

Join the MBA's New Initiative to Help Diversify Our Bar

by Emilee Preble & Emily Teplin Fox
Equality & Diversity Committee



Emilee Preble



Emily Teplin Fox

Diversifying the legal profession is more crucial than ever. Lawyers maintain the legal system, a bedrock of our democracy; our ranks should reflect the increasingly diverse people subject to it. Growing numbers of clients expect the law firms they hire to reflect the diversity of their businesses. When law firms do not demonstrate that diversity, they are at a competitive disadvantage. Diversity also breeds innovation. Heterogeneous groups tend to conduct better analyses and arrive at better decisions. And when our profession is not diverse, it is excluding top talent from underrepresented groups. Yet despite the importance of diversity, law persists as one of the country's least diverse professions.

For these and many other reasons, we agree with then-judge Ellen Rosenblum's statement in the American Bar Association's 2010 Report on Diversity in the Legal Profession: "In the 21st Century, the legal profession faces no greater challenge than the imperative to advance diversity throughout our ranks."

The MBA, through its Equality & Diversity Committee, is partnering with local law firms and law schools to launch a new initiative aimed at diversifying our bar: the MBA Bar Fellows Program. The goal of the program is to recruit and support diverse law students who plan to practice in Multnomah County.

Participants in the Fellows Program must: (1) be enrolled as full-time law students at the law schools of Lewis & Clark or the University of Oregon, (2) have an intent to return to the law school for their second year, (3) maintain appropriate academic credentials, (4) have the potential to diversify the legal profession through membership in a group underrepresented in the legal profession, including but not limited to racial, ethnic, and religious minorities, people with disabilities, and LGBTQ people, (5) commit to participating in the MBA Bar Fellows summer fellowship program the summer after their first year, and preferably (6) demonstrate financial need.

Each Bar Fellow will receive:

- **Tuition Scholarship up to \$60,000.** The two law schools with a presence in Multnomah County – the University of Oregon

and Lewis & Clark – will select and admit the fellows and offer scholarships (\$20,000 per student, per year, contingent on the participation requirements set forth above) for at least the first three years of the program.

- **Ten-Week Paid Summer Fellowship.** Local corporations and/or law firms will host the Bar Fellows for a 10-week summer fellowship after the first year of law school, with no expectation of continued employment. Depending on sponsors' preferences, fellows may spend the entire 10 weeks at a single sponsor's workplace, or rotate for five weeks between two sponsors. Sponsors will pay the Bar Fellows a salary (not a scholarship) of \$10,000 for the 10-week summer fellowship.

Fellows will be matched with sponsors based on mutual rankings after a "meet and greet" event at the beginning of the school year and an opportunity for sponsors to meet and interview each fellow in the January preceding the summer fellowship.

- **Mentorship.** A key feature of the MBA Bar Fellows Program will be a focus on mentorship. The members of the program will meet as a group four times throughout the year with a program mentor (likely a judge). In addition to group mentorship, each fellow will be offered limited ongoing mentorship from lawyers in the sponsoring law firms or company legal departments.

...the legal profession faces no greater challenge than the imperative to advance diversity throughout our ranks.

The MBA Bar Fellows Program is modeled after Washington's King County Diversity Fellows Program, also called the 'Gregoire Fellows' program, that welcomed its nine fellows in the fall of 2015 and has won praise within and outside Seattle.

Our goal is to launch the pilot program in the late summer, with law firms and corporate law departments committing to sponsor up to three fellows at each law school. The law schools will then recruit applicants through the rest of 2017, eventually naming the inaugural class of MBA Bar Fellows who will begin law school in the fall of 2018.

If you work for a local law firm or company, please partner with us to diversify our local bar. Your partnership commitment will include (1) funding and providing a 10-week summer fellowship for one first year law student for the summer of 2019 at a salary of \$10,000, and (2) providing one or more lawyers in your firm or legal department to mentor a fellow during her first year of law school. Law firms and corporate legal departments are encouraged to collaborate on a sponsorship and will have wide latitude in how they structure the summer program. Sponsors are not expected to include fellows in their summer associate programs.

Please express your interest in the Bar Fellows Program by contacting Emily Teplin Fox (efox@oregonlawcenter.org, 503.473.8314) by May 1. Many thanks to the MBA Board for its support of this program; to the Equality & Diversity Committee for getting it launched; and most importantly, to the law schools and to the law firms (Miller Nash Graham & Dunn LLP, and Dunn Carney LLP) that have already agreed to participate as sponsors.

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.

MARCH

3.2 Thursday
Presiding Court Update
Judge Nan Waller

3.9 Thursday
Great Lawyer, Bad Manager: Avoiding the Most Common Mistakes Lawyers and Law Firms Make as Employers
Dan Rowan

3.15 Wednesday
Family Law Update
Judge Maureen McKnight
Thomas Bittner
Sarah Bond

3.16 Thursday
Filing Claims Against Contractors for Residential Construction Defects
Martha Hodgkinson
Adele Ridenour

3.21 Tuesday
Bond and Lien Law in Oregon
William Fig

APRIL

4.12 Wednesday
Taking Some Sticks from the Property Rights Bundle
Laurie Hager

4.13 Thursday
Business Valuations & Financial Forensics: Why & How
Darrell Dorrell
Gregory Gadawski

4.19 Wednesday
Appellate Practice: What Every Trial Attorney Needs to Know
Shenoa Payne
Julene M. Quinn

4.20 Thursday
What Every Lawyer Should Know About Driving Under the Influence
David Eder
Mae Lee Browning

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Multnomah Bar Association
620 SW 5th Ave Suite 1220
Portland, Oregon 97204
503.222.3275
Fax 503.243.1881
www.mbabar.org

Save the Date

**MBA 111th Annual Meeting,
Dinner & Judges Reception**

Tuesday, May 16

5-8 p.m.

**Portland Marriott Downtown Waterfront
1401 SW Naito Parkway**

**Sponsorship opportunities available.
Contact Kathy at the MBA at 503.222.3275.**

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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 Raises Over \$16,000 for Multnomah CourtCare

by Kathy Modie

MBA Director, Events & Programs

What better way to raise money for a good cause than with a night of family fun, bowling, raffle prizes and a best bowling shirt competition? On Saturday, February 4, about 250 MBA members and their families participated in the MBA's 15th Annual WinterSmash fundraiser at AMF Pro 300 Lanes in Portland.

In the spirit of fun, teams gathered to vie for prizes based on their scores and outfits.

Best team score and the coveted bowling trophy went to the Bodyfelt Mount team, with their top three individual scores combined at 468.

There were a lot of great bowling shirts again this year. Bodyfelt Mount edged out the competition to win the prize for best shirt with their Game of Thrones-themed shirts.

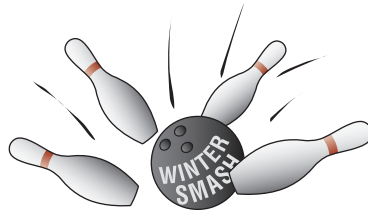
The prize winner for best individual score went to Chris Hayes from the Folawn Alterman & Richardson team, with a score of 187.

The recipient of the Big Lebowski award - the team with the most players this year - was Bodyfelt Mount, with 28 bowlers signed up. Folawn Alterman & Richardson and Wyse Kadish both registered more than 20 bowlers.

The 2017 WinterSmash benefited Multnomah CourtCare, the free drop-in childcare program for children of parents who have no other alternative than to take their children with them to court.

Thank you to Harrang Long Gary Rudnick for sponsoring the food and beverages again this year, and to our sponsors and all who participated. Thank you also to the WinterSmash Subcommittee, chaired by Jordan New, for planning such a great event. Thank you, Rebecca Cambreleng, Tony Kullen, Jordan New, and Kevin Parks for volunteering at the event.

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Portland Marriott Downtown Waterfront
Portland Timbers
Red Star Tavern
Johanna Ware and Tony Kullen
Widmer Brothers Brewing
Wyse Kadish LLP

See WinterSmash photos at www.mbabar.org/Membership/WinterSmash2017.html, and on Facebook and Twitter.

Correction: The MBA apologizes for leaving Bodyfelt Mount LLP off the list of WinterSmash sponsors in the February 2017 issue of the *Multnomah Lawyer*. Thank you Bodyfelt Mount LLP for your ongoing support of this important CourtCare fundraiser.



Calendar

MARCH

8 Wednesday
Solo & Small Firm Workshop: Having a Vision
See p. 4

10 Friday
April Multnomah Lawyer deadline

OWLS Roberts Deiz Awards Dinner

APRIL

5 Wednesday
East County Social
RSVP to pamela@mbabar.org

10 Monday
May Multnomah Lawyer deadline

12 Wednesday
Solo & Small Firm Workshop: Engagement Letters
See p. 18

13 Thursday
Judicial Brown Bag CLE: Pro Se Litigants
RSVP to pamela@mbabar.org

26 Wednesday
Administrative Professionals Day

MAY

1 Monday
CourtCare Campaign begins

4 Thursday
YOUthFILM Screening

10 Wednesday
May Multnomah Lawyer deadline

16 Tuesday
MBA Annual Meeting & Dinner
www.mbabar.org

18 Thursday
Tillicum Gathering
www.mbabar.org



Harrang Long Gary Rudnick bowlers



Bodyfelt Mount bowlers were excited to win the trophy, best shirt contest and Big Lebowski award this year.

mba|EVENT

MBA East County Social

Wednesday, April 5
Warren Allen LLP
850 NE 122nd Ave., Portland
4-5:30 p.m.

