



CourtCare's 16th Annual Fundraising Campaign

by Sarah Bond
MBF CourtCare Campaign Committee Chair

It's that time of year again when the Multnomah Bar Foundation calls on the Portland legal community to support its innovative and nationally recognized Multnomah CourtCare program!

CourtCare provides free, high quality, drop-in childcare for parents with court business. In turn, access to justice is increased (by removing the barrier of childcare for parents seeking assistance from the court) and the administration of justice is improved (by reducing distractions in the courtroom and reducing the number of reschedules and no-shows because childcare is not available).

We are one of the few jurisdictions in the country that provides this essential service.

In the words of Judge Katherine Tennyson "CourtCare is a service that every court needs."

The Honorable Patricia McGuire is this year's CourtCare Coach for Multnomah County's Central Courthouse. She echoes Judge Tennyson's sentiment and adds that "court is both stressful and important; no one benefits when children are present in the courtroom or when litigants are worried about their children. Because CourtCare provides high quality care for litigants with childcare needs, both problems are addressed."

CourtCare will be open and ready to serve children at the new Central Courthouse the same day it opens its doors in Spring 2020! The new Central Courthouse will feature a new and improved space for CourtCare that is specially designed for childcare and includes separate napping and reception areas. The space is three times bigger than the current space and will have the capacity to serve twice as many children, and will have all new furniture, cabinetry, and toys (items currently in use will be donated to the East County CourtCare space).

"CourtCare is a service that every court needs."

CourtCare opened its doors in 2001 at the Multnomah County Courthouse and then expanded services to the East County Courthouse in 2015. In 2017, Marion County and Polk County launched CourtCare programs modeled after Multnomah CourtCare called Mid-Valley CourtCare.

Multnomah CourtCare serves children as young as six weeks and as old as 10 years and, since opening, has served over 17,000 families. In addition to providing high quality childcare, CourtCare makes referrals to families for basic needs, housing, food, clothing and diapers, as well as mental health services and legal aid.

Parents consistently express gratitude for the program:

A parent in January 2019 expressed that "I am so thankful that my kids didn't just hear what I went through, they are already freaked out enough." Another mom was able to support her husband because of CourtCare. She stated, "I wanted to be with my husband for his sentencing and had no other place for our baby to stay."

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Kids love the program, too! One happy customer reported: "I love all the cows, you always give me oranges and crackers, and I only get oranges here. I love oranges." Another expressed that "this is my best place to go."

In total, CourtCare is a win for parents, a win for kids, a win for the court, and a win for justice.

Without the generous financial support of Portland's legal community, CourtCare would not be possible. **It is time to kick off**

the 2019 CourtCare Campaign which runs from April 29 through May 17. This year's Campaign has a goal of raising \$100,000. **We need your help to meet, and exceed, that goal.**

Please help broaden the gates of justice with your donation. We are counting on you.

Donations are made to the MBF and are tax-deductible. To learn more about CourtCare please contact me, Sarah Bond, at sarah@zimmer-law.com or 503.295.6191. Also, please see the insert to make a donation by mail, or visit www.mbabar.org/courtcare to make a donation online or to view a brief video about CourtCare.

On behalf of the MBF Board, thank you for your consideration and for supporting this essential, innovative, and life-changing program.

...CourtCare is a win for parents, a win for kids, a win for the court, and a win for justice.

Multnomah Bar Association Annual Meeting, Dinner & Judges Reception

Tuesday, May 14
5-8 p.m.

Portland Marriott Downtown Waterfront
1401 SW Naito Parkway

*Celebrating the profession and
recognizing our colleagues*

Professionalism Award Recipient
Tracy P. Reeve

MBA Diversity Award
Hala J. Gores

MBA Awards of Merit
Kasia E. Rutledge • Rakeem Washington

YLS Awards of Merit
Anthony Blake Jr. • Maxine Tuan

YLS Rookie of the Year
Margaret Davis

Pro Bono Awards
Julia M. Hagan • Erick J. Haynie •
David J. Malcolm • Lauren J. Russell

Register by May 7.

Thank you sponsors of the MBA Annual Meeting

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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.

MAY

5.2 Thursday
How I Learned to Love Rent Control: Senate Bill 608

Jane Moisan
Tim Murphy
Troy Pickard

5.7 Tuesday
Lessons from the Humanitarian Border Crisis: How Local Attorneys Can Get Involved

Warren Binford
Virginia Maynes
Eileen Sterlock

5.15 Wednesday
Mandatory Mental Health and Substance Abuse CLE

Judge Gregory Silver
Shari Gregory

5.21 Tuesday
1031 Exchanges: Soup to Nuts

Toija Beutler

5.22 Wednesday
Writing to Persuade

Anna Joyce
Jackie Kamins
Lora Keenan
Rolf Moan

5.29 Wednesday
ORS 20.080: Attorney Fees in Small Tort Claims

Chris Piekarski
Emery Wang

5.30 Thursday
Multnomah County Trial Practices Update

Judge Leslie Bottomly
Judge Eric Dahlin

JUNE

6.4 Tuesday
Section 1983 Litigation: Revisiting Qualified Immunity

J. Ashlee Albies
Juan C. Chavez
David Landrum
Jim Rice, moderator

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DEADLINE for copy: The 10th of the month*

DEADLINE for display ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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Free Food, Beverages and Cash Prizes

Friday, May 24, 6-9 p.m.

Lagunitas Community Room

237 NE Broadway, Ste. 300, Portland

The YLS Service to the Public Committee, in association with Literary Arts, invites you to the Second Annual Objection! Poetry Slam. The theme is "Free Speech, Free Press, Free Society" and the event is open to participants ages 13-22 who would like to perform a poem expressing their views.

Local, nationally-recognized poet Alex Dang will be emceeing the slam and hosting a creative writing workshop at the beginning of the event.

Attendance is free, no RSVP required. We hope you join us for a night of creative thought and performance.

Visit www.mbabar.org/slam for participation and event details.

Thank you to our sponsors:



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VOLUNTEER TO REDUCE ABUSE

Guardian Partners seeks volunteers to meet with elder adults and disabled adults under Guardianship care to ensure they are safe and thriving.

Volunteer Monitors are at the heart of our mission to keep vulnerable Oregonians safe and thriving. You'll be given training and ongoing support to be successful. Once assigned a case, you'll meet with the Protected Person as well as their Guardian and furnish a report to the Court, identifying any evidence of abuse or neglect.

- Typical cases requires six hours of time.
- Highly flexible—can be scheduled on your time at your convenience.
- Operating in Multnomah, Clackamas, Marion and Lane counties. More counties anticipated soon.
- The difference you make in a Protected Person's life can be profound!



I would love to schedule time to chat with you, your professional group, social group or faith group about our volunteer program. Let's talk!

Contact:

Marc Kochanski, Community Relations Manager
marc@guardian-partners.org | 971-409-1358

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Calendar

MAY

1 Wednesday
CourtCare Campaign
See insert for details

8 Wednesday
Time's Up Oregon
www.oregonwomenlawyers.org

9 Thursday
YLS & Law School Graduates Mixer
www.mbabar.org

10 Friday
United States District Court Conference
www.mbabar.org

14 Tuesday
MBA Annual Dinner and Reception
Details on p. 1

21 Tuesday
Oregon Law Foundation Reception
www.mbabar.org

24 Friday
Objection! Poetry Slam 2019
Details on this page

30 Thursday
MBA Solo & Small Firm UNconference
Details on p. 7

JUNE

6 Thursday
Oregon Paralegal Association 40th Anniversary Soiree
www.mbabar.org

8 Saturday
YLS, OHBA and ONLD Kick Off the Summer!
Details on p. 12

20 Thursday
MBA Solo & Small Firm Social
Details on p. 8

Interested in Becoming a CourtConnect Presenter?

Would you like to team up with a judge to present a civic education class to a community or student group? MBF CourtConnect is seeking volunteers to share their knowledge of the rule of law.

- Diverse backgrounds and all practice areas are welcome.
- Weekday, evening and weekend opportunities, with a minimal time commitment of two hours.
- Multnomah, Clackamas and Washington counties.
- Prior experience speaking to community groups is a plus.



Educating the public about the role of the courts is our responsibility as lawyers and judges who are its stewards. Members of the community often lump the courts, law enforcement and politics together. As we know, the judiciary is a crucial part of our system of government. MBF's CourtConnect program provides an opportunity for us to remind the broader community of that important role and share Multnomah County Circuit Court's commitment to fairness.

- Judge Melvin Oden-Orr, Multnomah County Circuit Court, CourtConnect Presenter



Contact Pamela Hubbs to learn more (503.222.3275, pamela@mbabar.org).



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

How I Learned to Stop Worrying and Love Rent Control: Exploring Newly Enacted Senate Bill 608

Thursday, May 2 Noon-1:30 p.m.
World Trade Center, Mezzanine
Members \$45/Non-Members \$70

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

In March, Senate Bill 608 enacted sweeping changes to Oregon's residential landlord-tenant laws. In this CLE, **Troy Pickard**, Portland Defender PC; **Tim Murphy**, Murphy Law Group PC; and **Jane Moisan**, Legal Aid Services of Oregon will explain what these new laws mean for both landlords and tenants, especially in the areas of no-cause terminations, rent increases and relocation payments. The presenters will also discuss the new City of Portland ordinance (30.01.085).

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

Bearing Witness: Lessons from the Humanitarian Border Crisis, and How Local Attorneys Can Get Involved

Tuesday, May 7 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Images of the humanitarian crisis at the US-Mexico border are ever-present; the news often overwhelming. Our panel of experts have witnessed first-hand the impacts of the crisis, and this CLE will help all local attorneys untangle the issues. Come learn about the inspections and reports **Professor Warren Binford**, Willamette Law School, has completed on the conditions in which children and their parents are being detained at the border, within the backdrop of the landmark Flores case. Come learn how **Virginia Maynes**, Program Attorney from Immigration Counseling Services, represents children who are predominantly alone, without parents or other legal guardians, and detained by the US government. Come learn how attorneys in private practice, like **Eileen Sterlock**, can also assist unaccompanied minors navigate the immigration system. Come learn how to get involved, no matter what type of law you practice. This CLE is for every attorney, no matter which side of the bar you are on, and no matter your level of experience. Our esteemed panelists are: **Warren Binford**, Professor & Director, Clinical Law Program, Willamette University College of Law; **Virginia Maynes**, Unaccompanied Minors Program Managing Attorney, Immigration Counseling Service; and **Eileen Sterlock**, Immigration Law Office.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1003. For registration questions, contact the MBA at 503.222.3275.

Mandatory Mental Health and Substance Abuse CLE

Wednesday, May 15 Noon-1 p.m.
World Trade Center, Mezzanine
Members \$30/Non-Members \$50

Note: 1 hour of Mental Health and Substance Abuse MCLE credit will be applied for.

A landmark 2016 ABA/Hazelden Betty Ford Foundation national study found that attorneys are nearly twice as likely as the general population to experience problematic alcohol use, and younger attorneys (under 30) are approximately three times as likely. Reported levels of depression, anxiety, and stress were also significantly elevated among attorneys according to the study. Given these realities, the Oregon Supreme Court approved amendments to the MCLE rules requiring mental health, substance abuse, and cognitive impairment education. The speakers in this CLE will talk about when to ask for help for yourself and for colleagues, and how to recognize when someone needs help. You will also hear a personal story of recovery. This CLE will be presented by **Shari Gregory**, LCSW, JD, OAAP Assistant Director/Attorney Counselor, and **Judge Gregory Silver**, Multnomah County Circuit Court.

