



“Things Are Different Here”

by Thomas C. Sand
MBA President

That’s a quote (or pretty close to one) of a statement made by former Oregon State Bar President Rich Spier at the investiture ceremony of Judge, and former MBA President, Eric Dahlin. Rich was describing his national travels to visit other bar

presidents and their surprise at his description of common practices that we take for granted - practices that we in Multnomah County call “professionalism.”

If Rich is right, the MBA can justly claim much of the credit. I first learned about professionalism by watching my mentor practice law. He was a tough and intimidating trial lawyer. He was also a consummate gentleman. He routinely avoided silly discovery squabbles and costly motion practice with a phone call or cup of coffee. I remember one case with a particularly obnoxious lawyer on the other side who wrote a four-page letter (some of you will remember the days of the paper letter) full of scathing personal attacks and vituperative prose about my scandalous behavior. He ended his missive by saying that because he was leaving on a two-week vacation we were not to take any further action in the case until his return. I ran, shaking and red-faced, down to the corner office, waving the letter in the air and blurting out, “We need to fight fire with fire and bury him deep in his own...” Well, you get the idea. The boss smiled and dictated (his assistant was the last living person who took shorthand) this response: “Dear ‘Bill’: We received your letter. Enjoy your vacation.” Then he explained how we would take the high road and that our nemesis would get his comeuppance. I’d never heard that word and had to look it up. In a dictionary. Which was a book. And a comeuppance he got. We won the case, he got fired from his law firm, and I learned a valuable lesson. So I saw professionalism in action - a notion critical to a later point I’d like to make about mentoring.

I first learned about professionalism by watching my mentor practice law. He was a tough and intimidating trial lawyer. He was also a consummate gentleman.

But the first time I remember talking about professionalism - and actually considering the prospect of doing something about it - was when Ed Peterson was chief justice of the Oregon Supreme Court and Wally Sweek was president of the MBA.

Chief Justice Peterson became concerned about professionalism long before most of us had thought about it. In his article “Professionalism - Are We Losing It?” Chief Justice Peterson observed, “Without professionalism, ours is a crass, uninspiring calling.” 44 Oregon State Bar Bulletin 4 (Jan. 1984).

The article spawned debate on the subject and led the MBA Board to create the MBA Professionalism Committee. I was lucky enough to be asked by Wally to serve. This committee prepared and adopted a statement of principles entitled “The Multnomah Bar Association’s Statement on Professionalism in the Practice of Law.” The statement, which is on display in the MBA offices and many law offices, is intended

to be aspirational in nature, with the goal that peer pressure, client service, and even self-interest will motivate lawyers to observe its tenets.

Following the MBA’s lead, the OSB created a professionalism committee as well. Using the MBA statement as a model, the OSB committee drafted a statement of professionalism, which was adopted by the Board of Governors in 1990. The Oregon Supreme Court approved and signed the statement of professionalism as an order of the court.

Most statements of professionalism or codes of courtesy recognize that a lack of professionalism is not in the best interests of the profession, the public, the judicial system, or clients. Battles between attorneys invariably drive up client bills, perhaps causing clients to be dissatisfied and seek other counsel. Good manners cannot be legislated or enforced, but focusing attention on professionalism can serve the best interests of clients and the profession by engendering respect and trust among lawyers, by making the practice of law more enjoyable and satisfying, and by reducing both the pecuniary cost and the psychological cost of lawyering in general and litigation in particular.

In addition to promoting the statement of professionalism, the MBA also recognizes a lawyer each year with the Professionalism Award - the highest award presented at our annual meeting in May. The Professionalism Committee also sponsors professionalism panels focused on various areas of practice and for which participants receive CLE credit. These panels, which consist of experienced lawyers and judges, talk through hypothetical problems from which younger lawyers can learn how to handle those pesky practical problems we didn’t get in law school.

Professionalism is also an important feature of the MBA’s mentoring program, which matches newer lawyers with experienced lawyers who can provide the type of leadership by example that I observed working with my mentor. I learned firsthand that we tend to adopt the habits of those teachers we admire. If you value the way we practice law here and want to preserve and improve it, please volunteer to be a mentor or serve on other MBA committees that help foster professionalism.

If you agree with Rich Spier and me that things really are different here, please join us in the ongoing struggle to preserve our unique professional way of life. Get involved in the MBA, participate in a professionalism panel either as a teacher or as a student, volunteer to be a mentor, and if you are a newer lawyer, please feel free to request a mentor. The crackerjack MBA staff stand ready to assist you.

...focusing attention on professionalism can serve the best interests of clients and the profession by engendering respect and trust....

mba|CLE

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

JANUARY

**1.11 Wednesday
Evidence in Family Law**
Judge Patrick W. Henry
Daniel Margolin

**1.26 Thursday
Brewery Law: The Top 10 Things You Didn’t Know You Don’t Know**
Jesse Lyon
Marcus Reed

**1.31 Tuesday
‘Til Death (Or Otherwise) Do We Part: The Interplay Between Family Law Issues and Estate Planning**
Mark Barzda
Taylor Kittell

FEBRUARY

**2.1 Wednesday
Discrimination “Because of Sex” Under Title VII in the 21st Century**
Laura Salerno Owens

**2.7 Tuesday
Managing Risk and Reputation: The Value of Building Strong Legal and Public Affairs Partnerships**
Elisa Dozono
Anna Richter Taylor

**2.16 Thursday
Post Judgment Collections: What Can You Do When the Judgment Debtor Won’t Pay?**
Margot D. Seitz
Daniel Steinberg

**2.22 Wednesday
Employment Law Update**
Megan Crowhurst
David Riewald

**2.23 Thursday
Multnomah County Criminal Law**
Judge Ed Jones

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SAVE THE DATE!

MBA 15th Annual WinterSmash

A Family Friendly Bowling Event

Saturday, February 4
5-8 p.m.
AMF Pro 300 Lanes
3031 SE Powell Blvd



A Multnomah CourtCare Fundraiser

See insert and page 2 for details.

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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.

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WinterSmash Benefits Multnomah CourtCare

A Family Friendly Bowling Event
Saturday, February 4
5-8 p.m.
AMF Pro 300 Lanes
3031 SE Powell Blvd



The 15th Annual WinterSmash will be held on Saturday, February 4 from 5-8 p.m. at AMF Pro 300 Lanes (3031 SE Powell Blvd, Portland). We are happy to bring back the Pin Setter registration option for \$20 per person. If you want to cheer on your team and enjoy pizza and drinks but you don't want to bowl, this one's for you!

Lanes will be available exclusively for MBA members and their friends, colleagues and families for an evening of fun and food. Bumper lanes will be available for children. The event serves as the kickoff for the annual Multnomah CourtCare fundraising campaign.

CourtCare is a drop-in childcare program for families with no other childcare options, many of whom are struggling with poverty, substance abuse and/or violence. CourtCare is located in the downtown and east county courthouses.

CourtCare has served 80 to 100 children each month since opening in December 2001. These children are protected from witnessing disturbing courtroom scenes involving their families and do not disrupt courthouse business. Instead, they receive attention from qualified care providers in a cheerful environment full of toys, art supplies and books. Trained caregivers offer a nurturing, safe environment for children, as well as information for parents on other community resources they may need.

So, come enjoy the company of your colleagues, some good food, play a game you know you love and support a good cause. Tickets are \$40 for adults and \$15 for kids 3-12 years old. Price includes food, drink, shoes, balls, lane time and the satisfaction of knowing you're supporting CourtCare. Prizes will be awarded for the highest and lowest individual scores, the group with the most participants in attendance and the group with the best bowling shirt. In addition, a traveling trophy will be presented to the group with the highest team score. Raffle tickets will be for sale. The event promises to be a good time; don't miss this opportunity! Register via the insert in this issue or at www.mbar.org.

Thank you to the WinterSmash sponsors.

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Calendar

JANUARY

2 Monday
New Year Holiday

10 Tuesday
February *Multnomah Lawyer* deadline

YLS Drop-In Social at Paddy's
See p. 12

12 Thursday
Young Litigators Forum CLE Series begins

16 Monday
Martin Luther King Jr. Holiday

27 Friday
2017 Pro Bono Award Nominations Due
www.mbar.org

31 Tuesday
Solo & Small Firm Social
See p. 6

FEBRUARY

4 Saturday
WinterSmash

10 Friday
March *Multnomah Lawyer* deadline

11 Saturday
Lewis & Clark PILP Auction

17 Friday
OHBA Annual Award Dinner
www.oregonhispanicbar.org

20 Monday
Presidents Day Holiday

MARCH

10 Friday
April *Multnomah Lawyer* deadline

OWLS Roberts & Deiz Awards Dinner
www.oregonwomenlawyers.org

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The MBA offers a special thank you to the following members for donating more than the suggested check-off amount to the Volunteer Lawyers Project when paying their 2017 dues.

