



Lawyers Looking Outward

by Tim Volpert
MBF President

It has been my great honor this year to serve as president of the Multnomah Bar Foundation Board. I must confess that when my friend, Tom Sand, called

me four years ago and invited me to join the foundation board, I fortunately said "Yes," without really knowing what the foundation is or what it does. Just in case you are in the same boat, let me tell you what the foundation is, share my pride in what it does as the public face of every MBA member, and express my enthusiasm for how much more it can do in the future.

The Multnomah Bar Foundation is a 501(c)(3) established in 2005 to commemorate the 100th anniversary of the Multnomah Bar Association. The foundation's IRS application states: "The organization will conduct and fund charitable and educational activities to further the study of law, elevate the public's understanding of the legal system, increase access to justice, and improve or enhance courtroom function to further the public interest."

That's a tall order! I'm proud to say, however, that the MBF Board and staff hit the ground running. By the end of 2006, the foundation's Civic Education Fund raised over \$150,000 to promote civic education and engagement. In its nine-year history, it has raised over \$460,000 from the generous members of the MBA.

This year, the MBF Board voted to change the name of the foundation's Civic Education Fund to the Civic *Engagement* Fund. This is a subtle but important change. Several distinguished organizations, such as the nationally-acclaimed Classroom Law Project and the Bus Project Foundation, concentrate their efforts on civic education and engagement programs for students in Oregon schools. While the MBF continues to support those organizations, we are now focused on encouraging civic engagement in areas of our community where civic engagement programs are inadequately funded. For example, the foundation supports the Red Lodge Legal

It is difficult to express what it is like to hear personally from those grant recipients....

Services Program - which brings civic education and legal empowerment to women, primarily Native American women, incarcerated in Coffee Creek Correctional Facility. We also support an Elders in Action Speakers Bureau presentation on "Basics of Civics 101."

The foundation also supports the Four Cities Peer Court - where volunteer attorneys work with students and local police to adjudicate juvenile offenses outside of the court system.

With each passing year, the number of grant applications to the MBF increases, enabling the foundation to serve a broader constituency. In some cases, a modest contribution from the foundation has given smaller organizations the credibility needed to secure funding from larger grant-giving bodies and charitable trusts.

...the foundation is now focused on encouraging civic engagement in areas of our community....

Of course, it is one thing to talk about what the MBF does and quite another to see what those grants are achieving first hand. To that end, our board members are assigned as liaisons to our grantees and make site visits to grant recipients. Also, to remind us of the importance of our work, we begin each MBF Board meeting with a presentation from a grant recipient on the programs funded by the MBF. Ask a board member about those encounters. It is difficult to express what it is like to hear personally from those grant recipients - how much they appreciate our modest grants and how these fledgling organizations achieve so much with the money we donate! Sometimes board member visits even lead to Superstardom! Take MBF president-elect Bonnie Richardson, whose site visit led to her becoming the moderator of MetroEast's grant-funded Legal Logic television series.

Your foundation is on a roll! But we can do so much more through increased donations from MBA members like you! In my practice as a civil litigator, I frequently hear lawyers lament that the practice of law is not satisfying, that they feel like they aren't achieving much more than moving money around. That may be because the stresses of legal practice have made many of us become more insular. It is easy to forget the great satisfaction lawyers can achieve looking outward - toward the people and communities we are supposed to serve. Think of contributing to the Multnomah Bar Foundation as one way you can look outward. When the foundation "speaks" by providing much-needed grants to nonprofit organizations, it speaks on behalf of every MBA member. It tells the public that the Multnomah County legal community cares about the health of the broader community it serves. If you doubt the significance of the message your contributions to the foundation sends, join me for a donor site visit sometime soon. See for yourself how much our contributions mean to the grant recipients.

Please consider making a year-end gift to the foundation. It does not have to be a big number. I am told there are 4,432 MBA members. Just think of how full the foundation's coffers would be, and how many more grants we could make, if each individual member were to donate just \$50 each year!

Happy Holidays from *your* Multnomah Bar Foundation!

When the foundation 'speaks' by providing much needed grants... it speaks on behalf of every MBA member.

mba|CLE

To register for a CLE, please see page 3 or go to www.mbabar.org and log in as a member to register at the member rate.

DECEMBER

12.3 Wednesday
Sports Law: Winning Strategies
Paul Loving
Michael Phillips
Stephanie Vardavas

12.9 Tuesday
Nontraditional Law Practices The New Frontier
Sheila Blackford
Helen Hirschbiel

12.18 Thursday
Fire & Other First-Party Insurance Claims
Doug Bragg
Rob May
Fred Millard

JANUARY

1.13 Tuesday
Oregon Legalized it... Now What?
Bear Wilner-Nugent
Lee Burger
David Kopilak

1.14 Wednesday
Mandatory Training to Become a Multnomah County Arbitrator
Presiding Judge Nan Waller

1.15 Thursday
The Challenges & Rewards of Representing Non-English Speaking Clients
Judge Oscar Garcia
Irina Batrakova
Brendan Dummigan
Emery Wang

1.21 Wednesday
Strategies for Litigating Attorney Fee Petitions
Judge Jerome LaBarre
Judge Michael Simon
David Markowitz

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Save the Date!
MBA 13th Annual WinterSmash
A Family Friendly Bowling Event
Saturday, February 7
6-9 p.m.
20th Century Lanes
3350 SE 92nd
10 minutes from downtown Portland
A Multnomah CourtCare fundraiser



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DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

NEWSLETTER STAFF CONTACTS

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LSAT Scholars Honored

The mission of the MBA's Equality & Diversity Committee is "to foster and expand diversity, inclusion and equality in the Multnomah Bar Association and Multnomah County legal community and to create and strengthen a relationship of mutual support between the MBA and its diverse lawyers and bar organizations." In furtherance of this goal, in March, the E&D Committee established an ad hoc LSAT prep course scholarship subcommittee earlier this year to distribute a grant from the MBA. The subcommittee – which included members of OHBA, OWLs, and OGALLA, among other groups – used the grant money to award MBA scholarships for LSAT prep courses to law school applicants who come from backgrounds traditionally underrepresented in the Multnomah County legal community, who have financial need, and who plan to go to law school and practice here. The committee received over 50 applications and awarded 12 scholarships applied to classes from PowerScore.



On October 30, scholarship recipients, members of the Equality and Diversity Committee, and other local lawyers attended a reception at Barran Liebman with Judge Adrienne Nelson to honor the scholars. The ad hoc committee was comprised of Emily Teplin Fox (Markowitz Herbold), Fumi Osowo, Gina Atwood (Nike), Alejandra Torres (Brownstein Rask), Jessica Osborne (Gordon Rees), Damien Munsinger (Barran Liebman), Sheeba Suhaskumar, and Lisa Pex Shevlin.

Holiday Gift Shopping?

Support the MBF When You Shop at Amazon

Online retailer Amazon will donate .5% of the price of eligible purchases to the Multnomah Bar Foundation when you shop using our AmazonSmile link. To participate, simply visit www.mbabar.org and click on News for the link. Bookmark the link and use it every time you shop at Amazon.



Free Event Publicity

When the MBA's most recent website launched, it included a unique feature: the ability for law-related organizations and nonprofits to add their social events to the MBA online calendar.

The idea behind the MBA offering other organizations the ability to access our online calendar was to create **one** site where all law-related events could be listed to help prevent conflicts.

Please consider adding your social events to the MBA online calendar at the following link: mbabar.org/Calendar/SubmitAnEvent.html. Or, you may contact the MBA by emailing us at mba@mbabar.org to add your item to our online calendar.



Calendar

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

DECEMBER

3 Wednesday
YLS Lunch & Learn
See p. 12 for details

4 Thursday
OSB Award Luncheon
Visit www.osbar.org for details

5 Friday
Mentor Program sign ups due

10 Wednesday
YLS Toys for Tots
See p. 12 for details

14 Sunday
YLS Zoolights
See p. 12 for details

25-26 Thursday-Friday
Christmas Holiday

JANUARY

1-2 Thursday-Friday
New Year Holiday

19 Monday
Martin Luther King Jr. Holiday

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

FEBRUARY

7 Saturday
WinterSmash
See p.1 for details

THE CLOCK IS TICKING....

Renew by December 31, 2014 to receive a **FREE \$50 credit** toward MBA CLE programming. Attend a CLE in person, watch a video webcast online or listen to a seminar on your computer or smartphone.

Terms and conditions apply. See www.mbabar.org for details.



MEMBER BENEFIT

LexisNexis

Special packages and pricing exclusively for MBA members in solo or small firms.



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

Sports Law: Winning Strategies for Representing Athletes & Sports Businesses

Wednesday, December 3, 2014
3:00-5:00 p.m.

