



MULTNOMAH LAWYER

February 2018
Volume 64, Number 2



Equity, Diversity and Inclusion: Pursuing Essential Aims of Our Profession

by Ryan W. Bounds
Chair, Equity, Diversity & Inclusion Committee

The longstanding mission of the MBA's Equality & Diversity Committee has been "to foster and expand diversity, inclusion and equality in [our] legal community, and to create and strengthen a relationship of mutual support between the MBA and its diverse lawyers and bar organizations." The committee remains focused on these vital objectives.

Indeed, recent developments have confirmed they are as urgent as ever. As Chief Justice John G. Roberts, Jr., noted in his annual report on the federal judiciary, "[e]vents in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear the judicial branch is not immune." Neither, by extension, is the bar. And the persistence of sexual harassment is not the only obstacle to achieving the more inclusive, egalitarian, and meritocratic profession that most of us envisaged when we joined it. Too many lawyers perceive an uneven playing field, pitted with episodes of insensitivity and skewed by residual biases. Too many promising students may abjure a legal career altogether out of fear that their prospects for success will be dictated not only by the quality of their work but by less equitable factors as well.

Our committee has adopted a new name that better reflects the breadth of these challenges and our varied efforts to address them. As committee-member Duane Bosworth reports elsewhere in this issue [see p. 6], the Equality and Diversity Committee is now the Equity, Diversity & Inclusion Committee. The change conveys our emphasis on the creation and diffusion of social capital, which makes a career in the law more productive and rewarding for lawyers, colleagues and clients alike.

The new name does not portend any departure, however, from our established initiatives and programs. Those have long focused on professional networks, mentoring, and education. With the guidance of Susan Cournoyer, our vice chair (and organizational genius), we have continued to implement and expand upon those efforts under the leadership of five subcommittee chairs, who deserve special recognition for their sustained and outsized contributions.

Jollee Patterson of Miller Nash Graham & Dunn chairs our Pipeline Subcommittee. The Pipeline Subcommittee seeks to promote legal careers to younger students from diverse backgrounds with the aim of cultivating a more diverse bar. This effort generally involves collaborating with scholastic programs serving underrepresented populations in order to expose students to a variety of careers in the law and to demystify the work of lawyers for young people who otherwise may never interact with one.

This year, the subcommittee is preparing to unveil a "Judicial Shadow Program," which will offer high school students the opportunity to shadow a state or federal trial judge for a day. The experience will include time in the courtroom and in chambers, as well as the chance to have lunch with the judge and a practicing attorney. Participating students will get to see what really happens in adversarial proceedings and then get to hear insights from the judge presiding over the action. We expect to offer this program to students at one or

two Portland-area high schools this year and hope to extend it to additional campuses in the future.

Maurisa Gates of Metropolitan Public Defender Services, Inc., chairs our LSAT Scholarship Subcommittee. A lack of familiarity with lawyers

and the work they do may deter some young people from pursuing legal careers, but the LSAT can erect another barrier to college students who cannot invest in honing the analytical skills the test demands. In order to remedy this, the MBA established a scholarship program in 2014 to pay for LSAT-preparatory courses for Oregonian college students of limited means and diverse backgrounds. Over the last three years, the subcommittee has identified 41 such college students from more than 100 applicants. Applications for this year's scholarships are already out (and available on the MBA website) and should be submitted by early March. We confer the scholarships every spring

Continued on page 2

mba|CLE

To register for a CLE, please see p. 4 or visit www.mbabar.org and log in as a member to register at the member rate.

FEBRUARY

2.15 Thursday
Anti-SLAPP Litigation in Oregon
Judge Erin Lagesen
Steve Berman

2.20 Tuesday
MBA Employment Law Update: A Whole New (or Old) World
Derily Bechthold
Aruna Masih

2.28 Wednesday
Refugee Rights: Where We Are One Year After the First Travel Ban
Cheryl Coon
Z. Hanah Riley

MARCH

3.7 Wednesday
Litigating RICO Claims in Oregon
Cliff Davidson
Harry Wilson

3.8 Thursday
Spousal Support Claims at Trial
Judge Beth Allen
Judge Katherine Tennyson

3.13 Tuesday
Presiding Court Update
Judge Stephen Bushong

3.14 Wednesday
How to "Win" Your Next Mediation - Strategies for Effective Advocacy
Judge Jean Kerr Maurer
Richard Vangelisti

In This Issue

WinterSmash	1
Calendar	2
CLE	3
Announcements	6
Ethics Focus	7
Around the Bar	8
News From the Courthouse	10
Tips From the Bench	10
Profile: Judge von Ter Stegge	11
MBF	11,13
YLS	12
The Corner Office	15
Pro Bono Volunteers	15
Classifieds	16
Member Resource Center	16

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

MBA 16th Annual WinterSmash

A Family-Friendly Bowling Event
Saturday, February 10
12-3 p.m.

KingPins
3550 SE 92nd Ave

A Multnomah CourtCare Fundraiser



Thank you to the WinterSmash sponsors.

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DEADLINE for copy: The 10th of the month*

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*or the preceding Friday, if on a weekend.

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Editor: Guy Walden

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Equity, Diversity & Inclusion

Continued from page 1

at the Tillicum Gathering, which our committee hosts in conjunction with the leadership of the specialty bar associations. In addition to helping select last year's recipients, US District Judge Marco Hernandez honored the current and past scholarship winners at the 2017 Tillicum Gathering with inspiring remarks that merit their own special note of thanks.

In addition to financing LSAT preparation itself, the subcommittee has also launched a mentoring program to track and support the scholarship recipients throughout the law-school admissions process. This effort will permit us to gauge how well the scholarship serves the purpose of generating more diverse classes of new Oregon lawyers in the coming years.

Emily Teplin Fox of Oregon Law Center chairs our **Multnomah Bar Fellows Subcommittee**. In 2016, the MBA formally announced the creation of the Multnomah Bar Fellows program for students from diverse backgrounds enrolling at U of O and Lewis & Clark Law Schools. The fellowships entitle each recipient to a substantial scholarship and paid summer employment at a law firm or other legal organization. The subcommittee is preparing for the first class of fellows to enroll this fall.

A great deal of work has already gone into making this program a reality. The subcommittee has confirmed employer sponsorships, coordinated publicity and programming with law school representatives, consulted with former University of Washington Law School dean Kellye Testy about her experiences with Seattle's analogous Gregoire Fellows program, and recruited judges in Eugene and Portland to mentor the fellows. We are all so excited to meet the inaugural class of Multnomah Bar Fellows and so grateful for the generosity of the program's judicial mentors and sponsoring employers.

Shalini Vivek of Portland State University chairs our **Education Subcommittee**. The

Education Subcommittee's goal is to provide education and training on equity and diversity issues for practicing lawyers. Such efforts are essential to a fully inclusive bar. This year, the subcommittee is organizing a four-hour CLE seminar on bystander intervention. There have been a number of talks and CLEs over the past year on identifying and confronting implicit bias within the legal field. Building upon this, the bystander-intervention CLE will teach attorneys how best to intervene if they witness discriminatory or insensitive behavior in legal settings, such as courtrooms, offices, and bar-related social functions. Keep an eye out for announcements about this important educational opportunity, which has been set to occur in the coming weeks.

The subcommittee is also exploring opportunities for a CLE seminar in partnership with the Fair Housing Council of Oregon. This civil rights organization offers bus tours of the metropolitan area in which participants see the residual effects of Portland's history of discriminatory housing. The subcommittee is aiming to schedule that CLE in early 2019.

Maya Crawford Peacock of the Campaign for Equal Justice chairs our **Publicity Subcommittee**. This subcommittee publicizes the work of our committee and administers the MBA Diversity Award, which recognizes MBA members for their promotion of equity and inclusion. The subcommittee has already solicited nominees for this important commendation and referred its recommended nominee for the full committee's endorsement and the MBA Board's approval. The award will be presented at the MBA's annual dinner in May.

The subcommittee will also be authoring and soliciting articles on diversity-related topics for upcoming issues of the *Multnomah Lawyer*. Keeping the conversation going throughout the year not only reaffirms our bar's ongoing commitment to fairness and inclusivity but stokes the voluntary efforts that are indispensable to realizing those aspirations in every courtroom, chambers, and office.

Calendar

FEBRUARY

1 Thursday

Are You Able to Live Well Today and Still Save for Tomorrow?

9 Friday

Blacks in Government Annual Black History Month Banquet

10 Saturday

WinterSmash
Details on p. 1

13 Tuesday

Solo & Small Firm Workshop
Details below

14 Wednesday

YLS OR/WA Employment Law CLE Seminar
See insert for details

15-17 Thursday-Saturday

NAAC Moot Court
Portland Regional

17 Saturday

Lewis & Clark Law School
PILP Auction
Details on p. 6

16 Friday

OHBA Annual Awards Dinner
www.oregonhispanicbar.org

21 Wednesday

Campaign for Equal Justice
Awards Luncheon
www.cej.oregon.org

22 Thursday

Lewis & Clark Law Student
Networking Event
Details on p. 13

24 Saturday

**Portland Children's
Museum Event**
Details on p. 12

MARCH

9 Friday

ACLU of Oregon Liberty Dinner
www.aclu-or.org

16 Friday

OWLS Roberts & Deiz Awards
Dinner
www.oregonwomenlawyers.org

APRIL

5 Thursday

Portland Opportunities
Industrialization Center
Breakfast
www.portlandoic.org

26 Thursday

Classroom Law Project Legal
Citizen of the Year Dinner
www.classroomlaw.org

27 Friday

OAAP/OWLS 11th Annual
Women's Retreat
www.oregonwomenlawyers.org

Solo & Small Firm Committee Workshop

UNDERSTANDING BASIC ACCOUNTING/ BOOKKEEPING WITHIN YOUR LAW FIRM

Tuesday, February 13
Workshop: 12-1:30 p.m.
Red Star Tavern Club Room
503 SW Alder, Portland

It is not enough to have an IOLTA checking account or give your financial records to a bookkeeper and tax accountant. Learn what happens once you have a client trust account, where the money is located on your financial statements and how it coincides with your legal management system. Learn how your day-to-day business activities are reflected in your monthly financial statements. Learn basic accounting concepts and safeguards to protect your clients and your practice. **Lozelle Mathai**, MBA, CFEI, will share her vast experience with us. She is a financial educator and accountant and the founder of Closing Your Books, LLC.