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The MBA will apply for 2 hours of general OSB MCLE credits unless otherwise noted; 2 Washington credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

Evidence in Family Law

Wednesday, January 11, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

The **Honorable Patrick W. Henry**, Multnomah County Circuit Court judge and lawyer **Daniel Margolin**, Stephens & Margolin, will lead an interactive presentation on challenging evidentiary issues in family law case.

For more information: Contact Mindy Stannard, McKinley Irvin at 503.953.1032. For registration questions, contact the MBA at 503.222.3275.

Brewery Law: The Top 10 Things You Didn't Know You Don't Know

Thursday, January 26, 2017 - 3:00-5:00 p.m.

Widmer Brothers Brewery, 947 N. Russell St.

Members \$60/Non-Members \$95

Oregon is home to more than 200 breweries which produce more than 1.7 million barrels of craft beer every year. Most of those breweries are run by small businesses that need attorneys to help them navigate through the complex regulatory system governing alcohol production, distribution, and sales. This seminar is designed to assist practitioners who advise or represent these businesses, and provide them with the tools they need to avoid common problems and pitfalls. Presenters: **Marcus Reed**, General Counsel for Craft Brew Alliance and **Jesse D. Lyon**, Davis Wright Tremaine LLP. Topics covered will include:

- TTB permits, OLCC licensing, and multi-state brand registration
- 50 state framework
- Funding and tied-house constraints
- Advertising, promotion, and trade practice rules
- Self-distribution, 3-tier distribution and franchise laws
- Brewery facilities, contract production and alternating proprietors
- Pub and retail operations
- Labels and trademarks

For more information: Call Alex Williamson, Prange Law Group, LLC at 503.595.8199. For registration questions, please call the MBA at 503.222.3275.

'Til Death (Or Otherwise) Do We Part: The Interplay Between Family Law Issues and Estate Planning

Tuesday, January 31, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

The MBA CLE Committee is pleased to present this two-hour class on key intersections of family law and estate planning. Family law attorney, **Mark Barzda** and trust and estates lawyer, **Taylor Kittell**, both of Gevurtz Menashe will present this CLE. This class is intended for anyone who practices in either the area of family law or estate planning.

For more information: Contact Kristen Hilton, Sussman Shank at 503.243.1654. For registration questions, contact the MBA at 503.222.3275.

Discrimination "Because of Sex" Under Title VII in the 21st Century

Wednesday, February 1, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

What does "because of sex" mean in 2017? Since its addition to Title VII of the Civil Rights Act of 1964, the prohibition on workplace discrimination "because of sex" has been constantly evolving. In this CLE, **Laura Salerno Owens**, Markowitz Herbold, will examine landmark decisions that form the basis for Title VII sex discrimination claims, and analyze how they have been interpreted in recent years to address increasingly broader forms of gender bias. In particular, the CLE will discuss the evolution of case law disapproving of "sex stereotyping" and the doctrinal implications for sex-based discrimination claims in new and emerging contexts, including sexual harassment between members of the same gender, pregnancy and childcare, and transgender discrimination.

For more information: Contact Molly Honore, Markowitz Herbold at 503.295.3085. For registration questions, contact the MBA at 503.222.3275.

Managing Risk & Reputation: The Value of Building Strong Legal and Public Affairs Partnerships

Tuesday, February 7, 2017 - 12:00-1:00 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Note: One hour of general OSB MCLE credit will be applied for.

Learn how aligning public relations strategy with legal strategy is becoming more important in this era of digital journalism, social media, public advocacy and accountability. Join **Anna Richter Taylor** of ART Public Affairs, and **Elisa Dozono** of Miller Nash Graham & Dunn for a discussion on helping organizations manage and control the public perception in crisis situations - from environmental risk, reputation damage, personnel issues or public safety threats.

For more information: Contact Cody Elliott, Miller Nash Graham & Dunn at 503.205.2465. For registration questions, contact the MBA at 503.222.3275.

Post Judgment Collections: What Can You Do When the Judgment Debtor Won't Pay?

Thursday, February 16, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This seminar will review post judgment collection methods available in Oregon, including execution, garnishment, supplemental proceedings (debtor examinations) and other techniques to help you collect your client's judgment. The seminar will also address the impact of bankruptcy on the collection process and will touch on proofs of claim, lien avoidance and stripping, and exemptions and related issues. The speakers will field questions related to representing the judgment creditor. Bring your problem cases!

Daniel Steinberg is a partner at Greene & Markley and concentrates his practice in commercial litigation, creditors' rights, and bankruptcy. **Margot D. Seitz** is an associate at Farleigh Wada Witt and concentrates her practice in debtor-creditor and insolvency matters, business dissolutions, real estate disputes, commercial collections, and estate administration.

For more information: Contact Jovanna Patrick, Hollander, Lebenbaum & Gannicott at 503.222.2408. For registration questions, contact the MBA at 503.222.3275.

Employment Law Update

Wednesday, February 22, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Change seems to be the only constant in the labor and employment law world. The last year was marked by many new statutes, regulations, ordinances and cases that impact employees, employers and unions in the workplace. Come to this presentation to learn about the most significant of these developments. The presenters at this class will be **Dave Riewald** and **Megan Crowhurst** of Bullard Law.

For more information: Contact Liani Reeves, Bullard Law at 503.248.1134. For registration questions, contact the MBA at 503.222.3275.

Multnomah County Criminal Law

Thursday, February 23, 2017 - 3:00-5:00 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Criminal practice in Multnomah County can be complex, with different types of cases having their own associated dockets, programs, resolution options, and procedural pathways. Multnomah County's chief criminal judge, **Judge Ed Jones**, has put together an outstanding panel to help practitioners learn everything they need to know about practicing in the county. The discussion will cover all types of criminal cases and will include, along with Judge Jones, sub-panels of experienced Multnomah County criminal defense practitioners discussing misdemeanor, felony, and domestic violence cases.

For more information: Contact Kevin Sali, Kevin Sali LLC at 503.329.3598. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

Presiding Court Update

Thursday, March 2, 2017 - 3:00-5:00 p.m.
World Trade Center, Auditorium
Members \$60/Non-Members \$95

In this session, Multnomah County **Presiding Judge Nan Waller**, the chief judges and court staff will present on the state of the court, review new Supplemental Local Rules, provide tips on issues unique to practicing in Multnomah County and preview the updated Attorney Reference Manual. Judge Waller will also give an update on the new courthouse, which is slated to open in 2020.

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

For more information: Contact Judge Kelly Skye, Multnomah County Circuit Court at 503.988.3204. For registration questions, contact the MBA at 503.222.3275.

**Happy New
(Membership)
Year!**

If you have yet to renew your MBA membership for 2017, please take a few minutes to do so online at www.mbabar.org or contact the MBA office at 503.222.3275.

We look forward to serving you in 2017.



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.

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CLE Registration Form

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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. 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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Register online and order or download MBA self-study materials at www.mbabar.org.
 Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available.

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- 2/7 Managing Risk and Reputation**
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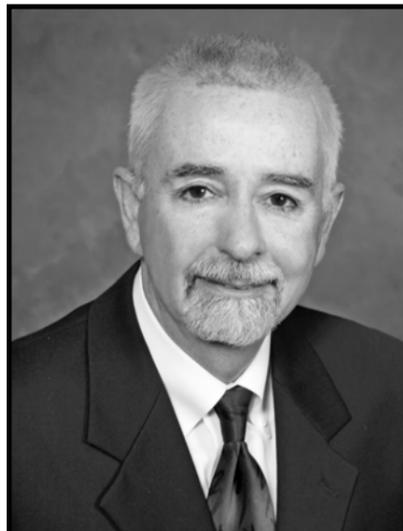


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mba | ANNOUNCEMENTS

MBA Now Accepting Nominations for Pro Bono Awards

The MBA, Legal Aid Services of Oregon and Oregon Law Center are now accepting nominations for the 2017 Pro Bono Awards. Presented at the MBA Annual Dinner, these awards honor individuals who have displayed a special commitment in their service to pro bono work in our community. Nomination forms are due Friday, January 27 - see insert for details.

Free CLE Webcast to MBA Members

The video webcast of the seminar "Public Speaking for Attorneys" is available in the Members Center at www.mbabar.org. The webcast is approved for two hours of practical skills OSB MCLE credit.

MBA members receive access to a rotating selection of six different CLE seminars each year - a \$360 value.

