of influential task forces and commissions.

Judge Holmes Hehn now sits on the family law bench, where the quarter-century of experience she gained in the trenches of criminal and juvenile law has allowed her to adapt quickly to most dockets.

She relishes the challenge of learning less familiar areas of the law, like probate and domestic relations, from those who appear in her courtroom. “The learning curve has been eased by the professionalism of the good lawyers who have appeared before me. They have really helped further my education.”



Judge Holmes Hehn learning to ride from the original horse-whisperer, Buck Brannaman



Judge Amy Holmes Hehn

her. Her history of working with crime victims allows her to relate well with unrepresented parties, a population that has increased rapidly in family courts. It is important to her to be rooted in the community and she prides herself on having recently won first prize in a Hollywood Farmer’s Market contest with her squash-pumpkin pie recipe. Those facets of her life tie directly into the role she wants to play on the bench. When all litigants leave her courtroom “feeling heard” though only one side prevails, she will know she has succeeded in creating the connection she wants to make.

MBA Committees

Continued from page 10



William Miner

Judicial Screening

Chair: **William Miner**, Davis Wright Tremaine LLP, 503.241.2300
Confidentially screens judicial and pro tem candidates in accordance with the MBA’s process.



Brad Krupicka

Membership

Chair: **Brad Krupicka**, Preg O’Donnell & Gillett, 503.224.3650
Conducts member-outreach activities and plans drop-in socials and WinterSmash, which benefits Multnomah CourtCare.



Amber Hollister

Professionalism

Chair: **Amber Hollister**, Oregon State Bar, 503.431.6312
Implements activities that promote professionalism and carries out the professionalism award process.

Help MBA Golf Raise \$20K for the Volunteer Lawyers Project at Legal Aid

Whether you’re putting together a foursome, entertaining a client or sponsoring a tee, your participation in the September 23 golf tournament supports the Volunteer Lawyers Project (VLP) at LASO. In its 32nd year, the VLP continues to connect pro bono lawyers with low-income clients who otherwise would not receive legal representation.

In 2012, VLP attorneys took over 2,000 cases and reported thousands of volunteer hours! The VLP is fortunate to have this army of skilled attorneys to help meet the legal needs of low-income clients. Coordinating such a large

pro bono project requires time and staffing.

All proceeds from the MBA Golf Championship benefit the VLP, making your involvement so important. Please join us. Network, entertain clients, have fun and help the VLP help Oregon’s poorest citizens. Visit mbabar.org to register or sponsor or contact Pamela Hubbs at 503.222.3275 or pamelah@mbabar.org.



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Young Lawyers Section

The Ten Minute Fix

by Eva Marcotrigiano
OSB Quality of Life Committee Secretary &
YLS Futures Committee Member



Mind frantically racing, you are slumped over your desk amidst mounds of files. Productivity came to a halt a while ago, and yet a deadline still looms. You tried to take a walk down the hall to clear your head, but that proved fruitless and time is flying by. What is a lawyer to do?

In May, the MBA YLS Professional Development & Education Committee and the OSB Quality of Life Committee joined forces to present a one-hour seminar for lawyers to learn mechanisms to move through such a rut. The Ten Minute Fix CLE, presented by attorney and yoga instructor Heather Decker and nurse-meditation instructor Kathleen Bell, focused on stress-reduction techniques that can be performed at your desk in 10 minutes or less.

On a sunny day in Perkins Coie's conference room, the presenters led lawyers through two relaxation breathing techniques, four chair yoga poses, and a simple meditation exercise. All of the techniques can be performed right in your office, with nothing but a chair. Notably, the techniques are also discreet, such that a colleague passerby may not even realize you are in the midst of refocusing.

For example, Heather Decker took us through the Three Part Breath: while seated, exhale completely. Inhale, bringing your breath all the way down into your belly. Inhale some more air, bringing it into your torso and lower chest area, expanding the sides and back of your rib cage to accommodate the breath. Bring

a final inhale into your upper chest area, lifting your sternum to allow room for the air. Exhale slowly, in reverse – chest, torso, abdomen. After you have exhaled completely, repeat. Continue for five breath cycles.