East County MBA members are invited to attend a social on Wednesday, April 5 at the firm of Warren Allen LLP. Presiding Judge Nan Waller will share a report on the courts.

Please RSVP to pamela@mbabar.org if you plan to attend.



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.

Presiding Court Update

Thursday, March 2, 2017 - 3-5 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.

Great Lawyer, Bad Manager: Avoiding the Most Common Mistakes Lawyers and Law Firms Make as Employers

Thursday, March 9, 2017 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Dan Rowan, an attorney at Bullard Law, will discuss the most common mistakes lawyers make as employers and provide practical guidance on how to avoid them. Topics will include separation agreements, use of social media, final paychecks, access to personnel files, retaliation, and over a dozen others issues that can become traps for the unwary employer. Throughout the presentation, Dan will include examples of how these issues play out in the real world to supplement concise summaries of the substantive law. The presentation will conclude with takeaways and questions as time permits. Dan will draw upon the firm's experience representing employers including representing law firms and fellow members of the bar.

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

Family Law Update

Wednesday, March 15, 2017 - 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

On March 15, the MBA will hold its annual two-hour Family Law Update. Multnomah County Chief Family Court **Judge Maureen McKnight** will be joined by **Thomas Bittner** of Schulte, Anderson, Downes, Aronson & Bittner; and **Sarah Bond** of Zimmer, Bond, Fay & Overlund.

Our speakers will provide family law practitioners with information on changes, updates, and reminders regarding Multnomah County Family Court procedures and practices, as well as valuable updates on appellate case law, including the most recent spousal support cases.

For more information: Contact Terry Wright, Willamette College of Law Director of Externships at 503.375.5431. For registration questions, contact the MBA at 503.222.3275.

Filing Claims Against Contractors for Residential Construction Defects: What Lawyers Need to Know from a Plaintiff and Defense Perspective

Thursday, March 16, 2017 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Make sure you know the requirements for both filing and defending claims against residential construction contractors and learn what it takes to build/defend your case. We are pleased to announce that **Adele Ridenour**, Ball Janik and **Martha Hodgkinson**, Hodgkinson Street Mephram will present this class.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.542.3107. For registration questions, contact the MBA at 503.222.3275.

Bond and Lien Law in Oregon

Tuesday, March 21, 2017 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Join us for a primer on Oregon bond and lien law, with a brief comparison of Oregon to Washington. **William Fig**, Sussman Shank, is presenting this class intended for attorneys who practice in the areas of construction and real estate.

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

Taking Some Sticks from the Property Rights Bundle: Adverse Possession, Prescriptive Easements, and Other Real Property Encumbrances

Wednesday, April 12, 2017 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Litigator **Laurie Hager**, a partner in Sussman Shank LLP's Real Estate and Construction practice groups, will discuss Oregon law on hidden encumbrances that may impact real property rights. This presentation will focus on the rules, historical developments, and recent case law on adverse possession and prescriptive easements. This class is a must-attend for transactional and litigation attorneys who represent developers or whose practices involve real property issues.

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

Appellate Practice: What Every Trial Attorney Needs to Know

Wednesday, April 19, 2017 - 2:30-4:30 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This seminar will cover appellate practice tips, tricks and pitfalls that trial attorneys should consider in their pre-appeal and appellate practice. This seminar will address considerations in whether to appeal, preserving issues for appeal, working with co-counsel and when to retain appellate counsel, briefing, spotting procedural problems with the other side's appellate arguments, and preparing for and conducting oral argument. It will cover appellate practice in multiple forums and differences a practitioner may encounter. The speakers will field questions related to appellate practice and procedure. **Shenoa Payne**, Attorney at Law, provides general civil litigation and appellate practice consultation for trial attorneys, helping to navigate the complex legal issues in all stages of the case, from pre-filing, motions practice, preservation of issues for appeal, trial motions and support, and attorney fee petitions. **Julene M. Quinn**, of Julene M Quinn LLC, specializes in appellate practice.

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

What Every Lawyer Should Know About Driving Under the Influence Intoxicant Cases

Thursday, April 20, 2017 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Presenters **David Eder**, Thuemmel Uhle & Eder and **Mae Lee Browning**, Cohen & Browning will cover the DUII investigative procedure for alcohol and drugs. Additionally, the course will focus on what to say if you get a phone call in the middle of the night asking for legal advice from someone arrested for a DUII, important timelines and great information for anyone who might have a drink and then get behind the wheel.

For more information: Contact Karen Thompson, Attorney at Law at 971.340.0963. For registration questions, contact the MBA at 503.222.3275.

Annual Probate Update

Tuesday, May 23, 2017 - 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

The MBA presents the 2017 Annual Probate Update, featuring **Judge Janelle Wipper**, Washington County; **Judge Robert Herndon**, Clackamas County; **Judge Katherine Tennyson**, Multnomah County County; and **Sibylle Baer**, Cartwright Baer Johansson PC. Ms. Baer will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the metro area. This CLE is a must for all probate practitioners and/or their staff.

For more information: Contact Mindy Stannard, McKean Smith at 503.567.7967. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

The Solo & Small Firm Committee presents
THE BUSINESS OF PRACTICING LAW

Wednesday, March 8
 Workshop: 3-4 p.m.
 Social hour: 4-5 p.m.

Hotel Monaco, 506 SW Washington, Portland

While the practice of law is a profession, every law practice is also a business. Having a vision for your firm and creating a business plan tailored to that vision will provide helpful insight into your own values and priorities, and how to grow and sustain your law practice.

The MBA Solo & Small Firm Committee is pleased to present this afternoon workshop where **Courtney Angeli**, **Andrew Altschul**, both of Buchanan Angeli Altschul & Sullivan, and **Chris Kayser**, of Larkins Vacura Kayser, will discuss these issues and various approaches that firms have taken. You will hear about specific strategies for specific goals, what is realistic, whether a business plan is even necessary for some practices and how plans can be implemented. Following the workshop, join us for networking and socializing, light hors d'oeuvres and drinks.

The MBA will apply for one hour of personal management CLE credit.

Cost: \$20 members/\$60 non-members



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The Professional Liability Fund is offering Oregon lawyers free use of a conference room located at 520 SW Yamhill Street, Suite 1025, Portland, Oregon. To reserve this space and learn more details about this free conference room space, go to the PLF website, www.osbplf.org, and click on Practice Management, then Oregon Lawyers' Conference Room.

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

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

CLE Registration Form

NAME _____	ACCOUNT NUMBER _____
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Member Status:
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 Non-Member

Payment Options:
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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:
 Multnomah Bar Association
 620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
 503.222.3275 ■ Fax to: 503.243.1881

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

- 3/2 Presiding Court Update**
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- 3/9 Great Lawyer, Bad Manager: Avoiding the Most Common Mistakes Lawyers and Law Firms Make as Employers**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/15 Family Law Update**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/16 Filing Claims Against Contractors for Residential Construction Defects: What Lawyers Need to Know from a Plaintiff and Defense Perspective**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/21 Bond and Lien Law in Oregon**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 4/12 Taking Some Sticks from the Property Rights Bundle: Adverse Possession, Prescriptive Easements, and Other Real Property Encumbrances**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 4/19 Appellate Practice: What Every Trial Attorney Needs to Know**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 4/20 What Every Lawyer Should Know About Driving Under the Influence Intoxicant Cases**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 5/23 Annual Probate Update**
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Robert Kim

Rob is a business litigator who represents clients in complex disputes and internal investigations. His experience includes antitrust and competition law, white collar defense and investigations, commercial litigation, and securities litigation and regulation. Rob earned a B.A. in Government from Dartmouth College and his J.D. from the University of Michigan Law School.

rkim@sussmanshank.com
 503.243.1655

Curtis Welch

Curtis, a seasoned attorney with over 26 years of experience, offers Sussman Shank clients a wide variety of experience in diverse practice areas that include construction law, civil litigation, real property law, and insurance law. Curtis joins the firm as Special Counsel. Previously, Curtis was a partner for 18 years with the Washington law firm Duggan Schlotfeldt & Welch PLLC.

cwelch@sussmanshank.com
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Ball Janik LLP elected Gabe Weaver a partner effective January 1, 2017. Gabe is a business litigator and trial lawyer who represents businesses and individuals in high-stakes litigation. His broad practice includes complex construction disputes, professional liability claims, and high-stakes personal injury litigation.

gweaver@balljanik.com
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mba | ANNOUNCEMENTS

Immigrant Protection Project

Metro Public Defenders would like to thank the MBA, and in particular MBA President Tom Sand and Board Member Rima Ghandour, for their support of the Immigrant Protection Project and for Rima's personal story about her connection to it. The project has a good start on funding from the City of Portland and MPD hopes to get support from Multnomah County and other governmental agencies soon. In the meantime, if you are interested you can follow the progress of the project and donate here: <https://immigrantprotectionproject.org/>

MBA Bar Fellows Program Seeking Corporate and Law Firm Sponsors

The MBA is seeking corporate and law firm sponsors for its new Bar Fellows Program, which will increase the diversity of the legal community in Multnomah County by supporting a group of diverse University of Oregon and Lewis & Clark law students. As Multnomah Bar Fellows, the students will receive financial support, mentoring, and summer internship opportunities. The program's goal is to foster a new generation of excellent lawyers who will enhance the diversity of our legal community. Learn more by reading the article on p. 1 or contact Emily Teplin Fox (efox@oregonlawcenter.org, 503.473.8314). Respond with your interest in this program by May 1.