For more information: Contact Roscoe Nelson, Nelson & Nelson at 503.222.1081. For registration questions, contact the MBA at 503.222.3275.

1031 Exchanges: Soup to Nuts

Tuesday, May 21 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Toija Beutler, attorney and owner of the Beutler Exchange Group, will discuss the fundamentals of the 1031 exchange for investment properties. Drawing on her 20+ years and 19,000 exchanges, she will bring you up-to-date on recent changes and current trends. This program will be of interest to real estate and tax attorneys.

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

Writing to Persuade

Wednesday, May 22 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Whether you are writing to a judge, the legislature, opposing counsel, or your colleagues, you are writing to persuade - to convince others to adopt your position. Come learn concrete techniques to apply at each stage of the writing process to make your work product more persuasive. Our panel includes **Anna Joyce**, Markowitz Herbold PC; **Jackie Kamins**, Multnomah County Attorney's Office; **Lora Keenan**, contract attorney; and **Rolf Moan**, DOJ Appellate Division. Topics will include:

- Framing your writing to serve your audience;
- "Reverse engineering" from the result you want;
- Using structure for maximum effect;
- Choosing words intentionally to reinforce your position.

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

Attorney Fees in Small Tort Claims: Understanding the Mechanics of ORS 20.080

Wednesday, May 29 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

ORS 20.080 allows successful tort claimants to recover their attorney fees in lawsuits for \$10,000 or less, but preserving the right to recover attorney fees is not always as straightforward as it seems. Join plaintiffs' personal-injury attorney **Emery Wang** of Vames & Wang and defense attorney **Chris Piekarski**, lead counsel for Allstate Insurance, for a discussion of how plaintiffs can perfect their claims for attorney fees, how defendants can effectively respond to ORS 20.080 demands, and how both sides can avoid common pitfalls.

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

Multnomah County Trial Practices Update 2019

Tuesday, May 30 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

This year's program will feature presentations by Multnomah County Circuit Court **Judges Leslie Bottomly** and **Eric Dahlin**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. Judges Bottomly and Dahlin will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter.

The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1003. For registration questions, contact the MBA at 503.222.3275.

Section 1983 Litigation: Revisiting Qualified Immunity - A Supreme Court Update and A Litigator's Guide to Successful Briefing and Oral Argument

Tuesday, June 4 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

This CLE is for civil litigators of all experience levels. Our panel of experts on 1983 litigation will break down the defense of Qualified Immunity within the context of the recent Supreme Court opinion in *City of Escondido v. Emmons*, 139 S Ct 500, (2019), and the Ninth Circuit's views on QI since the per curiam SCOTUS opinion was released. This CLE will also address how attorneys on either side of the bar should frame their briefing and oral argument since the Emmons decision in order to successfully represent their client. Our esteemed panel of experts for the CLE include: **David Landrum**, Senior Assistant County Attorney, Multnomah County Attorney's Office; **J. Ashlee Albies**, Albies & Stark, LLC; and **Juan C. Chavez**, Director, Civil Rights Project, Oregon Justice Resource Center. The CLE will be moderated by **Jim Rice**, Senior Assistant County Attorney and Litigation Manager, Multnomah County Attorney's Office.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1003. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

Washington and Clackamas County Court Updates 2019

Wednesday, June 5 3-4:30 pm
World Trade Center, Mezzanine
Members \$45/Non-Members \$70

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

The MBA CLE Committee presents this CLE focusing on Clackamas and Washington County court updates. This CLE is designed for all attorneys and will provide information and updates on appearing in Clackamas and Washington County Courts.

Our panel includes Clackamas County **Presiding Judge Kathie F. Steele** and Washington County **Presiding Judge D. Charles Bailey**. This CLE will assist the practitioner in adjusting to court procedures outside of Multnomah County, including local rules, judicial preferences, court organization, motion practice, and scheduling and obtaining court assistance with trial and pleading issues.

The CLE will also provide attendees with updates to both Washington and Clackamas County court practices. Electronic materials and online resources will be available to provide further assistance to attorneys who may practice in either or both of these counties.

For more information: Contact Michael McGrath, Gearing, Rackner & McGrath, LLP at 503.222.9116. For registration questions, contact the MBA at 503.222.3275.

Copyright and the Internet

Tuesday, June 11 3-5 p.m.
World Trade Center, Skybridge
Members \$60/Non-Members \$95

The Internet makes the dissemination of information far easier than it's ever been before, including information protected by copyright law. Join Intellectual Property attorneys **Bert Krages** and **Julie Reed** as they discuss how to advise clients on how to avoid copyright infringement claims and how to protect their own material from being infringed upon. They will also cover the practicalities associated with enforcing the copyrights of materials displayed on the web.

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

ORCP 17: Limitations and Applicability

Wednesday, June 12 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Note: 2 hours of MCLE ethics credit will be applied for.

Is there ever a situation that warrants and justifies filing an ORCP 17 motion against another attorney? How do the courts view these motions? What are the ethical concerns for attorneys defending themselves or their clients from these motions? Our speakers are **Peter Jarvis**, Holland & Knight LLP, whose practice focuses on professional responsibility and risk management for attorneys, and **Judge Katherine Tennyson**, Multnomah County Circuit Court. They will discuss ORCP 17, the pleading requirements for ORCP 17 fees and sanctions, and the complex legal and ethical issues it engenders. They will provide a back drop for discussion of how ORCP 17 motions are viewed by our legal community, whether these motions have a role in today's litigation, and what are the circumstances under which such a motion might reasonably be filed. More importantly, they will point out the significant ethical and conflict concerns that arise for attorneys in responding to these motions.

For more information: Contact Sarah Silberger, Attorney at Law at 503.939.2732. For registration questions, contact the MBA at 503.222.3275.

Oregon Pay Equity: What Lawyers Should Know When Advising Employers and Employees

Thursday, June 27 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Oregon's new pay equity law - arguably one of the strictest in the nation - came into full effect on January 1, and pay equity is top of mind for many employers and employees alike. This CLE will survey major features of the new law, compare and contrast it with laws recently adopted in other states (including Washington and California), and discuss unique compliance challenges and opportunities that the law presents for employers. The session will be led by two Portland-based attorneys who will share perspectives based on their experience litigating pay equity cases for plaintiffs and defendants, respectively: **Laura Salerno Owens** of Markowitz Herbold PC and **Kathryn G. Mantoan** of Orrick, Herrington & Sutcliffe LLP.

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

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
FIRM	EXPIRATION DATE AND SECURITY CODE
ADDRESS	SIGNATURE
CITY STATE ZIP	BILLING ADDRESS FOR CARD (if different)
PHONE	
OSB#	

Member Status:

MBA Member

Non-Member

Payment Options:

Check VISA MasterCard

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

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

Seminar Selection:

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

- 5/2 How I Learned to Stop Worrying and Love Rent Control: Exploring Newly Enacted Senate Bill 608**
 Class Registration (\$45 Members/\$70 Non)\$ _____
 CD-ROM & Written Materials (\$45 Members/\$70 Non) ..\$ _____
- 5/7 Bearing Witness: Lessons from the Humanitarian Border Crisis, and How Local Attorneys Can Get Involved**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 5/15 Mandatory Mental Health and Substance Abuse CLE**
 Class Registration (\$30 Members/\$50 Non)\$ _____
 CD-ROM & Written Materials (\$30 Members/\$50 Non) ..\$ _____
- 5/21 1031 Exchanges: Soup to Nuts**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 5/22 Writing to Persuade**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 5/29 Attorney Fees in Small Tort Claims: Understanding the Mechanics of ORS 20.080**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 5/30 Multnomah County Trial Practices Update 2019**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 6/4 Section 1983 Litigation: Revisiting Qualified Immunity - A Supreme Court Update and A Litigator's Guide to Successful Briefing and Oral Argument**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 6/5 Washington and Clackamas County Court Updates 2019**
 Class Registration (\$45 Members/\$70 Non)\$ _____
 CD-ROM & Written Materials (\$45 Members/\$70 Non) ..\$ _____
- 6/11 Copyright and the Internet**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 6/12 ORCP 17: Limitations and Applicability**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 6/27 Oregon Pay Equity: What Lawyers Should Know When Advising Employers and Employees**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

Total due\$ _____

New MBA Board Directors and Officers

New directors for the three-year terms which begin June 1 are:



Jacqueline Alarcón

Jacqueline Alarcón is an associate at Yates Family Law PC. Her practice focuses on divorce, property division, spousal support, child custody, child support, parenting time, post-divorce modification and enforcement of judgment. Jackie currently serves on the Judicial Screening Committee. Her involvement with the MBA includes co-chairing the YLS CLE Committee as well as being selected as the YLS Rookie of the Year in 2014. She currently serves on the Oregon Women Lawyers Board of Directors and is the Vice Chair on the Board of Adelante Mujeres.

Nellie Barnard is an associate at Holland & Knight. Her litigation practice includes representing



Nellie Barnard

clients in employment matters, complex business disputes, financial services litigation, and legal ethics. Nellie currently serves as the chair of the Professionalism Committee of which she has been a member since 2015. She also serves as a board member of the Federal Bar Association and is on the Associates Committee for the Campaign for Equal Justice.



David Bean

David Bean is a partner at Wyse Kadish LLP. His practice has focused almost exclusively on family law since 2001. David currently serves on the Court Liaison Committee. Previous service with the MBA also includes YLS President, chair of the Mid-sized Firm Roundtable, and chair of the Membership Committee. He also currently serves on the Oregon Family Institute Board of Directors, on the Campaign for Equal Justice Advisory Committee and on the Pro Bono Committee of LASO and the Oregon Law Center.



Ben Cox

Ben Cox is the owner of Ben Cox Law, which he started in 2011. His areas of practice include personal injury and insurance coverage. Ben currently serves on the Solo and Small Firm Committee and previously served on the YLS Pro Bono Committee and the YLS Board of Directors. He has also served as a chair of the OTLA Motor Vehicle Section, OTLA New Lawyer Committee, and on the OSB Procedures and Practice

Committee. He currently serves on the OTLA Board of Governors.



Holly Hayman

Holly Hayman is an associate at Leonard Law Group. Her practice focuses on bankruptcy and debtor/creditor rights. Holly is the 2019-20 YLS President and will serve as an MBA director during her term. Her MBA service includes past chair of the YLS Membership Committee, and YLS Board Liaison to the Professionalism Committee and the YLS Pro Bono Committee. She also serves on the Campaign for Equal Justice Associates Committee and the Legislative Committee of the Debtor-Creditor Section of the OSB.

Officers for the 2019-20 year:

Sarah Radcliffe will serve as President. She is the managing attorney for the Mental Health Rights Project at Disability Rights Oregon. This year, she plans to explore how the MBA can support and value the unpaid labor of caregiving, which so

many of us do outside our paid working hours. And, she wants to build on the MBA's practical strategies for advancing diversity, equity and inclusion in our profession.