Commitment to Professionalism

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

Take a Matter that Matters

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

Noon Time Rides

Short fast rides with hills. Meet at SW corner of Pioneer Courthouse Square (Yamhill & Broadway) between noon and 12:10 p.m., Monday and Thursday. Contact: Ray Thomas 503.228.5222 with questions, or meet at start.

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mba | EVENT

Solo & Small Firm Social

Tuesday, January 31
Hotel Monaco, Alder Creek Room
506 SW Washington, Portland
5-6:30 p.m.

The MBA Solo and Small Firm Committee invites you to a free social for solo and small firm practitioners.

- Enjoy complimentary appetizers
- Socialize and meet other attorneys who work at small firms
- Learn about and help shape upcoming workshops designed specifically to help your small firm succeed

RSVPs appreciated.

Please RSVP to shannon@mbabar.org.



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Ethics Focus

Golden Handcuffs: Non-Competes and Penalty Provisions

by Mark J. Fucile
Fucile & Reising LLP



When preparing employment agreements for business clients in a wide variety of industries, lawyers sometimes include “non-compete” provisions that bar employees from working for competitors for a stated

When managing their own practices...lawyers are generally prohibited from including non-competes....

period or geographic area after the person leaves the client. When managing their own practices, however, lawyers are generally prohibited from including non-competes or similar financial penalties in partnership, shareholder or employment agreements. By contrast, provisions that recognize the financial impact of the lawyer’s departure on the firm present a more nuanced question of whether they are an impermissible penalty on lawyer movement or a practical recognition of the economic effect of a lawyer’s departure.

Non-Competes

RPC 5.6(a) generally prohibits both “offering or making” a non-compete:

“A lawyer shall not participate in offering or making:

“(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement[.]”

This limitation is neither new nor unusual. Oregon’s predecessor professional rules contained a similar limitation in former DR 2-108(A). Oregon’s current rule is patterned largely on the corresponding provision of the ABA Model Rules of Professional Conduct, Model Rule 5.6(a). Around the Northwest, Washington, Alaska and Idaho all have similar rules.

As the text of the rule makes plain, it applies to both lawyer-owners (whether partners or shareholders) and

lawyer-employees (whether traditional associates or firm lawyers holding other titles). The justification for the prohibition is summarized in Comment 1 to ABA Model Rule 5.6: “An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer.”

RPC 5.6(a) exempts non-competes entered into in conjunction with retirement benefits and RPC 1.17(h) also exempts similar provisions associated with law practice sales. As ABA Formal Ethics Opinion 06-444 puts it (at 2-3): “To be considered a ‘retirement benefit’ capable of restriction under Rule 5.6(a), the benefit must be one that is available only to lawyers who are in fact retiring and thereby terminating or winding down their legal careers.” ABA Formal Ethics Opinion 468 (2014) makes the same point about the exemption for law practice sales.

RPC 5.6(a) can be enforced in the disciplinary context (see generally OSB Formal Ethics Op 2005-29). But, in many instances, the more practical effect is that non-competes have been held to be unenforceable (see, e.g., *Gray v. Martin*, 63 Or App 173, 181-82, 663 P2d 1285 (1983) (partnership agreement); *Hagen v. O’Connell, Goyak & Ball, P.C.*, 68 Or App 700, 703-04, 683 P2d 563 (1984) (shareholder agreement)). The rationale for a court refusing to enforce a prohibited non-compete is that it is void as against public policy. In *Gray*, for example, the Court of Appeals concluded (at 63 Or App at 182 n. 1): “[W]e believe that courts other than the Supreme Court may apply the disciplinary rules in determining whether the contract provisions are enforceable.”

Financial Penalties

Provisions that penalize a lawyer financially for leaving to compete with the “old” firm are generally treated as the functional equivalent of non-competes and are also generally prohibited by RPC 5.6(a). In *Hagen*, for example, the Oregon Court of Appeals refused to enforce a provision that imposed a financial penalty on a withdrawing shareholder if the shareholder did not agree to a non-compete. The Court of Appeals used the same approach on the penalty as with a non-compete (at 704): “The 40 percent penalty provision . . . [in valuing the departing shareholder’s interest in the professional corporation on withdrawal] . . . is unenforceable, because it is contrary to the public policy of making legal counsel available, insofar as possible, according to the wishes of a client.” Similarly, the Court of Appeals in *Gray* refused to enforce a provision that effectively forced a withdrawing partner to forfeit the partner’s unpaid draw and capital account unless the lawyer agreed to a non-compete. Again, Oregon is

not unique in this regard, with ABA Formal Ethics Opinion 06-444 noting (at 1) that “law firm partnership agreements generally may not include provisions that require partners who leave the firm and engage in a competing practice to forfeit financial benefits that are otherwise payable to partners

An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer.

who withdraw from the firm and do not thereafter compete.”

At the same time, the Court of Appeals in *Hagen* found (at 704) that the law firm could adjust the withdrawing shareholder’s stock value to reflect the economic impact of the lawyer’s departure on the firm as long as the adjustment “would result in a valuation that bears a reasonable relationship to the probable loss to the firm.” Citing *Hagen*, OSB Formal Ethics Opinion 2005-29 agrees that (at 67) “partnership agreements may provide for reimbursement to the partnership for harm actually caused to the partnership by the withdrawal or for a diminution in value caused by the withdrawal.” Opinion 2005-29 does not draw a bright line between a prohibited penalty and a permissible provision recognizing the economic impact of a withdrawal. But, as in *Hagen*, the closer a provision comes to a non-compete—either directly or implicitly—the more likely it will be held unenforceable under RPC 5.6(a).



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Around the Bar



Joseph Arellano



Sarah Carlin Ames



Daniel Keppler



Matthew Yium

Garvey Schubert Barer

Garvey Schubert Barer (GSB) welcomes **Joseph Arellano**, **Daniel Keppler** and **Matthew Yium** (all previously of Kennedy Watts Arellano LLP) to its Portland litigation group. Their addition bolsters the firm's complex commercial litigation and professional liability capabilities. Mr. Arellano has over 35 years of litigation experience with an emphasis on securities, commercial, and tort litigation. Mr. Keppler and Mr. Yium also bring substantial experience in class actions, appeals and alternative dispute resolution.



Eryn Karpinski Hoerster

GSB is pleased to announce that **Eryn Karpinski Hoerster** of the firm's Portland office has been promoted to owner. Eryn assists clients involved in complex commercial and regulatory matters, including white collar criminal defense, employment litigation and tax disputes. Eryn serves on the Board of Directors of PHAME and provides pro bono legal services through the U.S. District Court Pro Bono Panel.

She attended the University of Chicago's College and Law School.

GSB also welcomes **Sarah Carlin Ames** as an associate in its Portland office. She recently graduated summa cum laude from Lewis & Clark Law School and was selected as a member of its Cornelius Honor Society. During law school, Sarah worked for the Oregon Department of Justice Special Litigation Unit, helping with complicated and high-profile cases involving prisoner rights, endangered species, disabilities rights and land use.



Robert Banks, Jr.

Samuels Yoelin Kantor

The Public Investors Arbitration Bar Association (PIABA) has honored **Robert S. Banks, Jr.** with PIABA's Distinguished Service Award. The award is given in recognition of outstanding, long-term and sustained service to promote the interests of the public investor in securities and commodities arbitration.

Bob Banks is a partner at Samuels Yoelin Kantor LLP, where he leads the law firm's securities litigation group. A nationally recognized leader in investor rights law, Banks has been practicing law for more than 30 years, representing a broad array of individuals, organizations and groups who have been victims of negligent advice and fraudulent conduct by brokers, accountants and lawyers.

Banks has been a member of PIABA for 18 years. He serves on PIABA's board of directors, is a past president, and previously was honored with the Director Emeritus designation.

Harris & Bowker LLP

Harris & Bowker LLP is pleased to announce that **J. Mackenzie Hogan** has become a partner effective January 1, 2017.

Mackenzie represents clients in business, estate planning and real property matters. In



J. Mackenzie Hogan

addition, he currently oversees the firm's probate department assisting clients in probate and trust administration.



Ava Schoen

Tonkon Torp LLP

Attorney **Ava Schoen** has been elected President of the Board of Directors for Third Rail Repertory Theatre. Schoen has been on the board since 2008.

Schoen is a bankruptcy lawyer who works in Tonkon Torp's Bankruptcy & Creditors' Rights practice group. Her practice is focused on Chapter 11 corporate reorganizations, debtor-creditor law and commercial litigation.

Third Rail Repertory Theatre was founded in 2003 to provide a dynamic, professional local company to Portland audiences. Third Rail's permanent ensemble and guest artists share stories that provoke dialogue, encourage empathy, and inspire curiosity.