MBA Judicial Brown Bag CLE on April 13

Join Judge Stacie Beckerman, US District Court, Judge Maureen McKnight, Multnomah County Circuit Court, Chris Costantino, Samuels Yoelin Kantor LLP and Katharine von Ter Stegge, Multnomah County Attorney's Office for a brown bag CLE on litigating against pro se litigants. See p. 13 for details.

Free CLE Webcast to MBA Members

The video webcast of the seminar "Insurance Coverage for Small Businesses" is available in the Members Center at www.mbar.org. The webcast is approved for two hours of General OSB MCLE credit.

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Ethics Focus

The Road Not Taken: Declining Representation

by Mark J. Fucile
Fucile & Reising LLP



Imagine this scenario: You are meeting with a prospective new client. Although the matter involved is right in your wheelhouse, you are put off by the prospective client. He tells you that he has had three previous lawyers on this case and none of them listened to him. He wants someone “tough” and “aggressive”

Sometimes, the answer is “no.”

because he wants to inflict “maximum pain” on the other side. The prospective client says that he will “spare no expense” and wants “no stone left unturned.” He then adds that he stiffed his last three lawyers because he didn’t get what he wanted.

In an era of pervasive pressure to “market” both their firms and themselves, should lawyers take on every prospective new client who appears to have some reasonable ability to pay their bill? Sometimes, the answer is “no.” The smartest decision in a situation like our opening illustration can be to pass altogether. In this column, we’ll look first at common “red flags” that warn of high risk clients and then we’ll turn to equally common consequences of ignoring those risks.

Red Flags

Lawyers normally think of RPC 1.16 as the “withdrawal rule” - cataloging the circumstances when we must or may withdraw. The technical name of the rule, however, is broader and covers “declining” as well as “terminating” representation. For regulatory purposes, the “declining” concept generally means that we shouldn’t take on a matter unless, in the words of accompanying Comment 1 to ABA Model Rule 1.16, “it can be performed competently, promptly, without improper conflict of interest and to

completion.” For risk management, however, thinking about the reasons lawyers withdraw can provide a useful filter for gauging what prospective clients should be avoided in the first place. Although there are several, we’ll look at three in particular.

First, if the prospective client suggests or implies that you should take actions that violate the RPCs or would expose you to sanctions, it should be a short meeting. RPC 4.4(a) prohibits lawyers from using “means that have no substantial purpose other than to embarrass, delay, harass or burden a third person[.]” ORCP 17C(2), in turn, imposes a similar standard for sanctions on lawyers signing pleadings, motions and “other documents.” Although some prospective clients simply are not aware of the rules that govern lawyer conduct and back off once informed, others do not. With those that don’t, lawyers also need to be wary about trying to convince themselves that they will be able to “control” a client with this mindset. Just as RPC 1.16(a) (1) tells us we must withdraw from a matter if remaining would cause us to violate the RPCs, we should also heed that warning in deciding whether we should take a matter in the first place.

Second, less dramatic but equally telling, a prospective client who doesn’t listen also poses a distinct risk. We have probably all had clients who “vent” and then listen. But, a prospective client who won’t listen in an initial meeting is unlikely to pay attention later to the more nuanced analysis that most legal problems involve and may not cooperate in providing information the lawyer needs to handle a matter. RPC 1.16(b)(6) counsels that we have the ability to withdraw from matters which have been “rendered unreasonably difficult by the client[.]” If you sense that in short order you will be consulting this rule if you take the matter on, that is probably a good sign that you should decline up front.

Third, for every lawyer who has heard the phrase “spare no expense” and found a pot of gold, there are many more who found an empty pail. There are indeed “bet the company” cases where clients understand that expenses will, of necessity, be substantial. If you are being told to “spare no expense” on a more mundane case where there is no obvious rationale, however, your radar should be triggered. Especially when coupled with statements that prior lawyers weren’t paid for one reason or another, you should not expect to be an exception. The most common reason most lawyers withdraw (under RPC 1.16(b)(5)) is that they haven’t been paid.

Risks

The risks with the kind of client imagined in our opening scenario are often twofold.

First, a prospective client who gives the appearance that he or she will never be satisfied with a reasonable result under the circumstances probably won’t magically change that view if they actually become a client.

...a prospective client who doesn’t listen also poses a distinct risk.

Although some dissatisfied clients pay their bill, many do not - often rationalizing (as in our example) that the lawyers didn’t measure up. Particularly with clients of the “spare no expense” variant, it can be relatively easy to outrun an initial advance fee deposit and leave the lawyer exposed to a substantial unpaid fee.

Second, unhappy clients who don’t pay the bill also may complain about their lawyers’ conduct - either as a shield to a fee collection effort or in an attempt to ward off one altogether. With ORS 9.537(1) providing bar complainants absolute civil immunity, a bar complaint offers a disgruntled former client an easy avenue for what the military calls an “asymmetric attack:” cheap for the attacker and expensive for the defender. The threat of a malpractice counterclaim - however thin - can take the economic air out of a fee collection action with equal effect.

Summing Up

The age-old phrase “more trouble than it’s worth” applies to some prospective engagements. In the rush to bring new business on board, lawyers should undertake a realistic assessment of prospective clients to determine whether some present more economic risk than potential gain. In at least some instances, the best decision will be to “pass.”

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Around the Bar



Allen Eraut



Kevin Bergstrom

Rizzo Mattingly Bosworth PC

Civil defense law firm Rizzo Mattingly Bosworth PC announced today that **Allen Eraut**, a shareholder with the firm, has been elected chair of the Oregon Association of Defense Counsel (OADC) Construction Practice Group.

OADC's purpose is to increase the professional skill and knowledge of its nearly 700 members, to enhance the services of the legal profession to the public, to improve the adversary system and to work for the prompt and fair disposition of disputes. As chair of the Construction Practice Group, Eraut will lead one of OADC's most active practice groups.

Eraut concentrates his law practice on construction litigation and the defense of personal injury and property claims.

Rizzo Mattingly Bosworth is also pleased to announce the addition of **Kevin Bergstrom**. Bergstrom's practice concentrates on the defense of complex civil cases. As a member of the firm's environmental and natural resources practice group, Bergstrom represents clients in Federal EPA and Oregon DEQ Superfund cleanup matters, and has assisted in a federal trial defending a wind-energy company's operations against adjacent landowners.



Robert Schulhof

Kivel & Howard LLP

Robert Schulhof joined the firm "Of Counsel" in October 2016 bringing over 20 years of litigation

experience on matters as diverse as personal injury, product liability, contract disputes, business litigation, real estate and construction defect claims.

Prior to arriving in Oregon, Schulhof was on active duty with the U.S. Navy Judge Advocate General's Corps and continues to serve in the Navy Reserve.



Joshua Stadler



Jonathan Liou



Katherine Acosta

Dunn Carney

Dunn Carney has elected litigator **Joshua D. Stadler** as a partner and welcomed two new associates to the firm.

Stadler is a member of the litigation team. His practice includes business/commercial, employment, insurance coverage and real estate and trust and estate litigation. Stadler serves as the firm's Pro Bono Committee chair and is treasurer of the board for Portland Homeless Family Solutions.

Jonathan S. Liou and **Katherine M. Acosta** have joined the firm's litigation group as associates. Liou is an experienced litigator who represents individuals and businesses in complex products liability, construction defect and professional liability disputes. He has experience in private practice and served as a deputy district attorney for Multnomah County.

Acosta is a Lewis & Clark Law School graduate and former Dunn Carney summer associate.



Anastasia Yu Meisner

Samuels Yoelin Kantor LLP

Portland law firm Samuels Yoelin Kantor LLP announced that **Anastasia (Stacie) Yu Meisner** has joined the firm as Of Counsel. Meisner's practice focuses on estate planning, probate, trust and estate administration, guardianships and conservatorships, as well as business transactions and formation.

Meisner brings more than 15 years of experience in advising individuals, family businesses, small businesses, homeowners associations and nonprofit organizations. She also has extensive experience as a probate and civil court mediator.