As lawyers, we are mental workers. The idea behind practicing these simple methods at work is to create stillness in your body in order to create stillness in your mind. The techniques serve to down-regulate your system, allowing it to reset as if you had taken a power nap. Through practice, you develop the capacity to tolerate and move through the chaos productively. Additionally, the techniques may be shared with clients to help them handle depositions, trial, or drawn-out negotiations.

The Ten Minute Fix CLE was well-attended and well-received. Not only did participants leave with information and techniques to incorporate at work, but also with a revitalized sense of clarity and productivity for the rest of the workday.

For more information on breathing, mindfulness, and meditation, see: *Perfect Breathing – transform your life one breath at a time* (by Al Lee and Don Campbell); *The Calm Technique* (by Paul Wilson); *Three Deep Breaths* (by Thomas Crum); *Mindfulness Improves Reading Ability, Working Memory and Task-Focus* (article on UC Santa Barbara research findings); *Mindfulness Practices to Take Control of Workplace Problems* (Infographic at HuffingtonPost.com by Jeffrey Hunter); *Buddha Had it Right: Relax the Mind and Productivity Will Follow* (article on FastCompany.com by Faisal Hoque).

Join the MBA on Tuesday, September 17 from 3-5 p.m. at the World Trade Center, where Michael Dwyer and John Folawn will present a Meditation for Lawyers CLE. See more information on page 3.

YLS Committees

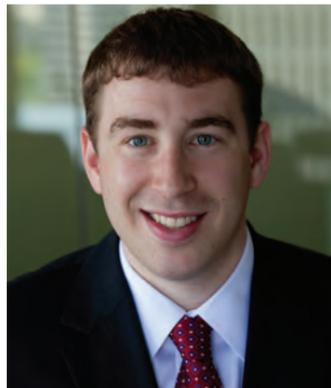
YLS members serve on committees designed to address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and contact information for the current committee chair follows. If you have any ideas or concerns to share about a particular area, please contact the chair, YLS President Traci Ray, or the MBA staff at mba@mbabar.org.



Kevin Parks

YLS Professional Development and Education Committee

Chair: **Kevin Parks**, Parks Law Offices LLC, 503.308.1080
Organizes YLS CLE seminars, as well as career development presentations.



Tyler Bellis

YLS Membership Committee

Chair: **Tyler Bellis**, McEwen Gisvold LLP, 503.226.7321

Assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. It also publishes the *New Admittee Survival Guide*.



Valerie Berg

YLS Pro Bono Committee

Chair: **Valerie Berg**, Attorney at Law, 503.754.0543
Coordinates the Nonprofit Project, publishes the domestic violence and juvenile rights handbooks, and encourages involvement in pro bono service. The committee helps organize the annual Pro Bono Fair and holds an annual fundraiser to support the pro bono community.



Cynthia Gaddis

YLS Service to the Public Committee

Co-Chair: **Cynthia Gaddis**, Law Offices of Daniel



Mary Tollefson

Snyder, 503.241.3617
Co-Chair: **Mary Tollefson**, Kramer & Associates, 503.243.2733
Provides lawyers with opportunities to become involved in the community, such as Community Law Week, Community Service Days and the imprint program. Organizes the YOUthFILM video contest for students on various democracy-related topics.



Troy Pickard

YLS Futures Committee

Chair: **Troy Pickard**, Portland Defender, 503.592.0606
Identifies and studies how lawyers of varying levels of experience are affected by changes occurring in the legal profession. Writes articles and organizes events.

Ask the Associate

Dear Awesome Associate,
At the peak of the summer doldrums, I find myself short on work. What is the best way to ask for work from the partners?

Your friend,
Underutilized Associate

Dear Underutilized,
Asking for work from partners can be tricky. You want good billable hours, but sometimes you get the project that has been kicked around the firm and now rests on your desk because, well, you asked for it.