Martin Alvey

Alvey Law Group

Martin L. Alvey, owner of Alvey Law Group, has been selected as a member of the American Board of Trial Advocates (ABOTA). ABOTA fosters the improvement of the ethical and technical standards of law practice to promote the efficient administration of justice and civic education about the legal system. Membership in ABOTA is peer-nominated. Alvey represents individuals in personal injury, workers' compensation, and Social Security litigation. Alvey is a Past President of the Oregon Trial Lawyers Association.



Elaine Albrich

Davis Wright Tremaine

Elaine R. Albrich, a lawyer with more than a decade of experience helping clients resolve complex land use and permitting issues, has joined Davis Wright Tremaine as counsel in our Portland office.

Albrich focuses her practice on the energy and alcohol beverage industries as well as traditional real estate development and rural economic development opportunities. She comes to the firm from Stoel Rives.

Albrich regularly represents clients in hearings and proceedings before city and county governing bodies, hearings officers, the Land Use Board of Appeals, the Oregon Energy Facility Siting Council, the Oregon Liquor Control Commission, and the Oregon Court of Appeals.

Albrich received her B.S. and J.D. at the University of Oregon. She serves on the board of the Northwest Cider Association and is vice-chair of Sustainable Northwest.



Susan Potter

Law Offices of Mark Sampath, PLLC

Susan P. Potter has joined the Law Offices of Mark Sampath, PLLC, located in Vancouver, Washington, as Senior Counsel. Susan's practice is focused on business transactions and entity formations, commercial real estate and financing transactions, corporate governance, employment law and health law. Prior to joining the firm, Susan served as General Counsel of Health Republic Insurance Company in Lake Oswego. She is a graduate of NYU Law School and has lived in Portland since 2013.

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 mba@mbabar.org.



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Tips From the Bench

Aid & Assist Docket Streamlines Passage for Mentally Ill Defendants

by Judge Cheryl Albrecht
Multnomah County Circuit Court



There's no question that the prevalence and complexity of mentally ill defendants in the criminal justice system has significantly increased in recent years. Multnomah County, for a variety of reasons, far outpaces other counties in the number of defendants sent to Oregon State Hospital (OSH) on findings that they are unfit to proceed due to lack of capacity. The new Aid & Assist docket, started in the fall of 2016, aims to trim that number by centralizing decision-making and reducing docket clutter while creating more targeted services for these high-need individuals.

Chief Criminal Judge Ed Jones presides over the dockets, set on Tuesdays at 2 and 2:30 p.m. in Justice Center Courtroom #2, but the process starts as soon as an attorney has concern about a client's ability to aid and assist. Attorneys should alert the Multnomah County Forensic Diversion Team (also known as the "370" team after ORS 161.370 or by the initials FD) by email at fd@multco.us or by faxing a request to 503.988.6325. ORS 161.365 requires the county's community mental health program to consult with the defendant to determine whether sufficient services are available for safe placement in the community. The sooner the Forensic Diversion staff gets notice the better the chances for a quick investigation and referral to treatment and other community support. The team continues to link clients to services and treatment whether the person is ultimately found fit or unfit to proceed.

While the 370 team is performing its consultation, the attorney can refer the client to a certified evaluator for an opinion on the ability to aid and assist. The state Office of Public Defense Services maintains a list of certified evaluators. If the situation is urgent or so readily apparent that a formal evaluation is not needed, the attorney can set a hearing without obtaining a report. Hearings are set on the 2:30 p.m. Aid & Assist docket by calling the Criminal Calendaring department at 503.988.3235, ext. 3. The attorney should also contact the case Deputy District Attorney and the 370 team to advise them of the hearing and to provide available reports and records. Under these new procedures, fitness to proceed hearings in all cases other than those specially assigned to a

judge due to the severity or complexity of charges, are set on the JC2 docket. Attorneys should also send probation violations to the Aid & Assist docket, though different considerations may apply depending on probation conditions and the 14-day requirement under ORS 137.545(6). There are no more determination hearings sent out from CPC, drug call or the morning presiding call dockets.

Judge Jones, the 370 team, a Deputy District Attorney and attorneys for people on the Tuesday dockets ring in the week at a meeting held Monday morning at 7:30 a.m. to discuss whether the defendant can or cannot aid and assist, whether more reports or records are needed, and whether the person can be safely supervised in the community or should be sent to the state hospital. If the person is in custody and community restoration is available, the court refers the defendant to Pre-Trial Release Supervision. Although the 370 team supports community restoration by providing legal education classes and linking clients to treatment and services, the team does not directly supervise defendants. The team assists PRS and provides notice if a defendant violates release conditions. If community restoration is not appropriate, the client gets transported to OSH for treatment until fitness is restored.

Once a person is found unfit to proceed, there are no scheduled "further proceedings" or "status check" hearings except for cases on the presiding call and domestic violence dockets. Rather than set multiple hearings on the CPC and drug call dockets, court staff simply enter an expected date of return, which puts the case into a "pending hospital" status. The case status in Odyssey designates the cases as "JC2 FPAA," i.e., Further Proceedings for Aid & Assist, or "JC2FPAA(370)," for community restoration cases. Court staff runs regular checks in Odyssey to monitor upcoming return dates, which are usually about six months out.

If the person is in the hospital, psychological evaluations are updated periodically. When a person is again fit to proceed, the hospital sends notice that the defendant will return to court within 48 to 72 hours. For those on community restoration, the

Continued on page 14



News from the Courthouse

by Jennifer Truzzolino
Court Liaison Committee

Presiding Judge's Report and Courthouse Update - Judge Nan Waller

Legislators Breakfast

The court and the MBA hosted the annual legislative breakfast on November 30. There was a great turn out of legislators, including a number of new legislators. The feedback received was that they were impressed with what the court was doing and the plans for the new courthouse. This is helpful as we are looking for additional support through two bond requests in the 2017 session. The court will also be looking to the MBA for assistance with supporting these requests to the legislature.

Courthouse

There are a number of green and energy efficient features being designed into the new courthouse. For example, excess power generated by the rooftop solar panels and the radiant heat absorption will be used to power lifting the Hawthorn Bridge and its lights.

The Historic Landmark Commission planned to review the building plans last December, which then go to the Portland City Council, who will hopefully act on the recommendation for approval. The courthouse is fundamentally different than other downtown buildings due to the need for a secure perimeter (thus, no retail on bottom floor) with no windows looking into the jail or Sheriff's Department. There is also a need for a sally port to allow for transporting in custody defendants to and from court in a way that is safe and respectful. The project team is also working with the Regional Arts and Culture Council to commission artwork throughout the courthouse.

The project team is evaluating acoustic materials for the walls, so that the jurors and witnesses can hear court proceedings and the FTR system can capture proceedings clearly. A mockup will be installed at the East County Courthouse and lawyers will be asked to take a look and provide feedback.

Legislative Session

Governor Brown issued the State's proposed budget, which has a placeholder for the court in it. Given the economic forecasts, there will most likely be budget cuts to all state agencies, potentially in the 10-12% range. The court already operates very lean, but will start the process soon to review options for additional cuts that we may be asked to make. It is anticipated those cuts could take place in late summer or early fall of 2017. The Chief Justice is committed to keeping the courts open five days a week, however given that 98% of the court's budget is personnel, there may need to be a combination of furlough days and staff reductions which will reduce service to the public. This could impact telephone hours, times that public windows are open, and the speed with which e-filed documents are accepted and entered. The court is continuously evaluating how to be as efficient as possible, including the use of technology and cross training staff.

In this next legislative session the Oregon Judicial Department is competing with a lot of different state-funded entities like education. It would be helpful to have the MBA help advocate for adequate funding for the court by being present for legislative days to help carry this message. If there are opportunities and attorneys know legislators, let them know the fundamental importance of maintaining funding for the court.

Listening Session

The court held a second community listening session, and a major takeaway is the sense that people feel that they have not gotten what they need from the justice system and that there is a lack of knowledge of how the justice system works, including Measure 11. The court and the justice system as a whole has an obligation to keep the community educated.

A third listening session will take place in Rockwood, at a location such as a high school. The next listening session will be held early this year, date and location to be determined. These sessions have been very well-attended and well received.

The next step is to create a "talking session" to provide information to the community. The MBA can be helpful and provide assistance with these events and providing this type of public education. The public often view all the components of the public safety system as one, so it is important to educate them about the role of judges and the courts in the justice system. The court's judges and management team are looking for themes from the listening sessions to create a Court 101 program, where judges and partners can speak to the community about the fundamentals of how the justice system works.