Before entering private practice, Meisner clerked with the Bureau of Labor and Industries. Meisner volunteers with a number of community and professional groups. Since 2008, she has been the treasurer for Friends of the Lake Oswego Public Library. Meisner served as outside legal counsel to Mercy Corps, and as pro bono counsel to the Korean American Citizens League and Friends of Opportunities for Law in Oregon. She is a past member of the Oregon State Board of Accountancy, an honorary and former board member of Oregon Minority Lawyers Association, and has twice served on the Oregon Governor's Judicial Screening Committee.

Meisner serves as legislative chair on the OSB Elder Law Section's executive committee. She has been a member of the House of Delegates from 2004 through 2016, was a founding board member of the OSB Diversity Section, and served for four years on the OSB Affirmative Action Committee. Meisner received the OSB President's Affirmative Action Award in 2005.



Shayda Zaerpoor Le

Barran Liebman LLP

Barran Liebman is proud to announce that **Shayda Zaerpoor Le** has been elected to serve as the President of the Board of Directors of Andisheh Center, a nonprofit organization that focuses on sharing and fostering Iranian

culture in the Portland metro area. Andisheh Center's main focus is to help create a connection for both Iranian and non-Iranian Americans to the artistic and cultural heritage of Iran.



Alan Reel

Allen Reel

Effective January 1, **Allen Reel** has retired from the active practice of law. He reports that he enjoyed his clerkship with the Oregon Supreme Court, service on the Beaverton Municipal Court bench and many years as a practicing attorney in Portland and Beaverton.

Reel would like to thank his colleagues on the bench and in the Bar for their many courtesies over the years, and his staff for their loyal service.

Reel will continue to serve as trustee and a fiduciary, and insists he is not entirely "out-to-pasture."



Brian Sniffen

hearings, and at trial in state and federal court.

Brian T. Sniffen assists clients with a wide range of business matters, with a focus on management and enforcement of intellectual property rights. Sniffen also regularly reviews and drafts contracts, and assists clients with the data-privacy and data-security aspects of their business.



B. John Casey

Stoel Rives LLP

The firm is pleased to announce that commercial and securities litigation attorney **B. John Casey** has joined the firm as a partner. Casey joins the litigation practice group in the firm's Portland office.

Casey represents a variety of clients in industries including accounting, law, finance, public utilities, sports, consumer goods, technology, media and manufacturing. He has more than 15 years of litigation experience, having worked at K&L Gates LLP (Portland) and Latham & Watkins LLP (Chicago) handling complex commercial disputes.

He is chair of the Business Litigation Section of the Oregon State Bar and chair-elect of the Securities Regulation Section. Casey also serves on the boards of the Jesuit Volunteer Corps Northwest, the Classroom Law Project and the Georgetown Club of Oregon, of which he is also president.



Andrea Barton



Cody Elliott

Miller Nash Graham & Dunn

Miller Nash Graham & Dunn is pleased to announce the promotion of three attorneys to partner.

Andrea Barton focuses her practice in the area of commercial litigation. She regularly represents local and national businesses, schools, universities, and individuals in breach-of-contract actions, tort claims, civil-rights claims, employment matters, and real estate disputes.

Cody J. Elliott is a litigator in the firm's employment law and labor relations and education law practice teams. He has experience resolving a wide variety of employment and commercial disputes through arbitration, mediation, administrative

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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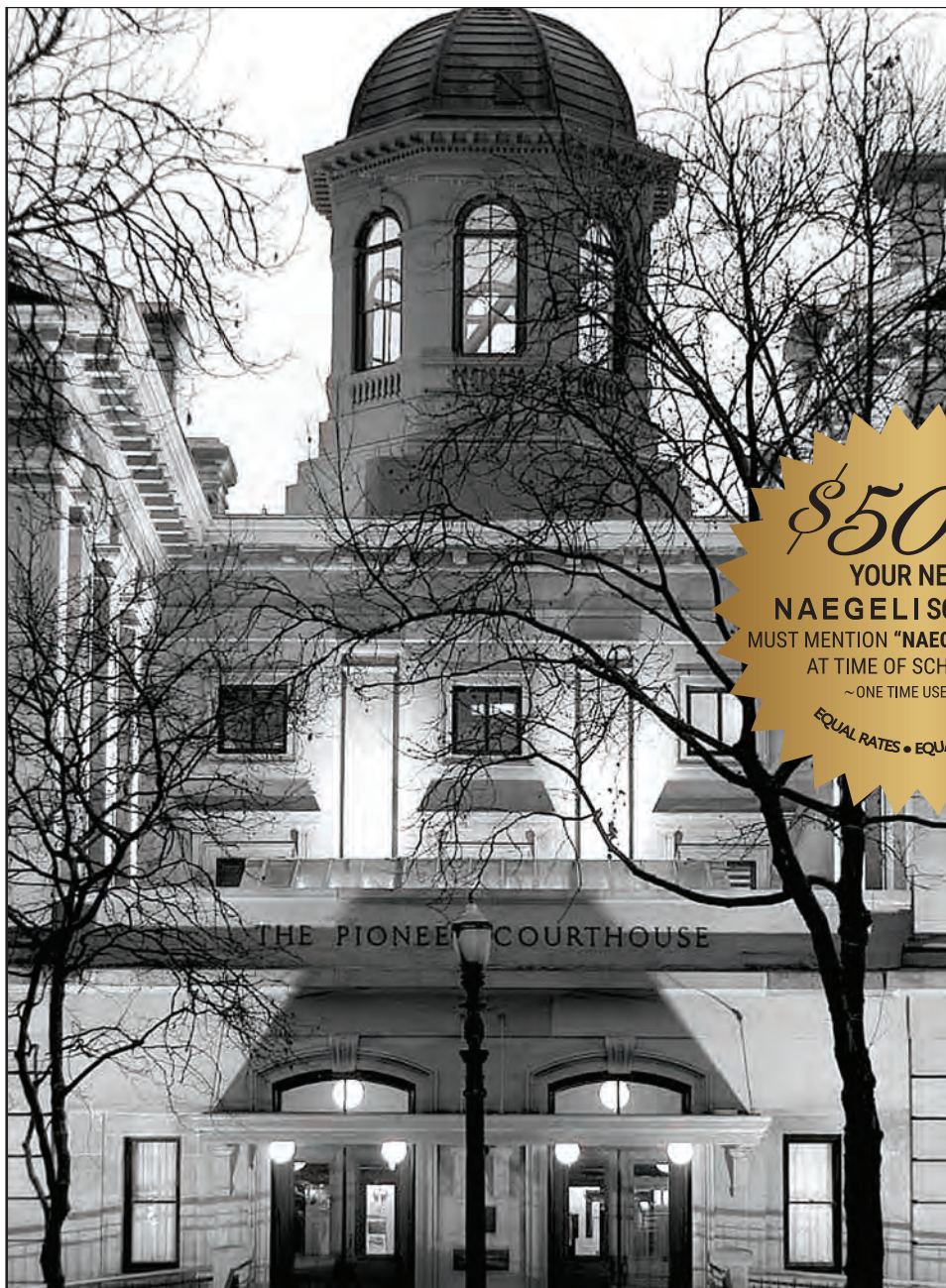


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Tips From the Bench

Sealing Documents in Family Court and Other Confidentiality Provisions

by Judge Maureen McKnight
Multnomah County Circuit Court



Last month Judge Bushong provided some tips for filing documents under seal. He started with the foundational “open courts” provision of the Oregon Constitution to remind us that the default position is against sealing and that legal authority must exist for blocking public view. He then progressed to the Uniform Trial Court Rules and Supplemental Local Rules in laying out the procedural requirements for seeking an order to seal. My article has two main points: (1) all the authority Judge Bushong cites applies to family court matters and (2) Oregon statutes specifically allow for sealing certain information from public view in family law cases. Practitioners need to know these provisions and follow the procedural requirements: sealing documents or information because it is “within the equitable powers of the Court” or “in the best interests of the children” or “based on stipulation” is simply not sufficient.

On the first point, Judge Bushong wrote of UTCR 5.160, which requires practitioners requesting sealing to set out (1) the statutory authority for sealing the documents, (2) the reasons for restricting public view, and (3) a description of the documents sought to be sealed. This uniform trial court rule applies in family court. Similarly, SLR 5.165 about which Judge Bushong also wrote applies in family court (except for the subsection re a motions judge). This rule was effective February 1 and addresses stipulated protective orders seeking to preserve the confidentiality of documents one or more of the parties deem “confidential.” His point was that proposed stipulated protective orders requiring the courts to automatically seal documents designated as “confidential” will not be signed based solely on the parties’ agreement. Parties must instead include in their proposed protective orders a specific paragraph set out in rule that makes clear a motion and further order of the court is required before sealing may occur. SLR 8.019 specifically makes sister rule 5.165 applicable in family court. Note that the court “will return unsigned any proposed protective orders that do not comply with this requirement.” The time to change your templates is now.

A variety of family law statutes and rules do provide authority for keeping information from public view, this because of the multitude of safety and personal identity and financial information that is inherent in these cases.

