



A Dimmed Light

by Michalle Wright

Edited by Alexa Weinstein

This year, the Multnomah Lawyer will feature several guest authors whose expertise about the legal system comes from their lived experiences. I hope these stories will provide a valuable perspective from people whose lives were, and continue to be, directly impacted by the systems in which we work.

Sarah Radcliffe
MBA President

I am a transgender woman, a formerly incarcerated person, a person who spent almost seven years homeless on the streets of Portland, a person who was addicted to drugs, and a rape survivor. I attempted to take my own life, and I still struggle with suicidal ideation associated with gender dysphoria. My time in prison lasted from my entry into Coffee Creek Intake Center in August 2013 to my release from Coffee Creek Correctional Facility in November 2018. My journey has not been an easy one, and I am still healing. In this article, I describe the events in my early life that led to my involvement with the criminal justice system. In a future article, I hope to speak to you from these pages about my experiences with probation, parole, and rehabilitation prior to my years in prison.

I was what they call a “troubled youth.” As early as I can remember, I knew something was different about me. But I didn’t immediately know that I was different in a way the world could not yet accept. I was certain I was a girl. And I was just as certain that being a girl, incarcerated in a body that everyone associated with being a boy, was going to cause me great pain. Maybe it was my older brothers who first taught me to be scared of people. When I was Michale (pronounced like “Michael”), I was punched, threatened, and shot at. I experienced violence even before anyone else knew I was a girl. I sought help from the justice system, but my experiences taught me that the police only created more chaos, rather than creating safety or peace. And even when the police seemed to be helping, the courts became a barrier that stopped me from getting the protection I needed. In this context, I could not expose who I really was. I hid Michalle (pronounced like “Michelle”) to keep her, to keep me, safe.

In school, I didn’t do well after third grade, as it drew too much attention. Hiding from my father, my teachers, and the whole world was my full-time job. I never raised my hand or did too well on tests, and I didn’t try out for dance or gymnastics or debate; I simply didn’t want anyone to notice me. I hid in plain sight, attending Sunday school as a child and singing about this little light of mine. However, as I became a teenager, my little light was dimming. I dropped out of high school and enrolled in GED classes. At night, I was harming my own body in an expression of my gender dysphoria. Cigarettes led to harder drugs that could more effectively hurt or kill me. I was desperate to numb my feelings and to suppress my true identity. During this formative time, I was learning unhealthy and self-destructive ways to cope.

My journey has not been an easy one, and I am still healing.

In the midst of this turmoil, my father was diagnosed with cancer. I was blindsided by his swift deterioration and sudden passing. After coming home when I was five years old, at the end of his own time in prison related to heroin addiction, my father had always showed me the love and kindness in his heart, despite the fact that he had no idea how to love or care for a child who clearly displayed non-traditional behavior for a boy or a son. I wonder if his death would actually have been easier on me had we not been close. But we were close, and I wish I hadn’t lost him so soon. He never had a chance to love me as I truly am, and for that, I still mourn. At the time, I was entirely unequipped to deal with his loss. Though others encouraged me to stop and grieve, I needed distraction and insisted on attending all of my GED classes.

My mother also lacked the tools to deal with her own grief over losing my father. She communicated to me that she didn’t want to be my mother anymore. I felt I had lost both of my parents, and other members of my family had recently passed away as well. At 16, I became homeless. At 17, I successfully completed my GED, but it did not rescue me from being a homeless teen or from facing the grief of losing a family, the pain of gender dysphoria, and the coping mechanisms of self-harm and drug use. I began to seriously question whether I could go on living.

My involvement with the criminal justice system officially began in January 2009, when I turned 18. By then, I’d been homeless for a little over two years. I was arrested on possession of a small amount of methamphetamine and provided with pre-trial release. From 2009 to 2013, I was incarcerated within various Oregon county jails roughly 25 times. My charges during this time included possession of a controlled substance, third-degree theft, criminal trespass, felon in possession of a weapon, and various probation violations. My sentences ranged from a few days in jail to 18 months of probation. I was also penalized with fines and fees, community service, and various stipulations including requirements to undergo treatment and orders to disclose certain aspects of my health care to members of the court. My follow-up article will focus on how the rules and regulations of parole, probation, and rehab both reflected the disorder and lack of safety in my childhood and directly conflicted with my medical and psychological needs during this period, ultimately leading me to prison.

Today, I have learned to love myself, though I wish it hadn’t taken so much tragedy for me to learn this skill. I have regained my light, and I shine it back to help others. Free from both prison and drugs, I am studying to become a lawyer and advocating for the resources that trans prisoners need in order to defend their rights.