Multnomah County Justice Reinvestment Program

A preliminary analysis of program outcomes shows it is doing a good job in reducing reliance on the state prison system. The best practices that were recently implemented have also worked well. The report will be posted on the court's website as well as on the Local Public Safety Coordinating Council website.

While the justice reinvestment program in Multnomah County has reduced prison sentences across all races, it has not reduced sentences for people of color to the same extent that it has reduced prison sentences for white offenders. The justice reinvestment program will do further analysis on this and explore ways to reduce racial and ethnic disparities. The court will also conduct continued judicial training focused on implicit bias, and is participating in a research project through the University of Oregon on implicit bias in civil cases.

Miscellaneous

The court will be working with the Sheriff's Office to improve security screening for individuals with the expedited access badges to ensure that lawyers and others with passes are not bringing items into the courthouse that are not allowed. There may be some times when individuals with access badges are asked to go through standard security screening on a random basis.

In the event of weather closures for the court, information will be sent out via the FlashAlert system, as well as posted on the court's website and sent to the media. If you are

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Magistrate Judge Jolie Russo U.S. District Court

by Steven R. Powers
Court Liaison Committee

Driven to be part of the solution and drawn by the analytical nature of being a neutral, Judge Jolie A. Russo began her service as United States Magistrate Judge for the District of Oregon in February 2015. No stranger to the federal court system, Judge Russo began over 28 years of federal service in 1988 as a staff attorney to Judge James Redden and later as a senior staff attorney to Judge Ann Aiken.

Judge Russo's commitment to the court and the community is evidenced by a long list of professional involvement and community engagement. For example, she has served on the board of the MBA and on the MBA Court Liaison Committee, is a past president of the Oregon Chapter of the Federal Bar Association, and is a past board member of Oregon Women Lawyers, just to name a few. She also has volunteered with the Portland Women's Crisis Center and served as a volunteer mediator for Portland Neighborhood House, which helps resolve neighbor-to-neighbor disputes.

For over a decade she has taught the next generation of attorneys having served as an Assistant Professor at Lewis & Clark School of Law from 2006-08 and at University of Oregon School of Law from

2004 to present. She stresses the importance of clear and concise writing to law students and new attorneys alike, including through the OSB's New Lawyer Mentoring Program. The same advice on the importance of good writing applies to more established practitioners: in her view, there is little reason to file a motion for an over-length brief or a motion to strike a portion of opposing counsel's brief because it is generally unnecessary. Instead, Judge Russo appreciates succinct written submissions where it is readily apparent that the lawyer figured out beforehand what she or he needed to convey to the court and then does so in the most efficient manner.

Perhaps nothing illustrates Judge Russo's values and commitment to the community better than her participation in the "Behind the Robes" program for disadvantaged high school students. A court-initiated collaboration with Portland Public Schools, the program brings students from low-performing high schools for a one-day seminar to educate and humanize the federal court system. She currently is working to bring the same program to Eugene, where her chambers are located in the Wayne L. Morse U.S. Courthouse.



Judge Jolie Russo

A native Oregonian, Judge Russo experienced the world of financial insecurity as a child, and, like many native Oregonians, picked strawberries and other crops to earn money. She had her work permit by age 14 and did not know any lawyers growing up. Indeed, she readily admits that she did not know what a tort was until she found herself in torts class at Lewis & Clark Law School where she eventually received her Doctor of Jurisprudence and then began building her distinguished career.

Having once worked in a dive shop in Hawaii, she is still certified to dive but her current outdoor passion is hiking. When not hiking in the Northwest, Judge Russo has taken in the vistas in Ireland, the Dolomites in Italy, and is planning to trek the Tour du Mont Blanc, which circles Mont Blanc and passes through parts of Switzerland, Italy, and France.

Reflecting on her appointment, Judge Russo continues to feel honored and humbled to resolve cases and controversies and works each day to keep Oregon a special place to practice law given the collegiality of the bench and bar.

News from the Courthouse

Continued from page 10

not signed up for FlashAlerts from the court, please do so at www.flashalert.net. Select Portland on the map, select the Courts/District Attorneys group, and select Multnomah Circuit Court. The service will send out information about the status of the court.

Chief Civil Court Judge's Report - Judge Stephen Bushong

The court continues to report that civil trials are getting out on time as scheduled. The trial date obtained at the trial readiness conference is a firm date and allows for the court's system of trial assignment to work efficiently.

For trials five days or longer, lawyers need to send a letter, not an email, to Presiding Court six weeks in advance to get assigned a trial judge. They will try to find a judge that will hear cases on Friday. An SLR is being drafted to put this practice into rules that will go into effect February 1, if approved.

Civil trials can be set for the East County Courthouse during the first full week of each month. If you want to use the East County Courthouse for trial, make sure to select a call date that is during the first full week of the month.

Please use the OECI system to check on the status of documents, like orders, filed with the court. Calling the court clerk or judge's JA takes away resources when lawyers have the information available to them online. Also, for Rule 7 notices, if you get a continuance, the court will not send you a notice of the next dismissal date. Attorneys need to docket that on their own.

Lately there have been more requests to file documents under seal, and this causes concerns about access to documents filed in court. The Oregon Constitution allows for access to court documents, and there is a UTCR addressing this. Documents should not be filed under seal just because the parties want to limit access. A new SLR will be in effect February 1 that will address the process of obtaining a protective order and filing documents under seal. It is important to note that the entire document cannot be filed under seal, only the portions that are protected. Be conservative about what is kept out of the public record. Also, it is important to plan ahead to address confidential documents for MSJ filings and trial. Judge Bushong will have a "Tips for the Bench" on this topic in a few months, and the court may have a CLE in the spring on the issue of how to request the filing of documents under seal.

January 5 - The OSB is hosting an event for the incoming president.

25 Years of Service Legal Aid Night Clinic In Partnership with Stoel Rives and Dunn Carney

by Jill Mallery
Legal Aid Services of Oregon

Over the years, Stoel Rives and Dunn Carney have demonstrated a strong commitment to pro bono service, and each firm has a long history of giving back to the community. Examples of this are the firms' partnerships with Legal Aid Services of Oregon (LASO).

In 1992, Stoel Rives partnered with Multnomah County Legal Aid Service to open a night legal clinic. The goal of the clinic was to assist low-income clients who worked during the day and could not access legal services during regular office hours. The partnership between Stoel Rives and the organization, now known as Legal Aid Services of Oregon, remains strong. "Stoel Rives has been a strong supporter of access to justice for 25 years," states Julia Olsen, Director of the Portland Regional Office of Legal Aid.

In 2013, an additional partner joined the program. Attorney Elizabeth Knight of Dunn Carney approached LASO about pro bono opportunities for the firm. That inquiry was the start of a new partnership among Stoel

Rives, Dunn Carney and the LASO-Portland Regional Office. Attorneys from the law firms staff one clinic a month. Both Stoel Rives and Dunn Carney provide their attorneys with billable credit for up to 50 hours of pro bono service per year.

The night clinic is held twice a month in the evening hours in downtown Portland. Several attorneys from each firm meet with three to eight clients per clinic. Volunteer attorneys provide assistance on civil issues such as consumer law, disability benefits, small claims, landlord/tenant disputes, debt collection and garnishments, estate problems, and expungements.

Two attorneys in particular play an integral role in the current success of the Night Clinic: Amy Joseph Pedersen of Stoel Rives and Joshua Stadler of Dunn Carney.

Pedersen, together with Stoel Rives partner Bethany Bacci, serves as co-Pro Bono Coordinator for Stoel's Portland office and is a member of the



Amy Pedersen

firm-wide Executive Committee. She took over managing the night clinic in 2010 from her partner Charlie Hinkle, who had managed the work for many years before that.

Pedersen is a longtime advocate of pro bono work, and her dedication to assisting the most vulnerable clients is shown through her expansive volunteer service and support of the clinic. She received the MBA Pro Bono Award of Merit in 2011. In addition to being a regular volunteer for the clinic, she often assists Stoel Rives attorneys with the clinic cases they have taken on. Pedersen encourages Stoel Rives attorneys to participate in the clinic and believes, "Anyone can serve. All you need are some problem-solving skills and a little heart." Thanks to Pedersen's efforts and the firm's pro bono culture, the night clinic has wide support from her firm.



Josh Stadler

Stoel Rives hosts the legal clinic at its Portland law offices once a month. Since 2010, more than 65 Stoel Rives attorneys have taken at least one case through the clinic. According to many Stoel Rives attorney volunteers, clinic work is some of the most rewarding they have ever done. It is also some of their most challenging work, due to the complexities of the clients' situations.