Valerie Colas will serve as Treasurer. She is a deputy defender in the juvenile appellate section at the Office of Public Defense Services. Valerie said: "The MBA has been instrumental in my development as an attorney; it has given me the opportunity to give back to our legal profession and our community while forming meaningful and lasting connections. My service on the Board has been driven by my belief in creating a more inclusive, diverse and welcoming legal profession and my belief in helping those who are underserved. As an officer, I plan to continue to support the efforts of the MBA in helping to increase diversity and inclusion in our profession and ensuring access to justice."

Emilee Preble will serve as Secretary. She is a Staff Attorney and Lead Underwriter for the OSB Professional Liability Fund. Regarding her work for the MBA, she says, "I feel lucky because my work with the PLF has afforded me the opportunity to work with many lawyers across our state. In a similar way, the MBA allows me to

Continued on page 6



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New MBA Board Directors and Officers

Continued from page 5

connect with and serve lawyers in the local community. Ours is a unique profession where we focus both inward on our legal community and outward on the broader community of the public we serve. The MBA

allows me the opportunity to connect with lawyers from many facets of our profession to coordinate and develop projects that will have a meaningful impact on our local community now and for years to come.”

Also continuing on the board are: **Rima Ghandour**, Ghandour Law LLC, who will remain on the board as Past President; **Paul Bovarnick**, Rose Senders

& Bovarnick LLC; **Caroline Harris Crowne**, Tonkon Torp LLP; **Adina Matasar**, Matasar Law PC; **Seth Row**, Miller Nash Graham & Dunn LLP; **Krista Shipsey**, Law Office of Krista Shipsey; and **Jovita Wang**, Richardson Wright LLP.



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The MBA conference room is available for reservation by members for client meetings, depositions and other professional law-related business.

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mba | ANNOUNCEMENTS

Seeking Volunteers to Plan 2019 Golf Fundraiser for the CEJ

Would you like to help plan the MBA Golf Championship? The event will benefit the Campaign for Equal Justice and support the Volunteer Lawyers Project to provide pro bono legal services to Oregonians in need. The MBA Golf Championship is a long-standing tradition, going back to at least 1938. Contact Pamela Hubbs for more information (503.222.3275, pamela@mbabar.org).

Owen M. Panner Award Nominations

The OSB Litigation Executive Committee is soliciting nominations for the 23rd Annual Owen M. Panner Professionalism Award. Each year the section honors an OSB member who exemplifies the highest professional and personal standards. Criteria may be found at www.osblitigation.com/awards.php or contact Kate Wilkinson (971.321.8866, kate.wilkinson@standard.com).

Conference Room Available to MBA Members

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 "Sexual Assault Claims: Issue-Spotting for the General Practitioner" is now available in the Members Center at www.mbabar.org. The seminar was accredited for two hours of general OSB MCLE credit.

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

Statement of Diversity Principles Available to Sign

The MBA Equity, Diversity & Inclusion Committee invites you to sign the Statement of Diversity Principles. Read and sign the diversity statement and pledge at www.mbabar.org/diversity.

Noontime 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 Solo & Small Firm Committee
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UNCONFERENCE

Thursday, May 30
Workshop: 3-5 p.m.
Social: 5-5:30 p.m.
Hotel Monaco, 5th Avenue Room
506 SW Washington St., Portland

Join us for our first MBA Solo & Small Firm UNconference, a fun and interactive take on collaborative learning. The goal of an UNconference is to create a unique experience that covers the topics of YOUR choice and utilizes the collective knowledge and wisdom of the participants.

Participants will submit topic ideas before the UNconference via a shared Google Form. Topics must be related to Solo/Small Firm, general law practice, business of law or law office management. Nine topics will be selected to create our agenda with three tracks and three sessions (25 minutes each). Each participant will attend three sessions of their choice. The UNconference will be facilitated by Solo & Small Firm Committee members **Heather Decker**, tcb coaching + consulting (business management coach for lawyers) and **Ben Cox**, Attorney at Law.

Cost: \$20 members/\$60 non-members.
Hors d'oeuvres and a drink ticket will be provided.
The MBA will apply for CLE credit.

Register at www.mbabar.org.

Ethics Focus

Instant Answers: Providing Advice Under Time Constraints

by Mark J. Fucile
Fucile & Reising LLP



We've all likely had situations where panicked clients called and needed answers on the spot. In most circumstances with existing clients, we're able to give them a quick reaction and then get back to them with a more detailed answer as time permits. More recently, however, web-based commercial platforms have emerged that promise virtually instant answers for a nominal fee from cooperating lawyers throughout the country. These newer services impact lawyers in two ways. First, for lawyers thinking of participating in such platforms, there are important considerations to evaluate before jumping on board. Second, the advertising for such services inevitably leaves the impression that all lawyers should be able to offer similar instant answers.

In this column, we'll look at three risk management issues that affect both categories: (1) adequately vetting conflicts; (2) effectively limiting the scope for a short-duration representation; and (3) meeting the standard of care. By focusing on these three, I don't mean to exclude others. Particularly with lawyers thinking of participating in web-based platforms, other "due diligence" should include an examination of whether the compensation mechanism complies with ORPC 5.4, which generally prohibits fee-splits with non-lawyers and potential unauthorized practice considerations if questioners are from jurisdictions where the answering lawyer is not licensed.

Vetting Conflicts

There is no special exemption from the conflict rules for short-duration representations.

In *In re Knappenberger*, 338 Or 341, 108 P3d 1161 (2005), for example, the husband in a divorce proceeding consulted for about two hours with a lawyer. Although brief, the consultation was confidential and the lawyer sent the husband a bill. Later, the wife in the same divorce proceeding hired the lawyer to represent her. The lawyer's conflict system was rudimentary at best and, for whatever reason, he didn't recognize the conflict until the husband's new lawyer pointed it out and demanded he withdraw. Although the lawyer eventually withdrew, the Oregon Supreme Court nonetheless disciplined the lawyer for failure to detect and more quickly resolve the conflict.

With most lawyers today using - or at least having available - computerized conflict systems, conflicts can be checked relatively quickly. In short, there is no technological room for excuse. Especially in consumer-oriented practice areas like our opening illustration, failure to run a conflict check before providing advice can be a quick path to a disqualifying conflict and potential regulatory discipline. Whether a lawyer participating in a web-based platform or one handling a more mundane initial telephone call, lawyers need to run a conflict check before taking on a client - regardless of the anticipated duration of the attorney-client relationship.

Limiting the Scope

ORPC 1.2(b) allows lawyers to "limit the scope of the representation if the limitation is reasonable under the circumstances and the client

...lawyers need to run a conflict check before taking on a client - regardless of the anticipated duration...

gives informed consent." Particularly if a lawyer is handling a short-duration matter, it can be imperative from the risk management perspective to confirm the representation's limited scope. Circumstances vary, but a written engagement agreement can provide critical evidence of what - and was not - the lawyer was hired to do. Although a written agreement preferably precedes the substantive advice provided, it may follow an oral agreement in many circumstances such as an hourly matter billed in arrears.

Even a written agreement cannot provide complete assurance that a lawyer will be shielded from a claim if the advice rendered turns out to

be inadequate. ORPC 1.2(b) is specifically prefaced on the phrase "if the limitation is reasonable under the circumstances[.]" If the nature of the inquiry fielded is inherently one that cannot be answered through a short-duration consultation, it is entirely conceivable that a later fact-finder - whether a court, a jury or a bar regulator - might find

Even a written agreement cannot provide complete assurance that a lawyer will be shielded from a claim...

that the limitation did not meet the key predicate test under ORPC 1.2(b). Comment 7 to the corresponding ABA Model Rule puts it this way:

"If ... a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely."

The Standard of Care

The federal district court neatly summarized the standard of care governing Oregon lawyers in *Hamilton v. Silven, Schmeits & Vaughan, P.C.*, 2011 WL 6887132 at *3 (D Or Oct 19, 2011) (unpublished) (citation omitted): "[T]he standard of care requires the lawyer 'to use that care, skill and diligence which would ordinarily be used by lawyers in the community in similar circumstances.'" Comment 7 to ABA Model Rule 1.2 noted above also counsels that "[a]lthough an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Lawyers contemplating short-duration representations need to carefully evaluate whether the time allotted by the client is really sufficient to competently address the issues involved. If the client is not willing to expand the time allotted to handle a matter with sufficient competence and care, the most prudent course - at least from the risk management perspective - may be to "pass" altogether.

Around the Bar



Kristin Asai

Holland & Knight

The firm is pleased to announce that Portland trial attorney **Kristin Asai** is one of seven female attorneys chosen firm-wide to participate in its Rising Star program. Holland & Knight's Rising Star program identifies an exclusive group of talented female attorneys for immersion in a year-long program designed to produce the future leaders of the firm and the legal profession. Asai is the first attorney from the Portland office to be selected as a Rising Star.



Jack Scholz

Hart Wagner LLP

The firm is pleased to welcome new associate, **Jack Scholz**, to the firm. Scholz's practice focuses on medical malpractice defense and employment litigation. He previously worked for a Portland firm practicing in the area of intellectual property litigation.

Before joining private practice, Scholz clerked for the Hon. Ann Aiken, Chief Judge of the US District Court for the District of Oregon. He remains active in the District of Oregon, where he currently serves as a member of the Local Rules Advisory Committee. Scholz also serves on the National Board of Directors for the Federal Bar Association (FBA) Young Lawyers Division, as well as the local Board of Directors for the Oregon Chapter of the FBA. Additionally, he is an elected member of the Oregon State Bar House of Delegates and serves on the YLS Membership Committee.



Brandon Reeves

Garvey Schubert Barer PC

The firm has welcomed **Brandon Reeves** as an associate in its Portland office. He is a member of the firm's Litigation Practice and focuses on commercial disputes. Reeves' experience includes cases involving trusts and estates, labor and employment, construction defects, and Fair Housing Act discrimination. He received his JD from the University of Washington School of Law, an MS from Vanderbilt University and a BS from the University of Kentucky.



Mark Strandberg

Ring Bender

The firm is pleased to announce that **Mark Strandberg** has been promoted to partner. His practice is focused on environmental and natural resource law. Strandberg represents both private and municipal clients in compliance and litigation matters related to CERCLA, the Clean Water Act and many other federal and state environmental laws. He also serves on the executive committee of the OSB Environmental & Natural Resources Section.



Yoona Park

Stoll Berne

Yoona Park recently was chosen by federal judges in the District of Oregon to serve as a Ninth Circuit attorney representative for the district. Park will represent the district at the annual Ninth Circuit Judicial Conference. Attorney representatives aid in facilitating open communications between judges and attorneys, and are chosen to serve three-year terms representing attorneys practicing in each of the Ninth Circuit's 15 districts.



Jacqueline Alarcón

Yates Family Law

The firm is pleased to announce that **Jacqueline L. Alarcón** has become a shareholder in the firm. The firm will continue to limit its practice to all aspects of family law.

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.

Kasia E. Rutledge and Rakeem Washington 2019 MBA Merit Award Recipients

Recipients have an enduring commitment to the MBA's mission of promoting justice through service, education or leadership to the MBA.

The MBA is pleased to present its 2019 Merit Awards to **Kasia E. Rutledge** and **Rakeem Washington** on May 14 at the MBA Annual Meeting and Dinner.