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

Lunch is provided.

One hour of Business Development CLE credit will be applied for.

Register at www.mbabar.org.

Is this YOUR FINAL ISSUE?

MBA members not renewed by March 1 are removed from the membership roster and no longer receive the *Multnomah Lawyer*.

Renew your MBA membership for 2018 by February 12 to ensure you receive your copy of the March newsletter.

Renew online at www.mbabar.org or over the phone at 503.222.3275.



The MBA will apply for 2 hours of general OSB MCLE credits unless otherwise noted; 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.

Anti-SLAPP Litigation in Oregon

Thursday, February 15 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Oregon's Anti-SLAPP statute is increasingly being used by strategic litigants across a range of industries and types of cases. In this CLE seminar the **Hon. Erin Lagesen** of the Oregon Court of Appeals and **Steven Berman** of Stoll Berne will provide an update on the growing body of case law applying the statute, lessons from past cases, and ideas of what might be to come. This is an area of law that all litigators should become familiar with.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.222.4424. For registration questions, contact the MBA at 503.222.3275.

MBA Employment Law Update: A Whole New (or Old) World

Tuesday, February 20 3-5 p.m.

World Trade Center, Sky Bridge Room

Members \$60/Non-Members \$95

With any new administration, some level of change is expected in federal policy enforcement. In the first year of the current administration, in the labor and employment world we've seen an overhaul of agency leadership, White House directives to federal agencies enjoining them from enforcing their own rules, and competing federal agencies taking opposing positions in the same litigation. More change has been promised to come. And while federal enforcement may be seen as taking a step back, states have become significantly more active in stepping up employee rights including the Oregon Legislature. This past fall, the newly configured US Supreme Court considered several cases with significant labor and employment implications. This CLE seminar will review labor and employment updates in federal enforcement, new legislation passed by the Oregon State Legislature, significant new cases, and anticipated developments on the horizon. **Derily Bechthold**, Portland City Attorney's Office and **Aruna A. Masih**, Bennett, Hartman, Morris & Kaplan LLP are the panelists for this must-attend class for all employment law attorneys.

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

Refugee Rights: Where We Are One Year After the First Travel Ban

Wednesday, February 28 12-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

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

This class will explore the iterations of the travel ban, challenges to it along the way, and where we are now, with a discussion of "who's in; who's out." It will also explore the impact of the travel ban and the related devastating cuts in refugee admissions and how they are affecting refugee resettlement agencies, refugees abroad and refugees who live in Oregon. It will provide personal perspectives on who refugees are, the issues and challenges that refugees in Oregon are facing and what lawyers regardless of practice area can do to help. This class will provide relevant and helpful information to practitioners in refugee and immigration practices, as well as any attorney who may represent a refugee in their regular practice. **Cheryl Coon**, Executive Director and founder of Refugee Disability Benefits Oregon and **Z. Hanah Riley**, Staff Attorney at Refugee Disability Benefits Oregon will present this class.

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

Litigating RICO Claims in Oregon

Wednesday, March 7 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Harry Wilson, a shareholder at Markowitz Herbold PC, and **Cliff Davidson**, a partner at Sussman Shank LLP, will present on RICO litigation in Oregon, with a focus on the defense side. Harry has frequently litigated racketeering claims in Oregon courts, and, in 2017, Cliff litigated civil RICO claims in both state and federal court, including one related to the growth of cannabis. Among other things, they will address differences between the state and federal RICO statute.

For more information: Contact Kristen Hilton, Sussman Shank LLP at 503.227.1111. For registration questions, contact the MBA at 503.222.3275.

Spousal Support Claims at Trial

Thursday, March 8 3-5 p.m.

World Trade Center, Plaza Conference Room

Members \$60/Non-Members \$95

Join Multnomah County Circuit Court **Judges Katherine Tennyson** and **Beth Allen** for a discussion about how to best present your spousal support cases at trial. They will discuss what evidence is most helpful for a decision about the amount and duration of support and how to effectively use experts, among other topics.

For more information: Contact Shannon Hall, Gevurtz Menashe at 503.227.1515. For registration questions, contact the MBA at 503.222.3275.

Presiding Court Update

Tuesday, March 13 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

In this session, Multnomah County **Presiding Judge Stephen K. Bushong**, the Chief Judges and court staff will present on the state of the court, review new Supplemental Local Rules, and provide tips on issues unique to practicing in Multnomah County. Judge Bushong will also give an update on the new courthouse, which is scheduled to open in 2020.

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

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.222.4424. For registration questions, contact the MBA at 503.222.3275.

How to "Win" Your Next Mediation - Strategies for Effective Advocacy

Wednesday, March 14 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Note: 1.5 hours of general MCLE credit and .5 hours of ethics credit will be applied for.

Mediation is often your client's "day-in-court." If this is true, then effective advocacy in mediation is critical to serving your client's interests. The strategies required for mediation can differ from trial advocacy. Mediation issues to consider that can make or break your case include:

- Should I even mediate and, if so, when?
- What kind of mediator and process - facilitative or evaluative?
- What should be in the mediation statement?
- What information should I disclose to my opponent?
- Who should attend the mediation?
- What case evaluation should I provide to the client?
- Should I worry about biases and emotions?
- What mediation ethics to know?

Join speakers **Hon. Jean Kerr Maurer**, retired Multnomah County Circuit Court judge and **Richard Vangelisti**, Vangelisti LLC for a lively discussion of strategies for "winning" your next mediation

For more information: Contact the MBA at 503.222.3275.

Carving Out a Civil Rights Practice: How It Helps Expand Your Network, Better Serve Your Clients and Positively Impact Your Community

Thursday, March 22 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Are you interested in civil rights work but don't know where to start? Would you like to learn how civil rights cases can expand your practice and your network? Have you considered how just one civil rights case can impact our entire community? Our nation faces bigger challenges than we have seen in decades. The most vulnerable members of our society face tremendous barriers to accessing justice. Attorneys pursuing civil rights actions are sorely needed. Come learn how you can carve out a civil rights practice in a wide range of subject matters - housing discrimination, ADA enforcement, employment discrimination, and prisoner litigation. No case is too small. Come learn how you can make a difference in the lives of your clients and our community.

Diane S. Sykes, Diane S. Sykes Attorney at Law PC, will moderate the panel made up of **J. Ashlee Albies**, Albes & Stark LLC; **Juan C. Chavez**, Attorney at Law; **Matthew C. Ellis**, Law Office of Matthew C Ellis; and **Shenoa L. Payne**, Richardson Wright LLP.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1000. For registration questions, contact the MBA at 503.222.3275.

Non-Economic and Punitive Damages

Tuesday, April 3 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Covering non-economic and punitive damages, this CLE highlights the advantages and disadvantages of pleading punitive damage, and how to best argue for and against non-economic damages. **Kristian Roggendorf**, Roggendorf Law LLC will address the plaintiff's perspective and **Angela Franco Lucero**, Kranovich & Lucero LLC will present the defendant's perspective.

For more information: Contact Kyle Dukelow, Law Office of Kyle B. Dukelow at 503.288.1992. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

**Voices of Homelessness
League of Women Voters of
Portland Civic Education Program
Tuesday, February 13**

It's fair to say that issues of homelessness have been among the most talked about topics in Portland for the past few years. The League of Women Voters has heard from homeowners, city officials, business people, and nonprofit organizations. Everyone, it seems, recognizes that having people unhoused on the streets of Portland is good for no one.



The February League of Women Voters of Portland Civic Education Program is dedicated to listening to people who have experienced homelessness. The public is invited to attend and hear about the challenges people have overcome and what they see as useful strategies for confronting this problem.

**Multnomah County Building
501 SE Hawthorne, Portland
7 p.m. (doors open at 6:30)**

The program is funded in part by a grant from the Multnomah Bar Foundation. It will be recorded by MetroEast Community Media for rebroadcast, and available on the League of Women Voters website (www.lwvpx.org). For more information, contact Marion McNamara, Civic Education Chair, at civiced@lwvpx.org.

**New Year,
New Leadership**

We are thrilled to congratulate Kirstin Abel as Bodyfelt's new managing partner! Kirstin's legal talent, determination, and passion for leadership will serve us all well. A huge thank you to Deanna Wray for guiding the firm for the past five years. In 2018, Deanna (and Kirstin) will continue to stand up for people and try cases.

BodyfeltMount.com / 503.243.1022

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 _____	CARD NUMBER _____
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PHONE _____	_____
OSB# _____	_____

Member Status:
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 Non-Member

Payment Options:
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 American Express

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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 503.222.3275 ■ Fax to: 503.243.1881

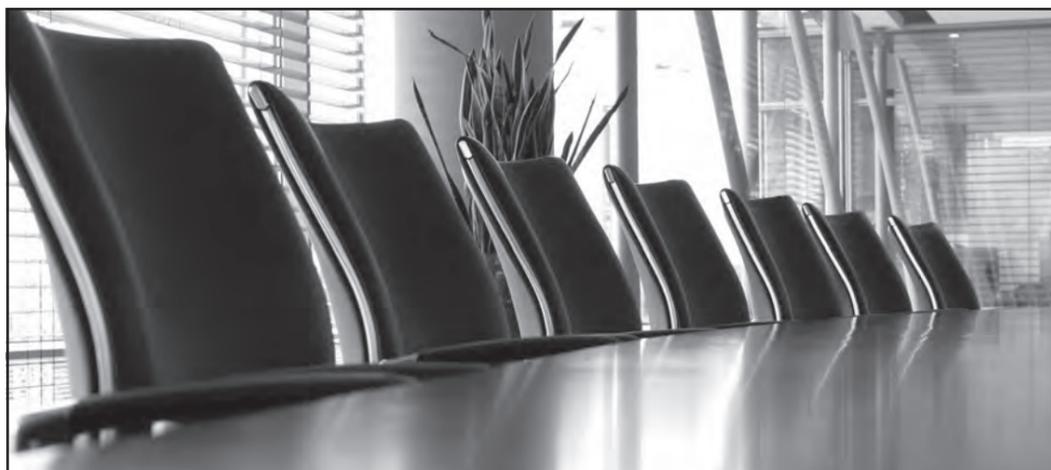
Register online and order or download MBA self-study materials at www.mbabar.org.
 Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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.