Pedersen explains the importance of the work and the challenges the clients face, "our clients are all very poor, some do not speak English and many have been taken advantage of by others who are more powerful. Many are disabled and cannot advocate for themselves. Legal problems can be overwhelming to people who already face challenges many of us can't even begin to comprehend."

A recent example of Pedersen's persistence in helping her clients was demonstrated in a case in

which, after various filings in probate court, Pedersen succeeded in having her 22 year-old client become appointed guardian for the client's eight-year-old half-sister after their parents passed away. The client can now manage her sister's medical and school needs without fear that her sister will be taken away.

Stadler, who was recently elected partner at Dunn Carney and practices in the firm's Litigation Practice Group, has served on Dunn Carney's Pro Bono Committee for several years and as the chair of the committee for the past year. In that role, he manages the night clinic, implements the firm's pro bono protocol and policies, explores new pro bono opportunities for the firm, and encourages attorneys to volunteer. Stadler himself is an active volunteer and supporter of expanding access to justice to low-income populations. Like Pedersen at Stoel Rives, he often provides Dunn Carney attorneys with assistance and advice on their clinic cases.

Stadler believes, "there is something special and uniquely satisfying about helping a person who would not typically have access to professional legal help and advice." He has shown his commitment to pro bono and leads by example, not only through his volunteer work for the clinic, but also by speaking

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mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, which includes any MBA member in practice less than six years or under the age of 36. The YLS provides leadership, networking, professional development and service opportunities. And we have fun!

Ask the Expert

Dear Expert:

I just recently graduated law school and am learning that many of the realities of practicing law are not taught to students in law school. Specifically, it is becoming more and more difficult to effectively manage my time and workload at the office. I'm feeling overwhelmed; do you have any advice?

- Overwhelmed

Dear Overwhelmed:

From what I have observed of lawyers, many of us are conditioned from an early age to timely complete homework, promptly perform chores and balance extracurricular activities with family and personal time. While those time management skills are beneficial in many ways, they do not necessarily prepare young lawyers for the new world of practicing law, particularly after growing accustomed to the syllabus, reading list and exam schedule that accompany each class in college and law school. Many young lawyers enter the workforce without any experience managing the amorphous schedule demands that confront new associates and solo practitioners.

For example, what do you do when you first start out on your own or at a firm and suddenly you have five cases from different clients or partners that all need immediate attention? First off, know that all of us have been in your shoes and survived to tell our tales. While there is an initial learning curve, you will find the way to master your time management. Start with an initial assessment of the projects on your plate and set expectations. Be sure to immediately identify:

background facts; any assumptions underlying the case or assignment; what documents may be helpful to you and where they are located; how much time you should spend; and, most importantly, the deadline. These questions help gauge the expectations of the client or the partner, and it is important to communicate up front so that the person giving you the work understands a realistic timeline for you to complete the project.

A vital, perhaps the *most* vital, aspect of balancing your new workload is effectively prioritizing assignments. Hopefully you have learned how to prioritize homework through years of schooling and those same skills should help you navigate the practice of law. The main difference from school is that you will often have less time to complete assignments and you do not usually know what else is headed your way or when. One way to prioritize the demands of an ever-changing work schedule is to keep a running list of tasks in descending order of priority, crossing out tasks once they are completed. It is a simple, but essential, tool to stay organized.

Finally, when all else fails, or even before then, ask for advice from your peers. Whether they are fellow associates or other lawyers in your network, many of them have probably felt the same way or had the same question as you and found a way to succeed. Your network of colleagues is an invaluable resource that you should lean on as often as possible.

Sooner or later, time management of your law practice will become second nature and you will be the one giving advice.

Jeanne Sinnott
YLS Member Spotlight

by Evan Lenneberg
YLS Board

Jeanne Sinnott, a partner at Miller Nash Graham & Dunn LLP, knows the value of the MBA's Young Lawyers Section (YLS). Jeanne began her YLS tenure as a member of the Service to the Public Committee in 2008, was later tapped to join the Board of Directors, and eventually became the YLS President.

Today, Jeanne makes a point of helping young lawyers at Miller Nash, and across the Portland legal community, find their way at the outset of their careers. Jeanne notes that "one of the most important, and difficult, aspects of becoming a successful lawyer is developing name recognition and building a book of business." When first starting out, young lawyers are often told to attend marketing events, but events directed at the bar in general can be difficult to navigate. Established attorneys use the events to catch up with their contemporaries and, although well meaning, can be intimidating for those of us that

are new to the Multnomah County legal community. Jeanne found the YLS to be the perfect antidote, both professionally and personally.

"At YLS events and on YLS committees, young lawyers are among peers - comfortable and at liberty to be themselves," Jeanne explains. "The YLS helped me make my way through our legal community and allowed me to grow as a lawyer." Jeanne built her referral network in part through the YLS, and Jeanne continues to refer work to, and receive referrals from, lawyers she met during her tenure on YLS committees and later as a director.

Additionally, the YLS offers a unique opportunity for young lawyers to gain experience in organizational governance in an environment meant for those of us just starting out. Now a YLS veteran, Jeanne is a member of various boards across several types of organizations, and she often relies on knowledge she gained in the YLS leadership.



Jeanne Sinnott

Benefits of involvement in the YLS don't end with professional development though. Not only are YLS committee and board meetings enjoyable, but Jeanne actually met some of her closest friends at YLS events and solidified those personal relationships on committees, and later as a director.

As a partner at Miller Nash, Jeanne specializes in litigation, bankruptcy, and debtor-creditor work. When she's not working, Jeanne spends time with her husband Rob (also a lawyer) and two boys, Henry and Wesley.

Amanda Bruen
Pro Bono Spotlight

by Rebecca Morgan
YLS Pro Bono Committee

Amanda Bruen had experience representing domestic violence survivors in court before she ever joined the bar. As a certified law student, she enrolled in the Lewis & Clark Law School Legal Clinic to advocate for survivors at hearings when their Family Abuse Prevention Act or Elderly Persons and Persons with Disabilities Abuse Prevention Act restraining orders were contested. After passing the bar, Amanda used that experience to build a robust pro bono practice with the Domestic Violence Project of Legal Aid's Volunteer Lawyers Project.

In less than a year, Bruen has invested over 100 pro bono hours and represented nearly 20 clients, all survivors of abuse at the hands of family and loved ones, in contested restraining order hearings through the Domestic Violence Project.

"I've taken nearly every case that Legal Aid has referred to me," Bruen says of her generous undertaking. "I consider it my entire practice right now. Being able to help other people is motivating; it's why I get out of bed in the morning. Knowing I can make a difference in others' lives makes my life more fulfilling."

Her work has not gone unnoticed. Jill Mallery, Pro Bono Coordinator for Legal Aid's Portland regional office, cites Amanda as the most active Domestic Violence Project volunteer of 2016. "Amanda is a truly dedicated pro bono attorney for Legal Aid's Domestic Violence Project. She is always willing to help and is quick to accept cases. She works tirelessly representing survivors of domestic violence in their contested restraining order hearings in Multnomah, Clackamas, and Washington counties," Mallery says. "Amanda has shown herself to be dependable and conscientious. She is a strong supporter of the Domestic Violence Project and works hard advocating for her clients."

For other young lawyers interested in building a robust pro bono practice, Amanda advises: "Find opportunities to do the work, before anyone asks you to." Her experience as a certified law student made the domestic violence project a natural fit for her, but she encourages others to search for, or even create, pro bono opportunities.

Amanda acknowledges that domestic violence cases can be emotionally draining, especially when her client is an elderly or disabled person without a



Amanda Bruen

strong support system. In one of her toughest cases so far, Amanda represented a woman in a restraining order hearing against her husband. If upheld, the restraining order would stay in effect for a period of one year. During the first interview with her client, Amanda learned that the woman had a terminal illness and was not expected to live longer than one year. "I realized in talking to her that we were talking about her safety for the rest of her life," she says.

Despite the emotional tolls, Amanda ultimately remains optimistic about the work, explaining that she finds positive takeaways. "Rather than be sad about the circumstances [of a case], I can be happy knowing that I was there to help them when they needed someone." That attitude allows Amanda to prioritize the needs of vulnerable clients and be a source of stability during an otherwise disorienting or even traumatic experience.

mba yls | EVENT

YLS Drop-in Social

Paddy's
65 SW Yamhill St., Portland
Tuesday, January 10
7:30-9:30 p.m.

Join the YLS at Paddy's (65 SW Yamhill St, Downtown Portland) on Tuesday, January 10 from 7:30-9:30pm and watch the Portland Trail Blazers take on the Los Angeles Lakers. Appetizers will be provided.