Practitioners are probably most familiar with UTCR 2.130, the “CIF” or Confidential Information Form process. No court order is needed here because the rule specifically requires that litigants in family law cases always include the following information in a separate form: a party’s (or a party’s child’s) Social Security number; date of birth; driver license number; former legal names; and employer’s name, address, and telephone number. Lawyers may also be familiar with UTCR 2.110, which provides a method to segregate and redact out from public view the information that was protected by UTCR 2.130 or UTCR 2.100 (see next section) but was mistakenly not filed in a CIF or redacted and therefore appears in the public record.

Finally, it is also likely practitioners are familiar with ORS 18.042(2), which requires that money award sections in judgments include only the final four digits of the Social Security number and the driver license number of each judgment debtor. Again, no court order is needed to provide just limited information because the statute calls universally for this limitation.

Practitioners may be less familiar with the following authority, each of which calls for keeping certain information out of public view.

- a. UTCR 2.100 authorizes “protected personal information” to be kept out of public view in any matter, not just family law cases. “Protected personal information” within the meaning of this rule means facts that would identify a person or a person’s financial activities. The rule does not authorize sealing of entire documents but only the details of financial accounts and transactions as well as personal identity facts. Unlike the CIF process, this rule requires a requesting affidavit and the approving signature of the trial court administrator. UTCR 5.160 and SLR 8.019 are inapplicable.
- b. ORS 25.011 This statute allows persons who must provide an “address” under any proceeding in ORS chapters 25, 106-110, and 416 to use a residence, mailing, or contact address in the same state as the person’s home. This statute does not authorize sealing in that it

Continued on page 11



News from the Courthouse

by Amity Girt
Court Liaison Committee

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

ICE Agents and the Courthouse
Both concerns and rumors surround the presence of ICE agents in the courthouses in the wake of the Executive Order (EO) signed in January on deportation and immigration. The court has received reports of increased ICE agent presence at the courthouse following the newly signed EO that affects deportation practices and has been working to sort out rumor from fact.

Under ICE policy, courthouses are not deemed “sensitive” locations and therefore, have not been off limits for ICE agents to contact and detain persons who are deportable. There have been arrests that take place at the courthouse by ICE agents prior to the new EO going into effect. However, reports of recent arrests in and around the courthouses, in light of the greater breadth of the EO as to who can be detained and deported, has led to increased media and social media coverage of arrests in the courthouse which has in turn led to an increase in fear. The court’s concern is that the increased fear will interfere with the administration of justice if people are afraid to come to the courthouse. Neither the court nor county has authority to exclude ICE agents from the courthouse.

The court and other public officials will continue to urge ICE agents to view courthouses as sensitive locations and to refrain from showing up at the courthouse to carry out their business. In the meantime, the court wants to make it clear that it does not provide information to ICE.

Racial and Ethnic Disparity in the Justice System

The Portland Tribune published one installment of a story on ethnic and racial disparities in the justice system. The court is committed to working on reducing all racial and ethnic disparities in the criminal justice system and has been working with the other stakeholders of the public safety system to identify decision points that contribute to disparities and develop action plans to address them.

Community Listening Sessions

The January listening session that was canceled due to snow was rescheduled for February 15 at Centennial High School in the Rockwood neighborhood. The purpose of the listening sessions is to give members of the community the opportunity to share their experiences in the justice system. The court will compile the information provided at the three sessions and will then organize “talking” sessions, open to the public, to respond to concerns and issues heard in the listening sessions. It is clear from the listening sessions that there is a need and desire of the public to have more information about how the justice system works.

Trial Dockets

Trials continue to get out; no new issues to report.

Courthouse Update

Judge Waller provided a reminder that there will be requests in the legislative session for courthouse funding. There will be a request to approve \$92.6 million for the final installment of the state’s portion of the cost of construction of the courthouse. In addition, there is an eight million dollar request for equipment that needs to be installed in the courthouse during construction. The court is requesting that MBA members assist in contacting legislators about the importance of both requests to an on-time completion of the courthouse.

Chief Probate Court Judge’s Report - Judge Katherine Tennyson

The probate mediation program, created by Judge Tennyson, continues to see success resulting in fewer probate case filings.

The Guardian Partners monitoring program continues to function well. This program was developed to address the void that existed in monitoring adult guardianships. These monitors take on a role of observation and provide information about services in adult guardianships. In Multnomah County, those who take on fiduciary roles within the probate system are required to take a class.

A committee has been formed to address the need for succession/transition planning in guardianships when the guardian is a parent of an adult child and the parent starts to age out of the ability to be an effective guardian.

Judge Tennyson reports that the probate department’s transition to eCourt went smoothly. Statewide, Multnomah County carries about 20-25% of all probate filings so the utility of eFiling has been immensely helpful.

Elders in Action will be trying out a volunteer program where they’ll have a volunteer at the courthouse a few times a week to assist people with their paperwork.

Miscellaneous

There will be periodic security checks for those with fast-pass access to the courthouse. This occurred recently for the first time, and Judge Waller reports that the full screening process was successful and commends members of the bar for their cooperation. No contraband items were confiscated during this screening check of persons entering the courthouse on a fast-pass card. The purpose of these random checks is to ensure that those people with fast-pass access are following the rules regarding what is permitted inside the courthouse.

Brown Bag - Litigating Against Pro Se Litigants

Judge Maureen McKnight, Multnomah County Circuit Court, Chris Costantino, Samuels Yoelin Kantor LLP and Katharine von Ter Stegge, Multnomah County Attorney’s Office are offering a brown bag CLE on litigating against pro se litigants. Pro se litigants are very common in the family law arena and increasingly common in the civil litigation world. The rise in pro se litigants has provided increased interest in funding a legal resource center aimed at assisting these litigants. The presentation will be at the Multnomah County Courthouse, Courtroom 602, on Thursday, April 13 at noon. CLE credit will be sought. There is no charge to attend. RSVP to Pamela Hubbs (pamela@mbabar.org).

The Honorable Bronson James Multnomah County Circuit Court Judge

by Jennifer Truzzolino
Court Liaison Committee



Judge Bronson James

Judge Bronson James is one of the newer judges at the Multnomah County Courthouse, having been appointed to the bench in February 2016, and then winning election to the bench in May 2016. Judge James filled the vacancy created by the retirement of Judge Alicia A. Fuchs.

Judge James, a lifelong Oregonian, was born in Portland, and grew up in Ashland. He went to Reed College, and graduated in 1994 with a Bachelor of Arts degree. Before attending law school, Judge James worked in the technology sector as an engineer, with an emphasis on information privacy, security and data loss response. His desire to become a lawyer led him to attend Lewis & Clark Law School, graduating cum laude in 2003.

Prior to his appointment, Judge James worked as a public defender where he represented

criminal defendants accused of crimes ranging from misdemeanors to death-penalty aggravated murder. He then transitioned to the appellate public defenders' office, where he worked for five years as the chief deputy defender for Oregon's Office of Public Defense Services Appellate Division. Thereafter, he went into private practice, focusing on both criminal trial and appeals for death penalty and civil rights cases. Judge James was also involved in a number of speaking engagements emphasizing his knowledge in Section 1983 civil rights claims, post-conviction appellate litigation, and developments in capital litigation and motion practice.

Judge James is considered a legal expert in search and seizure of digital data. While working in private practice in 2014 and using his technology background, Judge James wrote an amicus brief to the U.S. Supreme Court on behalf of the National Association of Criminal Defense Lawyers and the Brennan Center for Justice. He argued against warrantless searches of cell phones, reasoning that cell phones contain sensitive personal information. Specifically, he argued that cell phones contain all aspects of data about an individual, and are used to keep notes, manage finances, and facilitate private conversations via text message and emails. He cited

statistics that approximately 72% of those with cell phones keep them within arms' reach, and that even 12% use their cell phones in the shower. The Supreme Court unanimously agreed, deciding that police need a search warrant before they can search cell phones. Chief Justice John Roberts even cited portions of Judge James' brief in the Court's written opinion.

On appointment to the bench, Judge James has continued his efforts to bring awareness to digital search and seizure law. He has helped create guidelines for the collection and storage of electronic data, which has assisted in creating a better understanding of how data can be legally obtained and stored. Judge James is excited to be able to advocate for both sides in creating these guidelines. He wants to make sure that both sides are operating under the same rules that allow for lawful collection of electronic data. Judge James looks forward to continuing to assist the community using his expertise in the search and seizure of digital data.

Outside of the bench, Judge James has a broad spectrum of interests. He is an avid fan of all comic books, and attends Comic-Con. If you go into his chambers you will get a glimpse of his comic book posters and his Captain America rug. In addition, he has an interest in astronomy, and when it is not raining you will find him outside viewing the stars. Like many Oregonians, Judge James also enjoys heading to Mt. Hood to ski. On days when he is not outside, Judge James likes to cook at home with his daughter.