- 2/15 Anti-SLAPP Litigation in Oregon**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 2/20 MBA Employment Law Update: A Whole New (or Old) World**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 2/28 Refugee Rights: Where We Are One Year After the First Travel Ban**
 Class Registration (\$30 Members/\$50 Non)\$ _____
 CD-ROM & Written Materials (\$30 Members/\$50 Non) ..\$ _____
- 3/7 Litigating RICO Claims in Oregon**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/8 Spousal Support Claims at Trial**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/13 Presiding Court Update**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/14 How to "Win" Your Next Mediation - Strategies for Effective Advocacy**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/22 Carving Out a Civil Rights Practice**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 4/3 Non-Economic and Punitive Damages**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

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Ursula Kienbaum has been promoted to Shareholder
ursula.kienbaum@ogletree.com

Kristine Bingman has joined the firm as Of Counsel
kristine.bingman@ogletree.com

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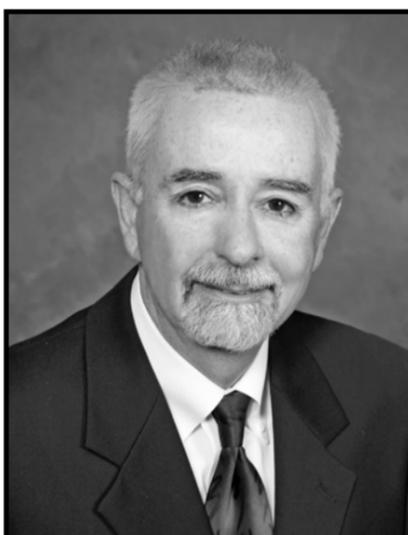


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mba | ANNOUNCEMENTS

Do You Want to Present at an MBA CLE Seminar?

The MBA CLE Committee is looking for qualified speakers to present CLEs for the 2018-19 year. If you are interested, please see the insert in this month's publication and keep an eye out for a link in this month's e-newsletter. The deadline for submissions is Friday, April 27. The MBA is committed to improving speaker diversity by all measures and strongly encourages all interested speakers to submit a form or contact committee chair Bridget Donegan for more information at 503.542.3107.

Public Interest Law Project Auction Set for Feb. 17

Lewis & Clark Law School's Public Interest Law Project will host its 27th annual auction on Saturday, Feb. 17 from 6-9 p.m. The proceeds from the "Secret Garden Auction" will benefit summer awards for students working for public interest organizations. For more information about the auction or donations, please email pilp@lclark.edu.

Arthur R. Miller to give Higgins Distinguished Visitor Lecture

Leading civil procedure scholar and Emmy winner Professor Arthur R. Miller CBE will present the Higgins Distinguished Visitor Lecture at the Lewis & Clark Law School on March 13 at 6 p.m. The event is free and open to the public. Contact Kerry Rowand at 503.768.6912, rowand@lclark.edu for details.

Conference Room Available for Reservation

Conveniently located downtown, the MBA conference room is available for reservation by members for client meetings, depositions and other practice-related uses. Contact the MBA for details and availability at 503.222.3275 or mba@mbabar.org.

Free CLE Webcast for MBA Members

The video webcast of the seminar "Legal Services as Products - How to Use Product-Development Tools to Design and Sell Legal Work" is available in the Members Center at www.mbabar.org. The webcast is approved for two hours of practice 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 your free professionalism statement at www.mbabar.org/assets/documents/profcertorder.pdf.

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.

The MBA Renames Its Diversity Efforts

by Duane Bosworth
Equity, Diversity & Inclusion Committee member

The MBA Board has agreed that the Equality and Diversity Committee should be renamed. While the existing name might have been continued, its words have become unintentionally grating to some ears and they do not fully convey the purposes of the committee or the work it is doing. I had the pleasure of describing to the Equality and Diversity Committee and then to the MBA Board my thoughts about the reasons for and the meaning and significance of a new name, the Equity, Diversity & Inclusion Committee.

The new name arises from a conviction that systemic racism, and systemic discrimination of many kinds, in fact exists. There might be some discussion about exactly what that means, but this conviction is certainly an ineluctable part of the committee's work. Overt, intentional discrimination is of course wrongful and often genuinely horrific. But an important part of the committee's work, I believe, is effecting change that will reduce unrecognized, systemic, unintended, and indeed unwanted barriers to opportunities. Systemic discrimination is far more impactful, occurs much more frequently, and is a far greater source of barriers we all intend to reduce or attempt, with great and exceptionally persistent focus, to eliminate. Here is an outline of the words at issue.

Equality v. Equity

There is a meaningful difference between these words. Words, and our understanding of them, change.

Equality means treating every individual in an identical manner. Equality has a long pedigree. It has long been the gold standard of attempts to reduce discrimination. We've now identified and articulated a better, more insightful platinum standard, however. Regarding race, for example, equality's roots share a history with "color-blindness," long held out as ideal. An argument favoring the use of both equality and color-blindness is that each treats people as individuals. So far so good. But both have significant problems. Both ignore the impact of systems. Color-blindness, like equality, concludes as a matter of logic that race, for example, does not itself affect opportunity. Many non-diverse Americans continue to hold the idea that color-blindness is helpful to people of color. But color-blindness creates a society that denies negative experiences and does not recognize disparities built into systems. And if one doesn't experience these disparities, it is possible to avoid thinking, let alone recognizing, systems. Systemic disparities affect opportunities. Equality, treating everyone the same, can allow us to ignore that.

The difference between equality and equity is often illustrated through a drawing of

three people standing behind a fence, trying to watch a baseball game. With equality - treating each person in exactly the same manner - a taller person can see over the fence but the fence is still blocking a shorter person from watching the game. Equality treats each identically; the short person has the same ability to stand at the fence as the tall person. That sameness is superficial. Equity seeks fairness in opportunity and provides something for a shorter person to stand on, to allow her or him the opportunity to see the game.

There is an important problem even with this depiction, however. As described, it illustrates that some people need something to stand on in order to have an opportunity to see over the fence. Shortness is a characteristic inherent to persons themselves, however. The illustration is fine with regard to height, but if it is intended to be a metaphor for systemic disparities it is wrong. The impact of systems on any individual's opportunities is not an inherent characteristic of that person but is instead external. The usual fence illustration demonstrates what is known as "deficit thinking," thinking that essentially blames victims of disparities for their own situation. A better illustration depicts individuals of the same height, but the second and third individuals cannot see over the fence, not because they are shorter but because systems have them standing on lower ground. Equality, giving each the identical right to stand at the fence, does not provide each the same opportunity. Equity, which acknowledges that systems create disparities, will provide something to stand on or will level the uneven ground, so that all three persons have actual access to the opportunity of watching the game. Equity recognizes disparity and squarely addresses opportunity.

Probably the best illustration of equity involves a track like those found around most high school football fields. We all understand that the outer lanes of such a track are actually longer than the inner lanes. If everyone started at the same place, some would need to run farther than others. It is obvious that in a 200-yard dash, for example, runners must start at staggered places on the track in order to create fairness. Importantly, this simply recognizes facts: disparate distances on the track are the same as disparate systems regarding opportunity. With equity, runners have the same opportunity to succeed. Identical treatment, a single starting line, ignores facts and would not be fair.

These metaphors are important. They illustrate essential characteristics of equity. It is very important to understand that staggered starting points do

not give any runner an unfair head start. Nor do they in any way paint any runner as a victim or an inferior runner needing socially vertical, that is, charitable help. Instead, staggered starts recognize evident facts that affect opportunity. Equity recognizes external facts and creates a fair race. Our committee's name now begins with equity, not equality.

Diversity v. Inclusion

Diversity has longstanding, deep roots. Inclusion does not have the same roots; we began articulating that concept about 30 years ago. While what immediately follows may seemingly disparage diversity in order to illustrate the need for inclusion, diversity should continue to have a place in our name, as described below.

Diversity, taken alone, intends to overcome disparities by increasing the number of people of difference who are eligible to pursue a set of opportunities. That intention does not fit the facts.

Diversity by itself has a linguistic deficit. It is a noun that passively describes a quality. Inclusion is a noun that inherently describes action. These differences matter.

Consider a brochure urging high school students to matriculate at a particular college or university. Photographs in that brochure very frequently depict diversity, that is, a group of people who demonstrate difference. This depiction does not itself demonstrate inclusion, however. Inclusion is about what an institution has accomplished with its diversity. Inclusion strives for and asks whether diverse students fully experience and have access to all the opportunities available to non-diverse students.

Diversity, taken alone, focuses on numbers. Without more, it can be completely congruent with a belief that advancement and opportunity are exclusively a function of merit. Inclusion acknowledges systems and seeks to reduce the power of those systems. Diversity alone is quantity. Inclusion is quality. Diversity in the first instance emphasizes the ways we differ. Inclusion emphasizes ways we may all have access to opportunity.