One way to get good billable work from partners is to spend some time thinking about some of the matters that are currently in progress at your firm. Sit down with those files and think critically about what can and should be done to effectively advance the case and improve your client's position over the

next few months. Make a short list of action items and take that into the partner's office. Instead of simply asking whether there is any work that needs doing, you can go in with your action items and propose them to the partner. Partners spend time and energy dolling out work to associates. A list of action items shows that you recognize that the partner's time is valuable, but also that you have been thinking critically about the firm's matters and clients. If there isn't much that can be done on the case in the coming weeks, explain that too and suggest that you revisit the file with the partner in a few weeks.

Summer months also find partners taking vacations. Handling the matters while the partner is away is another good way to find some billable hours, and you can also suggest action items on the partner's return, helping them ease back into it after a break.

If there is still a lack of good billable work, try and see if there are any other ways you can bring value to the firm. Could any of the firm's current systems be streamlined? Or see what you can do to develop some business of your own through increased marketing efforts during slow billable weeks. Showing leadership in slow times will also reflect well at your annual evaluation. Even if the hours for that week or month were low, you can point to these efforts and discuss additional value added, even if it is not in the traditional billable hour sense.

If all else fails, and it is still really slow, take a day or two (or five) of vacation and come back recharged and ready to bill.

Yours Truly,
Awesome Associate

Send your questions to Awesome Associate at mba@mbabar.org.

Oregon Asian Pacific American Bar Association

by Duke Tufty
YLS Immediate Past President

The OAPABA is a fast-growing community of Asian Pacific American attorneys and serves as the Oregon affiliate of the National Asian Pacific American Bar Association - an association that represents the interests of over 40,000 attorneys worldwide. The organization is run by a board of 15 members, including members from all over the state, from the bench, and from all three Oregon law schools. The mission of the organization is three-fold: advancement, advocacy, and communication.

Advancement. To promote the professional development and advancement of APA attorneys through education, research and programs.

Advocacy. To act as a vehicle and forum for expressing opinions on matters of concern to APA attorneys and our communities.

Communication. To encourage and foster communication among APA attorneys on issues affecting our work, communities and government.

Kim Sugawa-Fujinaga is this year's OAPABA president and we recently had lunch to talk about the organization.

Q: How did you end up in Portland?

A: I was born and raised in Hawaii, but wanted to experience living in a different place, no palm trees. Salem was pretty different and I decided to attend Willamette Law School and moved north to Portland for my first legal job.

Q: What is your favorite thing about Portland?

A: The summers and the food, but mostly the food. If I was forced to name my favorite restaurant, I'd say Tasty & Sons, but late night food is always good at the 24 Hour Pancake House on SE Powell.

Q: How did you first become involved with OAPABA?

A: Julia Markley invited me to their first election meeting and her mom had cooked homemade Filipino food - I was hooked!

Q: Why should new attorneys get involved with OAPABA?

A: OAPABA is FUN! We have great people, who are results oriented and like having a good time, plus doing meaningful work in the community. What's not to like?!

Q: What kind of law do you practice?

A: McEwen Gisvold represents businesses in all aspects and I focus my practice on commercial litigation with an emphasis on bankruptcy, debtor-creditor representation, and real estate disputes.

Q: What do you do for fun?

A: Crossword puzzles and shooting guns. Usually not at the same time.

Q: If you could change one thing about OAPABA, what would it be?

A: I'd clone our original board members and make them permanent board members!



Kim Sugawa-Fujinaga

Q: What would you like to focus on during your presidency of OAPABA?

A: Our past president Simon Whang was really great at focusing on the social component of our membership and I'd like to continue that growth, with an emphasis on service projects to the community.

Q: How does OAPABA give back to the community?

A: Besides continuing the work of our advocacy committee to provide non-partisan endorsements for judicial and national bar association candidates, we are also developing a joint pro bono project with the Oregon Law Center to serve the Asian Pacific American community.

Q: Why should everyone reading this article go to this year's OAPABA Gala Dinner?

A: Great food, even better company, and Kiddy Taiko! (Traditional Japanese drumming performance by kids.)