Hiding from my father, my teachers, and the whole world was my full-time job.

mba|EVENT

Multnomah Bar Association

Absolutely Social

The Grape Escape
Featuring Wine Tasting

Tuesday, October 15
The University Club
5-7 p.m.

Drop in after work and catch up with friends and colleagues.

Register at www.mbabar.org.

mba|CLE

To register for a CLE, please see p. 3 or visit www.mbabar.org and log in as a member to register at the member rate.

SEPTEMBER

9.18 Wednesday Revisiting How to Mediate: New Strategies To Resolve Old Problems

Eric English
Bonnie Richardson
Richard Vangelisti

9.24 Tuesday Mandatory Elder and Child Abuse Reporting

Nik Chourey
John Fick

9.26 Thursday Sex Crimes Conviction Relief

Mark Cogan
Jeff Turnoy

OCTOBER

10.2 Wednesday Special Education Law: An Overview for Non-Special Education Attorneys

Mary-Anne Linden
Diane Wiscarson

10.23 Wednesday Managing Difficult Clients

Jacqueline Alarcón
Mae Lee Browning
Ron Cheng

10.24 Thursday Health Care Law and the Corporate Practice of Medicine in Oregon: Is it Lore or Law?

Grant Engrav
Warren Foote
Bruce Howell

NOVEMBER

11.5 Tuesday Significant Appellate Opinions for 2018-19

Judge Katharine von Ter Stegge
Judge Scott Shorr

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DEADLINE for copy: The 10th of the month*
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*or the preceding Friday, if on a weekend.

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2019 Battle of the Lawyer Bands a Great Success

The McMenamins Kennedy School gymnasium was rockin' on July 25 when six bands competed for the title of "Best Oregon Lawyer Band 2019."

- 1. Bunny Lebowski & the Nihilists** - Bradley Dixon, P.K. Runkles-Pearson, Steve Galloway and Dennis Westlind
- 2. Habeas Corpse** - Tim DeJong, Tony Kullen, Houston Bolles and Mack Hagin
- 3. Hillsboro Road Kings** - John Knowles, Nathan Pogue, Greg Clemons, Skip Farmer and Doug Jacques
- 4. Holtey & The McCoy Russell Band** - Nate Holtey, John Russell, Katie Tallman, Frank Morton-Park and Paul Focke
- 5. Lisa Fitzgerald and the Spill** - Lisa Fitzgerald and Russell Barnett
- 6. Rock Judicata** - Tim O'Donnell, Mike O'Donnell, Chris O'Donnell and George O'Donnell

The Catbird Seats (Zack Mazer, Erik Eklund, Max Wall and Josh Mathis) performed as the house band.

The judges and crowd enjoyed all the bands, and in the end Habeas Corpse was named Best Oregon Lawyer Band 2019. Holtey & The McCoy Russell Band received the Audience Choice Award. Lisa Fitzgerald of Lisa Fitzgerald and the Spill received the James Britt Award for Best Individual Performer.

Thank you to Stoll Berne PC, Farleigh Wada Witt, McCoy Russell LLP, Miller Nash Graham & Dunn LLP, Aldrich Benefits, Elizabeth Christy Law Firm, PLLC, Howell Health Law LLC, Law Office of Shawn Morgan, LNS Court Reporting and Captioning, Parks Law Offices LLC, Vangelisti Mediation and Wright Finlay & Zak/Tony Kullen for sponsoring the event.

We would also like to thank our event judges: Judge Amy Holmes Hehn, Steve Berman, Heather Kmetz and Trish Walsh; and Justice Adrienne Nelson, who served as emcee. The event was planned by the 2018-19 MBA Events Committee, chaired by Rebecca Cambreleng, with members Christopher Fanning, Lissa Kaufman, Tony Kullen, Calon Russell, Mindy Stannard, Paul Thompson and Nels Vulin.

Thank you to everyone who attended and helped raise close to \$4,000 for Multnomah CourtCare.



