



Obstacles Facing Disabled Attorneys Removing Barriers to the Legal Profession

by Dana Sullivan
MBA President

Nearly 25 years ago, on July 26, 1990, President George H. W. Bush signed the Americans With Disabilities Act (ADA), which was aimed at combatting discrimination against disabled individuals. While the ADA has done much to facilitate employment, job retention and workplace promotion of individuals with disabilities, it is abundantly clear to me from my own practice how far we still have to go, particularly within the legal profession. As an attorney who specializes in employment law, I often counsel employees who are facing challenges at work due to a disability. A significant percentage of the clients who seek my advice regarding disability-related issues are attorneys. My work with these clients has led me to conclude that attorneys with disabilities, especially those who suffer from mental health conditions, face unique barriers to equal employment opportunities.

There is a lack of reliable data about the number of attorneys who identify themselves as disabled

Curious about what percentage of the bar identifies themselves as disabled, I turned to the internet to see what statistical data I could find. I was surprised by the paucity of current data available. The best information that I could find was published by the ABA's Commission on Mental and Physical Disability Law (commission). The commission is composed of lawyers and other legal professionals, many of whom have disabilities, are experts in the field of disability law, or have experience in assisting individuals with disabilities. The commission oversees various projects and activities addressing disability-related public policy, disability law, and the professional needs of lawyers and law students with disabilities. It identifies itself as "the only entity within the ABA - and the legal profession - that has a comprehensive focus on all lawyers and law students with disabilities on a national level." ABA Disability Statistics Report (2011) (2011 report), at pp. 2-3, found at americanbar.org/content/dam/aba/uncategorized/2011/20110314_aba_disability_statistics_report.authcheckdam.pdf.

According to the 2011 report, an ABA membership census conducted in 2010 revealed that only 6.87% of respondents identified themselves as disabled. However, whether the census results can be said to accurately represent the percentage of disabled attorneys overall is questionable in light of the fact that fewer than 10% of ABA members participated in the census survey and, of those participants, fewer than 25% responded to the query, "Do you have a disability?"

Unfortunately, the OSB does not currently have information regarding the number of disabled attorneys practicing in Oregon.

Those disabled attorneys who struggle most are often those whose disability is not apparent.

The OSB started collecting disability information in 2012 by offering those registering to join the Oregon bar for the first time the opportunity to disclose demographic information, including disability status. In addition, the OSB offers existing bar members the opportunity to update their member demographic data using their online member dashboard. Unfortunately, few attorneys have logged in to provide demographic information.

Attorneys declining to disclose the fact that they are disabled is not surprising. I know from my own practice that those disabled attorneys who struggle most are often those whose disability is not apparent. Attorneys who suffer from serious mental health conditions such as depression, anxiety, or bipolar disorder - to name a few that, in my experience, are common - are often reluctant to identify themselves as disabled or to seek accommodation because of the fear that the revelation will cause them to be stigmatized. For others, the term "disabled" may seem a loaded term inconsistent with their perception of themselves as a smart and driven professional.

It is nonetheless important that we try to track the number of disabled attorneys, in part so that we can measure whether efforts to increase opportunities for disabled individuals in the legal profession are successful. In fact, the 2011 report calls for a comprehensive national effort to collect information on lawyers with disabilities. I urge all Oregon attorneys who are disabled to share that information with the OSB so we can begin tracking that information locally. Armed with that information we can strive to improve those numbers and to engage in outreach to disabled attorneys to identify how best to support their advancement in the profession.

While there is some good news for disabled persons who want to enter the legal profession, there is still a long way to go

In the 2011 report, the commission attributed the low percentages of lawyers with disabilities to several trends, one of which was that relatively few college students with disabilities attend law school due to factors ranging from lack of funds to problems with attaining accommodations for the Law School Admissions Test (LSAT).

Happily, we may see a reversal in this trend due to the settlement, in May, of a nationwide disability discrimination lawsuit brought by the U.S. Department of Justice and individual test takers against the Law School Admission Council (LSAC). If the court approves the consent decree submitted by the parties, there will be systemic reforms to LSAC's treatment of test takers, including the implementation of a more expeditious process for responding to accommodation requests and the elimination of the stigmatizing practice of flagging for law schools the score reports of individuals who received extended time as a testing accommodation.

While this change may enable more disabled individuals to enter the legal profession, there is still much work to be done to address the obstacles that they face to succeeding as lawyers. In my opinion, the legal community, both nationally and locally, has devoted insufficient attention to these issues. Perhaps that is because attorneys who identify themselves as disabled make up a relatively small percentage of the bar. In Oregon, it may be because there is no minority bar association whose primary mission is the promotion of the interests of disabled lawyers. Whatever the reason, we must ensure that, as part of our effort to increase diversity within the legal profession, we identify barriers that discourage individuals with disabilities from becoming attorneys and ensure that those who have overcome those barriers are provided the necessary support to have successful and satisfying careers in the field.

I urge all Oregon attorneys who are disabled to share that information with the OSB....

mba|CLE

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SEPTEMBER

9.17 Wednesday
10 Ways to Address the Risk of Litigation in Documenting the Deal

Joe Franco
Michelle Slater

9.25 Thursday
Avoiding Discipline in Oregon: What's New, What's Not

Dawn Evans
Scott Morrill

9.30 Tuesday
Negotiation Skills & Tactics

Richard Spier

OCTOBER

10.2 Thursday
Oregon Benefit Companies: Merging Profit & Public Benefit

William Campbell
Jeffery Wolfstone

NOVEMBER

11.5 Wednesday
Child Abuse Reporting

Amber Hollister
Joe O'Leary

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Congratulations, Award Recipients

The May MBA Annual Meeting, Dinner and Judges Reception recognized exemplary volunteers and the MBA Professionalism Award recipient **Mark Johnson Roberts**. In addition to Mark, 12 outstanding volunteers were recognized. The MBA Award of Merit was presented to **Chief Justice Thomas A. Balmer, Philip S. Bentley, Judge Christopher L. Garrett, Presiding Judge Nan G. Waller, Representative Jennifer Williamson and Leslie Nori Kay**. The YLS Award of Merit was given to **Kelvin D. Adkins-Heljeson and Shayda Zaerpoor Le. Jacqueline L. Alarcon** received the YLS Rookie of the Year Award. Pro Bono Awards recognized **William H. Kwitman, Gerard P. Rowe and Sara Staggs**.

Congratulations to all the very deserving award recipients!



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Photos by Dan Carter
See additional photos from
the dinner at mbabar.org/membership/annualdinner2014.
html

Calendar

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

JULY

7.18 Friday
MBA Family & Friends
Golf Event

Visit mbabar.org for details

7.31 Thursday

OMLA Auction

Visit oregonminoritylawyer.org for details

9.22 Monday

MBA Golf Championship
to Benefit the VLP

Visit mbabar.org for details

9.26 Friday

OWLS Fall CLE & 25th

Anniversary Party

Visit oregonwomenlawyers.org for details

OCTOBER

10.2 Thursday

MBA Battle of the Lawyer

Bands

Visit mbabar.org for details

10.7 Tuesday

MBF Fall Social

Visit mbabar.org for details

10.9-11, Thursday-Saturday

ABA YLD Conference

See Announcements on p. 6 for details

10.18 Saturday

OGALLA Annual Dinner

Visit ogalla.org for details

10.23 Thursday

MBA Absolutely Social

Visit mbabar.org for details

AUGUST

8.18 Monday

Lawyers & Law Students Golf
Event

Visit mbabar.org for details

SEPTEMBER

9.1 Monday

Labor Day Holiday

9.11 Thursday

CEJ Party Under the Stars

Visit cej-oregon.org for details

9.20 Saturday

MBA Pro Bono Pedal

Visit mbabar.org for details



Attorney General Ellen Rosenblum congratulates Mark Johnson Roberts on receiving the Professionalism Award



Richard Vangelisti with MBA Merit Award recipients Judge Chris Garrett, Judge Nan Waller, Leslie Kay and Phil Bentley



Traci Ray with YLS award recipients Kelvin Adkins-Heljeson, Shayda Zaerpoor Le and Jackie Alarcon



Richard Vangelisti with MBA Merit Award recipient Chief Justice Tom Balmer



Richard Vangelisti with MBA Merit Award recipient Representative Jennifer Williamson



Richard Vangelisti with Pro Bono Award recipients Gerard Rowe, Sara Staggs and Bill Kwitman

MBA Family & Friends Golf Event

Friday, July 18
McMenamins
Edgefield, Troutdale

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Bring your kids, your colleagues, your clients and play nine, short par-3 holes on the East Pub Course. Hon. Adrienne Nelson and Hon. Kenneth Walker will judge your most creative swing and reward your most colorful attire. Putting contest, raffle and mulligans benefit the Volunteer Lawyers Project at LASO. This fun, casual event is ideal for new golfers, non-golfers and children. Register by July 11 at mbabar.org. Adults \$25, children \$10. Tee times begin at 2 p.m.