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

The MBA is pleased to present a two-hour sports law program moderated by **Will Glasson** of the University of Oregon. Our panelists will address issues routinely encountered in sports law. Topics to be discussed include:

- Representation of athletes when working with the NCAA, leagues, teams, drug testing agencies, and sponsors
- Representation of leagues and teams
- Representation of manufacturers in negotiations and disputes with other OEMs, athletes, and teams
- Licensing, product liability, import/export, sales channels, Foreign Corrupt Practices Act, confidentiality, and IP (e.g., trademark and branding) issues

Our well-qualified panel of attorney speakers are **Stephanie Vardavas** of Row99.com, **Paul Loving** of The Consul Group, and **Michael Phillips** of Davis Wright Tremaine. Stephanie is a former AGC of both Major League Baseball and Nike, and has 35 years of experience in the sports industry. Paul is Special Counsel at adidas and also represents individuals as well as companies in connection with sports marketing issues. Michael represents domestic and international clients in securities, mergers and acquisitions, general corporate and business law in the life sciences, outdoor recreation, and high tech industries.

For more information:

Call Sim Rapoport, Attorney at Law at 503.997.6329. For registration questions, call the MBA at 503.222.3275.

Nontraditional Law Practices The New Frontier

Tuesday, December 9, 2014
3:00-5:00 p.m.

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

Note: This class is worth 2 hours of ethics credit.

The legal marketplace is changing. Consumers are now demanding or can only afford limited legal representation. So too is the definition of the workplace. Due to the downturn in the economy or the desire to work independently, lawyers are working from home and/or maintaining virtual offices. In this program, our panelists – **Sheila Blackford** from the Professional Liability Fund, and **Helen Hierschbiel** from the Oregon State Bar, will

discuss the ethics and other practical considerations of alternative fee agreements, unbundling of legal services, and working from home and/or maintaining virtual offices.

For more information:

Call Sarah Brown, Holtey Law at 503.224.9878. For registration questions, call the MBA at 503.222.3275.

Fire and Other First-Party Insurance Claims

Thursday, December 18, 2014
3:00-5:00 p.m.

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

First Party insurance claims are those made by an insured against his or her own insurance company. Typical examples of first-party claims are those made against a homeowner's insurance policy to recover for losses arising from a fire, theft, water or wind damage, etc. Other examples of first party claims arise from health insurance coverage, business policies, and auto policies. The panel of speakers, **Fred Millard**, **Doug Bragg** and **Rob May** will provide two perspectives on the claim handling process, including review of typical property insurance policies, common coverage issues, presentation of the Claim to the Insurer, the Insurer's investigation, adjustment, and claim denial followed by litigation and/or contractual appraisal. The program will also address under what circumstances the insured is entitled to recover statutory attorney fees and prejudgment interest. We will also discuss statutes of limitation and other conditions and prerequisites that must be met before initiating litigation against an insurer.

For more information:

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

Oregon Legalized It... Now What?

Tuesday, January 13, 2015
3:00-5:00 p.m.

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

This CLE explores the planned implementation of Measure 91 legalizing the recreational use of marijuana, the general scheme for the regulation of recreational and medical marijuana producers and distributors, and how to advise Oregon businesses in both the recreational and medical marijuana market. Speakers include - **Bear Wilner-Nugent**, **Lee Burger** and **David Kopilak** - the legal practitioners involved in the drafting of Measure 91 and who have experience advising businesses participating in this new market.

For more information:

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

Mandatory Training to Become a Multnomah County Arbitrator

Wednesday, January 14, 2015
3:00-5:00 p.m.

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

Basic training to qualify for Multnomah County Arbitration Panel. Participation is a requirement for inclusion on the list of court appointed arbitrators.

This program will feature Multnomah County **Presiding Judge Nan Waller** and a panel of experienced arbitrators who will explain and discuss the statutes, rules, case law and ethical issues governing court-annexed arbitration in Multnomah County. The program will provide step-by-step advice on scheduling arbitration hearings and dealing with postponements, resolving pre-hearing evidentiary and discovery disputes, handling summary judgment and other pre-hearing motions, conducting arbitration hearings, dealing with attorney fees and costs and preparing and filing arbitration awards.

For more information:

Call John Ostrander of Elliott, Ostrander & Preston at 503.224.7656. For registration questions, call the MBA at 503.222.3275.

The Challenges and Rewards of Representing Non-English Speaking Clients

Thursday, January 15, 2015
3:00-5:00 p.m.

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

Note: This class is worth 2 hours of access to justice credit.

Navigating the legal system can be daunting for any client, and even more so for clients who speak limited or no English. Join **Judge Oscar Garcia**, Washington County Circuit Court; **Irina Batrakova**, The Batrakova Law Office; **Brendan Dummigan**, Pickett Dummigan; and **Emery Wang**, Law Office of Emery Wang for a panel discussion of the unique challenges faced by attorneys who represent these clients. In addition to providing insights drawn from their own practices, the panel also will suggest resources available to assist attorneys in overcoming those challenges.

For more information:

Call Keil Mueller, Stoll Berne at 503.227.1600. Call the MBA at 503.222.3275.

Register using the form on the next page

Strategies for Litigating Attorney Fee Petitions

Wednesday, January 21, 2015
3:00-5:00 p.m.

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

Attorney fee awards can be a hotly litigated issue in state and federal court litigation. In this program, our panelists – **Judge Jerome LaBarre**, **Judge Michael Simon**, and **David Markowitz** – will share tips for how to maximize the award of attorney fees and how to effectively challenge an attorney fee petition in state and federal court.

For more information:

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

Insurance Coverage for Every Practice

Tuesday, January 27, 2015
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 insurance coverage. Panelists representing both insurer and policyholder perspectives will discuss basic insurance coverage principles as well as recent developments and current trends. First party property coverage and third party liability coverage issues will be addressed. Any attorney encountering insurance coverage issues - whether frequently or only occasionally - should attend this program.

Our speakers are **Seth Row**, **Rick Lee** and **Bob Bonaparte**. Seth is a partner at Parsons Farnell & Grein representing commercial policyholders including banks, manufacturers, developers and public entities in litigation and negotiation of insurance disputes. Rick is the senior partner at Bodyfelt Mount and has represented carriers in a wide variety of insurance coverage matters for 25 years. Bob is a partner at Shenker & Bonaparte and specializes in representing individuals who have coverage disputes with their insurers. He has practiced law in Oregon for over 25 years.

For more information:

Call Sim Rapoport, Attorney at Law at 503.997.6329. For registration questions, call the MBA at 503.222.3275.

Multnomah County Presiding Court Update 2015

Thursday, January 29, 2015
3:00-5:00 p.m.

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

In this update session, the Multnomah County **Presiding Judge Nan Waller** and court staff will discuss the Supplemental Local Rules for Multnomah County Circuit Court and other issues unique to practicing in Multnomah County.

This seminar is designed for attorneys at all levels of experience and questions are strongly encouraged.

For more information:

Call the MBA at 503.222.3275.

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.mbar.org.

CLE Registration Form

Receive a \$5 discount when registering online at mbar.org.

NAME _____	ACCOUNT NUMBER _____
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Member Status:

- MBA Member
- Non-Member

Payment Options:

- Check
- VISA
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Registration forms with payment must be received in the MBA office by 3 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.mbar.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.

12/3 Sports Law

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

12/9 Nontraditional Law Practices - The New Frontier

- Class Registration Online (\$50 Members/\$80 Non)
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12/18 Fire and Other First-Party Insurance Claims

- Class Registration Online (\$50 Members/\$80 Non)
- Class Registration (\$55 Members/\$85 Non) \$ _____
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1/13 Oregon Legalized It...Now What?

- Class Registration Online (\$50 Members/\$80 Non)
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1/14 Mandatory Training to Become a Multnomah County Arbitrator

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1/15 Challenges & Rewards of Representing Non-English Speaking Clients

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- CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

1/21 Strategies for Litigating Attorney Fee Petitions

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

1/27 Insurance Coverage for Every Practice

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- Class Registration (\$55 Members/\$85 Non) \$ _____
- CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

1/29 Multnomah County Presiding Court Update 2015

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- CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

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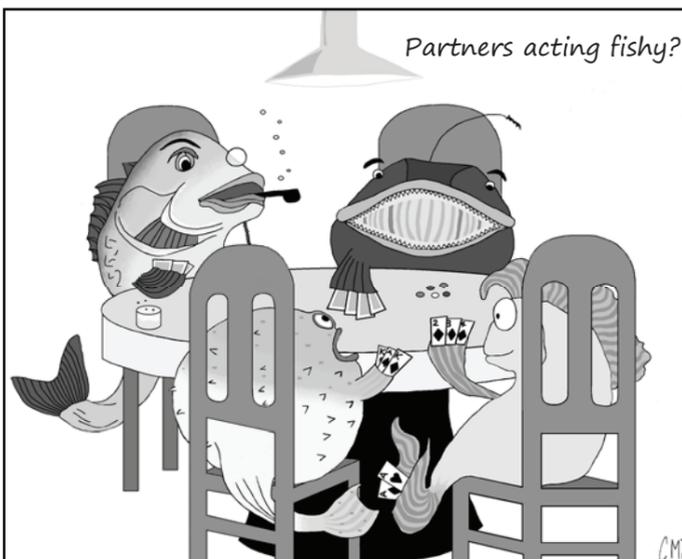
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mba | ANNOUNCEMENTS

MBA Seeks Members Interested in MBA Board Membership

The MBA is seeking energetic individuals who are interested in being considered for a three year term on its Board of Directors. Experience as an MBA committee volunteer and /or leader is not a requirement, but is preferred. If you are a current MBA member and are interested in serving on the board, please contact MBA Executive Director Guy Walden, guy@mbabar.org or 503.222.3275 to indicate your interest, or if you have questions about the commitment. The next board terms begin in June, 2015. The deadline for indicating interest is December 31.