Kasia and Rakeem met at Lewis & Clark Law School and both became public defenders, Rakeem with what is now Youth, Rights & Justice, and Kasia at Metropolitan Public Defenders.

racism, and holistic justice-based programming. Currently as a capital defense lawyer defending people facing the death penalty, for almost 10 years prior to that as a public defender, she was privileged to represent poor people accused of major felonies including murder, rape, kidnapping, and prostitution. Kasia fights to protect her clients' rights using a client-centered focus, storytelling, and education of the public about the struggles of the people she is honored to represent.

Rakeem Washington is an instructor with Portland State



Kasia Rutledge and Rakeem Washington

In those roles, Rakeem and Kasia noticed that law students, lawyers, and legal professionals needed help in navigating difficult conversations about race inside and outside the courtroom. They began to develop and present workshops and trainings about racism for law students, and then law schools, and soon other legal and non-legal professions. In 2017, they decided to make trainings and consultations a more central focus of their work. They currently conduct trainings around the country for nonprofits, organizations, law firms, higher education institutions, and government agencies.

Kasia Rutledge is a capital defense attorney and anti-oppression trainer. For over 18 years, she has developed and trained organizations, law firms, individuals, academic institutions, currently and formerly incarcerated people, and nonprofits in equity, anti-

University teaching a dual-credit course titled "Race, Class, Gender, and Social Justice" and is also the Director of Access and Re-Entry at Portland Community College. Before beginning his professional career, he spent hours as a volunteer, mentor, and coach with various community-based organizations. Some of his current work includes advocating for increased educational opportunities for students incarcerated through the Oregon Youth Authority. Recognizing that healthy communities make healthy individuals, Rakeem continues to work toward empowering the voices and increasing the visibility of underserved and disenfranchised individuals and populations.

The MBA is very fortunate to have volunteers that are dedicated to making our local bar a more welcoming and inclusive environment for all. Congratulations Kasia and Rakeem.

mba|EVENT

Solo and Small Firm Social

Thursday, June 20
Standard Insurance Center Atrium Patio
900 SW Fifth Ave., Portland
5-6:30 p.m.

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

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

RSVPs appreciated to Kathy Modie,
kathy@mbabar.org.

Congratulations
Laura Salerno Owens
Woman of Influence



Laura has added Portland Business Journal *Women of Influence* honoree to her growing list of accomplishments. Way to go, Laura!

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Young Lawyers Section Award Recipients

The YLS is proud to recognize the following individuals for their outstanding contributions during the 2018-19 committee year. Award recipients will be honored at the MBA Annual Meeting and Dinner on May 14.

YLS Award of Merit

For their demonstrated leadership and exemplary contribution to the work of the YLS, **Anthony Blake** and **Maxine Tuan** receive the YLS Award of Merit.



Anthony Blake

Anthony is an associate at Ball Janik where he practices construction litigation. He is presently serving his second year on the YLS Pro Bono Committee.



Maxine Tuan

Maxine practices family law at Wyse Kadish and is in her fourth year of involvement with the YLS CLE Committee.



Margaret Davis

YLS Rookie of the Year

Recognized for her energy, professionalism and eagerness to contribute, **Margaret Davis** is the recipient of this year's Rookie of the Year Award. Maggie is a member of the YLS Service to the Public Committee, and is a staff attorney with the Victim Rights Law Center, where she provides free civil legal services to the survivors of sexual assault. She focuses on immigration and civil court practice.

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Tips From the Bench

Oregon's Harmless Error Doctrine

by Chief Probate Judge Patrick W. Henry
Multnomah County Circuit Court



Effective January 1, 2016, the Oregon legislature adopted ORS 112.238, which provides for an exception to will execution formalities. In effect, the statute adopts the doctrine of harmless error. The statute provides that a writing may be treated as if it complies with the formalities of a will's execution, such as the signature of two witnesses, if certain requirements are met. Most importantly for the purposes of this article, the statute requires notice to certain "interested persons" and an affidavit supporting a finding that the decedent intended the writing to be his or her will.

Supporters of this change to the law saw it as a means for judges to determine the writing's validity based on the decedent's intent rather than their compliance with legal formalities. Those who opposed the revision raised concerns that the harmless error doctrine would cause a significant increase in litigation and would undermine the purpose of will formalities, i.e. to avoid the probate of fraudulent writings. As to the former concern, at least in Multnomah County, we have not seen a significant rise in "harmless error" litigation. Court staff estimate that we have seen fewer than 30 "harmless error" filings per year and have had fewer than five contested hearings since the statute was enacted. As to the concern relating to fraud, it is important to emphasize how the statutory framework is designed to avoid invalid writings being treated as a decedent's true testamentary wishes.

Perhaps the most important protection is that the proponent of the writing must give notice to "interested persons," who then have 20 days to file an objection to the petition. ORS 112.258(2). An "interested person" includes an heir of the decedent (i.e. people who would receive property if there were no will), any devisees of the "will," (i.e. people who receive property under the terms of the writing), and any person asserting an interest in the estate, including anyone who is a devisee of a previous will. See ORS 113.035(5), (7), (8) and (9). Thus, the people with an interest in challenging the admissibility of a writing that was fraudulently created or was not intended to be a will have an opportunity under the statute to challenge the admissibility of the writing.

Another protection that is built into the law is that a judge is required to make a finding, based on clear and convincing evidence, that the writing was intended by the decedent as his or her will. ORS 112.238(4). The judge may make the finding after a hearing or based on affidavits. ORS 112.238(2). In either scenario, attorneys need to keep in mind what they are required to prove.

As the report by the Oregon Probate Code Work Group to the 2016 amendments to the probate code indicates:

In order to establish the decedent's intent by clear and convincing evidence, the proponent of the document should have more evidence than simply the document itself. A piece of paper and an authenticated signature should not be sufficient to show the decedent's intent. Additional evidence could include evidence of the circumstances of the creation of the document, testimony of people who heard the decedent discussing his intent to execute a will, testimony of people who saw the decedent prepare or sign the will, or other documents prepared by the decedent that described the will. Any circumstances that suggest fraud in the creation of the document will, of course, lead a court not to admit the document as a will.

Under the probate code, there is a strong argument to be made that simply presenting a writing with an affidavit asserting that the writing is the decedent's will is not sufficient to demonstrate that the decedent intended the writing to be his or her will. If that were all that was required, the drafters could have approved of the admissibility of holographic wills.¹

In summary, here are the Tips from the Bench:

1. Be broad in your notice to "interested persons." If a writing is admitted and a potential "interested person" has not been notified, then the 20-day period to file an objection to the petition does not commence against that person. In addition, if a

¹ After Judge Henry submitted this article for publication, the Court of Appeals handed down *Deaver v. Culver*, 297 Or App 21 (2019). The Court in *Deaver* makes clear that the testator's intent is evaluated as of the time the writing is created. In addition, the Court states that "the clear and convincing standard requires more than presenting the document itself or the document and an authenticated signature." *Id.* at 27. Finally, they cite with approval the language in the Work Group Report included in this article.

Continued on page 14

News From the Courthouse



by Steffan Alexander
Court Liaison Committee

Presiding Judge's Report and Courthouse Update - Judge Stephen Bushong

Judicial Appointments

Governor Brown appointed Amy Baggio and Heidi Moawad to the Multnomah County Circuit Court. Amy Baggio took the bench on April 8, filling the vacancy created by the retirement of Judge Marilyn Litzenberger. Heidi Moawad started April 29, and filled the vacancy created by the retirement of Judge John Wittmayer. It is anticipated that the Senate may act on the appointment of Judge Karin Immergut to the federal district court in May. Governor Brown also announced her intention to appoint Steffan Alexander to replace Judge Karin Immergut.

Budget

Chief Justice Martha Walters submitted a comprehensive budget, Senate Bill 5513, to begin restoring some of the court's funding that has been lost over the last 10 years. The funding authorized by the legislature in 2017 left 80 FTE positions in OJD unfunded. The Chief Justice's budget requests (1) funding for the 80 FTE positions, and (2) restoration of another 97 FTE positions to support problem-solving courts and to allow courts throughout the state to provide public access eight hours per day. Currently, the OJD has 215 fewer employees than in 2007, in spite of a state population increase of over 10 percent in the past 10 years. In addition to the need for adequate staffing, the OJD also needs more judicial positions to do the work of the court effectively. The National Center for State Courts conducted a judicial workload assessment study for Oregon, which concluded that Oregon needs about 40 additional judges. The Chief Justice's budget requests funding for 14 additional judicial positions across the state.

The budget proposed by the Co-Chairs of the Ways and Means Committee does not restore any

of the unfunded FTE positions to the OJD. Instead, the Co-Chairs' proposed budget assumes that no additional revenue will be available and calls for a \$41 million reduction from current OJD service levels. The Chief Justice and others are working hard to explain the critical nature of the requests in OJD's budget, and we are still early in the budget approval process. The judicial branch's initial presentation to the Joint Public Safety Subcommittee of Ways and Means was held April 1-4, and there will be additional opportunities for testimony before Ways and Means. The final balancing of the budget typically takes place in June. The Chief Justice has not yet announced a plan for addressing any budget cuts if the legislature does not fully fund the OJD, but historically the Chief Justice has applied a formula to spread the budget cuts across the state courts.

The Chief Justice's budget also includes the final funding needed for the new Multnomah County Central Courthouse. The court's request is for \$9.3 million to pay for the last of the expenses to make the court operational in the new building. This includes the technology and furnishings that get installed in the building after construction has been substantially completed, which can be bond-funded, as well as the cost of moving the court into the new building, which is a general fund expense. The court will not be able to open in the new building without this final allocation of funding. Judge Nan Waller and Trial Court Administrator Barbara Marcille have been taking the lead on advocating for this final piece of funding for the new courthouse. Judge Waller and Barb have presented to several Ways and Means subcommittees, and continue to meet individually with members of the legislature.

The court appreciates the support it received from the MBA in collecting anecdotal evidence from litigators and clients regarding the importance of the court system in their lives and businesses.

UTCR and SLR Rules Update

The UTCR Committee approved two new rules at its March 8 meeting; the new rules will be effective on August 1. Both changes were recommended by the Civil Justice Improvements Task Force. The UTCR changes are posted on the OJD website.

- UTCR 5.150 (amended): This rule was renamed from Expedited Civil Jury Cases to Streamlined Civil Jury Cases. It provides for a "date certain" trial date for streamlined cases and eliminates the discovery limitations - such as the limit on depositions - and other issues that had previously been raised by the bar.
- UTCR 5.180 (adopted new rule): House Bill 2356 (2017) established requirements for legal actions filed by debt buyers (or by debt collectors acting on their behalf) to collect on purchased debt. The UTCR specifies procedures for complying with the new legislation, and also requires plaintiffs to include certain identifying information in the case caption to aid the court in identifying and tracking consumer debt collection cases.

The court is in the process of updating the Supplemental Local Rules. The court is taking suggestions from the bar, which must be submitted by May 15 to Judge Bushong and Barb Marcille. The new SLRs will go into effect February 1, 2020.

Addressing Diversity and Equity

On April 12, the court hosted a production for judges and court staff of "Hands Up!" by Portland's Red Door Project. The production consisted of seven powerful and deeply personal monologues exploring the experiences and feelings of black individuals in the wake of the events in Ferguson, Missouri. This presentation at the courthouse was made possible by an OSB Diversity and Inclusion grant and the efforts of the court's Diversity and Equity Committee.

Hands Up A Conversation About Racial Inequities in Our Justice System

by John Robb
Court Liaison Committee

“This shit doesn’t happen to white men.”