OAPABA is hosting its First Annual Gala Dinner at the Benson Hotel on Tuesday, September 10. The event is honoring Judge Lynn Nakamoto and the keynote speaker is the Honorable Ellen F. Rosenblum, Oregon's first woman Attorney General. For more information, visit www.oapaba.org.

supports these programs, giving back to the community and "protecting those who protect us." Since November 2001, the Wills for Heroes program has provided more than 7,000 estate planning documents nationwide, and this will be Oregon's first partnership with the well-established program.



Emery Wang YLS Pro Bono Spotlight

by Michael Fuller
YLS Pro Bono Committee

This month's spotlight focuses on attorney Emery Wang's pro bono efforts volunteering with the Legal Aid Services of Oregon (LASO) Domestic Violence Project (DVP).

The DVP pairs local attorney volunteers with domestic violence victims for representation in a variety of legal matters. Attorneys often advise victims of their rights and appear as counsel at Family Abuse Prevention Act hearings and stalking order proceedings.

Emery Wang attended Lewis & Clark Law School and joined the OSB in 2009. He maintains a solo office in Gresham and focuses his private practice on personal injury. Since 2011, Wang has volunteered to represent various victims of domestic violence through the DVP.

Wang worked as a Multnomah County District Attorney while in law school and chose to volunteer with DVP because the position allowed him to utilize his courtroom skills.

"I looked at various pro bono opportunities, including some in elder law, but eventually chose domestic violence because I already had knowledge about the trial process," he says.

Emery first learned of the DVP during a legal aid pro bono orientation meeting for attorneys looking to volunteer.

"Maya Crawford with LASO first introduced me to the DVP," says Wang.

In addition to his courtroom skills, Wang's fluency in Chinese has also proven a valuable asset as a DVP pro bono volunteer.

"I recently responded to a specific LASO request for an attorney who had experience in domestic violence, and spoke fluent Chinese. I stepped up because I figured, 'What are the odds there's anyone else out there for this victim?'" he says.

"Oddly enough I was at a barbeque recently and actually met another attorney who also speaks Chinese and works in domestic violence."



Emery Wang

Wang says based on his trials thus far, domestic violence cases provide a constant learning experience because the rulings are very fact specific. "It's hard to know exactly what the facts are and the hearings are usually pretty fast-paced and to the point," he says.

He estimates that about half the respondents are represented as well, usually by paid attorneys.

"It's really rewarding work. The petitioners are often scared for their safety, and scared of the court system generally. It's great to be able to help," he says.

"Emery has represented 12 clients in contested restraining order hearings this year," says Maya Crawford. "His sensitivity toward survivors of domestic violence and his courtroom skills are a valuable asset to our program. We appreciate his dedication to serving low-income clients in our community."

Attorneys of all experience levels are encouraged to volunteer. Restraining order hearings usually occur Mondays and Thursday and attorneys are often assigned to take cases on a given day. Most attorney-client relationships last for only one hearing. Volunteers aren't obligated to continue representation beyond the scope of the issue at hand and no direct experience in family law is required.

Questions about the DVP can be directed to the Maya Crawford with the LASO at 503.224.4086 or maya.crawford@lasoregon.org.

Wills for Heroes

The YLS is adopting the ABA's Wills for Heroes program. On Friday, October 4, we will provide four essential legal documents (Simple Will, Power of Attorney, Advance Directive and HIPAA Release) free of charge to Oregon's first

responders, including police officers, fire fighters, EMTs and search & rescue. By helping first responders plan now, we help them ensure their families' legal affairs are in order. The Wills for Heroes Foundation is a 501(c)(3) charitable nonprofit and it

mba yls|EVENT

Pro Bono Pedal

Coalition Brewing Company
2724 SE Ankeny, Portland
Saturday, September 7
11 a.m.

Join us at Coalition Brewing Co. for this 10-mile bike ride to raise money for Legal Aid Services of Oregon. Ride departs at 11 a.m. with after-party to follow. \$15 adults, kids 10 and under free. We hope to see you there!