New Free CLE Content for Members

The video webcast of the seminar entitled "Investigating Evidence from Both Sides of the Bench" is now available in the Members Center at www.mbabar.org. The seminar is worth two hours of general OSB MCLE credit. MBA members receive access to a rotating selection of six different CLE seminars each year – a \$300 value. The free webcast content is refreshed every two months, so check back often.

Statement of Diversity Principles Available to Sign

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

Noon Bicycle Rides

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

2015 Sponsorship Opportunities

Would you like to get your name in front of metro area lawyers? MBA event sponsorship can help you do that. Find all MBA 2015 event sponsorship information at www.mbabar.org/assets/documents/resources/sponsorshipreservationform.pdf.

Ninth Circuit Judgeship Opportunities

The Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of **Bankruptcy Judge for the Eastern District of California, Fresno Division**. This position will be available on or after July 16, 2015. The selection process may take up to 10 months to complete. The official duty station for this position will be in Fresno, CA. Deadline for completed applications is Thursday, December 18, 5 p.m.

The Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of **Bankruptcy Judge for the Western District of Washington, Seattle Division**. This position will be available on July 1, 2015. The selection process may take up to 10 months to complete. The official duty station for this position will be in Seattle, WA. Deadline for completed applications is Thursday, December 4, 5 p.m.

The term of office is 14 years for both positions, with a possible renewal appointment subject to reappointment procedures. The current salary is \$183,172 per annum. Relocation expenses are not reimbursable.

The U.S. Court of Appeals uses an open and competitive selection process. All applications are screened by a Merit Screening Committee, which selects a limited number of applicants for interview and contacts their references. From the initial group of interviewees, selected applicants will be referred for further interview by a Judicial Council committee, which then submits a recommendation of nomination to the court. The selected nominee will be required to satisfy FBI and IRS background investigations prior to appointment.

Basic qualifications for consideration include: (1) admission to practice before the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience (certain other legal experience may be substituted). Applicants are considered without regard to race, color, gender, religion, national origin, age, disability, or sexual orientation.

Application forms and more information may be obtained by contacting the address and/or telephone/fax numbers listed below. The Ninth Circuit Bankruptcy Judge Application may also be downloaded from www.ca9.uscourts.gov. Applicants are advised to allow for sufficient time to complete and submit the application. One completed and signed original (and one copy) must be sent to the Office of the Circuit Executive. One scanned version of the completed application must be uploaded to the Ninth Circuit Bankruptcy Judge Application System (<https://judgeship.ce9.uscourts.gov>). Applications must be in the format required by the Ninth Circuit and received by 5 p.m. on the deadlines.

To be considered, letters of reference (though optional) must be submitted with the original (and one copy) application and must be uploaded with the scanned application.

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Making Better Citizens, Better Juries, Better Clients

by Pamela Hubbs
Office and Foundation Administrator

Year-end is an ideal time for charitable giving. When you make a donation to the Multnomah Bar Foundation by December 31, you aren't just making a tax-deductible financial contribution. Your support allows the MBF to continue funding civic education and engagement in the community and in so doing, you're educating and engaging voters - making better citizens, juries, and clients. Your year-end gift will facilitate programs such as voter education forums, voter registration programs, adult education on democracy and the importance of every voice. It will fund civic engagement programs that reach underrepresented groups. Your gift will provide student education about the rule of law and the importance of civic involvement, taught through student-led programs, peer court, filmmaking, mock elections and mock trials.

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The Evolution of Lawyering: Cloud vs. Premise-Based Software

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For the first time ever, a majority of individual attorneys (50.2%) now indicate that they are more likely to use the cloud. For firms as a whole, the percentage is even higher: 72.4%¹

With cloud use being considered by more attorneys than ever before, it's essential that anyone considering a change dig deeper into the issues to answer the question: Will your firm benefit more from sticking with traditional premise-based, installed practice management software, or using software from the cloud, also known as software-as-a-service (SaaS) or web-based software?

For most firms today, the answer is a loud and resounding "It depends". To arrive at the correct answer for your firm, you have to examine three issues:

1. Risk
2. Management
3. Cost of Ownership

Comparative Risk

While anyone with a surface-level understanding of cloud-based software immediately thinks of the risk to confidentiality of information stored on the cloud, today's most advanced cloud-based programs have effectively mitigated many of those risks. With entirely new approaches to security, data in the cloud can be better protected from hackers than premise-held data is to thieves that might break into your office. Take a look at the recent article written by Jeffrey Taylor, aka The Droid Lawyer, *How Serious Are You About Security?* to read more about security issues right under your nose at your office (<http://thedroidlawyer.com/2014/01/how-serious-are-you-about-security/>).

In other, less obvious ways, cloud-based software makes it easier for attorneys to meet their legal and ethical obligations. Following are a few such examples:

Communications – At the top of legal clients' concerns about representation is their lawyers' failure to properly update them on the status and facts of their

cases. Advanced cloud-based practice management programs today give even the smallest firms the option to set up secure, simple and inexpensive client portals, without the necessity of unlimited server space or large IT departments. Such portals effectively give legal clients anytime, anywhere access to matter details at their own convenience, without interrupting the attorney's workday.

Diligence – The cloud puts essential information at an attorney's fingertips, improving the ability to effectively conduct required diligence.

Safekeeping – For smaller firms, property kept by the firm during and after representation can be difficult to keep up with. Use of the cloud removes that responsibility from the firm, putting safekeeping in the hands of the much larger cloud service to look after your firm's data. Most cloud services have data backed up across multiple locations to ensure that your data will always be there when you need it.

Privilege – Cloud services such as WatchDox®, available with LexisNexis Firm Manager®, allow firms to protect confidential shared files through the entire lifecycle, so you can:

- Define who is allowed to access a document

Continued on page 15

Ethics Focus

Who Decides? Fee Provisions that Penalize Client Choice

by Mark Fucile
Fucile & Reising



Clients can sometimes be “difficult” - especially when cases reach the crucial stage of settlement negotiations. Occasionally, lawyers try to put additional “teeth” into their settlement recommendations by including provisions in their fee agreements that contain penalties if clients reject their advice and wish to continue forward. One of the most common in this vein is a provision that retains the lawyer’s entitlement to a contingent percentage of the rejected offer while switching to an hourly fee from that point forward. Oregon ethics opinions dating back over 20 years permit this approach - with conditions that the opinion summarizes as “Yes, qualified.” Due to their unique history, however, the Oregon opinions now run counter to court decisions or ethics opinions regionally. Because these provisions have never been reviewed foursquare by Oregon’s appellate courts, Oregon lawyers should proceed with caution. In this column, we’ll look at the history of the Oregon opinions and how Oregon became out-of-sync with other states around the Northwest.

The Oregon Opinions

The OSB first addressed this topic comprehensively in 1991 with Formal Ethics Opinion 1991-54. This opinion, interpreting the old “DRs,” focused on former DR 2-106(A) and the question of whether this blended structure would impose a “clearly excessive” fee. The 1991 opinion concluded that as long as the blended fee structure was agreed with the client up front, it was not improper on its face.

When Oregon moved to the RPCs in 2005, the bar updated its ethics opinions to correspond to the new rules. One of the

new rules that came to us at that time was RPC 1.2(a), which requires a lawyer to “abide by a client’s decision whether to settle a matter.” There was no counterpart to RPC 1.2(a) in the former DRs. The updated version of the 1991 opinion - Formal Opinion 2005-54 - mentions the new rule and cautions that “the proposed clause could unduly interfere with the client’s unfettered decision whether to settle.” But, the opinion then goes on to focus primarily on the same issue at the core of the 1991 opinion: whether the resulting blended fee would be “clearly excessive.” Like its predecessor, the 2005 opinion found that as long as the blended fee structure was agreed with the client at the outset of the representation, it was not improper on its face.

One appellate decision (*In re Gastineau*, 317 Or 545, 550 n.5, 857 P2d 136 (1993)) noted Opinion 1991-54 in passing and another (*In re Groom*, 350 Or 113, 115 n.2, 249 P3d 976 (2011)) simply mentioned RPC 1.2(a). Neither decision, however, evaluates the central rationale of the opinions in light of the new rule. Meanwhile, courts and ethics opinions in other jurisdictions regionally have concluded that such provisions improperly invade settlement decision-making that is reserved to the client under RPC 1.2(a).

Other States around the Northwest

Washington, Alaska, Idaho and the Ninth Circuit have all recently addressed fee agreements or conduct similar to the illustration in the two Oregon ethics opinions. These more recent authorities focus on client decision-making under RPC 1.2(a) rather than the “excessive fee” issue that has been at the core of the Oregon opinions since 1991. As noted, all conclude that such provisions are improper.