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.

Ten Ways to Address the Risk of Litigation in Documenting the Deal

Wednesday, September 17, 2014
3:00-5:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Join transactional attorney **Michelle Slater** of Michelle Slater Law LLC and litigator **Joe Franco** of Markowitz Herbold Glade & Mehlhaf PC as they address best practices for minimizing the risk of future litigation in documenting business transactions. Business litigators and transactional attorneys will benefit from an examination of the real world application of dispute resolution clauses, indemnity provisions, releases and more in a thoughtful and practical presentation.

For more information:

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

Negotiation Skills and Tactics

Tuesday, September 30, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Negotiation is a fundamental part of most legal practices. Yet, few attorneys have received formal negotiation training or understand basic negotiation approaches. **Richard Spier** and other speakers to be announced will cover many key concepts in legal negotiation, applicable for litigators and transactional attorneys alike. Learn about different negotiation styles, how to credibly advocate for your clients and maximize their outcome by making timely demands and offers, and how to respond to common problems arising in various types of negotiations.

For more information:

Call Will Glasson, University of Oregon School of Law at 503.412.0468. For registration questions, call the MBA at 503.222.3275.

Child Abuse Reporting

Wednesday, November 5, 2014
12:00-1:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members \$35
Non-members \$55

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

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

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

Amber Hollister, Deputy General Counsel of the OSB, and **Joe O'Leary**, Deputy Director of the Oregon Youth Authority will present a lively and practical discussion of the issues.

For more information:

Call the MBA at 503.222.3275.

Avoiding Discipline in Oregon: What's New, What's Not

Thursday, September 25, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Note: This class will be worth 2 hours of OSB MCLE ethics credit.

View lawyer discipline from behind the scenes with **Dawn Evans**, OSB Disciplinary Counsel and Director of Regulatory Services, and **Scott Morrill**, OSB Client Assistance Office Manager, as they discuss how Oregon's disciplinary system works, how to avoid becoming ensnared in it, recent changes to the rules of professional conduct, and what changes may be on the horizon.

For more information:

Call Helen Hirschbiel, Oregon State Bar at 503.431.6361. For registration questions, call the MBA at 503.222.3275.

Oregon Benefit Companies: Merging Profit and Public Benefit

Thursday, October 2, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Almost a year has passed since Oregon authorized the formation of Benefit Company entities. Join Lane Powell Shareholder, **Jeffery Wolfstone** and Equilibrium Capital Co-Founder, **William Campbell** for an informative discussion of the past present and future of Oregon's B Companies. If you have business clients who combine profit motive with altruistic purposes, this program is for you.

For more information:

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

CLE BOGO

The MBA is pleased to announce its buy-one-get-one CLE policy for participants in the MBA and OSB mentor programs.

OSB and MBA mentors: When you register for an MBA CLE, you can register your mentee to attend with you for free. Contact Shannon West at 503.222.3275 or shannon@mbabar.org to add your mentee to the registration list.

Register using the form on the next page

Battle of the Lawyer Bands

Thursday, October 2

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. Join us and cheer for your favorite band! Crowd applause is a part of the judging criteria

Thank you Miller Nash LLP for generously sponsoring the event.

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



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Amy Angel, Barran Liebman

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9/17 Ten Ways to Address the Risk of Litigation in Documenting the Deal

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9/25 Avoiding Discipline in Oregon: What's New, What's Not

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Total due \$ _____

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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mba | ANNOUNCEMENTS

New Free CLE Content for Members

The video webcast of the seminar entitled “Effective Use of Time and Technology” is now available in the Members Center at mbabar.org. The seminar is worth one hour of practice skills and one hour of personal management for two hours of total 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 stay tuned!

Take a Matter that Matters

Sign the MBA Pro Bono pledge at mbabar.org/about-us/pro-bono.html and commit to taking at least one pro bono case this year.

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.

OMLA Social & Auction, July 31

Oregon Minority Lawyers Association 15th Annual Summer Social and Fundraising Auction is Thursday, July 31 at the World Trade Center, starting at 5:30 p.m. The admission cost is \$5 for law students and \$10 for others. To attend, RSVP to <http://bit.ly/1mLWQcH>.

OWLS Announces New Officers & Directors

Oregon Women Lawyers new officers and board members for 2014-15 are: Kendra Matthews, president; Elizabeth Tedesco Milesnick, vice president/president-elect; Laura Craska Cooper, treasurer; Angela Franco Lucero, secretary; and Amber Hollister, historian. New board members include: Hon. Allison Boomer, Megan Burgess, Kristin Sterling, Val Tomasi and Gloria Trainor. Continuing board members are Hon. Frances Burge, Maya Crawford, Dana Forman, Kristina Holm, Banafesh Violet Nazari, Jennifer Nicholls, Hon. Julia Philbrook and Hon. Youlee You; Aruna Masih was appointed to fill a vacant seat.

ABA YLD Fall Conference, October 9-11

The ABA Young Lawyers Division will hold its fall conference in Portland. Activities are being formalized, including CLE seminars and social events. For more information, contact ABA YLD Chair Andrew Schpak, aschpak@barran.com or conference co-chairs Traci Ray, tray@barran.com or Colin Andries, colin.andries@andrieslaw.com.

UO Jaqua Award Recipients Announced

The University of Oregon School of Law will present its John E. Jaqua Distinguished Alumnus Award to Wisconsin Senator Fred Risser ('52) and former Oregon Attorney General Hardy Myers ('64). The awards will be bestowed during the Oregon Law Alumni & Reunion Weekend dinner on Friday, September 12 at the Ford Alumni Center in Eugene.

Appointment of Chapter 13 Standing Trustee

The United States Trustee seeks resumes from persons wishing to be considered for appointment as a standing trustee to administer cases filed under chapter 13 of the bankruptcy code. The Eugene appointment is for cases filed in the United States Bankruptcy Court for the District of Oregon. Standing trustees receive compensation pursuant to 28 U.S.C. § 586(e)(1)(A).

The minimum qualifications for appointment are set forth in 28 C.F.R. § 58.4. To be eligible for appointment, an applicant must possess strong administrative, financial and interpersonal skills. Management, fiduciary and bankruptcy experience is desirable but not mandatory.

A successful applicant will be required to undergo a background check, and must qualify to be bonded. Although chapter 13 standing trustees are not federal employees, appointments are made consistent with the federal Equal Opportunity policies, which prohibit discrimination in employment.

Forward resumes to the United States Trustee, Attn: Ronalee Creel, 700 Stewart St. Ste. 5103, Seattle WA 98101. All resumes should be received on or before July 31.

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Ethics Focus

Who is the Client? New Decisions in Insurance Defense

by Mark Fucile
Fucile & Reising



“Who is the client?” is a key predicate question cutting across many law firm risk management issues ranging from conflicts to legal malpractice. Courts in Oregon and Washington recently addressed this touchstone in the insurance defense context. Neither decision fundamentally changed the law in either state, but they offer important clarifications in this common practice setting.

Oregon

The “default” position in Oregon under a series of OSB ethics opinions (Formal Ethics Ops 2005-30, 2005-77, 2005-121, 2005-157) is that an insurance defense counsel has two clients: the insured and the carrier. At the same time, Oregon commentary, including the OSB’s *Ethical Oregon Lawyer* treatise, suggests that this “two-client” model can be modified by agreement or the circumstances to limit the “client” to the insured only - leaving the carrier solely as a third-party payor. This

variation from the “default” arises with greatest frequency when a corporate client with a large self-insured retention and a corresponding “say” in the selection of counsel wishes to both hire “its” longtime law firm to handle litigation and also maintain the ability to consult that same firm about coverage issues arising from the matter concerned. A decision by the U.S. District Court in Portland confirmed this view.