No RSVP necessary.

Wills for Heroes November Clinic

Last November, the YLS Pro Bono Committee held a Wills for Heroes event that provided free wills and basic estate planning services to personnel from Tualatin Police Department, Multnomah County Sheriff and other local organizations. Wills for Heroes is a national program to provide wills and other essential legal documents to first responders.



Melinda Mayes
Jason Pierson
Caitlin Shin
Danielle Tanner
Trisha Thompson
Jennifer Vitello
Heather Unger

Thank you to our November clinic volunteers:

Lauren Barnhart
Brent Hamilton
David Malcolm



mba yls|CLE

2017 Young Litigators Forum

A Nine-Part Weekly Series for Newer Lawyers
Beginning Thursday, January 12 from 12-2 p.m.
(Consecutive classes all 12-1 p.m.)

This annual series of CLE seminars gives newer lawyers essential tools to develop practical litigation skills. The Young Litigators Forum addresses fundamental litigation subjects ranging from “Complaints, Answers and Pre-Answer Motions” through “Post Trial Matters.” Though each CLE is sure to discuss rules and strategy, the committee used practicality as the main criterion for selecting topics. The series aims to help you become a skilled and well-rounded litigator for the benefit of the legal community and those we serve.

Nine hours of practical skills and one hour of ethics OSB MCLE credit will be applied for in total.

Series registration is \$135 for members - see insert for details or contact the MBA at 503.222.3275.

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Yoona Park's practice focuses on complex business litigation, securities law, and employment class actions. She was named one of the *Best Lawyers in America* for 2017. Yoona has been recognized in *Benchmark Litigation* as an Oregon “Future Star” (2015) and in *Oregon Super Lawyers* as a “Rising Star” (2009-2013) in both Business Litigation and Employment Litigation categories. Yoona received

her undergraduate degree from Dartmouth College, and earned her law degree from Northwestern School of Law of Lewis & Clark College, where she was a recipient of the Dean's Fellowship for Excellence and a member of the Lewis & Clark Law Review.



Ben Leedy's practice focuses on the areas of commercial real estate acquisitions and dispositions, real estate finance, leasing and real estate development. He frequently advises clients in connection with purchase and sale transactions, office, retail and industrial leases, and secured lending transactions. Ben has been recognized in *Oregon Super Lawyers* as a “Rising Star” from 2012 - 2016. Ben received

his undergraduate degree from the University of Portland and went on to earn his law degree from Northwestern School of Law of Lewis & Clark College. While at Lewis & Clark, Ben received the Dean's Fellowship for Excellence, was a Business Law Roundtable Scholar, and earned a Certificate in General Business Law.

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Legal Aid Night Clinic

Continued from page 11

on panels about the value of pro bono service, volunteering with Legal Aid's Domestic Violence Project, and through a long-running immigration pro bono matter where he is assisting a low-income U.S. citizen with obtaining legal status for her husband, a native of Mexico, through the extreme hardship waiver petition process. "People deserve access to justice and a helping hand when they are facing issues they cannot solve themselves," Stadler explains.

In 2015, the MBA awarded Stadler the Michael E. Haglund Pro Bono Award which recognizes exceptional pro bono service by young lawyers.

Significant time and effort goes into making the night clinic run smoothly at each firm every month. Sandy Gilcher-Kimmel, Practice Assistant at Stoel Rives, Roberta Henderson, Practice Assistant at Dunn Carney, and Joy Medrano, of the Portland Regional Office help with a variety of tasks, including client intake, conflicts checks, preparing files and handling LASO paperwork. A big thanks for all their assistance and support of the clinic.

It is estimated that as many as 236,000 people in the Portland Regional Office service area meet the income guidelines for LASO. Thanks to the attorneys who volunteer for the night clinic, nearly 1,000 clients have

been scheduled for the clinic since 2007 and more than 4,600 hours have been spent helping clients resolve their legal issues. Pedersen and Stadler are true champions for providing legal assistance to low income clients and agree that pro bono work is the right thing to do. According to Julia Olsen, "The assistance that is provided by Stoel Rives and Dunn Carney is invaluable. Without the help of these law firms and the lawyers that volunteer their time, vulnerable low income clients would not get critical legal assistance." Pedersen summarizes, "Our lawyers staff the night clinic because it is the right thing to do. It's as simple as that." And Stadler says, "The high-level of participation in the night clinic by Dunn Carney lawyers speaks to the culture of our firm; it is a product of a shared belief that pro bono service is the right thing to do."

With the 25th anniversary of the night clinic, LASO greatly appreciates the dedication and commitment of Stoel Rives and Dunn Carney to serving low-income populations and expanding access to justice through their support of the night clinic.

Following is a list of Dunn Carney and Stoel Rives attorneys who volunteered for the night clinic in 2016. Many thanks for your time and efforts!

Dunn Carney LLP

Jonathan Bennett
David Boyer

John Chambers
Kenneth Davis
Alyssa Engelberg
Ashlee Espailat
Anne Foster
Heather Guthrie
Timothy Hering
Eric Kekel
Elizabeth Knight
Allyson Krueger
Eva Marcotrigiano
Jeana McGlasson
Brittany Medlin
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Brian Parrott
Lauren Russell
Samuel Smith
Joshua Stadler
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Bethany Bacci
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Margaret Hill Noto
Amy Joseph Pedersen
Edward Piper
Laura Rosenbaum
Brandy Sargent
Hayley Siltanen
Samantha Sondag

Tips From the Bench

Continued from page 10

370 team assists in scheduling defendants for community-based evaluations and helps clients attend all court dates.

Once the report is received, court staff places the case on the following Tuesday return docket at 2 p.m. and notifies the attorneys by sending any reports out via a secure email. The court addresses release as needed and sets court dates on the regular docket. If the ability to aid and assist is contested, Judge Jones schedules a follow-up hearing.

In summary, the new Aid & Assist procedures are as follows:

1. Upon receiving an Aid & Assist case, check in with the Forensic Diversion "370" Team. Help 370 staff and the client develop a community restoration plan if appropriate. Gather available records and reports, including obtaining an evaluation from a certified evaluator if needed.

2. Set the case on the JC2 2:30 p.m. Aid & Assist Docket and provide available reports to the court and DA. Fitness to proceed hearings should not be set on any other docket.

3. Attend the Monday morning staffing and the Tuesday JC2 hearing.

4. If the defendant is found unable to aid and assist, monitor the anticipated date of return and be ready to respond quickly upon notice of return or notice of violation of a release condition. Remember there are no status check dates that require court appearances on the CPC or drug call dockets, but status check dates are set on presiding call and domestic violence dockets.

Additional information handouts and referral forms are under development. In the meantime, attorneys should feel free to contact Judge Jones' JA Jan Napier with any questions at janice.d.napier@ojd.state.or.us or at 503.988.3540.

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Jane Clark
Hon. Mary Deits
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The Corner Office PROFESSIONALISM

Let's talk about discovery. We all know that cases are won or lost in the level of preparation for trial. However, the cost of litigation and other factors have led to fewer and fewer trials. Consequently, the primary arena for practicing civil litigation skills is in working with the discovery tools. Therefore, one's reputation as an effective litigator, and as a true professional, is often established in the discovery arena.

The orientations of the attorney seeking discovery and the attorney opposing discovery are diametrically opposed as revealed in a recent conversation between two such lawyers. Lawyer 1: "I've never met a plaintiff's lawyer who does not believe in his heart of hearts that the defendant is hiding a smoking gun document." Lawyer 2: "Nearly every client of mine believes that your client is hiding that smoking gun document."

Discovery can be sorted into two categories, confirming and exploring. Often a party simply wants to confirm that the testimony, document, or other evidence from the opposing party is going to be what the requesting party expects, i.e., whether the contract language is exactly as in the document held by the requesting party with no annotations or alterations. Other times the requesting party is seeking evidence maintained by the responding party, never previously seen by the requesting party, the existence, form, and quantity of which can only be surmised prior to production.

Certain Oregon Rules of Professional Conduct are especially implicated in discovery disputes, beyond the universally applicable duties of competence, diligence, and honesty. ORPC 3.4 is perhaps primary. Lawyers shall not "knowingly and unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value" or counsel or assist another person to do so. ORPC 3.4(a). Lawyers shall not "falsify evidence; [or] counsel or assist a witness to testify

falsely." ORPC 3.4(b). Lawyers shall not "in pretrial procedure, knowingly make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request." ORPC 3.4(d).