Washington Advisory Opinion 191 (at 2), which was amended in 2009, is typical:

“The proposed provision is antithetical to a lawyer’s duty to ‘abide by’ a client’s decision regarding settlement. Rather than accept a client’s settlement decision without

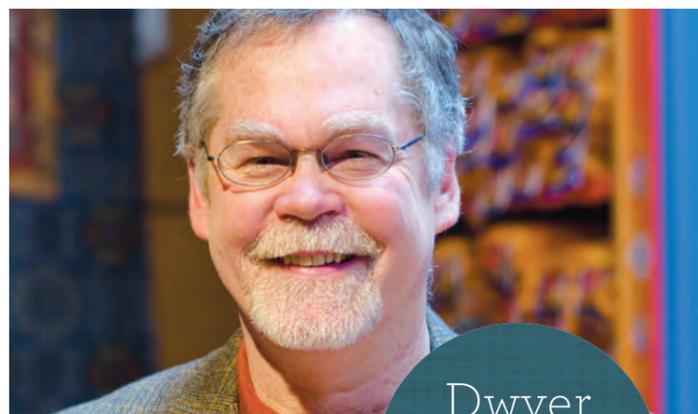
question, the provision - and thus the lawyer by extension - restricts the client’s freedom to reject a settlement offer. In very real terms, the provision functions to economically coerce the client into accepting an offer that the client might otherwise perceive to be inadequate.”

The Alaska Supreme Court echoed this view in *Compton v. Kittleson*, 171 P3d 172, 176 (Alaska 2007): “Because this right (under RPC 1.2(a)) is personal to the client, an attorney cannot demand relinquishment of the right as a condition of representation.” Idaho (*Hurst v. IHC Health Services, Inc.*, 2012 WL 2126886, *2 (D Idaho June 12, 2012)) and the Ninth Circuit (*Nehad v. Mukasey*, 535 F3d 962, 970-72 (9th Cir 2008)) reach the same conclusion.

Although in the more fundamental context of a criminal plea agreement, the Oregon federal district court also noted recently in *United States v. Davis*, 2013 WL 796655, *5 (D Or Mar 4, 2013), that RPC 1.2(a) “comports with the Constitutional limitations on when an attorney must obtain express client consent.”

Treading Warily

Ethics opinions in Oregon are advisory only under RPC 8.6. A court - especially one in the context of a fee dispute - might very well use the cautionary language on RPC 1.2(a) in the newer Oregon opinion as a jumping off point to embrace the more client-centered logic found in the recent decisions from around the region to invalidate a provision of this kind. Oregon lawyers would be well advised, therefore, to tread warily when considering provisions such as these that penalize client choice.



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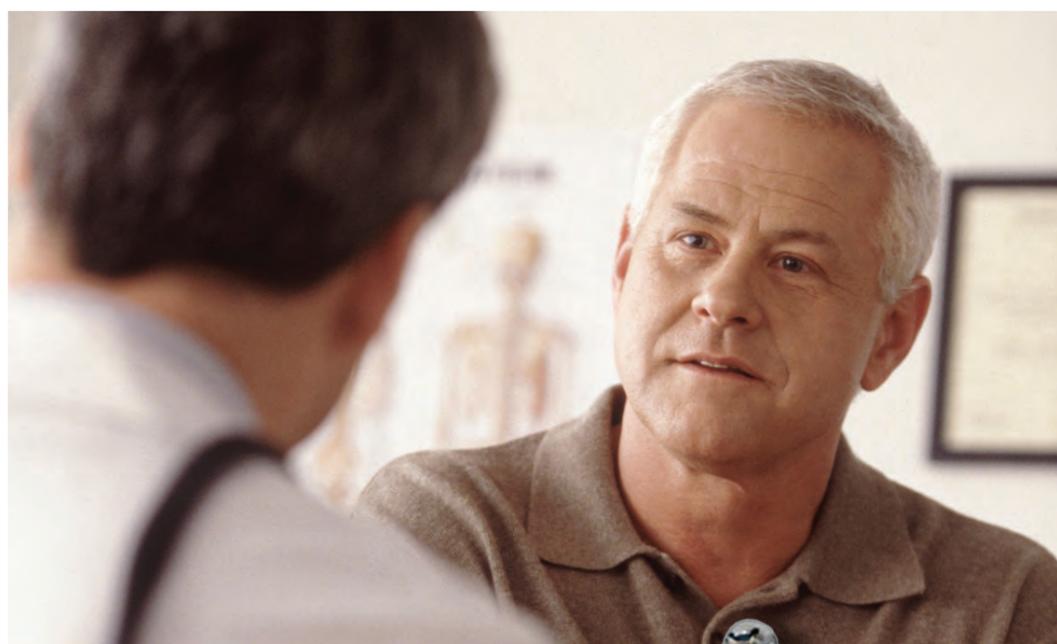
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Around the Bar



Lisa Kaner

Markowitz Herbold

Shareholder **Lisa Kaner** has been honored by the Oregon Area Jewish Committee with the 2014 Judge Learned Hand Lifetime Achievement Award for her professional excellence and her contributions to the community.

Kaner served as chair and legal counsel for the Oregon Holocaust Memorial Coalition, a multi-ethnic, interfaith group of organizations formed to create a Holocaust Memorial in Oregon. She successfully guided the coalition through a heated six-year legal battle and to the memorial's unveiling in 2004 in Portland's Washington Park. In 2008, she received the Judge Learned Hand Special Recognition Award for these efforts. She has continued her involvement in the ongoing project, recently assisting the Oregon Holocaust Resource Center in its merger with the Oregon Jewish Museum, which resulted in a new center for holocaust education. She helped to bring a new exhibit to the center, entitled "A Triumph of Life: Commemorating the 10th Anniversary of the Oregon Holocaust Memorial."



Amy Edwards

Stoel Rives

Amy Edwards has been honored by the Oregon Area Jewish Committee with the 2014 Judge Learned Hand Community Achievement Award for her demonstration of professional excellence and her contribution to the legal community. Her practice focuses on complex commercial, trust and estate, real property and healthcare litigation.

Miller Nash

Litigation partner **Tom Sand** has become a fellow of the American College of Trial Lawyers. Membership in the college cannot exceed more than 1% of the total lawyer population of any state, and qualified lawyers are chosen as fellows from all branches of trial practice.



Tom Sand



Cody Berne



Megan McGuire

Associate **Cody Berne** joined the firm's litigation practice team. Before entering law school, Berne was a police officer with the Portland Police Bureau.

Associate **Megan McGuire** joins the litigation practice team. Before beginning law school, McGuire was an intelligence analyst for the Texas National Guard and the private sector.

Davis Wright Tremaine

Milton Stewart, a senior partner at the firm, has been appointed Vice Chair of Development for Indiana University Foundation Board of Directors.



Stefan Wolf

Gevurtz Menashe

Stefan Wolf is a new associate estate planning attorney. He will handle estate planning related matters in Oregon.

AltusLaw

Scott Schnuck and **Kathryn Walter** announce the move of their firm to the historic Durham House, a beautiful 1892 Queen Anne House in the Goose Hollow area, 1012 SW King Ave. Ste. 103, Portland OR 97205. Other contact information remains the same; phone is 503.208.7347, fax is 503.374.1918 and website is www.altuslaw.com. The firm will continue to focus on business and construction law, real estate and HOA representation and lien services.



Bryce Hanks

Hart Wagner

Bryce Hanks has joined the firm as an associate. His practice will focus on employment defense and medical malpractice defense.



Colin Love-Geiger



Sarah Villanueva



Michael Willes

Tonkon Torp

Labor and employment attorney **Colin Love-Geiger** was elected to the Kids Community Learning Center's Board of Directors. The learning center is a nonprofit organization that provides before- and after-school enrichment activities, such as music lessons and clubs and classes during the school year

for children from kindergarten through eighth grade. The center also offers a summer day camp.

Love-Geiger's practice focuses on defending employers in lawsuits. He also assists employers in other human resource matters.

The firm's litigation department has added two lawyers; **Sarah Villanueva** and **Michael Willes**, both experienced trial attorneys. The department has also added new attorney **Alex Tinker**, who served as summer associate.



Jeremy Babener

Lane Powell

Attorney **Jeremy Babener**, whose practice involves tax law, has been elected to serve as a member of the OSB Taxation Section's Executive Committee, which supervises and controls the affairs of the section.

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.



Jason Wright

Folawn Alterman & Richardson

Jason Wright has become a partner with the firm. His practice includes insurance coverage, commercial litigation and a wide range of business and insurance disputes. He may be reached at jason@farlawfirm.com or 503.546.4625.



Bob Banks

Banks Law Office

Bob Banks was elected to a three-year term on the Public Investors Arbitration Bar Association (PIABA) Board of Directors. PIABA is a national association of attorneys who represent investors in disputes with the financial services industry. A former president of the organization, he was appointed to serve on the executive committee and is the board liaison to the organization's committee that works with state securities regulators at the North American Securities Association to safeguard investor protection.