Evrax Inc., N.A. v. Continental Insurance Co., 2013 WL 6174839 (D Or Nov 21, 2013) (unpublished), involved a corporation seeking to substitute its environmental counsel into a coverage case against a carrier that had reimbursed the corporation for the firm’s work in long-running superfund litigation. The corporation had retained the firm itself in the underlying superfund litigation and later tendered the defense to the carrier. The carrier accepted the defense under a reservation, with the carrier reimbursing the corporation for the firm’s work. In the subsequent coverage case, the carrier argued that the ethics opinions noted were a hard and fast rule creating a disqualifying conflict for the firm.

The district court disagreed, reasoning that there could be no disqualifying conflict in the absence of multiple clients. The district court found that although the ethics opinions expressed the general rule, they

did not exclude the possibility of altering the two-client model. Relying on the classic test for an attorney-client relationship set out in *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990), that examines both the client’s subjective belief and the objective circumstances, the District Court concluded that no attorney-client relationship ever existed between the law firm and the carrier under the facts involved. In doing so, *Evrax* provides a useful clarification to Oregon practice.

On a related point, even in the “one-client” scenario, an insured and the carrier should still be able to maintain privilege under the “common interest doctrine,” which preserves privilege over otherwise confidential communications on matters of common interest between parties whose positions are aligned. *Port of Portland v. Oregon Center for Environmental Health*, 238 Or App 404, 409-16, 243 P3d 102 (2010), and *U.S. v. Gonzalez*, 669 F3d 974, 977-83 (9th Cir 2012), discuss the common interest doctrine in detail under, respectively, Oregon and federal law.

Washington

Washington, by contrast, is a “one-client” state under a Washington Supreme Court decision (*Tank v. State Farm*, 715 P2d 1133 (Wash 1986)) and a Washington State Bar ethics opinion (Advisory Op 195). The “default” position in Washington, therefore, is that an insurance defense counsel only represents the insured and the carrier is simply a third-party payor. The Washington Supreme Court reiterated that paradigm in *Stewart Title Guar. Co. v. Sterling Savings Bank*, 311 P3d 1 (Wash 2013).

Continued on page 16



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Around the Bar



Mary Ann Frantz

Miller Nash

Business and securities partner **Mary Ann Frantz** was recently named first vice chair of the Girl Scouts of Oregon & SW Washington's Board of Directors. Her practice focuses on equity and debt offerings, SEC reporting compliance, public and private corporate governance issues, mergers, acquisitions, and sales of businesses, shareholder meetings/proxy contests, executive compensation and business transactions.

Klonoff was also appointed by Chief Justice John Roberts to a second three-year term as a member of the Advisory Committee on Civil Rules, which proposes changes to the Federal Rules of Civil Procedure. Klonoff is the only voting member of the committee from academia.



Jonathan Cavanagh

Cable Huston

Jonathan Cavanagh has joined the firm as an associate. He advises clients on taxation, estate planning and business matters.



Deanna Wray

Bodyfelt Mount

Deanna Wray, the firm's managing partner, has become a member of the Claims and Litigation Management Alliance, the only national organization created to meet the needs of professionals in the claims and litigation management industries. The alliance is comprised of insurance companies, corporations, corporate counsel, litigation and risk managers and claims professionals. Wray's practice concentrates on defense of product and general liability and civil litigation matters.



Julia Olsen

Legal Aid Services of Oregon

Julia Olsen has been appointed to lead the Portland Regional Office of Legal Aid Services of Oregon. Olsen has been a supervising attorney at the office since 2008.



Kwang-yi Ger Gale

Tonkon Torp

Kwang-yi Ger Gale has joined the business immigration practice group, where she will handle complex immigration matters on behalf of companies. She represents clients appearing before U.S. Citizenship and Immigration Services.



Robert Klonoff

Robert Klonoff

Robert Klonoff has stepped down as Lewis & Clark Law School dean. He will remain on the faculty as the Jordan D. Schnitzer Professor of Law. He will be on sabbatical for one year, during which time he will be teaching at law schools around the world.



Steven Gassert

Landye Bennett Blumstein

Steven Gassert has joined the firm as an associate. He will focus his practice on real estate development and transactions, condominium and homeowner association law, and construction defect litigation.



Steven Nofziger



Patrick Conti

Steven Nofziger has returned to the firm as a senior associate. His practice focuses on employee benefits and executive compensation, taxation and business planning matters.

Patrick Conti has joined as an associate. His prior work included licensing and contract disputes, business torts and consumer class actions.



Aurelia Erickson

Robert McGaughey

Aurelia Erickson has joined the firm as an associate. Her practice will focus on civil litigation with an emphasis on securities and shareholder lawsuits, employment claims and environmental law.



Megan Crowhurst

Bullard Law

Megan Crowhurst is a new associate. She advises employers on matters involving workforce and represents organizations in employment litigation claims.



Daniel Occhipinti

Pacific Seafood Group

Daniel Occhipinti is a new general counsel in the Portland-based company's team overseeing its legal, risk management and public affairs issues.

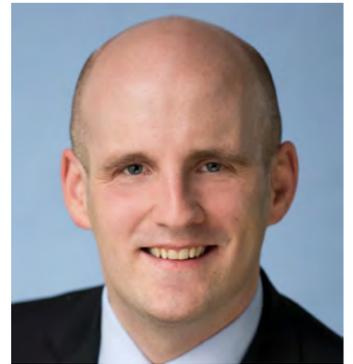


Paul Trincherro

Garvey Schubert Barer

Paul Trincherro has been named an owner in the firm. His practice focuses on litigation related to real estate disputes, eminent domain, federal and state securities laws, commercial disputes and intellectual property disputes.

share beer-related stories. Visit blogspot.cosgravelaw.com to follow and read the firm's new blog.



Darin Sands

Lane Powell

Shareholder **Darin Sands** has been appointed to the Classroom Law Project's Board of Directors.



James McDermott

Ball Janik

The firm's partnership has elected **James McDermott** as chair. McDermott has led the firm's litigation practice and is a business litigator and trial lawyer.

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.

Cosgrave Vergeer Kester

The firm has launched a beer blog to serve its growing list of clients in the brewing industry. Cosgrave attorneys are using the blog to discuss industry trends and to

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Tips From the Bench

Trial Readiness Conferences

by Judge Stephen K. Bushong
Multnomah County Circuit Court

*“So Fee, Fi, Fo Fo, Fum
Look out baby, ’cause here I
come...”*

When Smokey Robinson wrote these lyrics to the song “Get Ready,” we all know what he was talking about. That’s right - Trial Readiness Conferences (TRCs). Trial dates for civil cases are set at TRCs in accordance with SLR 7.015. As stated in the rule, the purpose of the TRC “is to facilitate the selection of a firm trial date and to assess readiness for trial.” The parties are expected to be prepared to discuss any remaining tasks to be resolved, including discovery issues, expected remaining pretrial motions, and any known scheduling problems for parties and witnesses.

Under SLR 7.015(1), the court will set a trial date no later than one year from the date the original complaint was filed unless the parties establish good cause for a later trial date. If the trial is set after the one-year deadline, SLR 7.016(2) requires the parties to participate in an Appropriate Dispute Resolution (ADR) process and file a certificate of compliance.

The rules do not define “good cause” for setting a trial beyond the one-year-from-filing date. Failing to conduct discovery because you expect the case to settle is not “good cause.” The fact that your calendar is filled with other trials may not be good cause, either. If you are so busy that you cannot bring a case to trial within one year as required by our rules, then you need to settle more cases or hire more lawyers instead of asking the court to find “good cause” for delay. There are plenty of good lawyers currently looking for work.

TRCs are usually conducted by me or Presiding Judge Waller on Fridays. The TRCs are usually docketed every 10 minutes, so the parties must be ready and on time for their TRC. Appearance by telephone is fine; the lawyers are responsible for setting up a conference line and then calling the court. (The court will not call attorneys or set up a conference line.)