Diversity is indeed necessary, but it is simply not sufficient. If we focus on diversity alone, we will never achieve our real goals. We will celebrate numbers but the sturdiness of those numbers will be precarious and their growth will be slow.

Having made a case for the addition of inclusion, diversity should nevertheless be retained in our name. Again, the concept of diversity is necessary even though not sufficient. We will usefully continue to look at numbers as one indicium of our progress. People know the concept of diversity and are comfortable with it. As long as we don't leave diversity hanging alone, that is without the assistance of inclusion, it will remain useful and it should be retained.

Continued on page 15



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Ethics Focus

See You in Court: Threatening Others

by Mark J. Fucile
Fucile & Reising LLP



For lawyers, threatening others is often a routine part of a day's work. A letter to opposing counsel raising the prospect of litigation over a contract dispute is a ready example. Even though threatening others is a common component of many lawyers' work, there are some distinct constraints on how far we can go. In this column, we'll look at three: (1) threatening criminal charges to gain advantage in a civil matter; (2) the boundary between good faith positions advanced for a client and threats that are not supported by the facts or the law involved; and (3) "no contact" issues that surface when sending demand letters and similar threats.

Threatening Criminal Charges

RPC 3.4(g) allows lawyers to threaten criminal charges related to a civil case - but the permissible window is very narrow:

"A lawyer shall not: . . . (g) threaten to present criminal charges to obtain an advantage in a civil matter unless the lawyer reasonably believes the charge to be true and if the purpose of the lawyer is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge."

Under this standard, a lawyer representing a company seeking the return of funds from an embezzling former bookkeeper could permissibly threaten to report the embezzler to the police if the former bookkeeper did not return the money involved. This threat would be permitted because it is intended, in the words of the rule, "to make good the wrong which is the subject of the charge."

By contrast, a lawyer representing a company in a contract dispute could not permissibly threaten to report the opponent for violating an unrelated criminal environmental statute. This second threat is prohibited under RPC 3.4(g) because it is unrelated to the matter involved.

Under the Oregon rule, the fact that no settlement was completed is not a defense (see *In re Charles*, 290 Or 127, 130, 618 P2d 1281 (1980)). It is also irrelevant that the lawyer who made an improper threat actually went to the authorities (see *In re Lewelling*, 296 Or 702, 704, 678 P2d 1229 (1984)). Similarly, it is irrelevant that the other party's conduct may, in fact, violate the law if the connection required under the exception is not present (see *In re Huffman*, 328 Or 567, 570-71, 983 P2d 534 (1999)). In short, the Oregon rule includes both a very broad prohibition and a very narrow exception.

The Role of Good Faith

RPC 3.1 prohibits a lawyer from "assert[ing] a position . . . unless there is a basis in law and fact for doing so that is not frivolous[.]" Similarly, RPC 4.4(a) prohibits a lawyer from "us[ing] means that have no substantial purpose other than to embarrass, delay, harass or burden a third person[.]" The Supreme Court in *In re Marandas*, 351 Or 521, 539, 270 P3d 231 (2012), equated a lawyer's good faith in this context to advancing a position that is "plausible" under the particular facts and law involved.

Even though threatening others is a common component of many lawyers' work, there are some distinct constraints on how far we can go.

Similarly, OSB Formal Opinion 2005-59 cast the term "frivolous" as not being "reasonable" under the circumstances. Although *Marandas* and the Opinion 2005-59 set a relatively low bar, lawyers need to be careful in how far they "push the envelope" in representing the facts or the law in demand letters and equivalent communications with third parties.

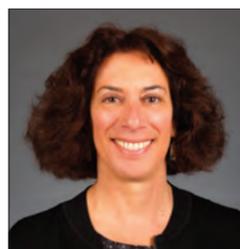
RPC 4.1(a), in turn, prohibits a lawyer from "mak[ing] a false statement of material fact or law to a third person[.]" Similarly, RPC 8.4(a)(3) prohibits lawyers from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law[.]" If, for example, a lawyer intentionally misrepresents the availability of an attorney fee remedy in a demand letter, the disciplinary risk shifts to the more dangerous territory of whether the lawyer lied.

The "No Contact" Rule

RPC 4.2 generally prohibits a lawyer from contacting a represented person "on the subject of the representation[.]" Although the contacting lawyer must know that the person contacted is represented, RPC 1.0(h) notes that actual knowledge can be inferred from the circumstances. In *In re Schwabe*, 242 Or 169, 408 P2d 922 (1965), a lawyer was disciplined under RPC 4.2's predecessor. In doing so, the

...lawyers need to be careful in how far they "push the envelope" in representing the facts or the law....

Supreme Court found that the fact that the lawyer subjectively believed the contacted person was not represented was irrelevant when the lawyer had received objective evidence to the contrary. Copying the represented person's lawyer does not protect the sender. In *In re Hedrick*, 312 Or 442, 822 P2d 1187 (1991), a lawyer was disciplined under RPC 4.2's predecessor for sending a letter simultaneously to a represented person and her lawyer. In sanctioning the lawyer, the Supreme Court in *Hedrick* noted (at 312 Or at 448) "the categorical nature of the rule[.]" Although the "no contact" rule contains an exception when the lawyer for the represented person has given express permission for direct contact, the lawyer in *Hedrick* had not obtained permission either. In sending a demand letter, therefore, lawyers need to carefully assess whether the recipient is represented and, if so, direct the letter solely to the recipient's lawyer unless the sender has specific permission from the recipient's lawyer to communicate directly with the recipient.



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Derek's practice involves complex civil litigation with a focus on trial work in the Hospitality, Transportation, Product Liability, Regulatory, and Professional Services industries. Derek has tried over 135 jury cases. Prior to private practice, Derek served as a Deputy District Attorney for Multnomah County where he tried major felony criminal cases. Derek is admitted to practice law in Oregon and in Washington.

503.972.2522
dashton@sussmanshank.com



Kimberlee Petrie Volm

Kimberlee's practice involves complex civil litigation in the Manufacturing, Professional Services, and Transportation industries. She has experience defending Federal Employers Liability Act (FELA) claims and personal injury claims. As an appellate attorney, she has represented clients in the Oregon Court of Appeals and Oregon Supreme Court. Kimberlee is admitted to practice law in Oregon and Illinois.

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kpetrievolm@sussmanshank.com

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Around the Bar



Garrett Garfield

Holland & Knight

Holland & Knight is pleased to announce that **Garrett Garfield** has been elevated to partner from associate in its Portland office.

Garfield is a member of the firm's Litigation Section. He represents clients in commercial litigation matters in state and federal courts, including contract disputes, business torts, real estate litigation and employment matters. He also is highly knowledgeable in the area of maritime litigation. Garfield received a JD degree from the University of Chicago Law School and a BA degree from Brigham Young University.



Kristin L. Abel

Bodyfelt Mount

Portland civil litigation firm Bodyfelt Mount has appointed **Kirstin L. Abel** as managing partner. Abel has been with the law firm for five years, and concentrates her practice on product liability, drug and medical devices, professional liability and medical malpractice matters.

Abel serves on the OSB's Products Liability Section Executive Committee and is a Barrister in the Owen M. Panner American Inn of Court. She volunteers for several youth mentoring and dropout prevention programs, and has been an advisory board member for Girl Scouts Beyond Bars for more than a decade. In 2017, she was elected to the Board of Trustees for St. Andrew Nativity School, after several years of service on the school's Ambassador Board.

Cosgrave Vergeer Kester LLP

The firm is pleased to announce that attorney **Tab Wood** has been named partner of the firm. Wood has previously worked at the firm as an associate representing businesses and individuals in civil litigation, including: complex personal injury, trucking, railroad, employment, commercial, and real estate litigation.

After graduating from Sewanee: The University of the South with a degree in English, Wood continued his studies at



Tab Wood

the University of Oregon School of Law, where he received his law degree and worked as an editor of the Oregon Law Review. He has also completed the National Association of Railroad Trial Counsel's College of Railroad Trial Advocacy, an intensive program for attorneys working within this complex niche industry.

Wood serves on the lawyers' committee for the Campaign For Equal Justice.



Anna Joyce

Markowitz Herbold PC

Portland litigation firm Markowitz Herbold PC announced today that former Oregon Solicitor General **Anna Joyce** has become a shareholder with the firm.

Joyce, co-leader of the firm's appellate practice, is an appellate and trial lawyer with 16 years of experience. She focuses her practice on developing winning strategies and writing successful arguments for both the trial and appellate courts.

Prior to joining the firm, Joyce worked at the Oregon Department of Justice, Appellate Division, serving as the Solicitor General. She also worked as an Assistant Attorney General for the Department of Human Services and Division of Child Support, as well as an Assistant Attorney General, Assistant Attorney-in-Charge, and Deputy Solicitor General for the Appellate Division. She graduated first in her class from the University of Oregon School of Law.

Joyce is a Dove Lewis Emergency Animal Hospital board member and an executive committee member of the OSB's Appellate Section.

Stoel Rives LLP

The firm is pleased to announce that **Todd Friedman** and **Brant Norquist** have been named partner.

Friedman practices business law, focusing on advising entrepreneurial, emerging, growing and established companies with respect to business formation and structuring,



Todd Friedman



Brant Norquist

commercial contracting, debt and equity financing, mergers and acquisitions, and real property matters. He primarily serves the food and beverage, technology, and creative industries, with a particular emphasis on wine, beer and spirits clients, and served as primary legal counsel on the recent acquisitions of WillaKenzie Estate, Hawks View Cellars, Witness Tree Vineyards and Little Big Burger.

Prior to joining Stoel Rives, Friedman had a career in corporate management, technology, international supply chain operations and venture capital. He is admitted to practice law in Oregon and California. He holds a bachelor's degree in chemistry from Pennsylvania State University and a doctor of philosophy degree in inorganic chemistry from the University of California, Berkeley.