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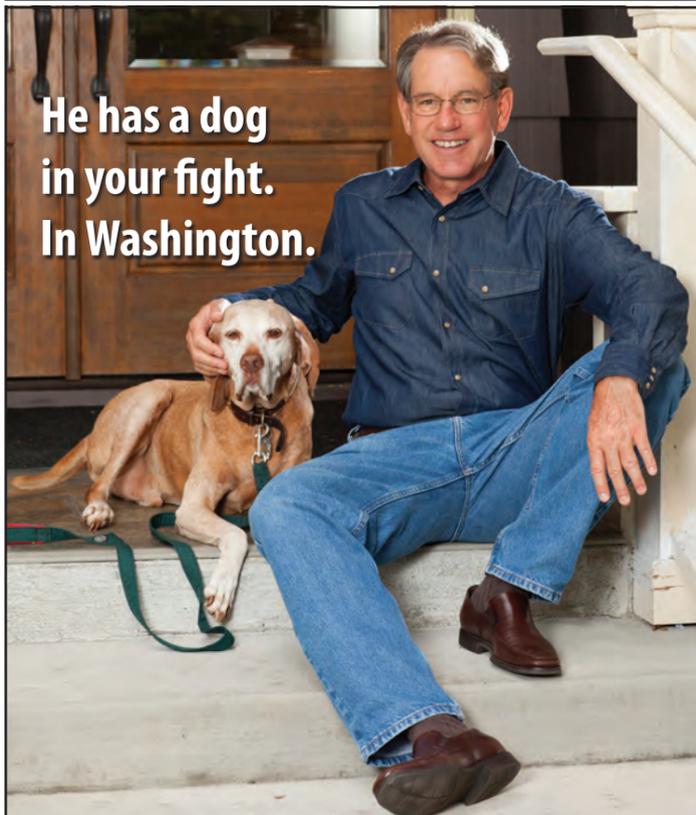
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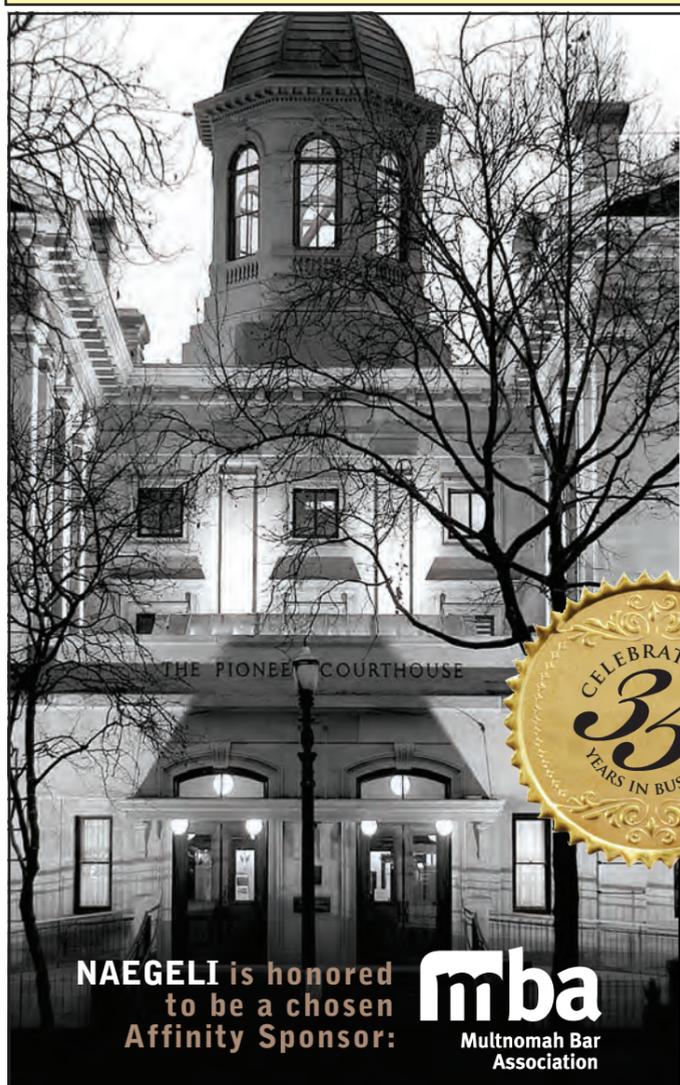
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Folawn Alterman & Richardson LLP is pleased to welcome Jason Wright as partner with the firm. Jason's practice includes insurance coverage, commercial litigation, and a wide range of business and insurance disputes. Whether your case is small or large, simple or complex, Jason can help you get the results you want.



Jason can be reached at jason@FARlawfirm.com or (503) 546-4625.



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Tips from the Bench

by Judge Marilyn Litzenberger
Multnomah County Circuit Court

This column addresses two common mistakes attorneys make before and during a civil trial. Those mistakes concern examining witnesses and amending pleadings.

Witness Examination

Witness examination is an art; it takes practice. Many attorneys focus on the challenges associated with cross-examination, particularity with experts and fact witnesses that have not been deposed. Direct examination is “easier” because lawyers or their staff have had an opportunity to prepare the witnesses they intend to call to prove their client’s claims or defenses. Sometimes the advance questioning takes place as an interview, other times it occurs before a discovery deposition taken at the opponent’s or another party’s request.

Unfortunately, when an attorney’s preparation for direct examination is given lower priority or attention, the opportunity to really convince the trier of fact is lost. Asking leading questions of your witness does not give the fact-finder a chance to get to know the witness, to assess what the witness really knows about the matters incorporated in their testimony, or to “hear” the witness’ side of the story and what the witness observed in his/her own words. Taking this approach dilutes the value (weight) of the witness’ testimony in the fact-finder’s mind. It is important to let the witness tell his/her story, not the attorney’s version of the limited facts the attorney perceives are needed to establish a prima facie case to avoid directed verdict.

Not infrequently, lawyers who appear in the courtroom to try a case adopt a discovery deposition style of questioning when examining their own witnesses. This is especially true when the case is tried to the bench. Lawyers seem to convince themselves that a judge will want the evidence presented in an abbreviated manner; therefore, they ask leading questions so that they can quickly wrap up the trial. Discovery depositions used to be a tool for finding out what fact witnesses might know about an event or a transaction or some other aspect of an alleged claim or defense. Open-ended questions were the normal method of obtaining that information. Nowadays, it seems that primary purpose frequently gives way to a different style of questioning - leading, argumentative - and the primary purpose is to structure the deposition as evidence designed to set up a motion for summary judgment. The tactic of summarizing the deponent’s prior responses in a leading question has become the norm, and that tactic is rarely challenged by an objection. As



a result of the way discovery depositions are conducted in current practice, lawyers carry over that style of questioning and technique to trial.

Asking leading questions of your own witness generally is not permitted under OEC 611 [ORS 40.370]. Of course, if no objection is made, the impermissible style of examination will continue. We all know the reasons lawyers do not want to make objections before a jury, but those reasons make less sense when a case is tried to the court. Judges, like lay jurors, like most human beings, will find your testimonial evidence more reliable (and thus give it more weight) if the questions you frame during direct examination include prompting the witness to explain why the witness knows what he or she is testifying about. In fact, in some cases, “foundational” questions may take longer to establish than the brief facts needed to prove a claim or defense. If you want a trier of fact (whether it be a jury or a judge), to find your witness’ testimony just as persuasive as you have come to believe it, take the time to ask the witness the same questions in the courtroom that you asked during your interview or during your preparation for trial. Remember the facts you needed to extract from the witness before you decided to take the case or decided to identify that person as a witness for trial, and don’t overlook those facts when the witness testifies in the courtroom.

One more word about preparation: Do this work far enough in advance of trial so that the witness tells his/her story to the fact-finder from start to finish and does not overlook pieces of the puzzle when testifying, because he/she has just related them to you. Instead of connecting the dots, witnesses jump from A to E without relating B, C, and D. Forgetting key facts can impact the reliability of the witness’ testimony. Without those “foundational facts” the witness is not as convincing.

This type of testimonial omission can also happen when a witness is called to testify as part of an offer of proof made outside the presence of the jury. After the court rules on the offer of proof, the witness is expected to relate the same testimony in front of the jury, but the witness sometimes forgets or may make

Continued on page 11



News from the Courthouse

by Doug Bray
Court Liaison Committee

Presiding Court Report New courthouse

Judge Waller announced that the MBA’s combined Courthouse and Court Funding Committee for 2014-15, chaired by Eric Dahlin, held its first meeting of the year on November 1. She said that a product of this first meeting is that both the OSB Board of Governors and the MBA Board of Directors will be asked to pass resolutions supporting the continued availability of state funding, made possible by 2013 legislative action, for up to 50% of the expense of the new Multnomah County Courthouse.

Continuing on the subject of the new courthouse, Judge Waller said that there are five sites being screened for recommendation to the board of county commissioners by the county’s facilities management staff and new central courthouse project staff. The final site will also have to be approved by the chief justice, as a part of the protocol for approval for state bond funding.

The other work going forward on the new courthouse is the “reference design,” the reference design fits the “program plan,” approved in August, to a hypothetical lot size and then stacks the components of the program onto the lot’s footprint to determine the most functional fit for all program space. The reference design does not determine the final architectural design to be constructed, but does shape feasibility of the program plan within a structure for the purpose of estimating building scale, cost and program adjacency relationships.

Judge Waller said that the Oregon office of Public Defense Services is ready to commit as the “state agency” occupant, in addition to the circuit court, in the new courthouse. Under the terms of the original legislation,

there must be at least one “state agency” occupant other than the circuit court in order for this project to qualify for a match rate for state bond funding of 50%. Without a second state agency, the match rate would only be 25% of the cost of the new facility. Public Defense Services’ presence in the building is critical for Multnomah County to keep its share of the new courthouse project at 50% of the allocated cost of the structure.