Register in advance at www.mbar.org or at the event.

mba yls|EVENT

YLS Wine Tasting Social

Blackbird Wine Shop
NE Fremont & 44th, Portland
Wednesday, September 25
5:30-7:30 p.m.

Please join the YLS, Financial Planning Association and Oregon Society of Certified Public Accountants for this casual opportunity to network and socialize.

The registration fee of \$15 includes wine tasting and hors d'oeuvres. Space is limited. Advance paid reservations are required.

Register online at www.mbar.org.

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Multnomah Bar Association | Young Lawyers Section

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CourtCare

Continued from page 9

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- Andrew Lauersdorf
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- Kenneth Lerner
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- Hon. Marilyn Litzenberger
- Christina Lok
- George Mardikes
- David Markowitz
- Jeffrey Matthews
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- Mary Louise McClintock
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- J. Randolph Pickett
- Jan Pierce
- Hon. David Rees
- Bonnie Richardson
- Matthew Ryan
- Marshal Spector
- Lynn Stafford
- Dana Sullivan
- Hon. Susan Svetkey

- Tauman Family Fund
- Steven Todd
- Margaret Van Valkenburg
- Richard Vangelisti
- Mark Wada
- Hon. Nan Waller
- Richard Weill
- Jeffrey Wihtol
- Hon. John Wittmayer
- Michael Yates
- JoLynne Zimmerman

mba | EVENT

**MBA Wine Crush
Hawks View Cellars**

20210 SW Conzelmann Rd, Sherwood
Saturday, October 5
1-4 p.m.

Please join us at scenic Hawks View Cellars for a discussion with the winemakers about the crush season and grape harvesting process, followed by a crush demonstration. The cost of \$25 per person includes appetizers, the crush demonstration, and a wine tasting of the Hawks View wine lineup. Additional glasses of wine and bottles will be available for purchase as well.



Register at www.mbabar.org or contact Kathy Modie at the MBA at kathy@mbabar.org or 503.222.3275.

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Positions

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The Portland, Oregon, office of Miller Nash is seeking a full-time associate with two to four years of experience in general commercial litigation. The successful candidate will have strong academic credentials, excellent written and oral communication skills, dedicated client-service focus, and a willingness to learn and work in a team environment. Membership with Oregon State Bar is preferred. No recruiters, please.

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transactions are required. Washington bar membership and experience with real estate transactions are not required but preferred. Please send resumes to shelly@slindenelson.com attention: Hiring Director.

Family Law Associate Position

Yates, Matthews & Eaton, P.C., an AV rated Portland firm seeks an attorney with at least 5 years experience in family law. Competitive salary, full benefits and bonus potential. Send resume, with writing sample Attn: Office Administrator, Cecelia Connolly, cconnolly@yatesmatthews.com. All inquiries will remain strictly confidential.

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Downtown Portland, Oregon law firm, is growing and currently offers employment opportunities for the following legal position 1) Associate Attorney with 3-8 years of experience in estate planning. Candidates must be licensed in Oregon; licensure in Washington is a plus. Compensation and benefits are competitive. Applications are accepted by email only. No telephone calls. To apply for a position, please email a cover letter, resume, writing sample, and unofficial transcript to jbrambani@kelrun.com.

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In the movie *Planes, Trains and Automobiles*, following a particularly boring story, Steve Martin's character memorably advises the traveling salesman played by John Candy: "Here's a good idea - have a POINT." That is good advice for lawyers too. In the legal profession, it can be comfortable and easy to do things according to a formula. Often, lawyers and their clients would be better served if more careful attention were given to the ultimate goal to be achieved.

Trial practice is riddled with examples of this phenomenon. For instance, some lawyers can hardly help themselves from excitedly objecting when they realize that the opposition has asked an improperly formed question. However, more experienced lawyers realize that in trial the goal is not to impress the judge and jury with your mastery of evidence, but instead to persuade them of the correctness of your position. Even completely proper objections often do not

further the goal of persuading the fact finder and can even be counterproductive by giving the impression that the subject that drew the objection is particularly significant.