Highlights from the American Bar Association Midyear Meeting

House of Delegates Report

by Akira Heshiki
MBA Delegate to the ABA House
of Delegates



The American Bar Association (ABA) House of Delegates is the policy-making body of the association, with nearly 600 members, made up of state and local delegates from all 50 states and American Samoa, Virgin Islands and Guam, as well as representatives from various sections, divisions and affiliated organizations. As a local bar association with over 2,000 members, the MBA has a representative seat to the ABA House of Delegates, giving the MBA an opportunity to have a voice on resolutions presented as well as the ability to propose resolutions.

In February, the ABA House of Delegates met in Miami for their midyear meeting. Typical of the meeting, the House considered and adopted policy on a wide variety of topics including Resolution 108, which urges governments and communities to adopt standards that make communities more resilient to loss and damage from foreseeable hazards - and urges specialty bar associations to be active participants in resilience efforts.

Also considered and passed was Resolution 118, which urges lawmakers to work with the legal profession to collaborate in the identification and removal of legal barriers to veterans' access to assistance, including housing, education, employment, treatment, benefits, and services, particularly those provided by the Department of Veterans Affairs.

Hotly debated but not adopted, was Resolution 110B, an action to concur with the Council of the Section of Legal Education and Admission to the ABA's proposal. The proposal was to simplify Standard 316 (Bar Passage) of the ABA Standards and Rules of Procedure for Approval of Law Schools. Opponents to the resolution cited concerns that the new proposed standard would negatively impact law minority populations and urged an impact study before making the change. Members of the Oregon delegation received letters of concern urging opposition from local law school professors at Willamette and Lewis & Clark.

Finally, two late-filed resolutions were considered and adopted by the House of Delegates.

Resolution 10B urges congress to reaffirm and expand upon existing policy to provide adequate funding for refugee applications and processing, including adoption of legislation which mandates that refugees receive appropriate individualized assessment in a timely fashion to determine eligibility. The resolution also included a statement that neither national origin nor religion be the basis for barring an individual. The resolution came with a signed letter of support from Connecticut Senators Richard Blumenthal and Christopher Murphy and was passed with very little opposition by the ABA House.

A companion resolution, 10C was also considered and adopted by the House of Delegates. This resolution urged the president to withdraw Executive Order 13769, not to use religion or nationality as a basis for barring otherwise eligible individuals from entry into the United States, and to facilitate transparent, accessible, fair and efficient systems for administering immigration laws and policies.

As adopted policies, the ABA Governmental Affairs Office may now coordinate implementation to advocate for implementation of these policies before congress, the executive branch, or other targeted governmental entities.

To see a complete list of resolutions considered by the House of Delegates at this meeting and to read submitted reports, visit americanbar.org and search for "House of Delegates." Information can also be found on past resolutions, as well as videos highlighting the impact of prior resolutions passed by the house, such as a resolution that urged payment of military survivor benefits to disabled beneficiaries.

ABA Young Lawyers Division Report

by Shayda Zaerpor Le
MBA Young Lawyers Section
Delegate to the ABA YLD



As the YLS Board's delegate to the ABA, I had the opportunity to attend the young lawyer programming at this year's ABA Midyear Meeting.

YLD: The Young Lawyers Division (YLD) of the ABA offered a wide range of programming and CLEs, including building a practice through sharpening communication skills,

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Tips From the Bench

Continued from page 10

does not require the person to provide the private information at all but instead allows the substitution of a contact address into the public record whenever a residential address is otherwise required.

c. ORS 109.727 Family law practitioners routinely provide in petitions and modification motions information regarding the location and caregivers of children for the five years prior to filing. Subsection 5 of this states that if the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public except after hearing. This is a situation in which UTCR 5.160 and SLR 8.01 apply.

d. ORS 25.020(8)(d) Support orders must contain a number of particular items of identifying information. Some of this information is already protected by the CIF process but other information required by this section for support orders may be sealed on a finding, even a ex parte one, that the "health, safety, or liberty of a party or child would unreasonably be put at risk by disclosure of this information." Significantly, not just the specified items for a support award but also "other information concerning a child or party to a paternity or support proceeding" can be sealed under this section by court order made after the requisite finding - and compliance with UTCR 5.160 and SLR 8.019. This statute is required by federal child support law and a corollary exists for the administrative process in OAR 137-055-1160.

e. ORS 110.375 This provision is the analog of 25.020 for proceedings under the Uniform Interstate Family Support Act (UIFSA). Again, UTCR 5.160 and SLR 8.019 apply.

The contours of information that can be sealed in family law matters are broad and are largely constituted by personally identifying facts and financial facts. Yet if the information you want to protect does not fall within any of the descriptions set out in statute or rule, read the cases under the constitutional "open courts" provision. Try to develop (or rebut) an argument grounded in a context in which our appellate courts may have recognized a non-absolute application of "openness." Not all is well-settled in this arena but a researched motion will carry you much further than a simple "equitable principles" argument.

Gun Safety Panel Discussion Tuesday, March 14

The League of Women Voters of Portland presents “Gun Safety: Responsible Use; Responsible Policy,” a panel discussion addressing the facts and statistics on firearms injuries and fatalities; the Second Amendment to the U.S. Constitution and constitutional issues related to gun owners’ rights and responsibilities; gun safety precautions; and current and proposed laws on gun rights and safety.



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Panelists include Lisa Millet, Director, Injury and Violence Prevention Program, Oregon Public Health Division; Jim Oleske, Associate Professor of Law, Lewis & Clark Law School; Paul Kemp, Gun Owners for Responsible Ownership; and Jenn Lynch, Oregon Alliance for Gun Safety. Marge Easley, League of Women Voters, will moderate.

Tuesday, March 14, 7-8:45 p.m. at the Multnomah County Board Room, 501 SE Hawthorne Blvd., Portland. Doors open at 6:30 p.m. The program is free and open to the public. For more information contact Margaret Noel (503.228.1675, civiced@lwvpx.org).



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The Corner Office PROFESSIONALISM

Recently Eager Beaver Associate was discussing a case with Senior Partner, who was lamenting that opposing counsel would not accept or return Senior Partner's phone calls. Instead, opposing counsel would just allow the phone call go to voicemail and then opposing counsel would immediately respond to Senior Partner via email. "I don't understand why opposing counsel doesn't take my call and just keeps emailing instead. Back in my day, we used the phone to communicate."

Eager Beaver isn't a big fan of "back in my day" statements from Senior Partners. If the legal world operated today as it did back in Senior Partner's day, everyone would still type on a manual typewriter and do legal research using actual books (Eager Beaver shuddered to even think of it).

Eager Beaver patiently explained to Senior Partner that email - and texting - was the modern way of communicating and that phone calls were old school. Eager Beaver, like many of his peers, preferred to type away and then click "send" instead of dialing numbers.

The MBA's Commitment to Professionalism has 12 principles.

The ninth principle provides that as lawyers we will "represent our clients' best interests while seeking to resolve matters with a minimum of legal expense to all involved." Eager Beaver is correct that email is much more frequently used today than phone calls. Emails are convenient, they can be answered at any time (unlike a phone call), and they create a written record of a client's position.

But Senior Partner wonders if complete reliance on emails without ever engaging in more interpersonal dialogue is always in the client's best interest, even if that is the attorney's preferred communication method. Emails rarely convey tone or nuance. Sometimes the email recipient interprets the message in a way that the sender did not intend. This can unfortunately lead to greater conflict between the parties, which can potentially cost the client more money in the long run and may not "resolve" matters with a "minimum of legal expense involved."

Senior Partner recalls how not so long ago she had much more personal contact with her opposing counsel. There were more court appearances together,

more social interactions among bar members, and sometimes she simply invited opposing counsel to lunch to discuss a case. Senior Partner thinks that interpersonal contact among those with different viewpoints and interests can sometimes reduce conflict. In the legal world, that can reduce costs.

"Yes, technology is great," Senior Partner finally says to Eager Beaver. "But just don't forget that interpersonal dialogue can be a powerful tool to reduce conflict, which better serves our clients. Get to know opposing counsel if you can."

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.

Highlights from the ABA Midyear Meeting

Continued from page 11

transportation management in big cities, the gender pay gap and issues with equal pay, law schools and the evolving legal market, disability rights, and many others. The conference also offered an interactive luncheon program on using cross-generational collaboration to address implicit bias in the legal profession, as well as a roundtable breakfast dialogue on eliminating racial bias in the criminal justice system.

YLD Assembly: The YLD Assembly undertook voting on a number of proposed resolutions. The assembly, including delegates from the State of Oregon, engaged in significant debate on Resolution 110B, also referenced above, to modify Standard 316 of the ABA Standards and Rules of Procedure for Approval Law Schools, which relates to bar passage. The resolution proposed that 75% of law school graduates who sit for the bar must pass the exam within two years of their graduation date in order for the applicable law school to keep its accreditation. The current rule requires passage within five years of graduation. Some of the debate focused on reduced admission standards and safeguards against exploitation versus impact to diversity in the profession and a targeted focus on curriculum, rather than on admission standards and bar passage rates. This proposed resolution was not passed. The assembly did consider and pass a resolution to encourage mandatory implicit

bias training for members of the judiciary. Other resolutions which were on the debate calendar can be found online.