Norquist focuses his practice on debt financing transactions, including bank credit, construction and asset-backed loans; Rule 144A offerings with a debt component; public debt offerings; real estate financing, lease financing, refinancing, workouts and reorganizations with a debt component; legal opinions; and energy and project debt finance.

Norquist holds a Master of Business Administration degree and a law degree from the University of Oregon. He holds a bachelor's degree from the University of Portland. He frequently supports the greater Portland community and serves on the board of directors of the Portland-area nonprofit Schoolhouse Supplies.

Wyse Kadish LLP

Wyse Kadish welcomes their newest addition, **Kristen Chambers**. She joins us as an associate of the firm's Estate Planning and Administration team and will focus her practice on estate planning, probate, and adult protective proceedings. Chambers has been active in the Portland legal community for many years now with a background in complex litigation proceedings.

The firm also welcomes its newest Family Law Associate



Kristen Chambers



Maxine Tuan

Maxine Tuan. She began her legal career as a Staff Attorney at St. Andrew Legal Clinic where she successfully litigated and represented clients in all areas of family law. Tuan understands that family law attorneys assist clients during challenging times, and seeks to represent each of her clients with compassion and dedication. Tuan is results-oriented, and finds real solutions to conflict so that individuals and families can move positively forward.



Ursula Kienbaum

Ogletree Deakins PC

The firm is pleased to announce that it has elevated **Ursula Kienbaum** to shareholder. Kienbaum practices in the firm's Portland office and is one of 11 attorneys elected to the 2018 class of new shareholders.

Kienbaum has spent her entire legal career representing and counseling employers in traditional labor and employment law matters. Experienced in traditional labor relations, particularly in the manufacturing, food processing, waste disposal, and telecommunications industries, she represents employers in representation and decertification proceedings, union campaigns, strike preparation, contract administration, and labor arbitrations. She also has significant experience investigating and responding to unfair labor practice charges before the National Labor Relations Board.

Kienbaum routinely assists clients with day-to-day employment issues, and has experience defending employment harassment, discrimination, and retaliation claims before state and federal courts and the Oregon Bureau of Labor and Industries.

She also has experience representing and advising clients regarding independent contractor misclassification issues, including audits with the Oregon Department of Labor and the Oregon Employment Department.



Jessica L. McConnell

Williams Kastner

Williams Kastner is pleased to announce that **Jessica L. McConnell** has joined the firm's Portland office.

McConnell concentrates her practice in federal, state, and local tax controversies, including tax audits, offers in compromise, and tax collection matters. Since joining Williams Kastner, she has helped a number of businesses and individuals efficiently resolve major tax and financial problems.



Steffan Alexander

Markowitz Herbold PC

The firm is pleased to announce that attorney **Steffan Alexander** has been appointed to the Public Defense Services Commission by Oregon Supreme Court Chief Justice Thomas Balmer.

Alexander is a trial attorney who represents a broad range of individuals and businesses in complex civil litigation disputes. He is a former prosecutor and believes in the value of a strong public defense system.

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.



Bodyfelt Mount welcomes associate attorney **Sarah P. Pozzi** to the firm. Sarah clerked for the Honorable Karsten H. Rasmussen, Lane County Circuit Court, after graduating from the University of Oregon School of Law. Sarah is joining our trial practice. After all, it's in her blood.

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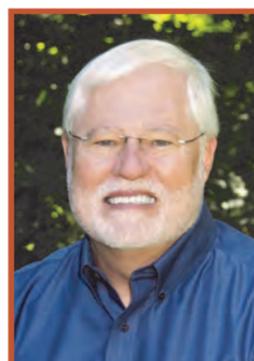
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Tips From the Bench

Legal Tapas

by Judge Leslie Roberts
Multnomah County Circuit Court

For a bit of a change, I'll be passing along a few tasty little plates of law and practice. Feel free to browse.

The Missing Witness (Avoiding Malpractice)

Sometimes the court tells you to have your witness in court at a particular time, and your witness, often an expert, has other plans. What do you do?

If all you say is that your expert has other plans for the time and can't adjust his appearance date, bad things may happen. In a Multnomah County case, the court ordered the pleadings of that party struck when out-of-state experts did not appear for a pre-trial hearing on admissibility. The Oregon Court of Appeals affirmed. Late notice was no excuse. *McDowell v. Allied Bldg. Prods. Corp.*, 235 Ore. App. 12, 23, 230 P.3d 552, 557, 2010 Ore. App. LEXIS 411, 15 (Or. Ct. App. 2010).

If you cannot produce a witness when needed, you must establish that you did all you could do, and for important reasons, not mere inconvenience, the witness could not be present. In *McDowell*, "plaintiff did not demonstrate to the court, through declarations or otherwise, that those [out of state expert] witnesses ... were unable to comply with the order or that plaintiff made reasonable efforts to secure their appearance and disclose their files." Pretty tough, but right in line with precedent.

It has long been the law in Oregon that the court should adjourn for a missing witness only in "extraordinary" circumstances. *Young v. Patton*, 9 Ore 195, 199 (1881). The lawyer should present proof of a true necessity for the evidence - that is, that justice is at stake - and show that the lawyer has exhausted all means of obtaining the testimony in a timely way. See *McDowell*. The court now acts under ORCP 52B (successor to ORS 17.050, without intended change in law) and the court can (but is not mandated to) require sworn testimony to support the request. *State v. Hill*, 240 Ore. 313, 314, 401 P.2d 43 (1965).

Most courts can adjourn a few minutes early in the day, when necessary; but don't count on more than minor adjustments without establishing need.

Remember *McDowell*, schedule inflexible witnesses early, plan for changes of pace in trial, and as a last resort, make the showing you need to if you have to chase a witness down. You don't want to have to give out your malpractice carrier's number to your client.

Improper (and Wasted) Voir Dire

Use voir dire to find out about jurors, not to lecture or persuade them.

Many lawyers think that voir dire is a fine opportunity for "call and response" style rehearsal of legal points as burden of proof



(as in, "everyone is equal before the law, even businesses - does anyone have a problem with that?"; "plaintiff has the burden of proof; anyone disagree?"). That is pointless. All jurors will say what they obviously should, and you are not helped in using your preemptory challenges. There will be time to argue these points in what is aptly referred to as "argument."

Some use voir dire (improperly) to suggest the arguments to be presented at trial or to suggest facts that may be external to the case. Those are bad ideas: "A prosecutor should not intentionally use the voir dire to present factual matter which the prosecutor knows will not be admissible at trial or to argue the prosecution's case to the jury." This admonition by the Bar is not limited to prosecutors alone. See ABA Standards for Criminal Justice, Standard 4-7.2.(c) (2d ed 1980) (rule applicable to all lawyers)." *State v. Pinnell*, 311 Ore. 98 n. 16.

Not only is the use of voir dire to conduct argument or a legal education improper, it is also a shocking waste of an opportunity. You have a paltry number of preemptory challenges, and you have one opportunity to identify your opponent in the jury room (depending on which type of juror is toxic to your particular case). You have only this opportunity to learn that Juror X's mom died in a bungled surgery, that Juror Y takes a rigidly dim view of corporate defendants, or Juror Z was recently the subject of a rear-end accident claim. Shouldn't you find this out? If you let the assassin into the jury box, you will never persuade that juror. Find the assassin when you can.

Improper Argument

It makes intuitive sense to assert your own devotion to the cause when asking others for support, but it is improper when litigating a case.

Generally, people realize they can't vouch for the truthfulness of a witness. That is not the only matter as to which the lawyer may not assert a *personal* belief:

"DR 7-106(C)(4) ("In appearing in the lawyer's professional capacity before a tribunal, a lawyer shall not assert the lawyer's personal opinion as to the justness of a cause * * * or as to the guilt or innocence of a criminal defendant.")" *State v. Cheney*, 171 Ore. App. 401, 410, 16 P.3d 1164, 1169 (2000).

Continued on page 11



News from the Courthouse

by John Robb
Court Liaison Committee

Court Update - Judge Nan Waller and Barbara Marcille, Trial Court Administrator

This report was given in December 2017 and is the last court update from Judge Waller, whose term as presiding judge ended at the end of December. Judge Stephen Bushong took over as presiding judge on January 1. Judge Waller expressed gratitude for all of the support the MBA and its members have provided to the court during her six years as presiding judge. Whenever the court has asked for help the MBA has willingly provided it. Judge Waller greatly appreciated all of the support - it has made the work of the court much easier.

Judge Waller also thanked the MBA for hosting the legislative breakfast in November. Chief Justice Thomas Balmer presented information on the impact of the budget cuts from the 2017 legislative session. OJD will be requesting restoration of funding in the upcoming short session. Currently, Multnomah County is achieving its budget goals by holding vacancies open for at least four months. This puts a lot of stress on staff due to a consistently depleted work force. As a result, judgments and other filings are not being entered as efficiently and public service counter hours have been reduced. All of this has a real-world impact on people's lives. Judge Waller requested that lawyers let Presiding Judge Bushong know how the budget shortfalls are impacting their clients and their business. It is important for legislators to have an understanding of what happens when OJD does not have sufficient funding. The courts hope to avoid a furlough situation, since closing the courthouse would cause the ultimate harm to public access.

Another focus of discussion at the legislative breakfast was the efforts underway to make the court more accessible and understandable to litigants currently and in the new courthouse. In the new courthouse, technology will be utilized to provide more information, education and options to the public. The plan is to have kiosks outside the security entrance of the courthouse so that people can access information without having to go through security to do so. This option was endorsed in some of the courthouse-users focus groups as beneficial to the public. In the upcoming short legislative session, OJD will be introducing a bill that will allow creation of legal resource centers in courthouses to provide more assistance to self-represented litigants across all case types. Multnomah County Circuit Court contemplates not only having facilitators and navigators to assist self-represented litigants but also providing education classes. The MBA has agreed to assist in this effort by developing electronic tutorials for self-represented litigants, explaining different aspects of legal processes across different case types.