Of course, this does not mean that it is never wise to object to an improper question. However, before objecting, always consider the ultimate goal. If an objection is valid, it will prevent the other side from introducing evidence that it needs to make its case and it cannot get introduced any other way, by all means object. But if the evidence is bound to come in one way or another, the wisest course is often to hold your tongue rather than emphasizing the importance of the question by objecting.

This problem also arises outside of trial. For instance, in depositions it is common to see lawyers asking questions for no apparent reason other than that they are the types of questions that are usually asked. This

Continued on page 18



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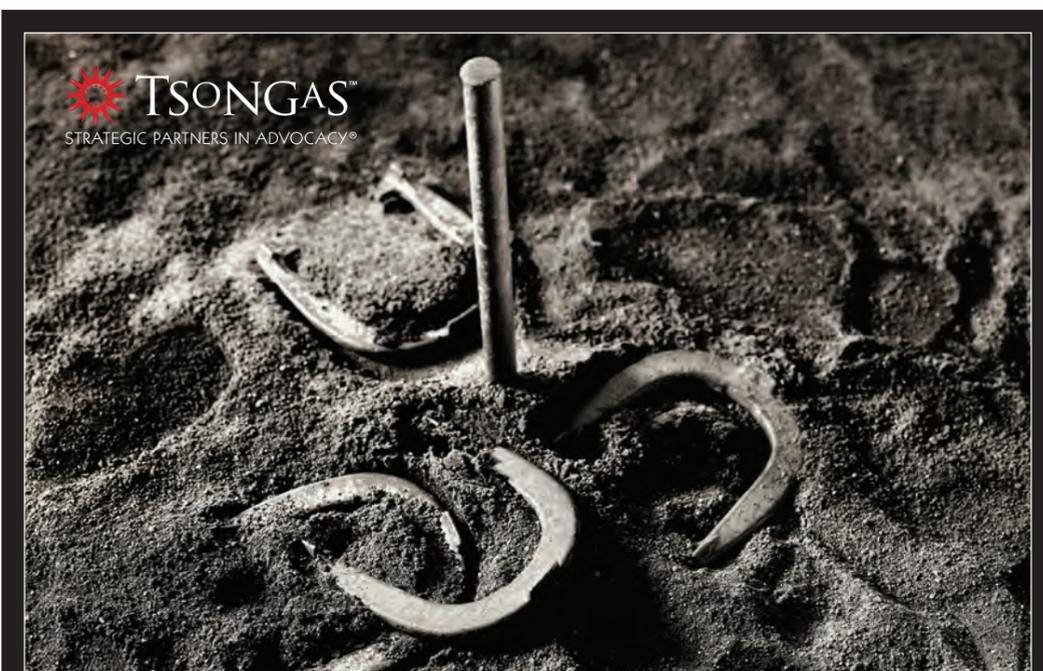
We are pleased to welcome Kirstin Abel to the firm.



Kirstin joins Bodyfelt Mount after working at another Portland law firm where she represented healthcare providers and facilities in malpractice cases. She will continue to focus her practice on litigation, representing individuals and businesses in a variety of civil matters.

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Continued from page 16

often results in long discussions about employment history and educational background, and other tangentially related matters, just because they are part of the laundry list of typical deposition questions, regardless of whether they have any significance to the matter at hand.

In preparing for a deposition, the starting point should be identifying exactly what you hope to accomplish. If you want the witness to take a particular position, think hard about how you can organize your questioning in a way that leads the witness in the direction you want to take her. If you need particular information, ask questions that are designed to elicit it. Your questions should spring from your goal, as opposed to simply asking a series of questions and hoping something interesting comes out.

This same failure to consider the point often leads to unprofessional conduct. Some lawyers seem to believe that if the other side wants something, it is their job to oppose it. However, often the goal of favorably and efficiently resolving your client's legal problems is best served by cooperation, not by unnecessarily picking fights.