YLD Presentations: ABA President Linda Klein spoke to the YLD Assembly, noting the ABA's efforts to monitor and respond carefully and strategically to initiatives undertaken by the president and the new administration, including the recent executive order on immigration. (The ABA's public statement on this executive order is also available online.) Klein also shared ongoing initiatives relating to legal aid funding and ABA Day, a focus on the 14th Amendment to help promote an educated citizenry, and state encouragement for a law day proclamation. She also discussed the ABA task force on increasing public confidence in the justice system, efforts towards expanding access to justice for military veterans, and ABA Blueprint, a dynamic tool for law practice management to help solo and small firm lawyers. The YLD Assembly also heard from Immediate Past President Paulette Brown and President-Elect Hilarie Bass.

Public Service: Consistent with the division's focus on public service, each conference provides an opportunity for attendees to participate in a service event in the local community. *Dare to Dream* is an event with local school-age students focused on vision-boarding, and *What Do Lawyers Do* is a panel presentation targeted towards undergraduate students who are considering a legal career, which provides information on preparation for law school, the law school experience, and different career paths available to law school graduates. (The MBA YLS will be planning a local implementation of this panel in March!)

The MBA YLS offers numerous opportunities to meaningfully participate in local initiatives and ABA programs through committees, events, and targeted projects. In addition, the ABA YLD Spring Conference will be in Montreal from May 4 - 6 and registration is now open on the ABA website. I personally encourage lawyers in our area to consider attending, and I invite you to reach out to me if you have questions about opportunities to get more involved with the MBA YLS or the ABA YLD.

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MBA Judicial Brown Bag CLE

So Your Opponent is Unrepresented?

Tips for Litigating Against Pro Ses in Civil and Family Law Cases

Thursday, April 13
Multnomah County Courthouse
Courtroom 602
12 p.m.

Please join **Judge Stacie Beckerman**, US District Court, **Judge Maureen McKnight**, Multnomah County Circuit Court, **Chris Costantino**, Samuels Yoelin Kantor LLP and **Katharine von Ter Stegge**, Multnomah County Attorney's Office for a brown bag CLE on litigating against pro se litigants. Pro se litigants are very common in the family law arena and increasingly common in the civil litigation world. Bring your lunch and questions to the downtown Multnomah County Courthouse. CLE credit will be sought.


Please RSVP to Pamela Hubbs at pamela@mbabar.org.

Pro Bono Volunteers

Thanks to the following lawyers and law students who recently donated their pro bono services via the LASO Volunteer Lawyers 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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Positions

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Salary will be dependent upon experience and includes a bonus compensation arrangement. All responses will be treated confidentially. No calls please. Please email resume and cover letter to hr@mcewengisvold.com no later than March 15 at 12pm. After receipt of resumes, interviews will be scheduled

Resume/cover letter must include:

- Work experience with dates of employment and compensation.
- Reason for leaving or wanting to leave past and current employment.
- Salary expectations.

Please note we are only accepting applications from candidates with relevant experience described above.

Family Law Attorney Position

Yates Family Law, PC, an AV rated Portland firm, seeks an attorney with at least 5 - 7 years' experience in family law. Competitive compensation and full benefits. Send resume, with writing sample Attn: Office Administrator, Cecelia Connolly, cconnolly@yatesfamilylaw.com. All inquiries will remain strictly confidential.

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Ideal candidates will have experience in: (i) general business and real estate transactions, (ii) business and/or intellectual property litigation, and (iii) managing client relationships as a direct point of

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Candidates must have solid academic credentials, excellent writing skills, and strong references. Experience handling a variety of matters at any given time is a big plus. Applicants must be active and barred in Oregon, with Washington and/or California admission a plus.

Harris Bricken offers a competitive salary, bonus and benefits package. Please email resume, cover letter and writing sample to careers@harrisbricken.com, with the subject line "Oregon Associate Attorney Position." All replies confidential.

Admissions Manager

The Oregon State Bar is looking to fill the position that will perform the functions of the Executive Director of the Board of Bar Examiners (BBX) as set forth in the Rules for Admission. This position will provide administrative, management, and staff support for the Admissions Department of the Oregon State Bar (OSB), in compliance with BBX directives and within policy guidelines applicable to OSB departments

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phases of litigation, including case management, motion practice, discovery, arbitrations, appraisals and trials. It also involves non-litigated insurance coverage work including research, taking EUOs, writing opinion letters and advising insurers on their obligations with respect to claims and claim-handling. Applicants must be admitted to the Oregon State Bar.

Qualified applicants should submit a cover letter, resume, law school transcript and a writing sample to Carol O'Connell at carol.oconnell@bullivant.com.

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Offices available, 1515 SW 5th Avenue, Market Building. One exterior office with West Hills view and three interior offices. Available for short-term lease or month-to-month, individually or as a whole. \$750 - 850 per space. Includes access to conference rooms, reception services and kitchen. Copier and postage meter use provided at cost. Furnishings available. Contact Deanne 503.222.9966, dsnedeker@williamsfredrickson.com.

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As a free service to our members, the Around the Bar column of the *Multnomah Lawyer* newsletter is the way to share with colleagues your transitions, promotions and other honors within the profession. **All MBA members are invited to participate.**

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Getting Engaged While Going Solo What to Know Before Giving It a Go

by Kevin Parks
MBA Solo & Small Firm Committee

As a solo or small firm lawyer - especially as a new or young lawyer - one of the most difficult things to remember is that the phone will ring. Eventually. The “Who? What? When? and Where?” of figuring out your client base can often be a stressful and arduous task. What shouldn't be such an issue though? Documenting and memorializing the terms of the attorney/client relationship.

If you put 25 lawyers in a room and asked them to review a copy of their most recent engagement agreement, chances are that you'd get at least 25 different answers. Sure, there are differences between contingent fee agreements and hourly fee agreements, and even more differences with flat

fee arrangements. But there are a variety of questions to ask yourself, and your potential client, before anyone signs on the dotted line.

Should I have an engagement agreement for pro bono cases? How do I discuss how costs are to be paid? Is my trust account information correct? What happens when there's a dispute over fees?

For its upcoming April workshop, the MBA Solo & Small Firm Committee has organized a roundtable discussion for attorneys wanting to get down and dirty in discussing the details of engagement agreements.

Featuring solo attorney **Robert Nunn**, former business and litigation Partner at Sussman Shank, **Samuel Kauffman**,

criminal defense attorney at Kauffman Kilberg LLC, and **Ben Cox**, plaintiff's personal injury and insurance litigation attorney, the workshop will bring together a broad spectrum of experience and expertise from a range of subject areas and practice backgrounds and pair them with your solo and small firm's most important resource: you.

Registrants are encouraged to submit (redacted) copies of their engagement agreements prior to the workshop, where the participants will discuss a variety of potential options for utilizing best practices in documenting your understandings and agreements with potential clients, properly setting up expectations, and ultimately paving the way for solo and small firm lawyers to worry about the things they should be worried about: practicing law.

Engagement Agreements Workshop, Wednesday, April 12, 12-1:30pm at Hotel Monaco. \$20 for members; \$60 for non-members. Register at www.mbabar.org.



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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!

YLS Director Nominees

Four three-year positions start July 1. In the event of a contested election, a ballot will be sent to members. Only YLS members may vote for YLS Directors.

law school classes at her alma mater, and is also a member of the Oregon Trial Lawyers Association.



Anaiah Palmer graduated from Lewis & Clark Law School and was admitted to the OSB in 2013. She practices immigration law at Parker, Butte & Lane PC. Anaiah joined the YLS Membership Committee in 2014 and now serves as the committee's chair.

In addition to her work with the YLS, Anaiah is an active member of the Oregon Chapter of the American Immigration Lawyers Association (AILA). She is presently the AILA Lunch and Learn Coordinator, and co-chairs the 2017 AILA Pacific NW Conference Committee. She regularly participates in various Citizenship Days, Refugee Adjustment Days and similar workshops organized by AILA and other nonprofits.



Kirsten Rush is a graduate of Lewis & Clark Law School, and was admitted to the OSB in 2012. She practices employment law at Busse & Hunt. Kirsten served on the YLS Service to the Public (STP) Committee from 2013-15, and then chaired the committee for the 2015-16 term. She has volunteered with STP's Imprint Program for the past four years.

Outside of the MBA, Kirsten co-authors the "Oregon Civil Rights Newsletter: Supreme Court Update" as a member of the OSB Civil Rights Section. She serves as a professionalism discussion leader for incoming



Jamison McCune graduated from University of Oregon School of Law and was admitted to the OSB in 2013. He practices insurance coverage, construction defect and commercial litigation at Bodyfelt Mount. Jamison joined the STP Committee in 2015, and presently serves as the committee's co-chair. He is also a member of the MBA VLP Golf Committee.

Jamison also serves on the OSB New Lawyers Division CLE Subcommittee, and is a member of the Oregon Association of Defense Counsel Construction Practice Group. Since 2014, he has participated as a mentor in the Lewis & Clark Law School First Year Mentor Program.