The construction of the new courthouse continues, and floors are beginning to be constructed. This process will now happen quickly, with a new floor scheduled to be built every three weeks.

In other work regarding disparity and diversity in the courthouse, the court recently finished a court-wide training about implicit bias, which was presented by Resolution Services Northwest. The court is also investigating training resources for a court-wide training on sexual harassment.

Public Service Projects - Andrew Schpak, MBA President

The MBA created a Public Service Task Force to determine where the gaps are in service and if there are opportunities for the MBA and its members to help fill those gaps. Based on the recommendations of that task force, the MBA is establishing a new Public Service Committee, and is seeking interested members. The purpose of the committee will be to promote existing opportunities for public service, create new opportunities for service, build public/private partnerships, and identify experts who are willing to provide training or pro bono representation.

Hackathon. The goal of the hackathon is to bring the local technology and legal communities together to brainstorm about how we can harness technology in general, and the capabilities of the new courthouse in particular, to help connect self-represented litigants with the information and forms they need. This event will take place in the spring or summer.

Unrepresented litigant video series. The OSB is working on an initiative with OJD, LASO, and others to compile, consolidate, and create videos that help non-attorneys understand and navigate the courthouse and litigation process. MBA leadership wants to ensure that the MBA and other groups aren't duplicating work, so Executive Director Guy Walden and Andrew will plan to attend the next meeting of the OSB group to ensure collaboration without redundancies.

The Honorable Katharine von Ter Stegge Multnomah County Circuit Court Judge

by Caroline Harris Crowne
Court Liaison Committee

Circuit Court Judge Katharine von Ter Stegge came to the bench in 2017 after spending over a dozen years trying criminal and civil cases for Multnomah County and the State of Oregon. After graduating from the University of Virginia School of Law in 2002 and completing a federal clerkship in West Virginia, she began her career in Oregon as a Deputy District Attorney in 2004. A few years later, she took a job in the Trial Division of the Oregon Department of Justice, and then later became a Senior Assistant Multnomah County Attorney. In her various roles as a government litigator she handled a broad spectrum of cases: criminal misdemeanors and felonies, juvenile dependency and delinquencies, as well as civil litigation in the areas of civil rights, employment discrimination, medical malpractice, wrongful death, guardianship, tax, and elections. Altogether as a practitioner, she took over 100 cases to trial. As a judge, she continues to serve in the public interest by applying her experience to a diverse circuit court caseload.

Judge von Ter Stegge was inspired to pursue a career in the law while taking a legal history class during college on the pivotal role that litigation and the courts have played in civil rights advances in this country. It was then particularly meaningful for her, as a lawyer, to play a part in a watershed civil rights case in our state. In 2013, she represented Multnomah County in challenging Oregon's constitutional provision banning gay marriage, which resulted in the court ruling that the law violated the US Constitution's Equal Protection Clause. Throughout her years as a government lawyer, she handled many civil rights cases because she enjoyed their legal and factual complexity. In doing that work, typically defending government officials, she always loved that "anyone who has a complaint about the government is entitled

to have a conversation about the meaning of the Constitution in a courtroom."

Judge von Ter Stegge's commitment to public service has extended well beyond her duties as a government attorney and now as a judge. She has served on the OSB Board of Governors and in the House of Delegates, on several committees of the OSB and the MBA, as President of Queen's Bench, on the board of the OWLS Foundation, as a Citizen Member of the Portland Police Review Board, as a mock trial instructor and mentor at Lewis & Clark Law School, and as a volunteer attorney representing victims of domestic violence.

One of the aspects of her new judicial role that she has enjoyed most is presiding over juror voir dire. As she describes it, the process can be a rare opportunity for people to engage in an in-depth dialogue with others in their community about important social issues, like homelessness, mental illness, and law enforcement - all without checking their texts or email. She also has enjoyed the opportunity to talk with jurors after trial. Generally, jurors are very positive about their experience and often report that jury service was much more enjoyable than they were expecting. Jurors also report that they appreciate trial counsel who are friendly and candid and who get right to the heart of what is at issue in the case.

Asked about her own advice for lawyers who appear before her, Judge von Ter Stegge likewise stressed the importance of candor. "It's always best to be honest with a judge even if it's momentarily uncomfortable. I would rather hear a lawyer tell me that he or she simply does not know an answer to a question or did not do research, rather than attempt to pass off a guess on the law with confidence or tell me that no authority exists when the lawyer simply hasn't checked." Lawyers who come before her on motions will find a judge who is



Judge Katharine von Ter Stegge

engaged and likely to ask some pointed questions. Judge von Ter Stegge also tends to be very direct in settlement conferences, providing a candid assessment of how the case may fare at trial. She loves to serve as a settlement judge, and she will work hard to help resolve the case if that is what the parties want.

The toughest aspect of being a judge for her so far has been witnessing the impact that crimes have on families, especially children. She recalls one criminal sentencing in particular. The victim had died in a car crash due to the defendant's conduct, and the defendant was sentenced to a long prison term in accordance with the State's plea offer. Both the victim and the defendant had young children, who were present at the sentencing. Those children were going to grow up without their parents. "Sometimes the loss and suffering in courtrooms is staggering. I don't think I will ever get used to that and I'm not sure that I should."

Another challenge has been dealing effectively with people in court who have mental health issues. One tip she got early on from another judge, which has served her well, is to call for a break before a situation escalates out of hand.

Judge von Ter Stegge is realistic. While donning the robe did not endow her with superhero powers to heal families and those who suffer from illness, she very much appreciates that in her role she has the power to help people in meaningful ways every day, and she is dedicated to serving that purpose.

When she is not hard at work in court, or serving in one of her many volunteer roles, Judge von Ter Stegge enjoys hiking, biking, canoeing and snowshoeing with her husband and young daughter and, on rare occasions, a quiet solo hike in the woods.

actually had to tell an out-of-state attorney not to do that; and I would counsel you not to call a criminal defendant a "vicious murderous pig." See *State v. Gairson*, 5 Ore. App. 464, 468-469, 484 P.2d 854, 856-857 (1971). This is not the full gamut of argument errors. It is good for a start, however.

Further Odds and Ends of Useful Knowledge

A discount to medical bills (sometimes negotiated by Medicare, which could also be negotiated by an insurer) is in the category of a "collateral source" and cannot be considered to reduce the reasonable value of medical services of a tort victim. Contribution of medical

services likewise is a collateral source (which is not a reduction in damages). The proof of the amount of the bills is insufficient to establish the reasonable value of medical expenses. *White v. Jubitz Corp.*, 219 Ore. App. 62, 68, 182 P.3d 215, 218, 10 (2008).

More Useful Tidbits Regarding Foreclosure

An omitted junior lienor simply retains the right to be subsequently foreclosed, in a separate suit. An omitted tenant has no title, is not a necessary party to foreclosure, and may be removed after right of redemption has lapsed. *State v. Martin*, 135 Ore. App. 416, 419-420, 898 P.2d 230, 231, (1995).

Thank you, 2017 Donors! \$45,000 Raised for Civic Education



Thanks to the generous support of law firms and lawyers, the MBF raised \$45,000 in 2017 for the MBF Civic Education Fund. The fall campaign raised \$35,575; karaoke night, \$6,525; and donations via the dues check-off option on the MBA membership form, \$2,952. The net proceeds will fund 2018 grant awards to local nonprofit programs that promote civic engagement, understanding of the rule of law or the political process, and the importance of voting and juries.

Grant award recipients will be announced in the spring.

To learn more, visit www.mbabar.org/foundation/grants.html or contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).

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MBA & YLS Board Elections

The MBA bylaws provide for nominations for MBA and YLS Board positions from the membership at large. YLS members may self-nominate for the YLS Board, and MBA members for the MBA Board. MBA and YLS Board nominating petitions must be endorsed by the nominee and at least 10 other MBA or YLS members, respectively. **Petitions must be received by 5 p.m. on Friday, February 23.** New MBA and YLS Board members will be announced at the MBA Annual Meeting on Tuesday, May 2.

Tips From the Bench

Continued from page 10

The stricture also applies to other cases. What you would be doing is making yourself a witness and of course you cannot do that.

It is a good idea to remove the expression "I think" from your trial vocabulary. Innocuous in some contexts ("I think you will find the jury room rather confining...") but you don't need it and if you expunge it entirely, it won't pop out when it is disastrous: e.g., "I think the plaintiff deserves every penny of damages!"

You can't invite the jury to speculate about what an excluded exhibit would have shown. I

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 Community Service Day Recap

*by Kevin Sasse
YLS Service to the Public Committee*

On December 13, YLS volunteers joined the Children's Book Bank to help clean up donated children's books. Those books will be distributed to children throughout the Multnomah County area. The Bank is primarily operated by volunteers, and has given tens of thousands of books to children in lower-income families in the past year alone.

The need served by the Children's Book Bank cannot be overstated. The Bank has identified a book gap between children residing in low-income neighborhoods and children living in middle-income neighborhoods. On average, the ratio of books to children is

one book for every 300 children in low-income neighborhoods, as compared to 13 books *per child* in middle-income neighborhoods.

The benefits of having age-appropriate books to read are tangible. Having books to read as a child is a major indicator of academic success, and studies have shown that children who do not read over the summer will lose more than two months of reading achievement each year. This can accumulate up to a two-year gap by the sixth grade! To donate your time or gently used children's books, please visit www.childrensbookbank.org for more information.