Following a site selection, which should be known in December, and the reference design work, which will be finished in November, the next large hurdle for the new courthouse program is obtaining legislative approval for the sale of \$17.4 million of state bonds in the 2015-17 biennium. A legislative commitment for this funding for Multnomah County’s new courthouse will permit the project to acquire the selected site and to select an architectural firm and construction company to design the new courthouse and the necessary plans for the construction. It takes time to proceed through each of these steps to realize the final goal - a new courthouse opening in the spring of the year 2020 - and it is important that there is continued support throughout the process to maintain funding commitments.

Isolation & quarantine in a time of Ebola

Judge Waller reported that she met recently with Dr. Paul Lewis, MD, MPH, who heads up the regional Tri-County Health Officer Program, based in Multnomah County. Judge Waller said she met with Dr. Lewis and Bernadette Nunley, Assistant County Attorney, on October 30 to review the state and county isolation and quarantine provisions in the event of a Multnomah County based Ebola virus incident which would require circuit court orders. She said that on October 31, she received a call from the county attorney’s office that such a case has been identified and the person voluntarily

went into isolation in a local hospital and the host family voluntarily held themselves in quarantine, but that the court should standby in the event a judicial order should be needed. Judge Waller said that she was very impressed with the Public Health Office’s preparation for such an incident. The Metro Public Defenders office was alerted in the event court-appointed counsel should be needed by a person who is subject to a court order requiring isolation or quarantine; MBA Board member Elizabeth Wakefield was on standby to serve as counsel, if needed. Judge Waller said that she was also impressed by the Public Health Office’s outreach to communities at risk to encourage them to perform self-monitoring for potential cases in new arrivals from West Africa. Fortunately, this incident was determined to not be a case of Ebola, but it was a timely test of the system.

Mandatory eFiling - Chief Justice Order 14-050 implementing new UTCR 21.140, effective December 1

Judge Waller said that the court would have a uniform approach on enforcement of compliance with this requirement, and would begin with education. She said that there will be a process for attorneys to apply for a waiver of the UTCR 21.140 mandate for eFiling of all court documents, as provided in that rule. Any request for a waiver, however, must be supported by good cause.

She added that her experience in working with electronic documents has led her to see the need to establish a uniform process for recording in a case when a proposed order or judgment is returned to the submitting party because it cannot be signed due to some procedural or drafting defect. While a returned document may not be signed, she has found it helpful when a copy of the proposed order or judgment is stored in the electronic database of

Continued on page 13

SAVO Update

by Katherine von ter Stegge
Court Liaison Committee



It may surprise you to learn that there are as many vulnerable adults under court-ordered guardianships in Multnomah County as there are children under the jurisdiction of the court due to abuse and neglect. Until recently, however, adults under guardianship had far fewer safeguards in place to monitor and ensure their ongoing welfare than children under court supervision do. Luckily for the citizens of Multnomah County, Judge Katherine Tennyson's growing concern over this disparity spurred her to action. Now adults under guardianships in Multnomah County may have a second, independent check on their welfare done by volunteers working for SAVO, the Special Advocates for Vulnerable Oregonians program Judge Tennyson helped create in 2012.

Before SAVO, the court had no information about the welfare of most adults placed under guardianship, beyond an annual report submitted by their guardians. Judge Tennyson was concerned about relying on this single source of information, because adults under guardianship, referred to as "protected persons," are often isolated and typically unable to advocate well for themselves. There is always a risk that guardians who do not have significant contact with the protected persons under their guardianship could miss warning signs that they need additional or different services. And, in rare circumstances, the guardian may become unfit to continue serving as guardian. Without a second set of eyes on the protected person, concerning changes in the welfare of individuals subject to guardianships or quality changes in the work performed by guardians could very easily be missed by the court.

Judge Tennyson was first inspired to begin creating a volunteer program in Multnomah County to monitor protected persons after learning about the ABA's voluntary guardianship program. She called a meeting in January of 2012 to explore creating a local volunteer program and invited fiduciaries who work with elders, lawyers who work with elders, and local nonprofits such as Elders in Action. The Saturday meeting generated such interest that the participants created not just a nonprofit to train and manage volunteers (SAVO was officially founded as a nonprofit in August 2012), but also successfully lobbied for a legislative change to give the volunteers official status with the court. In 2014, HB 4114 was passed by the Oregon State Legislature giving judges state-wide authority to appoint volunteer monitors to review the status of adults under the protection of the court and to report on whether their guardians are meeting court-imposed fiduciary duties. Multnomah County Presiding Judge Nan Waller promptly entered an order allowing volunteer monitors to assist the court.

This enormous improvement to the monitoring of protected persons came about only after SAVO successfully launched a pilot program to recruit and train volunteers in Multnomah County in 2013. SAVO pilot program volunteers were recruited from a guardianship class at Portland Community College. Each of the pilot volunteers agreed to take on two or three guardianship cases for evaluation, meaning they would visit the protected person, interview guardians and caregivers, and make a recommendation as to whether the protected person needed additional services or changes in the guardianship itself. The pilot program volunteers reviewed and made recommendations in a total of 17 cases. The work of the volunteers showed that 35% of the sample of guardianship cases reviewed needed adjustments by the court with regard to services or the appointed guardians themselves. In two of the cases (and later in another, related case), guardians were actually removed and replaced to ensure appropriate care for the protected persons. In one of the pilot program cases,

the guardianship was ultimately terminated by the court because of significant improvements to the protected person's ability to care for himself. Without the work of SAVO's volunteers, the need for these critical changes in guardianships may never have come to the court's attention. In a number of the pilot program cases, the guardianships were performing well and the protected persons were receiving good care; even though no changes to these guardianships were made, that feedback was excellent news for the court. The pilot program's success is even more impressive considering that it was developed and run entirely by SAVO's all-volunteer board and the support of other tireless volunteers in the community.

Thanks in part to generous grants by Spirit Mountain Community Fund, Meyer Memorial Trust, State of Oregon Aging and People with Disabilities Innovations Fund, Multnomah County, Maybelle Clark Macdonald Fund, Marie Lamfrom Charitable Foundation and Hoover Family Foundation, SAVO now has a full-time program manager, Tracy Connor. Connor has a Master's Degree in Social Work, is a graduate of the University of Pennsylvania School of Law, and has significant nonprofit experience developing and nurturing large-scale volunteer programs. SAVO has plans to hire an executive director and an administrative assistant to address what it hopes will be state-wide demand for its services. According to Connor, SAVO now has 12 certified volunteers in Multnomah County but is looking to train more volunteers to address the significant need of the courts with regard to guardianships. So far, Multnomah County is the only county in the state to adopt the use of volunteers to monitor guardianships, but SAVO hopes other counties will begin to implement their own programs now that the legislature has created authority for the courts to use volunteers. SAVO's strategic plan involves assisting in the creation of volunteer monitoring programs in other counties and providing ongoing support and training.

If you are interested in volunteering for SAVO or learning more about the program, please contact Tracy Connor at 503.416.0952 or by email: tracyconnor@savooregon.org. The next SAVO training for new volunteers will take place in January 2015.

file must be in the form approved by the court. Once the court has approved the proposed pleading, you are not free to make additional amendments unless the court's order granting leave to amend provides otherwise. Keep in mind, if the court has granted your opponent's motion to dismiss, the case cannot proceed until an amended complaint has been filed.

Best practices in Multnomah County assume your pleadings are in order before the case is called for trial assignment (the "call" date). You should not be reporting ready for trial if

Stand Up for Justice

by Elizabeth Knight
MBA Board Director

Last year, Oregon lawyers stood up for justice in record numbers. Over 3,000 Oregon lawyers contributed to the Campaign for Equal Justice, and thousands of lawyers donated time through pro bono programs. Oregon's legal aid programs need our help again this year. Because of the dramatic increase in poverty in Oregon (up 61% between 2000-11) and funding cuts, Oregon's legal aid programs have resources to meet about 15% of the civil legal needs of the poor. We're back again, and we hope you can help.

At Legal Aid's recent Open House at the Portland Regional Office, Presiding Judge Nan Waller talked about how, despite our outstanding justice system, simply having the doors to the courthouse open for all does not mean there's access to justice. She pointed out that without access to a lawyer, people with true need have no recourse at all.

Respect for our justice system is also on the line. When low-income Oregonians seek representation by a lawyer and are denied, over 75% of them have a negative view of the legal system. Conversely, when low-income individuals had the help of a legal aid lawyer,



Judge Beth Allen and Justice Virginia Linder

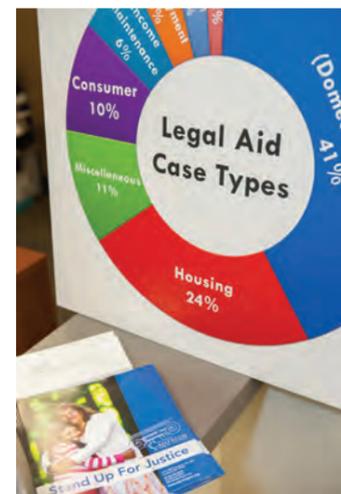
75% had positive feelings about the legal system - regardless of the outcome of their case. The presence of legal aid lawyers in our community strengthens our justice system in other ways as well. One study shows that the presence of a legal aid office in a community is the single most effective way to reduce the incidence of domestic violence in the community.