Best Individual Performer, Lisa Fitzgerald



Habeas Corpse took home the Best Oregon Lawyer 2019 trophy



Holtey & The McCoy Russell Band received the Audience Choice Award

Calendar

SEPTEMBER

5 Thursday
Volunteers of America Oregon
2019 DePriest Gala
www.voaoor.org/depreistgala

18 Wednesday
CEJ Party Under the Stars
www.cej-oregon.org/events

19 Thursday
22nd Annual MBA Golf
Championship to Benefit CEJ
See insert

26 Thursday
How What You Don't Know
(and Know) Can Hurt You
A Solo & Small Firm
Committee Workshop
Details on p. 6

26 Thursday
Blackbird Wine Social
Details on p. 12

26 Thursday
Oregon Asian Pacific American
Bar Association 2019 Gala
Dinner
www.oapaba.org

OCTOBER

10 Thursday
OFALA 2nd Annual Gala Dinner
www.oregonfala.org/events

15 Tuesday
Absolutely Social
Details on p. 1

24 Thursday
AILA Oregon Annual Gala
Dinner and Fundraiser
www.mbabar.org

25 Friday
CEJ Laf-Off
www.cej-oregon.org/events

Golf for Legal Aid

22nd Annual MBA Golf Championship

Thursday, September 19

Pumpkin Ridge Ghost Creek

12930 NW Old Pumpkin Ridge Rd., North Plains

1 p.m. Shotgun



This is the MBA's largest annual fundraiser for the Campaign for Equal Justice and will benefit the Volunteer Lawyers Project. Invite clients, colleagues, family and friends and play a beautiful course for a great cause. Discounted entry of \$195 for MBA members and non-lawyers if registered by September 12.

Sponsorship opportunities are available. Raffle prize donations and sponsor commitments of \$100 or more will be acknowledged on event signage if received by September 9. To register or sponsor, see the insert in this issue, visit www.mbabar.org, or contact Pamela Hubbs (pamela@mbabar.org, 503.222.3275).

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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.

Revisiting How to Mediate: New Strategies to Resolve Old Problems

Wednesday, September 18 3-5 p.m.

World Trade Center, Sky Bridge

Members \$60/Non-Members \$95

This CLE is for civil trial attorneys of all experience levels. Our panel of experts will cover mediation from an array of perspectives - the client, trial counsel, settlement counsel, and mediator. The panel will discuss “new” ways to improve on the “single-day event” model of mediation. Expect a spirited discussion of strategies to increase the likelihood of resolution with less costs to the parties. Audience participation and questions will be encouraged. Our panel of experts includes **Eric O. English**, Resolution Strategies LLP; **Bonnie Richardson**, Richardson Wright LLP; and, **Richard J. Vangelisti**, Vangelisti Mediation.

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

Mandatory Elder and Child Abuse Reporting

Tuesday, September 24 Noon-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Note: One hour of abuse reporting credit will be applied for.

This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. **Nik Chourey**, Oregon State Bar and **John Fick**, CFE, CFCI, Columbia Bank will present this lively and practical discussion:

- Recognizing elder and child abuse
- Mandatory reporting requirements and updates
- Protecting privilege and confidentiality

Nik is Deputy General Counsel to the Oregon State Bar and a former bar prosecutor with Disciplinary Counsel’s Office and trial lawyer. John is Columbia Bank’s VP & Manager of the Fraud Investigations Unit.

For more information: Contact the MBA at 503.222.3275.

Sex Crimes Conviction Relief

Thursday, September 26 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This CLE will cover relief from sex offender registration, both adult and juvenile, and expungement. Adult relief from registration is complicated, as it can be done in both the circuit courts and in the Board of Parole and post-prison supervision. Laws that have recently been implemented have opened the floodgates for tens of thousands of individuals to seek relief who never had a chance. Seeking relief in the Board of Parole and post-prison supervision will become the more common route for relief, and is based on Oregon’s new tier-system. The laws for juvenile relief remain unchanged, but there are a large number of factors that go into who is a good candidate for relief. The expungement (or set aside) law is one of the most complicated in the code, and is constantly changing. Sex crimes can be expunged only in very narrow circumstances. **Mark Cogan** and **Jeff Turnoy**, Mark C. Cogan PC, will describe all avenues for relief from registration for both adults and juveniles, and under what circumstances a sex crime can be expunged. The presentation will also cover expungements in general for adult convictions.

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

Special Education Law: An Overview for Non-Special Education Attorneys

Wednesday, October 2 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Representing children with disabilities and their families is a narrow, specialized practice area. If you don’t practice in this field or know someone with a disability, you might not know there is such a thing as special education law. Attorneys in many practice areas might encounter issues related to the legal rights and entitlements of children and young adults with disabilities. Most commonly, special education law intersects with family law, estate planning, guardianship, juvenile law, and criminal law, but it may also touch upon less obvious practice areas, such as taxation, contracts, employment, and even cannabis law. Special education law attorneys **Mary-Anne Linden** and **Diane Wiscarson** of Wiscarson Law PC are our esteemed speakers. This CLE will not make you an expert on special education law, but it will help you to identify special education related issues in your own practice and to know when to turn to other experts.

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

Managing Difficult Clients

Wednesday, October 23 3-5 p.m.