YLS volunteers (from left to right) Anthony Copple, Robert Parker, Kevin Sasse, Taryn Basauri, Michael Jones and Diego Atencio

**Christine Taylor
YLS Member Spotlight**

*by Evan Lenneberg
YLS Board*

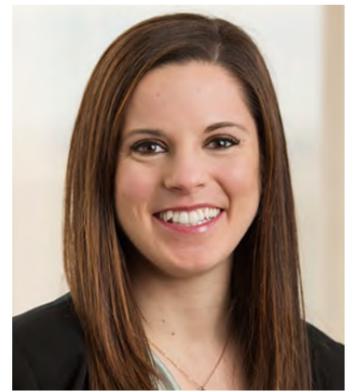
Christine Taylor is an associate at Miller Nash Graham & Dunn, specializing in construction and general business transactions. Christine is a former member of the MBA's YLS Pro Bono Committee. Christine also loves polar bears. Connecting polar bears and construction law may seem tenuous, especially in Portland, Oregon, but Christine has managed to do just that.

In the fall of 2016, Christine joined the Oregon Zoo Bond Citizens' Oversight Committee, which monitors the spending and allocation of the funds from the \$128 million zoo improvement bond, approved by voters in 2008. A veterinary medical center, a sparkling education center, and an ambitious polar bear habitat called the "Polar Passage" are among the improvements completed or underway using bond funds. The relationship between Christine and the committee is symbiotic - the committee benefits greatly from Christine's construction law expertise, and Christine gains invaluable, in-depth experience with issues near and dear to her, which may not otherwise be accessible for a non-scientist construction lawyer.

In October 2017, this symbiosis came to a head when Christine was invited to participate

in a polar bear safari in Manitoba, Canada. The trip was self-funded and intended to provide a format for interested and influential members of the zoo community to witness polar bears in their natural habitat. Importantly, the polar bear safari is much more than an excuse to see polar bears. The trip is designed to use the bears as an introduction into more pervasive issues, including the role zoos play in animal research and the impact of climate change on polar bear habitats and our planet in general. Christine says in no uncertain terms that the trip changed her life, explaining that "there is something about being in the Arctic that makes one understand how special, unique, delicate, and vulnerable the ecosystem is, which is not something one can fully grasp without seeing it firsthand."

It has become fashionable to question zoos' basic premise of making money by charging people to look at animals in cages. Through her role on the committee, and her experience on the polar bear safari, Christine has developed a broad understanding of the role the Oregon Zoo plays in protecting vulnerable species, including conducting invaluable research impossible to perform in the wild. For example, the Oregon Zoo trained its polar bears to voluntarily give blood samples.



Christine Taylor

Without such training, the bears would have to be anesthetized to obtain samples, making it impossible to collect samples regularly. Because the bears give blood samples voluntarily, the zoo can collect regular samples, and thereby provide a control group used to compare with samples drawn from wild bears. This research provides, among many other things, a window into how polar bears (and other animals) react to the changing climate.

Christine's ability to successfully connect her professional life with a seemingly disparate passion is a goal many lawyers strive to achieve, and an example of the value we, as lawyers, bring to our community in ways we may not expect. In her spare time (when not exploring the Arctic), Christine enjoys hiking with her boyfriend and dog. She is also a co-chair of the Campaign for Equal Justice Associates' Committee and a member of CASA's Ambassador Board.

**MBA Visits the Portland Children's Museum
Saturday, February 24, 5:30-7 p.m.
4015 SW Canyon Road, Portland**

Each year, the YLS Membership Committee reserves the Portland Children's Museum for this private networking event. Families will have free reign to explore the museum and complimentary refreshments will be provided for kids and adults. Admission is free.

Please register early as space is limited. Submit your party's RSVP list to ryan@mbabar.org.

Thank you to our sponsors:



Ask the Expert

Dear Expert,

I love being an attorney, but I am not thrilled with the work I am doing. I am interested in changing or expanding my practice area, but I don't have any experience in the field I am interested in pursuing. How do I learn what it's really like to practice in a new area of the law before I commit to it, and make sure I am not mal-practicing while I learn?

Sincerely,
Dissatisfied Associate

Dear Dissatisfied,

There are many interesting areas of the law out there, and it might take some time for you to find the right fit for your practice. Everyone's passion is different, and it's important to find work that will be personally satisfying in the long-term. It's okay to explore a little before you settle in, but make sure you do it responsibly. Here are some tips to help you get your feet wet in a new area of the law:

1. Start with your own firm

If you are in a larger firm, there might already be a practice group working in your field of interest. Find out if they need any help, and talk to your supervisor about spending some of your time with them. Even if your firm isn't currently practicing in this area, they might be interested in expanding, just like you are. See if they are willing to pay for some CLE seminars, and maybe you can spearhead a new practice area and expand your firm's offerings. At the very least, they might know people with experience in the field and be willing to introduce you.

2. Get insight from your peers in the trenches

Other newer attorneys are the best place to find out what it is really like to get started in any field. Many of them are still settling in themselves, and they are more willing to be honest with you about the challenges involved. Use the MBA to network with young lawyers already practicing in the field and take them out for coffee or lunch. Most lawyers love talking about what they do, and they can give you some insight into what you can expect in the field. They might also be willing to get you in touch with more experienced attorneys so you can build mentoring relationships.

3. Learn as much as you can

Most practice areas have dedicated Bar sections, or other local dedicated organizations. Find out from your connections what the specific organizations are that every lawyer practicing in the field tends to join. If you have the budget for it, join the organization and start getting to know the members and attending events. Simply following the listserv chatter

should get you some insight into the field, and you will make connections with more experienced practitioners. This is also the best way to find out about relevant CLE seminars or conferences in the area where you can start to get a feel for the substantive practice. If you can't join, see if you can still attend some events, as many organizations will allow guests.

4. Find a mentor, or two, or three

Hopefully by now you have met some experienced attorneys in the field who have given you a good impression and are willing to give you guidance. Nurture those relationship with coffee dates and thank you notes so you always have someone available if you come across a really tricky question or just get stuck. If you are keeping up relationships with experienced practitioners, they will also think of you first if a job opening comes up in the field. Even if it isn't at their firm, they can put in a good word for you when the time comes.

5. Get some hands-on experience

The best way to find out if you are interested in a new practice area is to get some hands-on experience. Make sure that, in addition to making professional connections and joining listservs, you find out if there are any local nonprofits or pro bono clinics specializing in the field. Most pro bono opportunities are available with close supervision so you don't have to worry as much about making big mistakes. If you volunteer at a clinic you will likely be given a role commensurate with your experience. It might be more of a paralegal role than an attorney role, but it will still give you a window into the day-to-day world of practicing in your dream field. Of course, it is also another great opportunity to connect with more experienced practitioners.

Once you have talked to attorneys of varying experience and expertise to get a feel for the practice area, and have some pro bono experience under your belt, you will be in a much better position to decide whether this is the field for you, and to start your transition if it is. If you love your firm but not the work you are doing, see if you can transition to a different practice group, or convince the partners to start a new practice group with you at the helm. If you're looking for a change, you can pursue the connections you make while looking for mentors and volunteering. Or, if you are very brave, you can set out on your own; just make sure you keep that network in place so you can always get the support you need.

MBF Announces Officers, Directors

by Pamela Hubbs
Office and Foundation Administrator

The Multnomah Bar Foundation is pleased to announce its new slate of officers and directors for 2018.

We asked our officers for their thoughts about the MBF and its work:



J. Matthew Donohue, Holland & Knight LLP, **President**, on the year ahead, "I am thrilled to lead the MBF and continue its mission to promote civic education. The MBF will work throughout 2018 to raise awareness and understanding of our civil process, and fund nonprofit organizations that directly serve and educate our community on these important issues."



Nicholas A. Kampars, Davis Wright Tremaine LLP, **Vice President**, about his service on the Board: "It's been an honor to serve on the Board and contribute to the great work of the MBF, especially the CourtCare program. I am very proud of the strong support we receive each year from the Portland legal community to meet this important need."



Jennifer A. Wagner, Stoll Berne PC, **Secretary Treasurer**, about the work of the foundation: "The MBF's mission of promoting civic engagement and increasing the public's understanding of the legal system is particularly important in the current political climate. Our legal community can play a valuable role in civic education. I am thrilled to continue to work with the MBF and the community organizations it supports to help keep our democracy strong."



Dana S. Scheele, Cambia Health Solutions, **Immediate Past President**, on the year ahead: "As I transition to my final year on the MBF Board, I am more proud than ever of the work the Board does and the organizations and people who feel its impact. From families benefitted by CourtCare to nonprofits focused on engaging metro area communities in the political process, the mission of the Board is a worthy one and worth paying attention to."



J. Mackenzie Hogan



Abby Wool Landon



James E. Oliver Jr.



Hon. Xiomara Torres

New directors are **J. Mackenzie Hogan**, Harris & Bowker LLP; **Abby Wool Landon**, Tonkon Torp LLP; **James E. Oliver Jr.**, Jim Oliver Law; and **Hon. Xiomara Torres**, Multnomah County Circuit Court.

Continuing directors are **Sarah H. Bond**, Zimmer Bond Fay & Overlund LLC; **Holly L. Johnston**, Lane Powell PC; **Mary Jo N. Miller**, Ball Janik LLP; **Timothy J. Resch**, Samuels Yoelin Kantor LLP; and **Julie R. Vacura**, Larkins Vacura Kayser LLP. **Emilee Preble**, Professional Liability Fund, is the current MBA Board Liaison.

Attorneys Needed for Law Student Speed Networking Event

The Feb. 22nd event will give law students the opportunity to learn more about practicing law, while gaining valuable insights and advice that could help them in their careers. Organized by the Black Law Student Association and other Minority Student Groups at Lewis & Clark Law School, and Perkins Coie LLP. To participate or for more information, contact Lawrence Pittman at lpittman@lclark.edu.

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The MBA conference room may be reserved for use by MBA members for client meetings, depositions and other professional law-related business.

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Contact the MBA for details and availability at 503.222.3275.