For instance, it is surprising how often lawyers fail to realize that discovery is a double-edged sword. The same lawyer who insists that your client comply with highly burdensome requests

seeking documents of marginal relevance is outraged when his client is asked to respond to similar requests. Everyone would benefit from a more professional approach, in which all parties tailor their discovery to seek information that has a reasonable chance of being helpful, rather than blindly pushing the discovery envelope as far as they can. Remember the goal. Discovery is not intended to be a tool to inflict burden on the opposition; it is a means to acquire information that may be useful to the presentation of your case. Losing sight of that goal often results in a mutually assured destruction scenario in which each side launches oppressive discovery requests on the other, with the result being that everyone wastes a great deal of time and money on unproductive efforts.

There are times when it is not possible to agree. However, by keeping your goal squarely in mind, quite a few fights over matters that do not advance that goal can be avoided. The result will be better relations with your opposing counsel and a smoother, more efficient, resolution of your client's dispute. No reasonable lawyer will resent you for sticking to your guns on issues that are important to your ultimate goal. However, needless fighting over matters that do not serve a meaningful purpose will quickly sour relations and undercut your ability to efficiently serve your client's interests.



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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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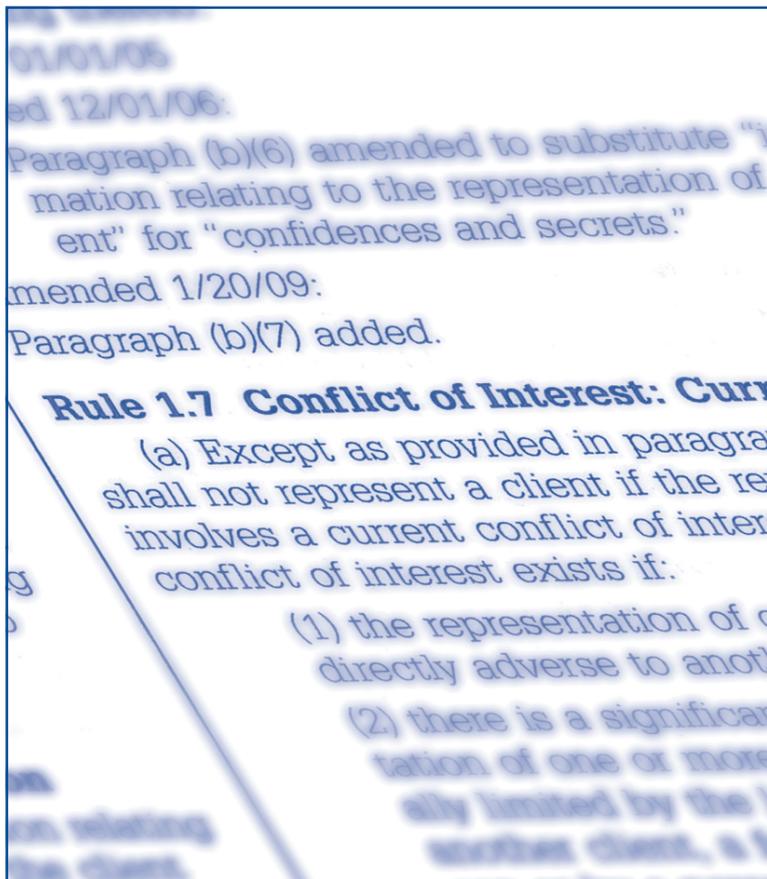
Continued from page 10

The court may direct the moving party to submit the documents for in-camera review.

The court's order may direct the clerk's office to:

1. File the documents, unsealed
2. File the documents, under seal
3. Return the documents, unfiled, to the moving party

The filing party must present the clerk with a copy of the signed court order and submit the documents in a sealed, properly marked envelope.



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

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

Rule 1.7 Conflict of Interest: Current or Potential

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest unless the lawyer determines that no conflict of interest exists if:

(1) the representation of one or more clients is not directly adverse to another client, and

(2) there is a significant possibility that the representation of one or more clients will not be materially limited by the lawyer's duty to the other client, and the lawyer obtains the informed consent of each affected client.

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by Pamela B. Hubbs
Office and Foundation Administrator

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