There's no one solution to the justice gap in Oregon. Because legal aid programs balance over 80 different sources of funding, it is likely that all of those funding resources need to be increased - and we will continue to look to other states for ideas to increase funding here. But we can each play a role in helping to preserve justice and

they are not. Amendments to conform to the evidence are not the appropriate procedure to "fix" a complaint or answer that should have been amended after discovery. Amendments to conform to the evidence are allowed only "when issues not raised by the pleadings are tried by express or implied consent."

fairness in our legal system. Here are a few small acts of justice that can help:

- **Be a Walking Public Service Announcement for Legal Aid and CEJ.** Wear a CEJ button to help spark conversations about the need.



- **Participate in Giving Tuesday!** An antidote for Black Friday. Work alone or in small groups to ask your friends and colleagues to donate to charity on Giving Tuesday on December 2. The tools you need are on CEJ's website.
- **Volunteer and provide pro bono help.** Check out www.probononet.org or www.oregonadvocates.org.
- **Where You Bank Matters!** IOLTA funds go to the Oregon Law Foundation to support legal aid and other law related nonprofits. If all lawyers banked at banks paying 1% interest, that would generate \$700,000 for legal aid - enough to support two small legal aid offices for a year.
- **Donate to the Campaign for Equal Justice.** Join your colleagues and friends in supporting legal aid in Oregon. The campaign was started by Oregon lawyers in 1991 to support legal aid.

Go to the Campaign for Equal Justice's website to learn more: www.cej-oregon.org. We know that lawyers in Multnomah County will continue to step up their efforts to help address the justice gap: it's what we do.



Attendees at LASO Open House

Tips From the Bench

Continued from page 10

an unconscious leap because he or she knows everyone in the room (except the jury) just heard him or her explain why or how or when. Your detailed list of questions for examination of the witness will help you keep the witness (and you) from forgetting what the witness has unintentionally left out of his/her testimony.

Leave to Amend Pleadings

UTCR 5.070 (1) requires a party moving for leave to file an amended pleading to attach the proposed pleading to the motion in a format that shows the proposed changes. If the court grants the motion for leave to amend, the moving party must then take the additional step of actually filing the amended pleading. Counsel should not assume the proposed amended complaint attached to its motion for leave to amend will be filed by court staff or deemed filed when the motion is granted; it is not. The amended pleading you

Young Lawyers Section

Ask the Partner

Dear Partner,

I want to be more involved in client relations and development. What can I do to get "face time" with clients, and how should I participate in client meetings?

Associate

Dear Associate,

You must be proactive. Many young attorneys stay barricaded in their offices, out of harm's way. But don't be afraid to step out of your comfort zone. If you want to be involved in client meetings and development, let me know. It never hurts to take initiative in advancing your career, and developing client relationships is a challenging-yet-necessary skill for any attorney to hone.

To become involved in this aspect of practice, not only must you consistently demonstrate great lawyering skills, but before you are ever given the opportunity to interact directly with clients, most partners must also be convinced that you're likely to remain with the firm. Despite your stellar research and writing skills, I don't want to waste firm time and resources helping you foster a relationship with a client you may one day attempt to steer elsewhere.

Ways to show me that you're committed may include helping with interviewing, volunteering to be on a firm committee, or taking the initiative to start a new committee or small practice group. Once you have proven both your legal abilities and loyalty, you'll begin to have the opportunity to interact with clients directly.

Be advised, though, that client counseling requires an entirely different set of skills that you don't learn in law school or the courtroom. In my experience, more young attorneys go up in flames when

speaking at client meetings than during any other situation.

Understand that clients often see you merely as expensive surplus. They would generally prefer you weren't in meetings. Once given that opportunity, you don't want to reinforce that notion. To help dispel that concern, there are a few rules to keep in mind:

First, speak only when spoken to. You want the client to see you as the bright, young, attentive attorney. But it isn't hard to alter that opinion for the worse, and being perceived as wasting the client's time (and money) is a surefire way to do so.

Second, you cannot ever guarantee that your humor will come off. Especially during an initial meeting with a client, don't even consider taking the risk.

Third, never correct the lead attorney. No matter how wrong you may think he or she is, it's at least as likely that you're wrong. Talk about any issues after the meeting, but let the lead attorney handle any necessary corrections.

Fourth, often you'll be tasked with taking notes and observing. Keep that dynamic in mind. While you may have won a client counseling competition in law school, that doesn't carry much weight in the real world - at least not yet.

If and when you are called upon to advise a client directly, hit the main points and finish promptly. If the client has questions, let him or her ask. Clients don't often want to hear some nuanced case distinction on an obscure procedural point; rather, they're concerned with action steps, not legalese.

Finally, and most importantly: Take advice from the lead attorney about what he or she wants and expects from you prior to that initial client meeting. And then stick to it.

Mae Lee Browning YLS Member Spotlight

by Benjamin Cox
YLS Board Director

Mae Lee Browning (Willamette '14) is looking for opportunities in the criminal defense field, but she doesn't consider herself unemployed. "I call myself a free agent," she quips - exactly the linguistic parrying one might expect from a lawyer who once qualified for the Junior Olympics in fencing.

Mae Lee is in a great position as a "free agent," having done an outstanding job of building a network during law school. Prior to classes, she met attorneys and judges through OSB Opportunities for Law in Oregon (OLIO) program, and during law school she served as a student representative to both the Oregon Asian Pacific American Bar Association (OAPABA) and the MBA YLS Board.

Willamette's mentor and externship programs then matched her with Liani Reeves, Gov. Kitzhaber's General Counsel. Browning greatly appreciated the experience: "I have learned so many valuable lessons from Liani, such as the value of taking on leadership roles by serving on the boards of bar organizations, and giving back to the legal community and community at large."

Mae Lee made another helpful connection in school: former Chief Justice Paul De Muniz. Justice De Muniz taught

Browning's criminal procedure class and later helped her land a lobbying externship with Oregon Criminal Defense Lawyers Association (OCDLA) under Gail Meyer. Browning says, "I love the complex, nuanced social interactions that comprise lobbying. The feeling in the Capitol building during session is electric and challenged me the same way being in a courtroom does." The externship allowed Browning to assist OCDLA in passing SB 1550, the Speedy Trial bill. Beyond merely lobbying legislators, Mae Lee also testified on the record before the Senate Committee on General Government.

After graduating in May and sitting for the bar exam, Browning set to work connecting with the criminal defense bar in Portland. She credits Ben Eder at Thuemmel Uhle & Eder and Mike De Muniz at De Muniz Law for their guidance.

Mae Lee currently volunteers with Metro Public Defender (MPD), learning to translate her dedication into effective courtroom advocacy, seeking every possible opportunity to get into the courtroom and learn from others already in practice.

Browning also recently completed OSB Trial Advocacy College, an intensive two-day program featuring a veritable



Mae Lee Browning

"Who's Who" of Oregon judges and advocates, including Bill Barton, David Markowitz, Tom D'Amore, and Judges Youlee You, Anna Brown and Michael McShane. After one day emphasizing trial skills education, participants then conducted portions of a mock trial under the eyes of the esteemed panel. Browning reports, "The outstanding faculty was approachable and truly invested in helping young attorneys improve our craft. It was an inspiring, confidence-building experience, and confirmed for me that the courtroom is where I want to be."

Considering the impressive amount of groundwork Mae Lee has done, it's likely that her tenure as a "free agent" won't last long and she'll find her way into the courtroom full-time soon.

When Browning isn't immersing herself with work, she's active in OAPABA, ONLD, and MBA YLS. Mae Lee lives in inner Southeast Portland with Bambi, her rescued Chihuahua.

Christopher J. "CJ" Graves YLS Pro Bono Spotlight

by Timothy Lawson
YLS Pro Bono Committee

For Christopher J. "CJ" Graves, associate attorney at Gevurtz Menashe, pro bono is an extension of his everyday practice. Serving people in need is very fulfilling work for CJ, and at the same time, his work gains him valuable experience which benefits his firm, its clients, and his own professional growth as a budding attorney.

A resourceful family law attorney, CJ provides his expertise to pro bono clients in contested restraining orders, which are a regular feature of his practice. The merits of each client's will vary, but to CJ, the most important aspect of this work is to ensure that his clients are heard. By helping these clients to present their best case, CJ directs the judge's attention to the core of the clients' predicament. Whatever the outcome, CJ strives to give clients the satisfaction that the court has listened to them and fully considered their situation. It's important to CJ that people in need have the confidence that the legal process can work for them and address their concerns.

CJ also serves pro bono clients by crafting dissolution orders and assisting with custody and parenting matters. An

attorney's assistance in mapping out contentious property divisions, such as the steps for selling a family home, is invaluable to the client. Because property divisions are essentially set in stone after obtaining court approval (absent fraud), CJ's work is crucial for anticipating future sources of friction, allocating risks, and avoiding debt. This provides a measure of financial security and peace of mind to a vulnerable person who would otherwise be left to fend for themselves.