Here are some tips for a successful TRC.

Before the TRC

- Calendar the TRC date as soon as you receive the notice from the court. If the assigned date conflicts with other matters, make arrangements for another attorney to cover the TRC for you. As a last resort, contact the TRC judge and reschedule.
- Assess how long the trial will last. Don’t forget to include time for jury selection and jury deliberation.



- Check your calendar for available trial dates within one year from the date the original complaint was filed.
- Contact your client and your witnesses - especially expert witnesses - to find out any dates they will not be available for trial.
- Confer with opposing counsel on potential trial dates. Agree on a firm trial date that works for everyone’s schedule.
- If the only dates that work are beyond the one-year deadline, determine whether you have “good cause” for delaying resolution of the case.
- Make arrangements with opposing counsel for completing discovery and complying with the ADR requirement, if applicable.
- Discuss the possibility of settlement with opposing counsel. Settling the case *before* the TRC saves resources. Notify the court if the case settles.
- Decide whether to appear at the TRC in person or by telephone. If more than one party is appearing by telephone, make arrangements for a conference line in advance.
- Consider requesting a trial at the court’s new East County Courthouse, which has large courtrooms with state-of-the-art facilities and free parking.

At the TRC

- Show up (or call in) on time. Late appearances can cause serious problems for the court and court staff.
- Inform the court of the expected length of the trial, your requested trial dates, and any anticipated problems.
- Be prepared to discuss the status of discovery, pretrial motions, and the prospects for settlement.
- Be prepared to explain why you think there is good cause for scheduling trial outside the one year deadline.

After the TRC

- Notify your client and all witnesses of the assigned trial date. Tell them that this date is considered “firm” and likely will not be changed.
- Comply with the ADR requirement and file the required certificate of compliance, if applicable.

Continued on page 14



Coming Soon to You A Chance to Weigh in on the New Multnomah County Courthouse

by Bob Calo
MBA Courthouse Committee Chair

The last time lawyers in Multnomah County had a chance to weigh in on the location and features of a new downtown courthouse was in the 1900s, as the current courthouse was constructed from 1909 to 1914. So we are a privileged group to be part of the process that will construct a new courthouse for the 21st century.

As most of us know, the wheels are in motion for the construction of a long-overdue new courthouse. The tentative completion date is 2020. State and county officials and the firm hired to help with the design and structure of the courthouse are currently working with the National Center for State Courts to develop a program plan for the new building. Once that is complete (in late summer/early fall), they will be seeking input from the various constituencies who use the courthouse (cleverly denoted as CHUGS - Courthouse User Groups). Obviously, the MBA is one of those CHUGS. Thus, in late summer/early fall, the various alternatives for site location and amenities will be presented to you in an online poll, where you can weigh in on your preferences. Will we have unanimous consensus? The obvious answer is “no” (can we really expect 4,400 different lawyers to all agree on something - it has never happened in the history of mankind, and it won’t happen here). Thus, we anticipate that we will be providing the raw numbers and the percentages of our members who favor each of the proposed alternatives.

To prepare you for the survey, let me provide a bit of background and bring you up to speed on this process in the form of the ever-popular FAQs.

Do we really need a new courthouse?

Ah, the beauty of being the author of an article is that you can tee-up a really easy first question to answer. The short answer is “yes,” we need a new courthouse.

The MBA, public officials, and the business community have all agreed that the current courthouse needs to be replaced. The MBA has been involved in studies/committees going back to 1969, and every study has confirmed the current courthouse is functionally obsolete. First, it is structurally deficient. The walls of the structure are unreinforced concrete masonry. Every engineering firm that has looked at this courthouse in the last few years has concluded that it would experience serious damage in any moderate to large earthquake. There is no question the current building is structurally deficient.

There is also inadequate space in the building. This pre-WWI structure was built to house a total of eight judges and all the other offices and services of the county. At present, there are not even enough courtrooms to accommodate the current bench (50 full-time and pro tem judges), and it is anticipated that additional judges will be needed in the next 40-50 years to meet with the court’s case load.

In addition to the issue of inadequate space, the current courthouse lacks the wiring and electrical capacity to allow the court to be upgraded and to function efficiently in the 21st century. The courthouse also has security and safety issues; for example, the courthouse’s current configuration places limitations on separating criminal defendants from judges and witnesses. As such, there is no question that the current courthouse is functionally obsolete and structurally deficient.

Ok, we need a new courthouse, but was any thought given to retro-fitting and renovating the current structure?

Well, yes there was. For several years, the process was in limbo as people debated whether the courthouse should be renovated or a new one built. One of the key problems with the retrofit

process was that the risks involved in renovation were considered to be too high compared to new construction. The work would be so extensive that it would disrupt courthouse operations for a long period of time, which would wreak havoc on the judicial system of the county. Also, renovation projects have much higher risks. Everything from losing power or water to parts of the building to finding hazardous materials that requires full containment that requires shutting the building.

The debate ended last year when Multnomah County officials elected to replace rather than rebuild the current courthouse. To that end, in December 2013, it hired Day CPM Services, Inc. (DAY CPM) of Beaverton, Oregon along with HDR, the Portland office of the engineering and architectural firm, to represent Multnomah County in charting out the type of space and location of the new courthouse to be built. Beaverton-based Day, will also act as the “Owner’s Representative” in the design and construction of the new facility, overseeing all the contracts and other administrative duties related to the project.

What is the cost of the courthouse and how is it going to be paid?

The total cost of the construction is estimated to be more than \$200 million (but that estimate may change depending on factors such as site selection, cost of materials, and space allocations within the courthouse).

How to pay for these costs has also been another issue that has for years stymied any progress on getting a new courthouse. As we all know, the circuit courts of Oregon are part of the Oregon Judicial Department. In 1981, Oregon reorganized the court system to be unified state circuit courts, and counties provide and maintain the facilities in which courthouse operations are conducted. In Multnomah - as in most counties - the judges of this circuit court are housed in a courthouse owned and operated by the county. The current courthouse is located in the City of Portland.

Continued on page 15

Judge Joel DeVore Oregon Court of Appeals

by Kevin Kono
MBA Court Liaison Committee

"It's just 'Joel,' no 'judge' stuff necessary." When I first reached out to Judge Joel S. DeVore about this article in an email addressed to "Judge DeVore," that was his first response, and it seems to illustrate the type of person Judge DeVore is. As his former law partner Varner Jay Johns III described him: "He is authentic. He is the real deal. There is no pretense, only substance."

Judge DeVore was appointed in October 2013 as one of three new Oregon Court of Appeals judges, along with Judge Erin Lagesen and Judge Doug Tookey in connection with the expansion of the court to include an additional three-judge panel. Judge DeVore is on a panel with Judges Darlene Ortega and Chris Garrett.

Judge DeVore grew up in Alaska, the son of a preacher, which ingrained in him traits of being pragmatic and down-to-earth, and, in his words, a focus on "helping your neighbor." Those characteristics have undoubtedly influenced his focus as a judge: "To serve ... to get it right," and "to use whatever God-given talents we might happen to have to help others - even if only in the messy context of resolving disputes."

Judge DeVore has been helping people resolve disputes for roughly four decades. He graduated

from Antioch College in 1974. Through school years, Judge DeVore worked as a custodian, tutor-counselor, fry cook, stable hand, government intern, and volunteer for the NAACP Legal Defense Fund in Mississippi. After college, he worked for four years as the Citizen's Ombudsman for the City of Anchorage, Alaska. As ombudsman, Judge DeVore helped citizens solve problems and resolve disputes - dealing with complaints relating to everything from unplowed streets, to cars buried with snow from plowing the streets, to excessive force after a hockey game - whatever local citizens cared about. He had no authority with government officials, so he had to rely on persuasion. This was born his interest in the law. In troubleshooting and resolving complaints, and successfully arguing with the city attorney to effect change, Judge DeVore realized that the law is involved in virtually all aspects of life, and that there is no magic to being a lawyer.