A 14-year-old boy leaves a performance at Carnegie Hall, brimming with excitement and possibility about his own future as a classical guitarist. Moments after walking out of the theater, he is surrounded by police officers, thrown against the hood of a police car, and held at gunpoint.

A teacher passes a slow-moving car while on his way home. When the car speeds up towards his rear bumper, he speeds up to gain some distance. The car closes the distance. Upon stopping at an intersection, he is surrounded by undercover police cars, pulled from the car, and thrown to the ground. Guns are drawn and pointed at his head. “Don’t move or I will blow your fucking head off.”

A young woman is being strangled by her boyfriend. She can’t breathe. She hears the police arriving, and he stops. The police arrive and he composes himself. He talks to them. Afterward, they turn to her, and her relief evaporates when they grab her arms to place them behind her back. She reacts with surprise and gets thrown to the ground, multiple grown men piling on top of her. She can’t breathe.

“I am tired of feeling so grotesque.”

When Kevin Jones, the director of The August Wilson Red Door Project’s presentation of *Hands Up*, introduced the special performance to the judges and staff of the Multnomah County Circuit Court, he admitted that he was initially afraid of doing the show in Portland. He began to explain why, but stopped and said, “You’ll find out soon enough.”

What followed was a raw, provocative performance that did not feign any niceties about the “lie that America doesn’t want to wake up from” - the lie of the superiority of white skin. It did not feel like your typical diversity training.

The performance, consisting of seven monologues written by six black men and one black woman, was part of the Multnomah County Circuit Court’s effort to address issues of equity and fairness in the court

system. It was introduced by Judge Katherine von Ter Stegge, Cyndi Jefferson, and Roger Rand, members of the court’s Diversity and Equity Committee.

The committee, created in 2015 by Trial Court Administrator Barbara Marcille, includes judges and court staff and was formed to explore and address diversity and equity within the court’s workforce as well as to improve fairness for the public. The court began its educational and training outreach with a showing of the film “Cracking the Codes: The System of Racial Inequity,” a film which is now a standard part of new employee orientation at the Multnomah Circuit Court. They have since provided court-wide trainings for staff and judges on topics including implicit bias, trauma-informed practices, the #MeToo movement, institutional equity, and procedural fairness. A continuing lunch and learn series has featured dozens of speakers from different ethnic and cultural segments of the community to offer their perspectives on these issues to members of the court system.

This effort comes in the context of a national conversation about racial inequities and institutional bias. The increasing proliferation of surveillance and body cameras has begun to provide repeated, graphic accounts of violence inflicted by law enforcement on people with black skin. This has helped bring to the surface long-simmering racial tensions in a country founded on principles of equality and justice but also within the context of brutal systems of colonization and chattel slavery.

It also comes amidst an increasing recognition of Oregon’s own history of colonial white supremacy, and of the fact that some of its remnants remain in our justice system. Writing from the bench in 2016, then Multnomah County Circuit Court Judge Bronson James described clearly how during

Oregon’s founding and early history, explicit steps were taken to protect a “free white society” from the threat posed by “potential black-incited Indian uprisings.”¹ A repeal effort of Oregon’s constitutional provision banning black people from the state was defeated by voters five times between 1900 and 1916 before the provision was removed from the Constitution in 1927. The 20s and 30s featured a resurgence of racial animosity and resulted in new laws and regulations aimed at diminishing the voice of minority Oregonians in our communities, including, as Judge James found, a non-unanimous jury system.

Hands Up did not address Oregon’s history specifically, but it did not pull any punches in addressing the black community’s perspective on how its members can be treated by the justice



Hands Up cast member La'Tevin Alexander

system. It was an uncensored and deeply personal exposition of, as Jones put it, “seven psyches of the African American Spirit.” It was designed to make the listener - especially the white listener - uncomfortable mentally, emotionally, and physically. It’s difficult to describe the sensation of having defense mechanisms I didn’t realize were there activated and meticulously prodded for two hours while surrounded by court staff and judges.

In his opinion in *Williams*, Judge James wrote that “[n]either the parties, nor the public, are served by attempts to marginalize the realities of a past that today we find uncomfortable or unpleasant.” In welcoming Kevin Jones and the cast and crew of *Hands Up* into the courthouse, the leadership of the Multnomah County Courthouse proved they are not afraid of welcoming and acknowledging the uncomfortable and unpleasant realities regarding race that remain in the present. It was a challenging, and ultimately expanding and heartening experience.

¹ *State v. Williams*, 15CR58698.

Tracy Reeve Receives 2019 MBA Professionalism Award

Tracy Reeve, City Attorney for the City of Portland, will receive the 2019 MBA Professionalism Award on May 14 at the MBA Annual Meeting and Dinner.

The MBA Professionalism Award, the organization’s highest honor, recognizes candidates who exemplify the standards set forth in the MBA Professionalism Statement:

Professionalism goes beyond the observance of the legal profession’s ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, and makes the practice of law more enjoyable and satisfying.

Tracy began her legal career 30 years ago in San Diego, California with the national law firm, Gibson Dunn & Crutcher 30 years ago. After a few years of private practice, both in California and Oregon, she joined the City Attorney’s Office (for the first time) in 1991. Tracy would later leave her position with the City for another brief stint in private practice. In 2001, she rejoined the City Attorney’s Office full time and has been a tireless public servant ever since.

In 2014, Tracy was appointed by Portland’s City Council to lead the City Attorney’s Office. Since taking over this role, Tracy has made tremendous efforts to diversify the City’s staff of attorneys. Simon Whang, current Deputy City Attorney, noted, “Tracy has heralded a new wave of lawyers. She instituted the Honors Attorney Program to seek young talent, emphasizing socioeconomic hardship and veteran’s status,” in addition to other traditional areas of diversity. She has also made sure that every City attorney’s OSB Diversity Section dues are paid.



Tracy Reeve

As Molly Washington writes, “I consider Tracy to be a true ally in every sense of the word.”

In addition to her efforts to diversify the City Attorney’s Office, Tracy has also emphasized the importance of professionalism, both within her own staff and the legal community at-large. She asks that all attorney candidates in their interviews provide an opposing counsel reference because, as Tracy has observed, “that is often where the truths emerge with regard to professionalism.” She has served as a mentor to both lawyers and non-lawyers alike, including mentoring immigrants, women in recovery and DACA recipients.

“Tracy elevates the vision of ‘government work’ from mere competency to shining excellence, and brings favor and pride to the Office and the City. She does so through her commitment to always do the right thing, through her leadership, through vision and example, and by being, above all, professional,” noted Simon Whang.

Congratulations to Tracy Reeve, a most worthy recipient of the 2019 MBA Professionalism Award. Her advocacy, civility and humanity is an example to all members of the bar.

Volunteer Opportunities

Mock Congressional Hearings Judges Needed

The Classroom Law Project is recruiting volunteers to act as judges for elementary school student mock congressional hearings. Two opportunities currently offered:

- Gus J. Solomon Federal Courthouse (downtown Portland) on Wednesday, May 29, 9:30-11:30 a.m.
- Sexton Mountain Elementary (15645 SW Sexton Mountain Dr., Beaverton) on Thursday, May 30, 5-8 p.m.

Contact Cari Zall for details:
czall@classroomlaw.org, 503.224.4424.



mba | Young Lawyers Section

What is the YLS?

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

Ask the Expert

*Dear Expert,
My attorney friend approached me about co-counseling a case. We've been friends since law school, and I think it could be fun. What are some considerations I should take into account before deciding?*

Co-counseling a case with a friend can be a very rewarding experience, if you are careful. Before you decide you should think about the human factors involved. Is this a friend who you trust? Is this a friend who if something goes south you would be able to work through the issues? If you are not sure, is it worth risking the friendship? These are all personal questions that you should consider, and to which only you and your friend might have the answers.

Another thing to consider is your friend's quality of work. At the end of the day, you will be responsible for your friend's work and vice versa. Are you comfortable with that? You may consider looking at any work of theirs that is available on OECL.

Also consider your friend's working style. Everyone is different, and sometimes different styles are incompatible (but sometimes they are especially complementary). For example, some people are chronic procrastinators, others are very organized. You should consider compatibility in all of its permutations. Think back to law school. Did you work on any projects together or study together? How well did it work out? Have you discussed their current law practice, and are you generally on the same page professionally?

Even if you know the answers to all of these questions, do you know any people your friend has co-counseled with before? If you and your friend are comfortable with it, ask them to talk about how it went.

Oregon Rule of Professional Conduct (ORPC) 1.5(d) allows for the splitting of fees between lawyers of different firms, but requires the lawyer to get informed consent from the client regarding the fact that fees will be divided, and the total fee charged may not be clearly excessive. Pursuant to ORPC 1.0(g), informed consent requires you to communicate both the risks, and any alternatives of a proposed course of action. Consent need not be in writing, but I recommend it to be. The factors in evaluating whether a fee is excessive are contained in ORPC 1.5(b), and include among other factors the customary fees in the community and skill required.

If you decide to co-counsel, make sure to determine the split of workload, fees, and costs at the outset. Do not assume that everything will be split 50/50. If you are unsure about your agreement, go ahead and put the details in writing, even if it's an email summarizing the agreement. If things go awry, you will not have to rely on oral discussion or assumptions. One option other than 50/50 is to split the fee based on work put in. Be wary of this sort of arrangement, because sometimes lawyers, maliciously or not, inflate their hours or spend more hours on tasks than they otherwise would. If you do go with this sort of arrangement, it is a good idea to check in regularly with your co-counsel to make sure you are on the same page regarding your relative contributions.

Finally, before you begin, it is a good idea to introduce the client to your co-counsel, in order to make sure that the client feels comfortable with the arrangement.

Kathryn Gapinski and the Senior Law Project YLS Pro Bono Spotlight

*by Sherisa Davis-Larry
YLS Pro Bono Committee*

Have you heard of the Senior Law Project?

Legal Aid Services of Oregon's (LASO) Senior Law Project (SLP) is a volunteer lawyer program where seniors can make appointments for a free 30-minute meeting with an attorney. Participants must meet eligibility criteria such as be 60 years or older (or married to someone who is 60 years old or older) and be a resident of Multnomah County. Volunteer attorneys at SLP help with civil legal matters, such as estate planning, consumer matters, and housing issues. Individuals who meet LASO's financial standards are eligible for free ongoing legal services from volunteer attorneys. SLP operates out of nine locations in the Portland area.

Kathryn Gapinski, an attorney who volunteers with SLP, shared with us what a day in the life of a Senior Law Project volunteer entails. Kathryn volunteers at the Urban League of Portland's Multicultural Senior Center in Northeast Portland. She chose that location because it's the closest location to her house and Kathryn wants to help people in her neighborhood.

When Kathryn arrives at the Senior Center, she meets with Kashea Kilson-Anderson, the Senior Center Manager, who gives Kathryn a list of participants to meet with for the afternoon. Each volunteer shift is three hours on Tuesdays. Kathryn currently volunteers about every other week. However, SLP does not require a large time commitment. Attorneys can volunteer every few weeks, once a month, or even just a few times a year.

During each intake, Kathryn advises seniors on any number of concerns ranging from areas of law she has expertise in, such as estate planning, or areas that are new to her, such as housing or the Social Security Administration's ability to garnish retirement benefits to pay student loans. During those meetings it is as if Kathryn is a lawyer of all trades because the individual's matter may be in an area of law in which Kathryn is unfamiliar.