Michael Willes earned his JD from Columbia Law School and was admitted to practice in California in 2010 before his admission to the OSB in 2014 and WSBA in 2016. He works at Tonkon Torp LLP where he represents clients in civil litigation and criminal cases. Michael joined the YLS CLE Committee in 2015, and is presently co-chair of the committee.

Michael serves on the Campaign for Equal Justice Associates Committee, the Portland Workforce Alliance Expo Committee and is a member of the OSB House of Delegates. He also volunteers with LASO's Domestic Violence Project.

Iván Resendiz
YLS Member Spotlight

by Kevin Parks
YLS Board

Just six months into private practice as an associate with Miller Nash Graham & Dunn, one would think Iván's schedule somehow has more than 24 hours in each day. While his business litigation practice can be demanding on his time, his list of volunteer activities seemingly leaves little room for eating or sleeping: President-Elect of the Oregon Hispanic Bar Association, member of the Oregon Minority Lawyers Association Board of Directors, mentor at Willamette University College of Law, and, of course, member of the MBA YLS Membership Committee.

"As lawyers, we're advocates; we have a voice," he posits, and indeed, using his voice to support and affect positive change within his community has always been a goal. In fact, Iván has been using his own voice effectively on behalf of others for as long as he can remember, nearly his entire life.

After growing up in Santa Ana, California, Iván's family moved frequently - to his family's former home in Ixtapa-Zihuatanejo, Mexico, back to California, and later to an apple orchard in central Washington before finally settling in the Portland area. As early as age four, Iván began necessarily honing the communication and mediation skills that would later serve him well in his professional life, serving as the translator for his Spanish-speaking parents. Now decades later, with a developed proficiency in English and Spanish, those same language and communication skills are the very tools Iván uses

to connect with the community and give back.

After graduating from West Linn High School in 2008, Iván intended to join the Marine Corps. After signing on the dotted line to enlist, however, an unexpected injury prevented him from serving. Looking to refocus and find a new path, he was awarded a Diversity Excellence Scholarship to attend the University of Oregon, and headed down to Eugene on a full ride.

At UO, Iván double majored in political science and psychology and studied Arabic, but law school was always on his mind - it had been since he was a child. Growing up, he had noticed and noted the revered position that attorneys maintained throughout the community, both in the U.S. and in Mexico. When friends or family (or characters in television and movies, the mediums which helped Iván first develop his English speaking skills) felt lost or confused, distraught or helpless, they often sought and looked up to the advice and guidance of lawyers. Eager to give back to his own community in a similar role, Iván took the opportunity to become a "Double Duck."

During law school, Iván clerked at the Oregon Department of Justice (ODOJ) Civil Litigation Section, which inspired him to pursue a career in civil litigation. At the ODOJ, Iván worked on employment, commercial, and civil rights litigation cases, served as second chair in a federal bench trial, and briefed and successfully argued a dispositive motion in




Iván Resendiz

state court. While in law school, he also served as a law clerk at the Lane County District Attorney's office, and cites Professor Suzanne Rowe as a particular influence on him. After graduating in 2015, he landed a coveted clerkship with the Honorable Lynn R. Nakamoto. He began his clerkship at the Oregon Court of Appeals and went with her to the Oregon Supreme Court after her historic appointment as the first Asian American on the Oregon Supreme Court. As a clerk, he assisted in researching, writing, and editing opinions, and recommended action on petitions for review.

Now having transitioned to an associate in the litigation practice group at Miller Nash Graham & Dunn, Iván focuses much of his time on business litigation, with an emphasis in helping to bridge the gap between the local business community and the lawyers who represent them.

Moving forward in his professional career, Iván aims to get more involved in the local legal community and with the ABA, citing local housing issues as a particular focus. In his "free" time, he's an accomplished marathoner (he's finished four so far) and an avid movie-goer, identifying the Zihuatanejo-idealized *Shawshank Redemption* as his favorite.

Justice Trivia
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Thursday, March 30
5:30 p.m. pre-registration, 6 p.m. start
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Help support Oregon's legal aid programs by participating in this fun fundraising event. Join us at Kells for trivia and light appetizers while supporting a cause important to our legal community. Doors open at 5:30 p.m. and trivia begins at 6 p.m. Register a team of five, or attend and form a team on the night of the event. The suggested donation is \$10 to participate, or \$5 for law students and unemployed or legal aid attorneys. Pre-registration will be available soon at www.cej-oregon.com.

Discovery Dispute Q&A With the Honorable Stephen K. Bushong

by Maxine Tuan
YLS CLE Committee

How can parties minimize discovery disputes at the outset of a case?

It is important for the plaintiff's attorney to be thinking and planning what types of discovery are going to be needed from the initial client meeting. Plaintiff's counsel can start preparing discovery requests at the same time that they prepare the initial petition documents. Once the defendant is properly served, and the plaintiff's counsel receives notice from the defense counsel, it is a good idea for the parties to have a conversation about the course of discovery. This should be done by a phone conference or in person. Lawyers can even work out obtaining mutual discovery without filing formal discovery requests.

Once a party senses that a discovery dispute may arise, what course of action should the party take?

If the parties were engaging in informal discovery, the parties should file formal discovery requests. It is important that attorneys call clients to see what discovery the clients are able to produce. If the client has the discovery, turn it over. Both parties should be producing discovery and conferring throughout the litigation process. Before a discovery issue becomes a dispute, the parties should call each other and have a conversation about what specific



Hon. Stephen Bushong

discovery is still needed and the timeline for producing. The goal of these conversations is to narrow the discovery dispute by the time the dispute is heard in front of a judge.

What actions satisfy the "good faith effort to confer" requirement?

Confer means that the attorney had an in-person or phone discussion with opposing counsel. The certificate of compliance filed with the motion should state and describe each meeting or discussion a party took to confer and resolve the discovery dispute with opposing counsel. The certificate should also state very clearly what discovery has been produced and what discovery has not been produced. There are of course instances where conferring will fall short of an actual in-person or phone discussion. For example, if an opposing counsel

simply refuses to return a call. I find that this happens very rarely.

What are some instances where it is beneficial to a party to have a judge hear a discovery dispute?

Any time there are privilege or confidentiality issues, it may be appropriate to have a judge weigh in on the production of documents. A protective order should be able to resolve many of the issues associated with privilege or confidentiality, though, because the terms of the release of discovery can be resolved. Issues regarding "scope and breadth" can also be valid discovery disputes. If an attorney is arguing that the discovery request is "burdensome," the attorney must have talked to the client first and be able to substantiate why the discovery request as written is overly burdensome. The judge will attempt to balance one side's need for information versus the burdensomeness of the discovery request.

Discovery disputes can get very contentious. How can attorneys remain cordial and professional throughout?

Yes, discovery disputes can become very contentious. Especially for new lawyers; they sometimes think it is necessary to be overly aggressive in discovery requests. Attorneys often find themselves on the receiving end of a large discovery request, which aggravates them. If you foresee the discovery request as being overly burdensome, pick up the phone and talk to opposing counsel and have a practical conversation about what specific discovery is actually needed to resolve the case. Once an attorney gets past the assumption that the opposing party is the enemy, the working relationship improves.

When do you believe sanctions are appropriate for discovery disputes?

Very rarely do I award sanctions for discovery disputes. In the rare instances that a party is using abusive discovery practices,

which is both unprofessional and potentially unethical, the judge has a duty to call the attorney out on this behavior and apportion sanctions when appropriate. Specifically for deposition practice, when a deposition has been scheduled, cancelling a deposition unilaterally right before the deposition may lead to sanction. The right thing to do is to take the deposition, make the proper objections during the deposition, and then resolve the objections at a later time. Don't derail the discovery track. The court's goal in resolving discovery disputes is to keep the case moving forward.

For more on this subject, join presenters Multnomah County Chief Civil Court Judge Stephen K. Bushong, Dean Heiling of Heiling Dwyer and Eric E. Meyer of Elkins, Zipse & Mitchell at the "Resolving Discovery Disputes" CLE seminar on Thursday, March 23. See the enclosed flyer for details or visit www.mbabar.org.

Community Service Day at Oregon Food Bank Event Recap

by Gabrielle Hanson
YLS Service to the Public Committee



On January 31, the YLS Service to the Public Committee organized volunteers to repack food at the Oregon Food Bank. The Oregon Food Bank distributes food through a statewide network of 21 regional food banks and approximately 970 partner agencies serving all of Oregon and Clark County, Washington. The Oregon Food Bank prides itself on not only providing food but also on addressing the root causes of hunger through public policy, nutrition, garden education and public awareness. Sarah Carlin Ames, Ashley Carter, Ryan Kunihiro, Dan Moses, Trisha Thompson and Gabby Hansen helped repack 7,027 pounds of oranges and 12,059 pounds of apples. To learn more about the Oregon Food Bank or to volunteer, please visit oregonfoodbank.org.

The Solo & Small Firm Committee presents

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