Judge DeVore came to Oregon to go to law school, graduating from the University of Oregon in 1982. He clerked for a year in the Oregon Court of Appeals, and then began his legal career in Pendleton, becoming a partner in the

former firm of Mautz, Hallman & DeVore. For the next 25 years, he was an attorney with the Luvaas Cobb firm in Eugene. His work involved appeals and civil litigation. He often gave advice or litigated insurance coverage. That work prompted him to help draft legislation to fix problems in auto insurance, which passed in 1997, 2005, and 2007. Much of his practice was "repair work" for other lawyers. That meant representing their clients to avoid dismissal of their lawsuits when the risk of a lawyer's potential mistake might have denied the client the chance for a day in court. And, of course, a substantial part of Judge DeVore's practice consisted of appellate work in the Oregon and federal appellate courts.

Along the way, Judge DeVore married his high school sweetheart, with whom he had two sons, now grown. In 2007, personal tragedy struck when his wife passed away at the young age of 55. Consistent with his commitment to public service, Judge DeVore recently shared his story, and his insights regarding grief, through the Oregon Attorney Assistance Program, so that he might help others facing similar situations. Judge DeVore is now happily remarried - with a honeymoon that he interrupted for his final interview with Governor Kitzhaber prior to being appointed.

The honeymoon period following his appointment to the appellate court was similarly

short, as Judge DeVore dove immediately into a full caseload. Upon his arrival, the court had the new judges' offices ready, the clerks ready, and the new judges assigned to panels. Now six months into his judicial career, Judge DeVore describes that the "workload is as advertised, with an amazing amount of reading." But he also describes "relief and joy at seeing people who care and are committed for right reasons."

"As I get older, there are disappointments in life, but here the court works in a way that you want a court to work to get it right. As a rookie judge, I sit in and watch judges hash out opinions - really talk over the language; it really happens the way you want it to happen. It is just a delight."

Both his experience as an appellate practitioner and his focus on getting it right inform his approach thus far as a judge. As he hears oral arguments, Judge DeVore tries to remember being at the podium. He wants practitioners to understand that the judges and advocates alike are there to get answers and to get to the right resolution. He notes that he is still learning how to ask good questions to help the court figure the case.

"We are not trying to embarrass anyone. It is easy to ask a poking question, pointing out here is your problem. But I admire a question that helps the lawyer get the argument out better. Judge Duncan does a wonderful job asking questions



Judge Joel DeVore

to help the court figure out a case. It is not adversarial; it is analytical. It is a skill I still have a lot to learn about."

There seems to be little doubt that Judge DeVore will put in the work he may feel is necessary. As Varner Johns described him, "Joel is a lawyer who simply always does the hard work. He would tackle the most complex legal issues and figure them out from top to bottom." Judge DeVore promises to bring that same thoroughness to his work as a judge.

"Do you remember exhausting yourself after laying out a dispute before a judge, and all you really want, so desperately, is to know the judge will really care, will spend the time to get to the bottom of things, and will do everything in his or her power 'to get it right?' We need people, as judges, who'll pour themselves into the work, selflessly, with head and with (judicious) heart. For me, that's why I wanted to be a judge."

Mark Johnson Roberts 2014 MBA Professionalism Award Recipient



The following is Mark Johnson Roberts' acceptance speech at the MBA 2014 Annual Meeting

Thank you, Attorney General Rosenblum. I'd like to thank you all. A few people I'd like to thank in particular. My husband, Jay Roberts, the light of my life. He's married me three times in 30 years.

My father, Delton Johnson, is here from California. He's been taking care of my mother for 12 years. She has Alzheimer's disease. Dad, let these nice people give you a round of applause. You sure deserve it.

My colleagues at Gevurtz Menashe, Ron Gevurtz, who's also here from California tonight. Albert, Eric, Shawn. These guys have supported me in a thousand different ways over the years. I really can't thank them enough.

My law partner, Saville Easley,

who nominated me for this award. And all of the volunteers and staff who worked to make this evening a success.

My story tonight has a happy ending, but in the beginning, something terrible

happened. Jay and I met in 1983. We moved into a beautiful house on a tree-lined street in Menlo Park, just around the corner from downtown East Palo Alto, locally known as Whisky Gulch. In Whisky Gulch were two gay bars. So we went over there on foot the first week we lived in that house. And there in the street, three blocks from our home, without warning or provocation, we were attacked and beaten because of our love for each other.

I tell you this story now because I want to emphasize how much things have changed in the 30 years since. How Jay and I came from that night to this one. And how a simple idea, like loving the person of your choice, became a national movement. How that movement overturned "don't ask, don't tell." How we

struck down the Defense of Marriage Act and stand poised today to deliver on the promise of marriage equality for Oregonians and for all Americans.

Our movement has been predicated on that simplest principle of successful human interaction: that we should treat others in the way that we want to be treated. The Golden Rule. Once we understood how it applied in this context, it became the key to everything else. And I believe that it is the key to all of our successful interactions, including our professional ones.

It's a reflection of the historic times we've lived through that Jay and I have had three weddings. Our first wedding was for love. It was 1992, and we were way ahead of our time. No one we knew had ever heard of a gay wedding, but we had one. It was a big event for gay Portland that summer. Over 200 people crowded into the Reed College Student Union to celebrate our love. Some of you are here tonight. It was the happiest day of my life.

The struggle for marriage equality began in earnest the following spring. The Hawai'i Supreme Court held that state's marriage statute unconstitutional. It was the first decision of its kind in America. Congress responded by passing the Defense of Marriage Act, refusing federal recognition to any same-sex marriage that a state might subsequently authorize. President Clinton

signed it and it became the law.

And so, my second wedding was a political statement. In March 2004, we again found ourselves on the forward edge of history. Gay and lesbian couples were not yet getting married legally, but all of a sudden, it seemed people were getting married all over. Five elected American leaders ordered their jurisdictions to begin issuing marriage licenses to same-sex couples. One of those brave executives was our own Multnomah County Chair, Diane Linn.

When Multnomah County staff began issuing marriage licenses, they were swamped. Gay and lesbian couples lined up around the block. We had weddings in the street, weddings in the Keller Auditorium, weddings everywhere. I can barely describe the joy we all felt at finally having a seat at the American table.

The following fall 12 American states adopted anti-gay-marriage measures at the ballot box. One of them was Oregon. It was the worst day ever for marriage equality. The Oregon Supreme Court eventually voided our marriage along with 3,000 others. We were not surprised, and yet we were devastated.

Those of us who were involved in the Multnomah County strategy have come under criticism recently for the decisions that we made. But they were the right decisions, then and now. Because as terrible as

those experiences were, they served a larger purpose. People, including LGBT people and their families, began to see what we were fighting for. People began to see themselves reflected in our struggle. They saw our joy and they saw our pain. And, ever so slightly, the wall of resistance began to crumble.

My third wedding was for equality. The Supreme Court overturned the Defense of Marriage Act. Suddenly, there were federal aspects to same-sex marriages. We had to do it; for our taxes, for Social Security, for a whole host of other protections we'd never had before. So we took three dear friends - a priestess and two witnesses - to my law firm's conference room over in Vancouver. And we got married!

We struggled for 20 years to get married. In the end, though, it was perfectly ordinary. Normalcy, of course, was all we ever wanted. We reveled in it.

I'm talking a lot about equality with my clients these days. Like straight people, we now have to pay alimony and share our retirement accounts with our spouses. Equality can be bitter medicine.

What a world we've created, though. A world where gay couples at last can plan for their futures, plan for illness, plan for death, even, and have some assurance that their plans will

Continued on page 14

Young Lawyers Section

The New BYOD Movement

by Kathryn Walter
YLS Futures Committee



The ubiquitous smartphone and tablet: we all have (at least) one. We know its in-and-outs, strengths and weaknesses, shortcuts and workarounds. We use it in our daily life to stay in touch with family and friends. And now, for many of us, we bring these devices to the office.

In comes BYOD (or bring your own device) a relatively new phrase referring to a policy where employees are permitted to bring and use their own computing devices in the workplace. BYOD has numerous advantages, and two significant disadvantages, requiring a firm's proactive management of a BYOD environment and some simple, commonsense strategies.