How do the ethics rules' minimum standards relate to the MBA's standards for professionalism as stated in the MBA's Commitment to Professionalism? "We will...be courteous, fair and respectful...; accurately represent the facts...; only pursue litigation, engage in conduct, or take positions that have merit; act in a timely fashion...; [and] seek... to resolve matters with a minimum of legal expense to all involved."

In this column we will focus on requests for the production of documents under ORCP 43. (Surprisingly, several surveys have identified requests for documents, and the attendant responses, as the most common area of discovery abuse.) In a request for production, is it really necessary to have three or more pages of boilerplate introductory instructions? How about that section of convoluted "definitions" that clarify nothing and fail to even provide for the ability to shorten the actual requests? Does opposing counsel have a duty of competence to read all of that drivel? Finally, can we word the requests so that, for a "reasonable person," the request would identify those items sought without a broad brush that seeks everything? In response to the request, do the overlong, undifferentiated pro forma objections and "without waiver" verbiage included in responding to each and every request really serve anyone's interest? Could the response in almost every case simply be, "Attached as Exhibit 1 are 16 documents responsive to Request #1"?

Production of documents was challenging enough before everyone went digital. Where there was once a binder, or perhaps a banker's box, of papers in an "average" case, now there is an explosion of electronically stored information. Effective January 1, 2018, a new

amendment to ORCP 43 E will allow any party to request a meeting with the opposing party very early in the case to discuss the scope of production, the form of production, data sources, search terms, preservation, costs, privileges, metadata, and other relevant issues. In this way, the responding party can learn what the requesting party wants and determine whether the discovery exists and the most efficient way to gather and to deliver the response. Likewise, a requesting party can gain insight into how information is maintained and refine the request. Good faith compliance with the Rule 43 E conferral requirement will be considered by the court in ruling on a motion to compel or a motion for a protective order. (This conferral is in addition to the UTCR 5.010 duty to confer just prior to the filing of a discovery motion, which occurs much later and after the parties have reached an impasse.)

There is no reason to wait for the amendment to Rule 43 to become effective. Parties can take the initiative to meet early in a case to identify and clarify what discovery is wanted and what discovery is readily available, or available at all. Meeting and talking in good faith about discovery issues early in the life of a case will enhance the level of professionalism and will likely resolve matters more quickly while minimizing legal expense for all involved.

The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer your question. Questions may be submitted anonymously.

Pro Bono Volunteers

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

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

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

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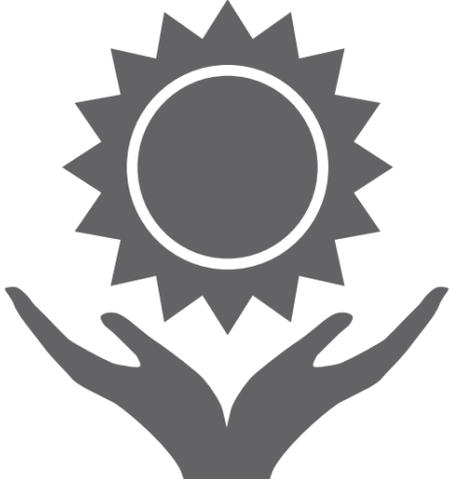
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Cosgrave Vergeer Kester LLP is pleased to announce

Megan M. Evans has become partner of the firm.

Megan's practice focuses on complex litigation, construction related disputes and advising clients on software matters.



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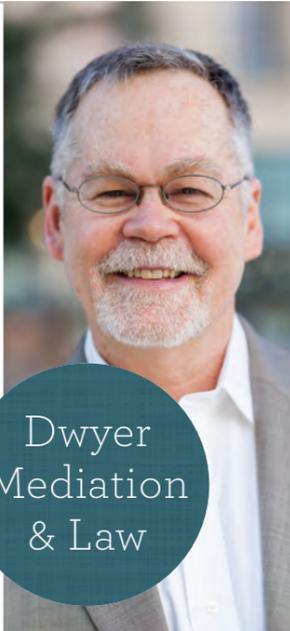
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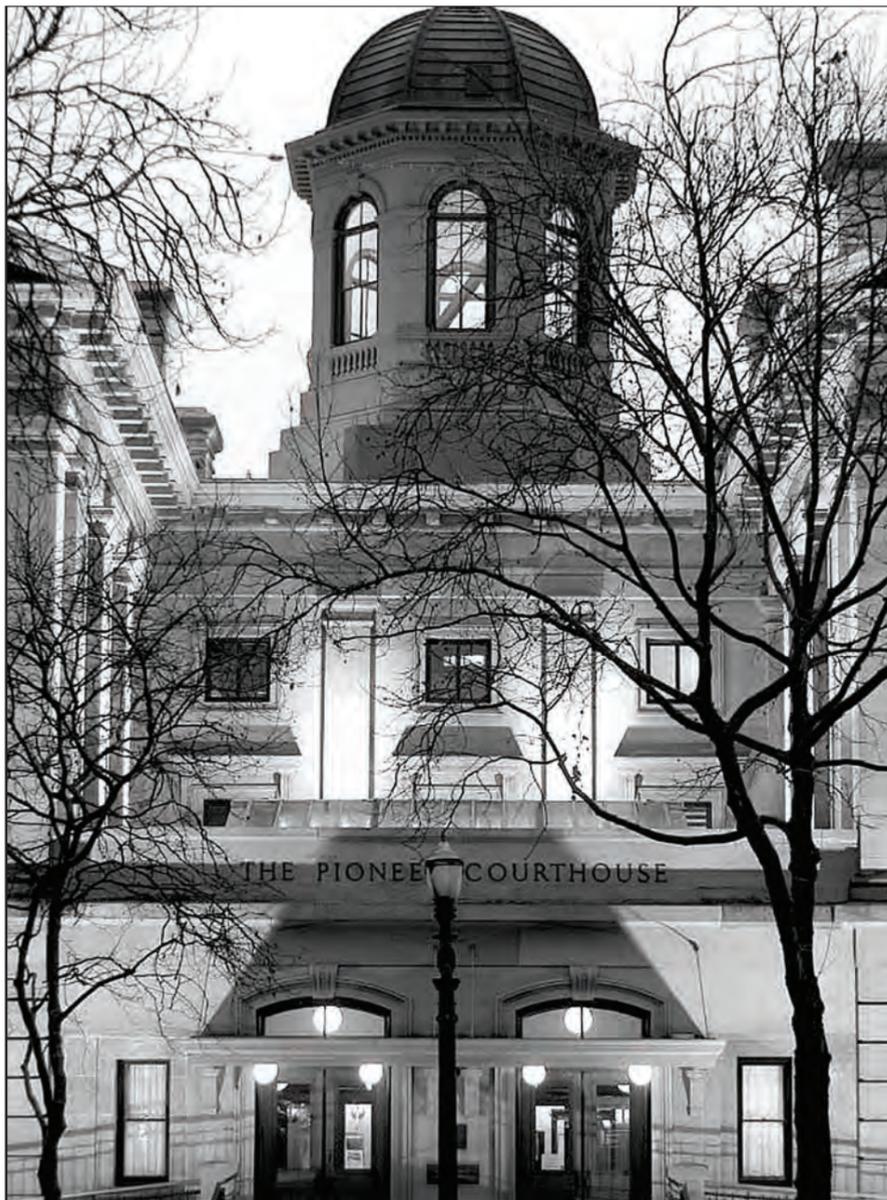
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Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.





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MBF Invites Letters of Inquiry for 2017 Grants

by Pamela Hubbs
Office and Foundation Administrator

Local nonprofits interested in receiving 2017 grant funding for programs that promote understanding of the justice system, the importance of voting, the political process or civic involvement are encouraged to submit a letter of inquiry to the Multnomah Bar Foundation (MBF) by January 20. Grants are awarded to 501(c)(3) organizations whose programs increase civic education and involvement and understanding of the rule of law. Priority is given to new projects that utilize MBA volunteers in the geographic area served by the MBA.



Criteria for letters of inquiry, deadlines, and other information about the grants program may be found at www.mbabar.org/foundation/grants.html. Grant awards will be announced and funded in May.

Thanks to the generous support of the legal community, the MBF Civic Education Fund

has awarded over \$360,000 in grants since 2006. In 2016, the MBF granted a total of \$44,495 to Bus Project Foundation, City Club of Portland, Elders in Action, League of Women Voters of Oregon, League of Women Voters of Portland, MetroEast Community Media, Northwest Family Services, Oregon Nikkei Endowment, Oregon Tradeswomen, Inc., Saturday Academy and Sponsors Organized to Assist Refugees.

For more information, please contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).

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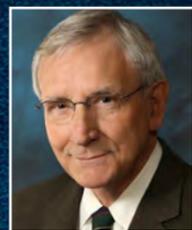
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