Volunteering is important.

Kathryn believes volunteering our time and skills is an important part of being an attorney. For those who are new to the practice of law, Kathryn encourages volunteering. You do not need to know every answer or be familiar with every area of law in order to help someone in a meaningful way. Sometimes this may be as simple as finding someone a referral. For more seasoned lawyers, Kathryn believes it is important to volunteer because those lawyers have much to offer.

Who is Kathryn Gapinski?

Kathryn Gapinski is a solo practitioner at Gapinski Law, LLC. She was born and raised in Wisconsin and attended University of Michigan, where she earned a bachelor's degree in sociology. After graduating from the University of Michigan, Kathryn earned her juris doctorate from University of Wisconsin Law School in 2008.

Kathryn has worked in both public interest and private practice. Her first attorney job in Oregon was practicing family law at St. Andrew Legal Clinic's Hillsboro branch. Kathryn found her time there very rewarding, as



Kathryn Gapinski

she enjoyed helping low income individuals with family law issues and valued the collaborative working environment. Kathryn later clerked in the probate department of the Clackamas County Circuit Court and turned her focus to estate planning, estate administration, and protective proceedings, working in private practice after leaving the courthouse. She opened Gapinski Law, LLC in December 2018 and continues to focus on estate planning, probate, trust administration, guardianships, and conservatorships.

Kathryn has remained immersed in public interest since transitioning to private practice. She has been volunteering with SLP since 2013. Kathryn has been involved with over 70 cases and has volunteered more than 95 hours.

Kathryn is not all about the law all the time. She is a big Portland Pickles baseball fan and is looking forward to the team's 2019 season. Haven't heard of the Portland Pickles? They're a summer collegiate wood bat baseball team who play at Walker Stadium in Lents Park. In addition to rooting for the Pickles, Kathryn enjoys spending time with her husband, Erik, and their two dogs.

We thank you for your service, Kathryn.

Contact LASO at 503.224.4086 to learn more about how to get involved.

mba yls | EVENT

**YLS, OHBA and ONLD Kick Off the Summer
Saturday, June 8
2-5 p.m.
Rogue Eastside Pub & Pilot Brewery
928 SE 9th Ave., Portland**

Come join the YLS, OHBA and ONLD as we kick off summer! This is a family-friendly event so come on out and enjoy the sunshine, play some cornhole and celebrate with colleagues. We encourage those interested to bring along your favorite social game. Stay tuned for more details!



This is a free event. No RSVP necessary.

Mary Tollefson YLS Member Spotlight

by Kirsten Rush
YLS Board

I first met Mary Tollefson when I joined the YLS Service to the Public Committee and Mary was co-chairing the committee. Mary's leadership and involvement in the YLS inspired my own, and I suspect she has inspired many other members to be more active or seek out leadership positions. Mary is currently the YLS Past President and is in her last year of service on the board. She has been active in YLS leadership, holding every board position except Treasurer, and has been a liaison to every committee except one (sorry, CLE Committee). As Mary prepares to move on from the YLS, it seems fitting to send her off by spotlighting her years of dedicated service.

Mary graduated from Willamette University College of Law in 2007 and began her legal career practicing family law in Newport. She got her start in the YLS shortly after moving to

Portland when a friend invited her to join the YLS YOUTHFILM Committee. She was a member of that committee for two years before becoming co-chair. As co-chair, she led the committee through its transition to what is now known as the Service to the Public Committee. Mary then joined the YLS Board and served as a Director, Secretary, President-Elect, and President.

Looking back on her time in the YLS, Mary has found her involvement to be personally rewarding, particularly getting to know attorneys in other practice areas and interacting with colleagues in a non-adversarial setting. YLS membership and service on the YLS Board has provided her with many opportunities to meet other attorneys and expand her personal and professional network. She's most enjoyed participating in YLS events including the Poetry Slam and its predecessor YOUTHFILM,



Mary Tollefson

volunteering as a pen pal in the Imprint Program, and volunteering at Wills for Heroes clinics.

Mary practices family law at Corey Law Group and plans to continue her involvement in the MBA after leaving the YLS Board. Mary is also actively involved with the Junior League of Portland. With her service to the YLS coming to an end, she is looking forward to some free time with her family, at least to the extent there can be free time with a toddler at home. But, given Mary's history of YLS leadership, she probably won't be able to stay away from the MBA for long.

May 30 CLE Introduces New Attorneys to Exciting New Areas of Law

by Emily Clark Cuellar
YLS CLE Committee



What do "Modern Family" star Sofia Vergara and Portland real-estate developer Jordan Schnitzer have in common? They are both entangled in ongoing legal disputes resulting from assisted reproductive technology (ART). Assisted reproduction law is a rapidly-growing area which touches on issues from family law, to estate planning and contract drafting. And the headline-catching disputes are often complicated affairs both legally and morally, sometimes leading to expensive, seemingly endless litigation.

On May 30, Beth Wolfsong, of Wolfsong Law PC, will present a CLE entitled "Marriage, Divorce, and Alternative Paths to Parenthood" as part of the YLS Contract Drafting CLE series. Wolfsong has many years of experience with family law contracts and her practice now focuses on the area of assisted reproduction law. Interested to learn more about this area of law, I asked Wolfsong how she got started in the field, what challenges this area of practice presents, and if she had advice for new practitioners who are interested in ART.

Wolfsong became interested in working with ART as an outgrowth of her work with same-sex couples and "family formation law was a big piece of that." When she was new to the field she relied heavily on other attorneys, because CLE resources on the subject were sparse: "There is not a lot of CLE material out there, especially not at the time. Eventually - with some gentle nudging by one of my mentors - I applied and was accepted as a Fellow in the Academy of Adoption and Assisted Reproduction Attorneys (AAAA). That gave me greater access to CLEs (we have two CLE conferences every year) and a wider group of colleagues working in this field."

Wolfsong enjoys practicing assisted reproduction law because it offers both intellectual and emotional rewards. "The fact that the law around ART has been slow to catch up to the science/medicine is fascinating and challenging. It requires an always-on-your-toes approach, and each case can present totally unique issues." While there are elements of ART contracts that every contract drafter knows, "recitals, representations, consideration, breach provisions, etc.," these contracts also involve "an extra element of emotion, caution, risk, and uncertainty," due to their nature. Because of these challenges, Wolfsong thinks the most important skills for a practitioner in this field are "compassion, responsiveness, collegiality, and an ability to be a good advocate for your

Continued on page 14

The State of LLC Oppression Claims in Oregon

by Aurelia Erickson
YLS CLE Committee



LLC members and corporate shareholders are not created equal. In the corporate context, a shareholder in a closely held corporation has statutory authority to try to force the corporation to cash out his/her shares if the corporation acts in a manner that is "illegal, oppressive or fraudulent." No similar statutory right exists for members of an LLC.

Corporate shareholders have long been able to assert these oppression claims. In addition to the statutory provision, Oregon courts have often used their equitable power to fashion remedies not specifically provided by statute in order to protect minority owners.

Without a statutory basis, LLC members may only have a claim for oppression if courts use this traditional equitable power. Whether courts will do so is an open question in Oregon.

Only one Oregon appellate case has addressed the issue of oppression claims in the LLC context.

In *Rowlett v. Fagan*, 262 Or App 667, 327 P3d 1 (2014), the Oregon Court of Appeals held plaintiffs had properly stated a claim for negligence on the part of their attorneys when they failed to timely assert an oppression claim on behalf of plaintiff LLC members. The Court of Appeals found plausible support for an equitable oppression claim. "[T]here can be no question that the claim was colorable ... An oppression claim in the LLC context, although one not ironclad given the lack of a definitive governing case in Oregon, has support in the law." *Id.* at 682-83.

The Oregon Supreme Court has declined to address the issue, reversing the Court of Appeals on other grounds. *Rowlett v. Fagan*, 358 Or 639 (2016).

But the Oregon Court of Appeals' decision in *Rowlett v. Fagan* is consistent with approaches applied in other jurisdictions and a more general trend to extend to LLCs remedies recognized in the corporate context.

Reflecting this and other trends across the country regarding LLCs, the Uniform Law Commission (whose mission is to provide states with "non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law") promulgated a Revised Uniform Limited Liability Company Act (Re-ULLCA) in 2006.

This revision provides a remedy for oppressive conduct. Re-ULLCA allows an LLC member to apply for a court order "dissolving the company on the grounds that the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."

Further, Re-ULLCA states that in an oppression proceeding, the court may order a remedy other than dissolution. This addition reflects the long-recognized ability of courts to fashion appropriate equitable remedies to protect minority owners.

Twelve jurisdictions have now enacted Re-ULLCA: Alabama, California, District of Columbia, Florida, Idaho, Iowa, Minnesota, Nebraska, New Jersey, South Dakota, Utah and Wyoming.

Other states - including Oregon - are considering whether to adopt all or parts of Re-ULLCA. The Oregon Law Commission has formed a committee to review Re-ULLCA and make recommendations about which portions, if any, should be included in a revision of Oregon's LLC Act.

The consideration of Re-ULLCA does not guarantee, of course, that Oregon will adopt a statutory basis for oppression claims in the LLC context. States that adopt Re-ULLCA may modify provisions to better reflect their case law or favor certain goals.

California, for example, adopted additional bases for dissolution but did not include oppression language. Instead, California's Revised Uniform Limited Liability Act allows a member or manager to seek dissolution

Continued on page 14

Presentations at St. Andrew Nativity School

On Friday, April 5, YLS President Shayda Zaerpoor Le, YLS Pro Bono Committee member Anthony Blake and Lewis & Clark Law School student Diego Gutierrez led a discussion at St. Andrew Nativity School in Northeast Portland. The three presenters discussed how and why they came to pursue a career in law, shared their daily routines, and addressed some of the common misconceptions and challenges associated with the profession.



Tips From the Bench

Continued from page 10

person is notified and does not raise an objection in the 20-day period, they are precluded from contesting the lack of compliance with formalities of execution. ORS 112.038(4)(b).

- Submit your writings with affidavits that provide a basis for the judge to make his or her findings relating

to the intent of the testator by clear and convincing evidence. You should include specific findings in the form of judgment you submit. Submitting a “statement of wishes” with an affidavit asserting that the statement is a will may not be enough.

Judge Henry began serving as the Chief Probate Judge in Multnomah County on January 1, 2019.

State of LLC Oppression Claims

Continued from page 13

where those in control “have been guilty of, or have knowingly countenanced persistent and pervasive fraud, mismanagement, or abuse of authority.”

But providing a statutory oppression claim for LLC members seems appropriate as LLCs and close corporations share many of the same characteristics. Majority members may dictate

how the LLC operates, especially in the absence of an operating agreement. Closely-held LLCs often involve individuals with close personal or family relationships. Many LLCs have a small number of owners with no ready market for the sale of an ownership interest, resulting in a similar potential for the “imprisonment” of an owner’s investment.

The adoption of a statutory remedy for oppression would provide needed clarity on the issue and codify the rights of LLC members in Oregon.

CLE - Exciting New Areas of Law

Continued from page 13

own client while also taking a balanced approach in the contract.” And while the cases where things go wrong dominate the headlines, Wolfson notes that “for the vast majority of cases I’ve had, the people involved are really amazing, and develop really amazing relationships with each other (including respecting each other’s boundaries).”