There are numerous advantages to BYOD. The convenience of a BYOD culture is undeniable. For the employee, it is simpler to integrate the same devices into all facets of life. Moreover, the employee's comfort with the device and satisfaction at selecting a specific device with desired features can foster productivity and happiness. At small firms, an employee or partner may be required to provide his or her own technologies. A BYOD environment often facilitates an employee's ability to work remotely and improves connectivity, which enables firms to more effectively manage cases, maximize billable hours, and save time through continuous workflow and access to files. BYOD can also enhance collaboration via secure mobile file sharing, allowing employees to create, review, and edit documents from anywhere.

So, with all of these benefits, why not support BYOD? A primary disadvantage with BYOD is security. Law practices must be particularly concerned with client confidentiality and privilege. Firms utilizing BYOD need to plan for lost or stolen devices, which is more the rule than the

exception (even generating the new street slang term "Apple Picking" referring to theft of iPods, iPhones, and iPads). No longer is it just the loss of one file carried in a briefcase, but that the loss could compromise a large amount of confidential data. Additionally, smaller firms with BYOD can struggle with compatibility issues among devices, which can also weaken security along with increasing costs and maintenance headaches.

Given these potential risks, firms must proactively implement a BYOD policy. If a firm allows BYOD, the firm must impose upon BYOD employees the same protocols as for company-issued devices. This means requiring employees to cede certain control of their devices to the company and to comply with certain mandates to prevent a security breach. The ABA, in its article *Risky Business: "Bring-Your-Own-Device" and Your Company*, has outlined several key elements of a solid BYOD policy: www.americanbar.org/publications/blt/2013/09/01_pavon.html. Another good resource are the information security standards published jointly by the International Organization for Standardization and the International Electrotechnical Commission. For more information, see: en.wikipedia.org/wiki/ISO/IEC_27000-series.

Some key protocols, even for smaller firms, are good practices even without BYOD. For example, the single most important action in data protection is implementing a strong password - the longer the better. Devices should automatically lock after a short period of non-use to prevent unauthorized access. Files and other sensitive information should not be stored on the device. Users should be required to turn on the "find my device" feature on Apple products and install an application enabling remote wiping of the device. The implementation of all of these practices is a good start to reducing security risks.

BYOD is a growing phenomenon and is likely to be the way of the future. Employers should embrace this transformation, but be preemptive in addressing security concerns.

New YLS Officers Elected One year terms began July 1



Jeanne Sinnott

Jeanne Sinnott, YLS President for 2014-15, is a partner at Miller Nash LLP and practices in the areas of debtor-creditor law, commercial litigation, and bankruptcy. Jeanne graduated from Lewis & Clark Law School and was admitted to the OSB in 2007. She joined the YLS Service to the Public Committee in 2009 and served as the committee chair in 2010-11. She co-chaired the YLS Imprint Program in 2009 and 2010. In the past year, Jeanne has also volunteered for the Wills for Heroes and Bullyproof programs.



Mackenzie Hogan

Mackenzie Hogan, YLS President-Elect, graduated from the U of O School of Law and was admitted to the OSB in 2010. He works at Harris & Bowker LLP and practices in the areas of business, probate, estate planning and real estate. Mackenzie joined the YLS Membership Committee in 2010 and served as the chair of that committee in 2012-13. He was the recipient of the 2012 YLS Award of Merit and was formerly a student representative for Pro Bono for the ABA 12th District.



Tyler Volm

Tyler Volm, Secretary, graduated from Lewis & Clark Law School and was admitted to the OSB in 2008 and Washington Bar in 2009. He works at Barran Liebman and practices in the areas of employment litigation, labor law, and compliance. Tyler previously chaired the YLS Professional Development & Education and currently chairs the MBA Golf Committee. He was president of the Lewis & Clark Recent Graduate Council from 2011-13 and has been on

the Executive Committee for the Gus J. Solomon Inns of Court since 2011.



Micah R. Steinhilb

Micah R. Steinhilb, Treasurer, graduated from Lewis & Clark Law School and was admitted to the OSB in 2008. He is an associate with Gordon & Polscer LLC and practices in the areas of insurance, products liability, construction defect and environmental law. Micah joined the board in 2012 and served as secretary in 2013-14. Before joining the board, he chaired the YLS Professional Development and Education Committee in 2011-12. He is an adjunct professor at Lewis & Clark Law School, a past editor of the Environmental & Natural Resources Section *Case Notes* Newsletter and serves as a mentor with Lewis & Clark Law School.

Traci Ray, Barran Liebman, continues on the YLS Board as past president.

Jacob Zahniser Pro Bono Spotlight

by Evan Lenneberg
YLS Pro Bono Committee Chair

Jacob Zahniser, a senior associate in Ball Janik's construction litigation practice group and former stage actor, has made pro bono representation a priority throughout his legal career by taking full advantage of the pro bono programs available to Oregon lawyers, including the Oregon District Court's Pro Bono program and LASO's Domestic Violence Project. Despite a busy civil litigation practice, Zahniser has taken it upon himself to, as he explains it, "put his law degree to good use serving Oregonians in need." Indeed, he has been the anchor many Oregonians need to prevent the complicated legal system from sweeping them out to sea.

Attorneys who participate in the district court's program are included in a pool of volunteer attorneys who may be appointed when individuals petition the court for pro bono

representation and sometimes on the court's own motion. Participating in that program, Zahniser has handled a wide variety of cases on behalf of individuals who desperately need an advocate. For example, he represented an individual who was swept into a section 1983 claim for allegedly falsely accusing a man of performing an unlawful act in an Oregon public university bathroom. Zahniser navigated the defense of this individual, which involved many parties and unique areas of law, and secured his client's dismissal from the case.

Similarly, LASO's Domestic Violence Project gives attorneys the opportunity to represent clients in a variety of matters including contested restraining order hearings. Through the program, Zahniser has helped individuals obtain restraining orders against those that



Jacob Zahniser

would otherwise do them harm. By participating in these programs, he has not only assisted individuals who may have otherwise been left to pursue their causes pro se, but has also gained invaluable case management and trial experience in the process.

In addition to participating in Oregon's formal programs, Zahniser, a former actor himself, has helped his fellow thespians and artists set up 501(c)(3) organizations. He uses his law degree to the fullest extent, helping to keep Oregon's bar among the proudest in the country.

YLS Board Changes

by Jeanne Sinnott
YLS President

As we begin our new 2014-15 board term, the YLS would like to recognize **Paige De Muniz's** contributions to the YLS and thank her for her hard work and dedication over the years. Paige joined the YLS YOUthFILM Project Committee in 2010, co-chaired the YLS Service to the Public Committee in 2012-13, and joined the YLS Board in 2013. Paige has decided to move on from the board and we wish her well.

Cynthia Gaddis has been appointed to fill the vacancy left by Paige. Cindy is an associate at the Law Offices of Daniel Snyder and focuses her practice on employment law. She graduated from Lewis & Clark Law School



Cynthia Gaddis

in 2011. Cindy joined the YLS Service to the Public Committee in 2011, and most recently served as co-chair of that committee in 2013-14. We look forward to having Cindy on the board!

MBA Annual Meeting & Dinner Celebrates Diversity

by Saville W. Easley
MBA Professionalism Committee



Over the past year, the MBA continued its efforts to focus on diversity in the legal profession. From working with our local diversity bars and their leaders, to amending the MBA's Statement on Professionalism, the MBA is proving to be at the forefront of tangible progress with regards to inclusion.

The Statement of Professionalism was amended to add:

- We will not engage in or condone unlawful or unethical discrimination.
- We will treat all persons with courtesy, fairness and respect, without regard to any distinguishing personal characteristic such as gender, race, ethnicity, disability, sexual orientation, gender identity or expression, social or economic status, military status, age, national origin, or religion.

The MBA has long recognized that diversity and inclusion among lawyers creates a stronger bar and bench. A membership that reflects the diversity of Multnomah County is essential to assuring that the public has access to a legal system that shares those differences. This diversity inspires trust in the public that they will be treated fairly and equally under the law. It also enhances respect for the legal system.

There are still barriers that exist to the practice of law to those who are of diverse backgrounds. A review of the statistics for women and minorities in the legal profession and in positions of leadership reflects that a disparity still exists. But we should occasionally stop and celebrate the advances we have made as a bar in promoting diversity and inclusion. It was a remarkable evening at the 2014 MBA Annual Meeting and Dinner to see the many women and minority attorneys honored for their leadership and contributions to MBA. I had the opportunity to talk with a few of the award winners to talk about their recognition as leaders.