To CJ, pro bono work stands as professionalism at its core, empowering people in need to access, understand, and be heard by the legal system in difficult periods of their lives. This work is particularly crucial in family law, where ethical rules generally prohibit contingent fee arrangements.

His firm agrees. Gevurtz Menashe has a pro bono policy in place, encouraging its attorneys and staff to take on pro bono work and to volunteer in the community. The firm makes its resources available to encourage and assist its people's endeavors and takes into account time spent by its personnel on public service when assessing



CJ Graves

and rewarding individual performance.

In addition to benefitting those in need, CJ believes that pro bono work is especially valuable to newer lawyers. In particular, CJ holds out contested restraining orders as an example of meaningful work with a reasonable time commitment, noting that "Contested restraining orders are great work to take on when you find yourself with a lighter workload. The turnaround time on these hearings can be as fast as one week, and they get you out of the office and into the courtroom."

Lastly, CJ encourages other newer attorneys to make time for pro bono work to enhance their own experience of the legal profession: "It feeds your sense of justice, and it empowers a deserving client, giving them peace of mind in a very personal way."



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YLS Upcoming Events



Lunch & Learn with the YLS
Wednesday, December 3
Bottle + Kitchen at Hotel Rose
50 SW Morrison St.
12-1 p.m.

The lunch will provide great networking, and a presentation from Judge Henry Kantor, Multnomah County Circuit Court, about everything young lawyers need to know about appearing in Multnomah County Court. Cost is \$20 and includes a lovely lunch and dessert. Hotel Rose provides free valet parking. To register, please contact Shannon West, 503.222.3275 or shannon@mbabar.org.

YLS Drop-in Social & Toy Drive
Wednesday, December 10
Portland Prime
121 SW Alder St.
5-7 p.m.



Celebrate the Season and mingle with your fellow Young Lawyers. Please bring a new unwrapped toy for Toys for Tots and help bring holiday cheer to children in our area. No RSVP is necessary.

Community Service Day with the Oregon Food Bank
Friday, December 12
Oregon Food Bank
7900 NE 33rd Dr.
1-3:30 p.m.



Help us fight hunger and join the MBA Young Lawyers Section Service to the Public Committee at the Oregon Food Bank. We will organize and package food donations for people in need throughout Oregon. Friends, family, and children over the age of six are welcome to join.

To sign up or for more information contact Lisa Pex Shevlin at lisa.pex@gmail.com.

YLS visits Zoolights and Portland Children's Museum
Sunday, December 14
4015 SW Canyon Rd.
5:30-7:30 p.m.



Come join the MBA and YLS at the Portland Children's Museum and the Oregon Zoo for ZooLights. This event is open to all ages. The fun starts at the Children's Museum across the parking lot from the zoo entrance. Refreshments will be provided before heading over to the zoo to enjoy the lights.

Thank you to our sponsors:



News From the Courthouse

Continued from page 10

documents for the case. She said that a process to deal with these situations is in development.

A third project under way in the move to mandatory eFiling is defining under newly implemented UTCR 21.070 (3) (m), what stipulated or ex parte documents must be eFiled and which must be presented conventionally without eFiling, and filed as paper documents. The court will request an out of cycle approval of Supplementary Local Rule 2.501, which will set out those stipulated or ex parte matters which must be presented conventionally. That new rule is under development.

Interruption of File & Serve access September 26-29

Judge Waller told the committee that she was disappointed when File & Serve was taken offline on Friday, September 26, with no notice to the bar until the following Monday. She said that she is working to get better information to the bar, including information in advance of the "out of service" status, if at all possible. She acknowledged that on September 26 it was not possible to give advanced notice due to the nature of the problem discovered. Once the breach was protected by taking the system down, however, its unavailability should have been communicated immediately to the bar. She noted that in such situations new UTCR 21.080 (6) provides a cure for filing deadlines missed due to system unavailability.

Justice Management Institute (JMI) studying high functioning public safety systems

Staff from the Justice Management Institute paid a call on the circuit court and separately on other public safety system components in a national study of "high functioning" public safety systems. The JMI selected Multnomah County for scrutiny as one of the eight top metropolitan areas in the nation for collaboration among system partners to advance the overall goal of improved public safety.

Annual Legislative Breakfast sponsored by the MBA

Judge Waller thanked the MBA for sponsoring once again the Annual Legislative Breakfast, on November 17. The annual event provides a forum for MBA leadership, the presiding judge and key judges, and the chief justice, with others, to speak to the Multnomah County legislative delegation about the work of the circuit court and the importance of legislative support for court facilities, the judiciary, and the administration of justice.

Report of Judge Stephen K. Bushong, Chief Civil Judge

Courtesy copies still required

Judge Bushong said that even when eFiling is mandatory, lawyers still will have the responsibility to provide a courtesy copy of documents to the hearing or trial judge. This requirement continues and is found in Supplementary Local Rule 6.015. Attorneys should consult each judge's web page to determine the judge's stated preferences for how the courtesy copy is to be delivered.

Trial readiness preparation & expectation for the trial date set

Judge Bushong next covered expectations for attorneys when coming to trial readiness conferences and at call. He said that opposing attorneys should come to the trial readiness conferences with a mutually agreeable and firm trial date and the date should be within the 12 month time frame, absent good cause to schedule a later date. Once that trial date is given by the parties it is considered a date certain for trial. No party should expect or request a continuance of a trial date, absent extraordinary good cause presented to the presiding judge at a case scheduling conference well in advance of the date set for call. There are no longer "normal course" continuances of civil jury trial dates; do not ask for one.

Civil trials in the East County Courthouse (ECC)

Judge Bushong said that civil trials are now being assigned to be tried at the East County Courthouse. For these trials, a panel of jurors will be summonsed directly to the ECC. Parties will know at the time of the trial readiness conference if the case will be assigned to the ECC. For parties assigned to trial at the ECC, a trial judge will be assigned at call on the Friday before the Monday trial date. If the case settles or is otherwise closed before trial, this "case closed" information should be communicated to the presiding judge's office as quickly as possible. This notice will permit the jurors to be notified that it is not necessary to report.

Federal Bar Association Report

Jolie Russo reported that Judge Ancer Haggerty is retiring fully after December 31, and that Stacie Beckerman, Assistant U.S. Attorney, selected by the U.S. District Court judges to be the newest U.S. District Court Magistrate for Oregon, is currently going through the administrative processing necessary to assume her new duties. She said also that Lisa Hay has been named as the new Federal Public Defender upon the retirement of Stephen Wax.



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The Evolution of Lawyering: Cloud vs. Premise-Based Software

Continued from page 6

- Control how a file is viewed and duplicated, including allowing or blocking printing, editing, copying and forwarding
- Set expiration dates, or revoke permission to view a document
- Create an audit trail of where documents were viewed, on which devices and at what times

Conflict of interest – While paper files make it almost impossible to conduct thorough conflict of interest searches, files stored on the cloud can be easily and quickly searched for conflicts, no matter how many attorneys in the firm.

Competence – Recent Model Rules updates requiring attorneys to “stay abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology” become easier to keep up with in the case of cloud applications, which keep your software updated automatically.

Management

Both cloud and premise-based software require a learning curve, though many cloud-based solutions are more intuitively designed to make them instantly familiar, so attorneys can jump in and get started without taking up valuable time starting over on each new task.

Recovering from a disaster requires having a complete backup to restore your files in short order. While premise-based software requires constant attention by an employee or contracted service to ensure that backups occur at regular intervals, having software in the cloud requires less attention because back-ups are performed continually, in the background, with no effort required on the part of the law firm.

In either case, due diligence is needed from any firm to ensure that internal or external sources have clear service level agreements that include roles and responsibilities, disaster recovery planning, guaranteed availability, data ownership and security assurances.

Cost of Ownership

When calculating the total cost of ownership of premise-based or cloud-based programs, it's important to include all costs over the normal lifecycle of a product or service, including:

- a. The initial investment. Cloud service software often requires a lower upfront investment (in money) than premise-based solutions.
- b. The human resources cost. For premise-based software, you'll need to count the time required to implement your in-house solution. Cloud-based programs, on the other hand, require time to vet reliable vendors and negotiate expected cloud-service levels.
- c. The ongoing maintenance cost to sustain your premise-based software or cloud solution.

For large firms, having software installed in-house can allow them to take advantage of economies of scale, whereas cloud-based software generally requires a monthly fee for each licensed user. There's no one definitive answer as to which type of software will cost your firm more. Over time, in fact, the costs can be very similar.

For smaller firms, especially those just starting out, paying a small monthly fee for cloud-based software can soften the sticker shock from the upfront cost of premise-based software, along with the annual maintenance plans that generally go along with installed software, which is typically incorporated into the cloud service cost.

Premise-based software may also require larger expenditures for servers, networks and firewalls, along with a larger IT staff investment to maintain the additional hardware.

In the end, what's important is that you study both options carefully to weigh the pros and cons of each for your particular situation. Sometimes cost will be the deciding factor. Other times, security or freedom to access information may be your first priority.

Whatever weighs heaviest in your decision, it's important to dig below the surface to get the full story about the total costs of both cloud and premise-based solutions.

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