So, what should newer attorneys do if they are interested in this field? Wolfson encourages them to “not wade in without trying to learn as much

as possible first” by attending as many CLEs as they can. “The AAAA midyear conference is open to everyone (e.g. you don’t have to be a Fellow). And the ABA includes sessions on ART during its family law conferences. What the CLEs do is not only give you materials and opportunity to learn, but you can meet other colleagues working in this area. Finding colleagues and working cases with them (either as “of counsel,” as a mentee, or as an opposing counsel) is a great way to learn, too.” If you are interested in this area, Wolfson’s upcoming CLE - which will give a broad overview of ART contracts, along with other family law contracts - is a great place to start your studies.

David J. Malcolm Senior Law Project Volunteer of the Year Award Recipient

*by Jill Mallery
Legal Aid Services of Oregon*

The 2019 Senior Law Project (SLP) Volunteer of the Year recipient is a long-term volunteer attorney who volunteers simply because he cares about his community. Dave Malcolm believes “giving back helps our community, enriches and adds meaning to my life and adds variety to work.” This award is presented annually to an attorney who has displayed a special commitment to pro bono services through the SLP. The SLP began in 1978 and consists of 25 monthly legal clinics held at nine senior centers across Multnomah County. The pro bono project is coordinated by the Portland Regional Office of Legal Aid Services of Oregon (LASO).

Dave graduated from California State University Sacramento with a Bachelors of Art and from the University of West Florida with a Master of Business Administration. He received his law degree from Willamette University. Dave served as In-House Counsel for Emulex Corporation in Costa Mesa, CA from 2006-13. Currently, Dave is a solo practitioner with a transactional practice in Portland, Oregon. His focus is business transactions, corporate governance, intellectual property, real property, nonprofits, taxation and estate planning and administration. Dave is a proud father, US Air Force veteran, and current President of the East Portland Rotary Club. He has served on numerous OSB and MBA committees. Dave began

volunteering for the SLP in 2003. He explains, “I first volunteered for the SLP as a brand new attorney. I gained priceless practical experience and self-confidence while helping people and working directly with clients (a learning experience in itself).” Since that time, Dave has assisted over 80 clients with their legal issues. He has dedicated approximately 600 hours to helping seniors through the SLP. He volunteers regularly at several SLP clinic locations, including Urban League and Hollywood. Dave provides all levels of legal service from advice and counsel to full representation. He is a strong advocate for his clients, always willing to take on a new challenge, and often accepts difficult and time-consuming cases, including representing a senior seeking guardianship over her incapacitated 81 year old Hindi-speaking mother.

Dave believes attorneys should do pro bono work, encourages attorneys to volunteer, and explains the benefits of volunteering. “It’s an opportunity to make a real difference for others. Help is available if desired or needed. It’s a good way to meet others in the legal community and gain experience in a new practice area.” Dave adds, “Legal Aid is a great resource when the need arises, from referring you to an experienced and helpful attorney to providing insight and direction in a new, unfamiliar subject matter...” LASO offers support and mentors to its volunteers on legal aid pro bono cases.



David Malcolm

When asked why he does pro bono work for the SLP, Dave explains, “simple or small cases (like estate planning or housing or consumer issues) can make a major difference in the client’s world. What’s common or normal to us can be extremely confusing, unknown or beyond the client’s abilities.” Dave’s clients, LASO, and the SLP community partners appreciate Dave’s pro bono work and value his assistance. LASO receives a great amount of positive feedback from the seniors that have received assistance through the SLP. Julia Olsen, Regional Director of the Portland Regional Office of LASO, expresses gratitude for Dave’s service, “Long-term, experienced volunteers such as David Malcolm provide incredible value to our pro bono programs. We recognize his contribution and thank him for providing critical legal help to low-income seniors for the last 16 years through the Senior Law Project.” Dave’s commitment to his clients and long-term dedication is remarkable and has made a true difference in the lives of his clients and the community.

For more information on the SLP or volunteering with LASO, please contact Jill Mallery or Erin White at 503.224.4086.

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Lauren Russell Mike Haglund Volunteer Lawyers Project Award Recipient

by Erin White
Legal Aid Services of Oregon

Lauren Russell is the 2019 recipient of the Michael E. Haglund Pro Bono Award. The award is presented to a young lawyer who, in the tradition of Michael Haglund, founder of the Volunteer Lawyers Project, has displayed a special commitment to pro bono service through LASO, OLC, or MBA YLS projects. Lauren, an associate with Dunn Carney, is being recognized for her commitment to pro bono service and work with the Legal Aid Night Clinic.

Josh Stadtler, a partner with Dunn Carney and co-chair of the firm's Pro Bono Committee says, "Lauren has demonstrated a particularly strong interest, dedication, and devotion to pro bono service since she started at Dunn Carney. Over time she has taken on a leadership role with the Night Clinic, not only in meeting with and representing clients but also by encouraging other attorneys to participate and serving as a mentor in that regard, and also with the firm's

Pro Bono Committee, which she now co-chairs."

Attorneys from Stoel Rives and Dunn Carney exclusively staff the Legal Aid Night Clinic in partnership with the Portland Regional Office of Legal Aid Services of Oregon (LASO). Once a month, Dunn Carney attorneys meet with clients pre-screened by LASO. The cases cover many areas of law including consumer, small claims, landlord/tenant, and estate planning. The volunteer attorneys typically provide continuing legal representation to clients with whom they meet.

Lauren began volunteering with the night clinic when she was a summer law clerk, and tries to attend several times a year. "I volunteer in part because I have been extremely fortunate in my life and believe I should use my privilege to help others, even in small ways. It also just makes me feel good!" she says. Lauren has represented numerous clients and dedicated many pro bono hours to helping low-income

Oregonians with their legal issues. A recent experience with the night clinic was also one of the most rewarding for Lauren. She assisted a woman who co-signed for a car loan with her daughter, and was subsequently stuck with the vehicle. Lauren negotiated a voluntary surrender of the car and a zero balance loan. She recognized that her ability to navigate the system was something her client did not have, and her client was very happy with the result.

"What I enjoy most about the Night Clinic is the client interaction, which associates in larger firms do not always experience in their first few years of practice. I find counseling the clients is a good way to hone my emotional intelligence and problem solving skills. With some clients, there is no good legal remedy for their situation, but at the very least you are sitting with them and listening to their stories, and you may be the first person in their lives to do that. The Night Clinic also gave me the opportunity early on to take ownership of my own cases, including drafting demand letters, reviewing or drafting complaints, and providing litigation strategy advice," Lauren shares. Jill Mallery, Staff Attorney and Pro Bono Coordinator with

LASO says, "Through her pro bono work with the Night Clinic, Lauren has shown her strong commitment to increasing access to justice by providing legal assistance to those who would otherwise go without legal help."

Lauren grew up in Billings, Montana. She attended the University of Montana where she obtained her undergraduate degree in journalism and subsequently worked as a daily newspaper reporter and freelance writer. She then earned her JD from University of Oregon School of Law. While attending, she clerked for the Oregon Department of Justice's Appellate Division and externed for the Hon. Ann Aiken, then-Chief District Judge of the US District Court for the District of Oregon. As an associate with Dunn Carney, Lauren practices primarily with the firm's Litigation Team and focuses on employment-related matters and commercial litigation. In addition to her work with the night clinic and co-chairing Dunn Carney's Pro Bono Committee, Lauren's other volunteer work includes co-running her firm's United Way charitable giving campaign every year and volunteering as a mock judge for 1L appellate oral arguments at her alma mater.

Lauren says, "I would certainly encourage all attorneys



Lauren Russell

to volunteer their time to pro bono efforts that fit their interests and abilities. For new lawyers, it is a great way to build your skills and gain confidence as an attorney. For everyone, it is a way to connect with members of your community with whom you may not ordinarily interact and a reminder that even a small amount of time donated can achieve meaningful results. I am still learning to balance the demands of being an associate with my professional responsibility and personal desire to do pro bono legal work, but I am lucky that my firm is very supportive of pro bono service."

To learn more about pro bono opportunities with LASO, contact Jill Mallery or Erin White at 503.224.4086 or ProBono@lasoregon.org.

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Contact

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Hala Gores

2019 MBA Diversity Award Recipient

by Austin Burnett Batalden
MBA Equity, Diversity & Inclusion Committee

Hala Gores will receive the 2019 MBA Diversity Award on May 14 at the MBA Annual Meeting and Dinner. This award is presented to an individual lawyer, legal employer, or other legal organization for a commitment to fostering and promoting diversity and inclusion in the legal profession. This award was created to spotlight the efforts of people and organizations in our community who are steadfast advocates for increasing diversity. Hala embodies the spirit of this award.

Hala was born in Nazareth to a Palestinian Christian family. She was 10 years old when she moved to the United States. Hala grew up as an outsider with

limited financial resources. Her upbringing planted a seed in her to pursue social justice and assist marginalized members of society. These values have informed her choices, leading her to law school and a career advocating for individuals who have suffered serious personal injury or have lost a loved one as a result of the negligence of another person, a company or governmental agency. Hala has worked exclusively as a solo practitioner in order to provide pro bono services to approximately 20 percent of her case load. Outside of effectively advocating for her clients, Hala advocates for lawyers from non-dominant cultures and marginalized communities.



Hala Gores

In supporting Hala for this award, Rima Ghandour, spoke of first passing the bar. When Rima passed the bar, she received a call from Hala welcoming her to the profession. Hala made the connection that Rima was a fellow Arab American and a fellow woman from a non-dominant culture. Hala knew the importance of welcoming Rima and supporting her, so much so that Hala had Rima over for dinner the next day.

This story is not unique. Hala has been supporting and mentoring other lawyers her entire career.

Hala is well respected as trial attorney and was the first woman of color to be President of the Oregon Trial Lawyers Association. She serves on the executive committee of the Owen M. Panner Inn of Court, is involved in Oregon Women Lawyers, Queens Bench, and is co-founder and first president of the Arab American Cultural Center of Oregon, an organization whose mission is to preserve and promote the heritage and culture of Oregon's Arab and Arab American diverse community. When asked about her involvement in the various organizations, her response is not about the prestige but about how grateful she is to have had the opportunity to do what she could in the various roles. As president of OTLA, she was able to establish a sustainable safety initiative after recognizing the significant impact traumatic brain injuries had on her clients. Rather than see the problem as unavoidable, she created a program to provide, at cost or no cost, bicycle helmets to children and families in Oregon that could not afford them.

Hala has been a mentor for many lawyers from non-dominant cultures and marginalized groups, and assisted them in trial skills development. She has been a humble breaker of glass ceilings and willing to provide help whenever asked. Hala provides assistance to newer attorneys in need of help with job searches, making professional connections in the community, and providing advice around their careers and practice. Hala has constantly done the work of showing up and making the Portland legal

community more welcoming to those from marginalized communities, allowing those she has mentored to thrive in their own right.