Mark Johnson Roberts was awarded the MBA Professionalism Award. In a speech that inspired two standing ovations, Mark spoke about changes in the law as it evolved to grant LGBT people the right to marry. He spoke about how the law has personally affected his own life and his longtime relationship with husband, Jay Roberts. There is courage in professionalism and this was evident in Mark's simple (but not always easy) advice to attorneys to "just be yourself" and follow the Golden Rule.

Shayda Zaerpoor Le was awarded the MBA YLS Award of Merit for her leadership in the Wills for Heroes Program. Shayda reports that the MBA was positive and welcoming to her as a new lawyer, but it has been the encouragement of lawyers who have stepped forward as mentors who have had the most impact on her promising career. She praises the many lawyers who went out of their way, lawyers like Traci Ray, the former

Continued on page 19

Everyone Benefits from Restorative Justice Program

by Scott Downing
Scott Downing PC



This article profiles Four Cities Peer Court, a recipient of a 2013 Multnomah Bar Foundation grant.

The Four Cities Peer Court began in East County in 2008 and was patterned after a successful program in Beaverton. The four cities include Gresham, Troutdale, Fairview and Wood Village. The police departments from Gresham, Troutdale and Fairview, and the Multnomah County Sheriff supported the program as a way to deal with low-level youth offenders who were not being prosecuted or receiving services from the Multnomah County Juvenile Department. Local police felt that these offenders were not suffering any consequences as a result of their offenses. The program was initiated as a way for these first-time offenders, ages 12-17, to take responsibility for their actions and to prevent them from reoffending in the future. As explained by program manager Kim Harvey-Trigoso, the goal was to provide community restorative justice for these offenders and at the same time allow local high school students to participate in the process as prosecuting and defense attorneys.

A youth who is cited for minor offenses such as drug possession near a school, alcohol offenses, low-level assaults or criminal mischief (graffiti) is given the option of participating in Peer Court or being referred to Juvenile Court. Almost 95% of youth offenders agree to participate in the Peer Court program. Offenders must be interviewed by the Peer Court office and their participation approved by the Juvenile Justice Department. An offender's parents must also agree and the youth has to agree to abide by the "punishment" set by the Peer Court jury. In addition, the offender and his or her parents are interviewed by interns for Northwest Family Services, the agency that oversees the Peer Court program. Many of these youth suffer from substance abuse and mental health issues. If such concerns are raised, the youth and his family are provided referrals for help.

While in Peer Court, the youth is assigned a student volunteer defense attorney and

a student volunteer prosecuting attorney. For many of these high school volunteers, participation in the process has been a life-changing experience and inspired more than one to become better students and leaders at school and to aspire to college and a career choice in law or law enforcement. Volunteer attorneys receive training from several local attorneys. Robert Shoemaker, Shelley Keller, David Ross and Patricia Webb are currently advising these aspiring attorneys in how a courtroom functions. Judge Kristena LaMar (who apparently will never completely retire) has been acting as judge for the twice-monthly court sessions held in the Fairview City Council Chambers. While the teen jury deliberates, she will offer friendly advice to the student attorneys.

Sentencing options, determined by the panel of jurors, include assigning an essay regarding the impact of the offense on their family and community, participating in a *Costs of Crime* class, and community service. All participants are required to participate as future jurors. Youthful offenders are thus judged by their peers and also participate in setting punishment for other offenders. When a youth successfully completes his or her "sentence," the offense is expunged from his or her record. If a youth reoffends, he or she is referred back to the Juvenile

Department. Over 75% of Peer Court offenders successfully complete their program.

Peer Court provides a valuable alternative for first-time youth offenders in East County by allowing them to be judged by their peers. Positive restorative justice helps these youth understand the consequences of their behavior and provides a better model for avoiding reoffense. Students volunteering as attorneys learn about our justice system and gain valuable experience as future leaders.

Peer Court was originally funded by a one-time, four-year federal grant that was administered by the Police Activities League (PAL). "When PAL closed in 2013, Peer Court lost its funding mechanism," says Harvey-Trigoso. "Community support from participating cities, local police departments and a grant from the Multnomah Bar Foundation in 2013 were instrumental in providing gap funding for the program. Without this assistance from the MBF and the East County community, Peer Court might not exist today."

Peer Court will soon lose its rent-free space in the former Rockwood satellite police office and Harvey-Trigoso is urgently seeking a new location. There is



Kim Harvey-Trigoso, Peer Court Program Manager, Lorenzo Ramos and Cindy Valenzuela, Peer Court youth attorneys, Robert Shoemaker, retired attorney and Peer Court judge

an ongoing need for volunteers and in-kind contributions. To learn more, volunteer, or if you know of reasonable office space in East County, contact her at KHarvey-Trigoso@NWFS.org.

FOURTH ANNUAL PRO BONO PEDAL

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Tips From the Bench

Continued from page 10

- Consider and discuss settlement. Notify the court if the case settles. Otherwise, get ready for trial.
- Smokey Robinson wrote, "I'm bringing you a love that's true; So get ready, get ready..." Here's something else that's true: when bringing your case to court for trial readiness, the key to success is to get ready.

Endnote: "Get Ready," written by Smokey Robinson in 1964, has been recorded by many artists, including The Temptations (1966); Diana Ross and The Supremes (1966); Ella Fitzgerald (1969); The Miracles (1970); and Rare Earth (1970).

Professionalism Award

Continued from page 11

be respected and carried out. A world where gay youth can see a normal future for themselves, with a loving partner and a supportive community.

And how did we do it? Entire books are now being written about the strategies that were used, but ultimately, we did it by assuming that others would apply the Golden Rule and would want US to be treated in the way that THEY would be treated. And we were right. By changing the terms of the debate so that people understood it was about love, and not about "changing the definition of marriage," we made our struggle into one we could not lose.

I was asked to talk tonight about what professionalism means to me. Here it is: Being oneself. Being real. Being kind. Being honest. To my mind, these are the characteristics of the true professional. But most important? The Golden Rule.



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Thank you for your attention, and thank you for this wonderful award. I will treasure it always.

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Courthouse

Continued from page 10

For years, this system has resulted in the unintended consequence of an impasse: all these stakeholders (state, county and local officials) agreed the current courthouse needed to be renovated or a new courthouse built, but the cost of a new or renovated courthouse has been too great for the county alone.

Fortunately, in the past year, that impasse has improved. In July 2013, the Oregon Legislature approved the sale of \$15 million in bonds for site acquisition and

planning. In the next session there will be an additional request for funding for the project. The legislation passed allows for up to a 50% match of state funds from the sale of Q bonds to county funds. The county has designated proceeds from a property sale on the west end of the Morrison Bridge to the courthouse project. Also, the county has debt service capacity funds that could be redirected into this project as bonds expire, to help pay for the construction of the project. While this funding is far less than will be necessary to complete the

project, it is enough to advance the predevelopment process significantly.

As for the balance of the costs and expense, officials are still assessing various options.

One alternative is procurement through a “public private partnership” (known as a “P3” project) to build and service the new courthouse. This method of procurement could provide some private capital to help finance the project, but as a publicly-owned and operated facility, government entities will still have to find funding to pay the debt service on the financing.

The governor’s office encourages the use of innovative procurement strategies in accomplishing large infrastructure improvements in the State when it is clear that the method will result in better projects and higher value for money. The governor’s team has identified the Multnomah County Courthouse as a potential pilot for a P3 project. Accordingly, the county has contracted with Partnerships B.C., an arm of the Province of British Columbia that oversees major infrastructure projects, to develop a “business-case analysis” for the project, with several options for procuring design, financing, and construction, as well as maintaining the courthouse once it is built. The options considered in the business case analysis will likely include a performance-based procurement. The business-case analysis is expected to be completed by late fall.

Are there alternative funding mechanisms being considered if the P3 partnership does not come to fruition?

Yes. The state has already passed legislation that allows for a 50% match of state funds to the cost

covered by the county. Executive Order 12-17, released by Gov. John Kitzhaber in advance of his proposed 2015-17 budget, indicated that freed-up bonding capacity will provide \$1.1 billion every two years over the coming decade for “capital improvements in infrastructure,” which could include funding for the courthouse.