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The Corner Office PROFESSIONALISM

The hardest part about being a litigator is realizing your client has a losing case. That realization triggers the difficult job of delivering bad news to the client. Being the bearer of bad news is an unenviable task in any situation, but it is especially difficult for a lawyer. We are, after all, professional “fixers.” That is why many of us went to law school. We like to fix problems, and generally, we are good at it. But there are some problems that cannot be fixed under the law: a claim outside the statute of limitations, unforeseeable negligence, or a poorly negotiated contract. For a professional who spends his or her time fixing problems, it is galling to come across a problem that we cannot fix. It is especially so when you believed the problem could be fixed at the outset of the representation. We have all been in this predicament (even the most successful of us), and if not, it just means you haven’t been practicing long enough.

When faced with that situation, the natural response is denial. The lawyer may not be quite sure how to deliver the bad news, and thinks that with more

research or more time mulling over the problem, a solution will present itself. Perhaps a solution will eventually present itself, but beware of that conclusion. It is a trap for the well-meaning lawyer. Simple procrastination in such circumstances can easily snowball into dishonesty, and soon after that, discipline.

There are many examples in the Disciplinary Board Reporters of good lawyers who found themselves before the Bar simply because they avoided delivering bad news. The decision to spend more time on the problem often means that the matter gets pushed to the side of your desk or the file gets put in your briefcase to look over some quiet evening at home. And that is how months slowly pass while your attention is on other, more viable matters. At some point, a critical deadline or two gets missed, and the dimensions of the problem start expanding. What seemed like bad news a few months ago is now really bad news, part of which is embarrassingly your fault, and the task of delivering the news has just gotten that much harder. This is the point at which truly

disciplinable conduct often begins to occur. Rather than deliver the bad news and own up to the missed deadline, the lawyer misrepresents that status of the case, and with an RPC 8.4 violation, it’s all downhill from there to one degree or another.

So the next time you have bad news to deliver, fight the urge to delay discussing it with the client. Lean into the chore with professionalism, and recast it as an opportunity. It may be an opportunity to brainstorm about the case with the client or it may just be an opportunity to gently manage client expectations.

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

Thank you 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, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark Small Business Legal Clinic, Children’s Representation Project, Wills for Heroes, 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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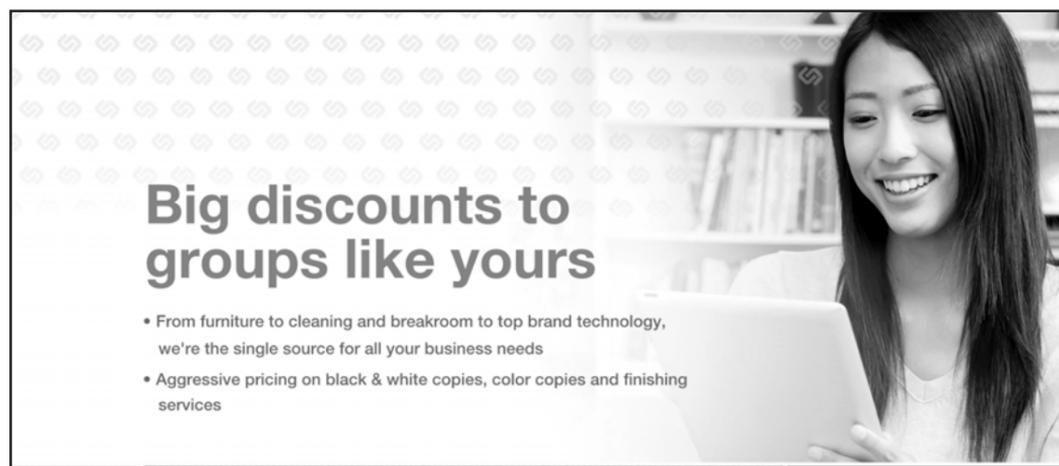
Diversity Efforts

Continued from page 6

Conclusion

The MBA has agreed that a name change is necessary to capture what its committee is doing and what our bar needs. Central to those needs is the effort to better identify the barriers we have had absolutely no intention of

creating or continuing. There are many reasons those barriers can be invisible or overlooked. A real understanding of equity and inclusion, with an assist from diversity, will allow us, indeed require us, to identify and attempt to remove the very barriers we never had a conscious intent to create. The committee looks forward to the future.



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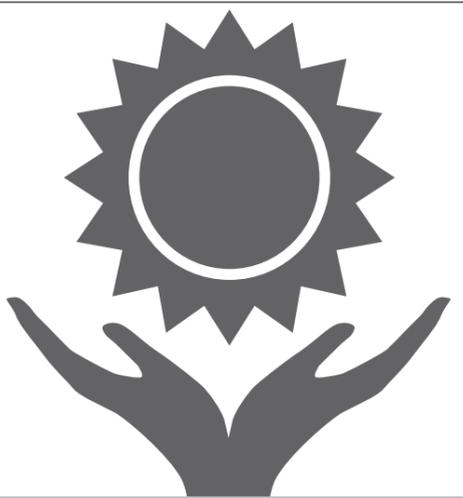
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We are not accepting third-party recruiter submissions at this time.

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- Cover letter
- Resume
- Writing sample (5-7 pages)
- Law school transcript

Applications must include all of the above documents for full consideration. Documents may be uploaded in Word or PDF format on the web site.

All inquiries will be handled confidentially. Interviews will be scheduled starting in mid-January. Position is open until filled.

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Member Resource Center

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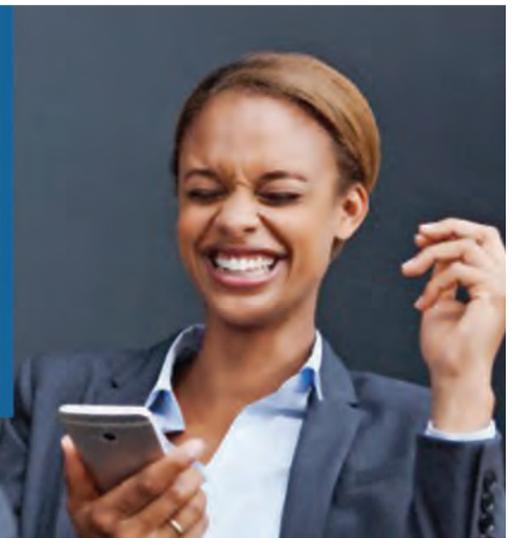
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Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.

MBA 2018 Mentor Program Kicks Off

The MBA Mentor Program, administered by the MBA Professionalism Committee, kicked off the year with a reception on January 16. Thirty-four pairs are participating in this year's program, which matches YLS members with esteemed and experienced MBA members for a six-month period. The mentors and mentees attended a brief welcome and

heard words of wisdom from Jane Paulson, the 2017 MBA Professionalism Award recipient. Thank you to all who are participating!

The MBA CLE Committee offers a two-for-one registration at MBA CLE classes for mentor pairs. Mentors who sign up for an MBA CLE can bring their mentee for free. Contact the MBA for more information.



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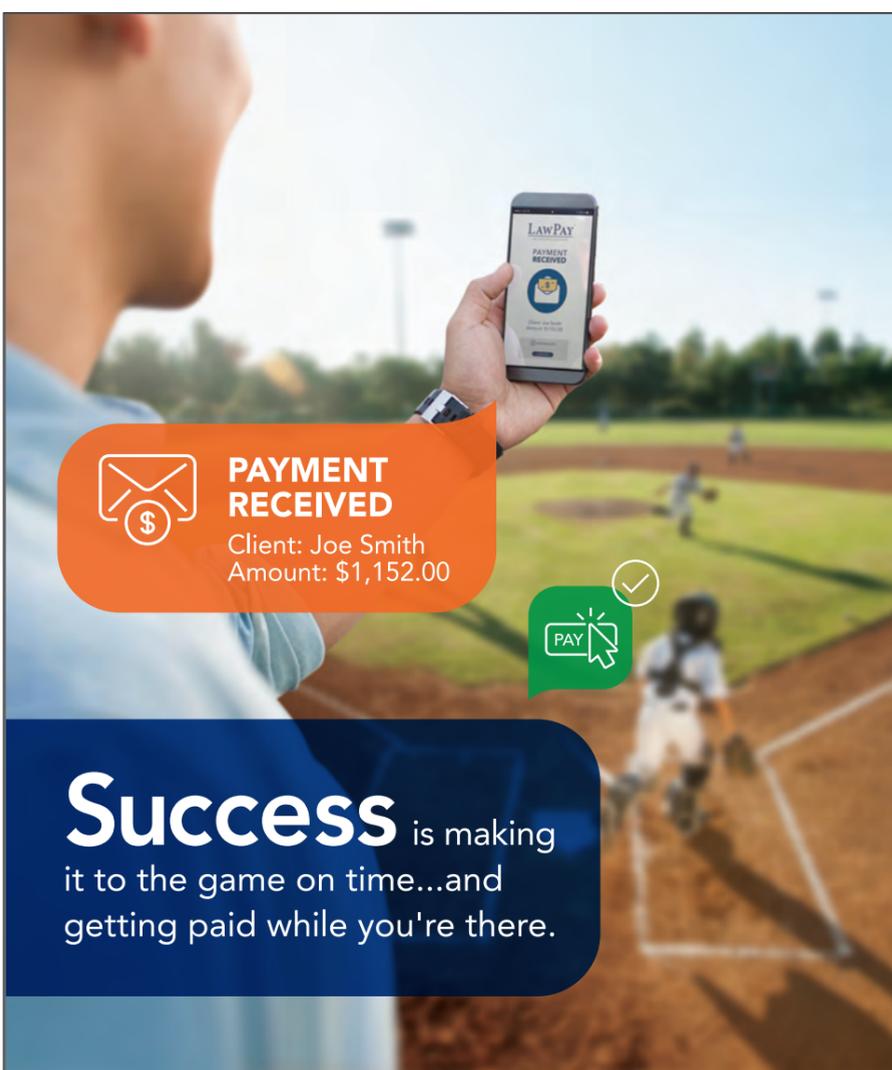
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