When asked about Hala's mentorship, Robert Le, a successful personal injury lawyer in Portland had the following to say:

Hala has mentored me for almost 10 years. There were several of us younger lawyers who were not from Oregon. Many of us from minority communities. She spent time getting to know us, finding out where we were in our practice, and what was needed to become better lawyers. As a result we became better lawyers for the people we help. Prior to passing the bar, I had no legal experience. My family were immigrants with limited resources. I knew very few lawyers. Hala became one of them. The results she brings her clients and her service in the legal community sets a standard we should aspire to. Hala helped me accept who I am as a minority lawyer. My story is very different. So is Hala's. She helped make Oregon my home. She helped me develop my skills to be a better trial lawyer. She brought me to learn from lawyers like herself who would spend time and invest in me. This mentorship is ongoing for nearly a decade. I have much more to learn. From where I started, I never would have imagined in the last few years to have tried more than a dozen cases to verdict. It was people like Hala who showed me how to overcome adversity. To debrief after a win or loss. Regardless of the outcome, to soon get back up and be better.

The MBA is proud to have Hala Gores as a member. We commend her for her dedication to increasing diversity and inclusion.

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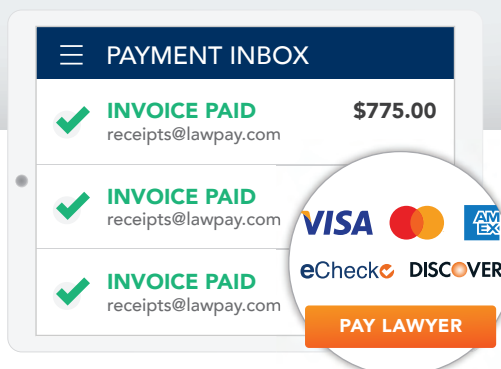
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Julia Hagan and Erick Haynie Pro Bono Award of Merit Recipients

by Ed Marks
Legal Aid Services of Oregon

The Pro Bono Award of Merit is presented to lawyers who set an example for the entire legal community regarding the importance of providing pro bono services to clients who otherwise would be unable to afford access to justice.



Julia Hagan (left)

Julia Hagan

Julia Hagan, a partner at Gevurtz Menashe in Portland, knows that the difference between a family living in long-term poverty or having a chance for a stable future often depends on whether they can afford counsel to navigate the emotionally-charged legal complexities that accompany so many family law cases.

“Too often, poverty traces back to a difficult divorce, child custody disputes or domestic violence,” said Julia, one of two attorneys to be honored with this year’s Pro Bono Award of Merit. “It can make it so that poverty continues into the next generation.”

Providing legal representation pro bono has been part of the plan for Julia ever since she was a law student at Lewis & Clark in the 1980s. Her public interest journey included a dozen years at Multnomah Public Defenders

handling criminal and juvenile defense court cases. Then, when the opportunity to join Gevurtz Menashe came along, negotiations over leeway to continue providing legal services to those in need were just as important as negotiations over compensation.

“Commitment to pro bono was part of the deal for joining the firm,” Julia said. And Gevurtz Menashe has continued to support Julia’s pro bono work. Last year alone, Julia logged 112 pro bono hours when a family’s custody

disputes turned complicated. The mother was represented by counsel. The father was also represented by counsel. But it was with Julia’s work as pro bono counsel for the couple’s child that the case was resolved with long-term protective orders for the family.

Gevurtz Menashe managing partner Shawn Menashe credits Julia with promoting a firm-wide culture of pro bono excellence. “I am truly proud to call Julia my Partner and colleague,” Shawn said in his letter nominating Julia for the Pro Bono Award of Merit. “She continues to lead and represent our professional community in a profound way.”

Julia has been a mentor to many younger rising star attorneys through the OWLS Family Law Mentoring Circle and through direct mentoring opportunities in individual pro bono cases, “Julia is amazing”

said LASO staff attorney Nicole Rose in Portland. “I’ve learned so much from working with her.”

Julia’s many achievements as a pro bono hero are all the more remarkable because of her commitment to handling family law cases. Far too many low-income Oregonians continue to need family help beyond what legal aid programs and the generosity of Oregon’s pro bono community can provide.

In cases where parents are left to fend for themselves, lack of experienced legal help can leave at least one of the parents, still far too often the mother, struggling for years to meet the financial burdens of raising the children. “It could be a tax issue, or a debt that the other parent should have paid, or even resolving something as basic as who gets the title to the family car,” said Julia, giving examples of financial issues that often remain problematic for people forced to represent themselves in a family law case. “Especially in rural communities, the burdens of finding adequate day care if you don’t have family or friends to turn to can make these problems even worse.”

Julia’s volunteer leadership extends to the broader legal community as well as individual cases. Among her many roles, she has served as Past Chair of the OSB Juvenile Law Section, earning the Section’s Leadership Award in 2012. She also has served as a member of the MBA Board of Directors, and previously served as Chair of the MBA Judicial Screening Committee and Chair of the MBA Professionalism Committee. In 2017, she was awarded the OSB Edwin J. Peterson Professionalism Award.

But her greatest passion remains making sure that the cost of attorney fees does not mean more children will

continue to suffer. “For the children, these cases can easily turn into tragedy,” she said.



Erick Haynie

Erick Haynie

During his 20 years of practice, Erick Haynie, a partner at the Portland office of Perkins Coie, has tried more than 40 cases to judgment. His cases have involved high stakes real estate and land use disputes, commercial leases, complex business torts and intellectual property disputes.

But perhaps no victory in court meant so much to any client as a case Erick took to trial last year in a small rural community approximately 100 miles from Portland. A widow was facing the loss of her leased home of 20 years after the owner became incapacitated. One of the owner’s family members filed a lawsuit to reclaim the property, arguing that the widow had not fulfilled certain obligations in her long-term lease regarding maintenance activities and improvements for the property.

Erick, one of only two attorneys honored with this year’s Pro Bono Award of Merit, quickly agreed to take the case pro bono after receiving an email from LASO Staff Attorney Ron Rubino.

“Ron Rubino is my own personal Mordecai Green,” Erick said, referring to a fictional hero from John Grisham’s 1998 novel, *The Street Lawyer*. In the novel, Mordecai Green convinces fictional corporate lawyer Michael Brock to take on the cause of homelessness in collaboration with Green’s fictional 14th Street Legal Clinic in Washington, DC.

But in Erick’s case, the threat of homelessness for the elderly widow was all too real. Erick needed no convincing - over 120 hours, two depositions and a favorable trial verdict later, the widow’s right to stay in her home was upheld in a court decision delivered last November.

The fact that the widow had absolutely no money to pay attorney fees didn’t cause even one moment of concern.

“Perkins Coie invests in pro bono” Erick said. “We give credit

for pro bono hours toward an associate’s billable hours. As for partners, it’s generally true old fashioned pro bono. It’s often some of the most rewarding work we do.”

Erick is also quick to give credit to Perkins Coie Associate Courtney Peck, who co-counseled the case with him and second chaired the trial. Erick and Courtney divided questioning of witnesses. Erick did the opening statement and Courtney did the closing.

In this era of declining civil trials, Erick points to that kind of opportunity to gain trial experience as another of the many benefits that comes to any firm or individual attorney willing to take on pro bono work.

“For young lawyers starting out, pro bono is often a way to make real human connections and to get experience in dealing directly with clients and witnesses in court,” he said. Plus, the fact that this particular case required travel to a rural community was only a very minor burden. “I grew up in rural Oregon and like practicing in rural courts,” he said. “The opportunities to take a case to trial there are often very good.”

Erick’s personal commitment to pro bono is consistently exemplary. He has logged 2,130 hours of pro bono service in a wide range of cases dating back to 1999, averaging out to more than 106 hours every year. He has served on Perkins Coie’s Firmwide Pro Bono Committee, chaired the Portland office’s Pro Bono Committee, and received the firm’s national Pro Bono Leadership award in 2004. LASO also previously recognized Erick for his pro bono contributions to Oregon’s rural communities with its “Community Partnership Award,” LASO’s highest recognition for exceptional dedication to serving the legal needs of low-income Oregonians.

Erick’s volunteer spirit also extends well beyond the courtroom. Among Erick’s many community-focused activities, he is the immediate past President and Chairman of the Board of the Hood River Rotary Club. He’s also the Chairman of the Board of the Providence Hood River Memorial Hospital Foundation. Erick also serves on the Hood River City Council.

“Erick gave her what she needed most: a voice in court, a chance to be heard,” said Ron Rubino of LASO, referring to the widow’s case won by Erick and Courtney last fall. “I know how truly desperate she was and how bleak things looked for her.”



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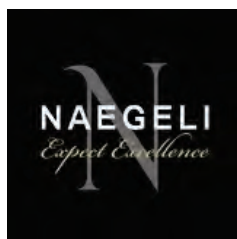
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The Corner Office PROFESSIONALISM

We will only pursue litigation, engage in conduct or take positions that have merit.

(From the MBA Commitment to Professionalism Statement)

Often we see television and movies depict the practice of law with a lot of grandstanding in order to “win” a trial or court proceeding. In real life, we have to remember that what we see in Hollywood is different than the day-to-day practice of law. While it is important to zealously advocate for your client, it is always good to make sure that what you are doing has merit. A few examples that I have come across in my practice are below.

As attorneys, sometimes we are contacted by potential clients to file lawsuits on the eve of the statute of limitations. We will therefore file a lawsuit before the case is evaluated, in order to preserve the statute of limitations. This is understood to a degree among the bar. However, it should

only apply as long as it takes for the facts to be evaluated. Oregon Rules of Civil Procedure 17C(2) provides that, “a party or attorney certifies that the pleading, motion or other document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” If at any point in the life cycle of a lawsuit, a plaintiff’s attorney determines that the lawsuit has no merit, the lawsuit should be dismissed.

Other issues arise when a party is representing themselves pro se. While we all know that pro se litigants must comply with the court rules just as any other litigant, see e.g. *State v. Palmer*, 35 Or App 125, 128, 580 P2d 592 (1978), people oftentimes try to take advantage of pro se litigants because they are not lawyers. It is not appropriate to file a number of motions against a pro se litigant simply because they do not know the rules. ORCP 17C(3)

reminds us that as attorneys we “certify that the claims, defenses and other legal positions taken in the pleadings, motion or other document are warranted.” Unless there is merit to what we are doing, we should not file motions against pro se litigants simply in hopes that they do not respond to the motion or show up for oral argument.

At depositions, only make objections when necessary in a concise, non-argumentative and non-suggestive manner, pursuant to ORCP 39D(3). As the attorney defending the deposition, do not make objections to each and every question just because you know you will not like the answer to the question. Only object when there is a reasonable basis to do so. Similarly, as the attorney taking the deposition, ask questions and follow up with the necessary candor to get at the facts at issue. Do not, “conduct or hinder in bad faith, or ask a question in a manner not

consistent with the ORCP, or in such a manner as unreasonably to annoy, embarrass or oppress the deponent or any party” such that you would need to get the court involved as outlined in ORCP 39E(1). The best depositions that I have seen are those where all parties engage in professional conduct, ask questions that have merit and move on.

To all the new lawyers, please know that what you see on television is not real! Luckily I had great mentors at my firm that taught me how to pursue and work up a case to advocate for my client while being respectful and friendly with opposing counsel. Our community has great mentors that can help guide you to start off on the right foot to practice with merit. For example, the OSB has a New Lawyer Mentoring Program, offering new members one-on-one guidance on elements of practice while promoting professionalism. To the more established

practitioners, please consider giving back and being a mentor. Please see www.osbar.org/nlmp for more information. In addition, the MBA has a mentorship program each year pairing new lawyers with experienced lawyers. This year’s program ends in July. Applications for next year’s program will be available in the fall.

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.

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