What is the immediate timeframe for the planning and construction of the courthouse?

The project managers have targeted the new courthouse to be built by the end of 2019 and opened in 2020. Obviously, there are several intermediate steps along the way. The most pressing are as follows:

- **Summer 2014:** Solicit area landowners this summer, seeking options for the building’s location with a goal of having the site selected by year end.
- **By Late Summer/Early Fall 2014:** Work with DAY CPM and HDR to develop the operational and space requirements (amenities) for the new courthouse.
- **Fall 2014:** Obtain feedback from the agencies and organizations that will be using the courthouse as to the best location and design of the courthouse. This group is known as the CHUG; the MBA is part of this group.
- **End of 2014:** Select a site for the courthouse and (at least preliminarily) the operational and space features that will be in place for the new courthouse (more on this below).

Ok, you say MBA members and other courthouse users get to have input on the location, structure and amenities in the

new courthouse, but have any tentative decisions been made on these issues?

Emphatically, no. No section of the county or specific location has been designated, and no decision has been made on the structure or amenities in the new courthouse. The officials involved in this project have no pre-ordained preference and will await both input from the courthouse users, which includes us and many others; for example, the judges, the sheriff’s office (safety, security, and prison movement are key considerations), the DA’s office and the clerk’s office just to name a few, and suggestions and guidance from the National Center for State Courts. In addition, the officials involved in this project will also have to look at a myriad of factors in deciding a location, including, for example, prisoner movement and security, availability of onstreet or off-street parking, access to public transportation (in addition to judges and lawyers, hundreds of people enter the county courthouse every day), demographic predictions and traffic volume in the county, and the ability of the judges to get to the other courthouse facilities in the county.

PLEASE let us know your thoughts in the upcoming online survey. The more participation by the members, the more comprehensive input we can give the officials as to our views on the new courthouse. Late summer and into early fall can be a hectic time for lawyers, and we also anticipate that we will need a quick turn-around time on the survey, but this is an important issue, so look for that email from the MBA and make the time to give us your feedback!!!



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Ethics Focus

Continued from page 7

The plaintiff carrier in *Stewart* had hired a law firm to defend Sterling Savings in a foreclosure case involving lien priority issues. There were no coverage issues. But, the carrier later claimed that the law firm committed malpractice in the foreclosure case and sued the firm. Under Washington law, however, a claimant in a legal malpractice case must generally have had an attorney-client relationship with the lawyer in the matter in which the malpractice allegedly occurred. Tacitly acknowledging Washington's "one-client" approach to insurance defense, the carrier instead argued that it still had standing as a third-party payor under a "multi-factor test" adopted in *Trask v. Butler*, 872 P2d 1080 (Wash 1994), allowing nonclients to sue for legal malpractice under narrow circumstances.

The Washington Supreme Court disagreed, finding that a carrier is not an intended beneficiary as that concept was articulated in *Trask*. Lacking either an attorney-client relationship or the alternative under *Trask*, the Washington Supreme Court concluded that the carrier could not meet a required element for a legal malpractice claim and affirmed dismissal of its claim. Like *Evraz* in Oregon, *Stewart* does not fundamentally change Washington law. But again like *Evraz*, *Stewart* offers a helpful clarification for Washington practice.

Again like Oregon, Washington also recognizes the common interest doctrine to afford an avenue for confidential sharing of information between an insured and a carrier. *Sanders v. State*, 240 P3d 120, 133-34 (Wash 2010), includes an extended discussion of the common interest doctrine under Washington law.

MBA Lawyers & Law Students Golf Event Monday, August 18 Langdon Farms Golf Club, Aurora

Excellent opportunity to foster professional relationships as law students and the legal community meet and network over lunch, dinner and golf. The MBA will match law students with lawyers and judges, matching practice interests when possible. Raffle and mulligans benefit the Volunteer Lawyers

Project at LASO. Exclusive law firm sponsorship opportunities are available. To sponsor this event or to sponsor a law student who might not otherwise be able to play, contact Pamela Hubbs at 503.222.3275. Register by August 8 at mbabar.org. Lawyers \$100, law students \$40 (students, please register through your Career Services Office); includes lunch and dinner. 1:45 p.m. shotgun.



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Congratulations, Mark!

We salute our friend and colleague, Mark Johnson Roberts, as the recipient of the Multnomah Bar Association's 2014 Professionalism Award. Mark is the Oregon State Delegate to the American Bar Association and a former President of both the Oregon State Bar and the National LGBT Bar Association. With his life-long commitment to community service and ensuring all people have access to quality legal representation, he is well deserving of this award, the MBA's highest honor.

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MBA Annual Meeting

Continued from page 13

YLS President, to encourage her into a role of leadership. A true leader, Shayda is quick to acknowledge the many other volunteers who made the Wills for Heroes Program a success.

Jacqueline Alarcon was awarded the YLS Rookie of the Year Award for her work in establishing a series of CLEs. As a Hispanic woman, Jacqueline is aware Hispanic women underperform in seeking a higher education. She decided early in her education that she wanted to fight that statistic not only for herself but for other Hispanic women. Jacqueline is actively and passionately involved with Adelente Mujeres, a nonprofit which works to empower Hispanic women in the community. She also acknowledges all the mentors that have helped her in establishing her career. Her advice to other young lawyers is to speak up and take charge.

Congratulations to the other MBA award winners: Chief Justice Thomas Balmer, Philip Bentley, Judge Christopher Garrett, Presiding Judge Nan Waller, Representative Jennifer Williamson, Leslie Kay, Kelvin Adkins-Heljeson, William Kwitman, Gerard Rowe and Sara Staggs.

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New MBA Officers Elected One year terms began June 1

Dana L. Sullivan, Buchanan Angeli Altschul & Sullivan LLP, is president. She has been on the board since 2011. Dana graduated from New York University Law School. She was admitted to the OSB in 1994. In her practice, Dana focuses on the representation of individuals in employment litigation. She also advises individuals in contract and severance negotiations and conducts workplace investigations.

Dana served on the MBA CourtCare Committee for several years and



Dana L. Sullivan

received the YLS Award of Merit in 2000 for her outstanding service to the YLS Service to the Public Committee, where she coordinated its Dropout Prevention Program. She served as president of the Oregon Trial Lawyers Association in 2009-10 and served on OTLA's Board of Governors from 1999 to 2011. Dana has also served on the following OSB Committees:

Economic Survey, Federal Practice and Procedure (which she chaired 2007-08), Civil Rights Section Executive Committee, and she currently serves on the Civil Rights Section Newsletter Editorial Board. Dana also serves on the Federal Bar Association's

Local Rules Committee.

Elizabeth Wakefield, Metropolitan Public Defender, is secretary. She graduated from Willamette University

College of Law in 1997 and was admitted to the OSB the same year. After graduating from law school, she clerked for Multnomah County Circuit Court Judge Linda Bergman (now retired). Elizabeth's practice areas are criminal defense, juvenile law and civil commitments.

Elizabeth's MBA service includes a term on the MBA Judicial Screening Committee from 2007-10 and the CourtCare Committee, 2007-08. She currently chairs the OCDLA Education Committee and



Elizabeth Wakefield

previously served on the OCDLA Legislative Committee. She is also a member of the OSB Civil Rights Section Executive Committee and the OSB Unlawful Practice of Law Committee. She also is a Classroom Law Project Mock Trial Coach.

Bob Steringer, Harrang Long Gary Rudnick P.C., is treasurer. Bob graduated from U of O School of Law in 1998 and was admitted to the OSB that year. He has since been admitted to practice in state, federal and tribal courts throughout the Pacific Northwest. His practice emphasizes civil litigation, administrative proceedings and appeals, particularly in the areas of business disputes, government regulation and matters involving public policy. He was recently elected president of his firm.

Bob chaired the MBA Professionalism Committee, served on the MBA Pro Bono Task Force and mentors new



Bob Steringer

lawyers in the MBA Mentor Program. His present OSB service includes serving as chairperson of the Constitutional Law Executive Committee and as a mentor in the New Lawyer Mentoring Program. He has also served on the OSB Public Service Advisory Committee.

Richard J. Vangelisti, Vangelisti Law Firm LLC, is past president.

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