World Trade Center, Sky Bridge

Members \$60/Non-Members \$95

Three attorneys from different backgrounds (criminal defense, family law, and personal injury) will discuss how to handle difficult clients at all levels of litigation, from catching red flags at intake to managing difficult expectations throughout litigation. Hear horror stories about clients refusing to sign settlement agreements they agreed to; clients failing to show up to court; and uplifting stories about working with indigent clients and those with diminished capacity. **Jacqueline Alarcón**, Yates Family Law PC; **Mae Lee Browning**, Attorney at Law; and **Ron Cheng**, Kaplan Law, LLC will explore the various strategies used to preserve your integrity while still effectively advocating for clients who can be their own worst enemies.

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

Health Care Law and the Corporate Practice of Medicine in Oregon: Is it Lore or Law?

Thursday, October 24 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

The corporate practice of medicine (CPOM) doctrine generally provides that entities providing a licensed health care service need to be owned by licensed medical professionals. This CLE will discuss the history and applicability of CPOM in Oregon, enforcement, what medical licenses are affected by it, management services agreements as a tool for compliance, and how the Oregon Board of Medicine looks at CPOM issues. The panelists will include attorney general for the Oregon Medical Board **Warren Foote** and health law attorneys **Bruce Howell** and **Grant Engrav**.

For more information: Contact the MBA at 503.222.3275.

Significant Appellate Opinions for 2018-19

Tuesday, November 5 Noon-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Please join the MBA for an update on Oregon appellate decisions for civil law practitioners. Multnomah County Circuit Court **Judge Katharine von Ter Stegge** and Oregon Court of Appeals **Judge Scott Shorr** will present an overview of some key civil law decisions from the Oregon Court of Appeals and Oregon Supreme Court from 2018-19. These esteemed speakers will touch on issues relevant to nearly all practitioners. An absolute “must-see” to wrap up 2019 and prepare for a new year.

For more information: Contact the MBA at 503.222.3275.

Understanding UM/UIM Claims

Thursday, November 14 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This CLE is for any practitioner who wants to learn more about UM (uninsured) and UIM (underinsured) motorist claims. Come hear from practitioners on both sides about the ins and outs of these types of claims.

Topics will include:

- Coverage considerations;
- Claim requirements and procedures;
- Damages and attorney fees;
- Arbitration.

Our speakers are **Michael A. Colbach**, a Portland personal injury attorney and **Simon J. Harding**, a shareholder at Schulte, Anderson, Downes, Aronson & Bittner, P.C. who focuses on personal injury defense, automotive liability and general liability defense.

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

To register for these classes, see page 4.

Saving After Graduation Don't Let Short-Term Debt Overshadow Long-Term Savings

by Elise Bouneff
Columbia Bank



For most attorneys right out of school, the default thinking is all about paying down student debt. After all, the average law school student loan works out to about \$300,000. With such a huge amount looming over one's head, it is a reasonable assumption that any and all discretionary income should be diverted toward paying down that debt.

However, such action is not always the right way to go. In fact, developing a strategy for long-term savings - along with embracing fiscal discipline - is most often the preferred course of action for young professionals. In other words, the destination for the extra money you have at the end of the month does not have to go exclusively toward paying down debt.

The transition from living frugally during school to suddenly experiencing the freedom of a sizeable paycheck can often lead to fiscal confusion. As such, it is critical early on in one's career to find a group of trusted advisors to help set a financial course. A banker, CPA and financial advisor are going to become critical partners throughout one's career, and much of their valuable counsel is going to center around a savings plan that prepares for the big life goals ahead such as buying a home, kids, buying into a firm and retirement. Additionally, having emergency savings in case of job loss or other factors must be considered.

While much of their counsel will depend on individual circumstances, we find that a common, and very prudent course of action most often prescribed for a young attorney, is to put money in some kind of savings vehicle first, even before sending a check toward the pay down of student debt. Now of course, we are not recommending that one completely forget about that sizeable college loan, far from it. It is an obligation that must be met.

We are simply making the case that the time horizons for your student debt and your career savings plan are much different, with the latter being so much longer and more important long-term than the former. So if one has an extra \$200 at the end of the month, it makes sound fiscal sense to devote a majority of that pot of money toward savings and the minority toward paying down student debt. You can structure payments towards student loans to accommodate your income and eventually you will retire the debt. However, the savings you put in place now - no matter how small - will continue to feed your life and career goals in perpetuity.

It's a cliché, but nevertheless an important statement that all attorneys should heed: "It's never too early to save for the future." Paying off your student debt is important, but saving for the future is vital. For most pros, the short-term pain of paying off student loans is greatly eclipsed by the security and prosperity derived from a sound and sustainable lifelong savings plan.

Elise Bouneff is Senior Vice President and Relationship Banking Officer for Columbia Bank. She can be reached at ebouneff@columbiabank.com.



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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:
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620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
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Register online and order or download MBA self-study materials at www.mbabar.org/cle.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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

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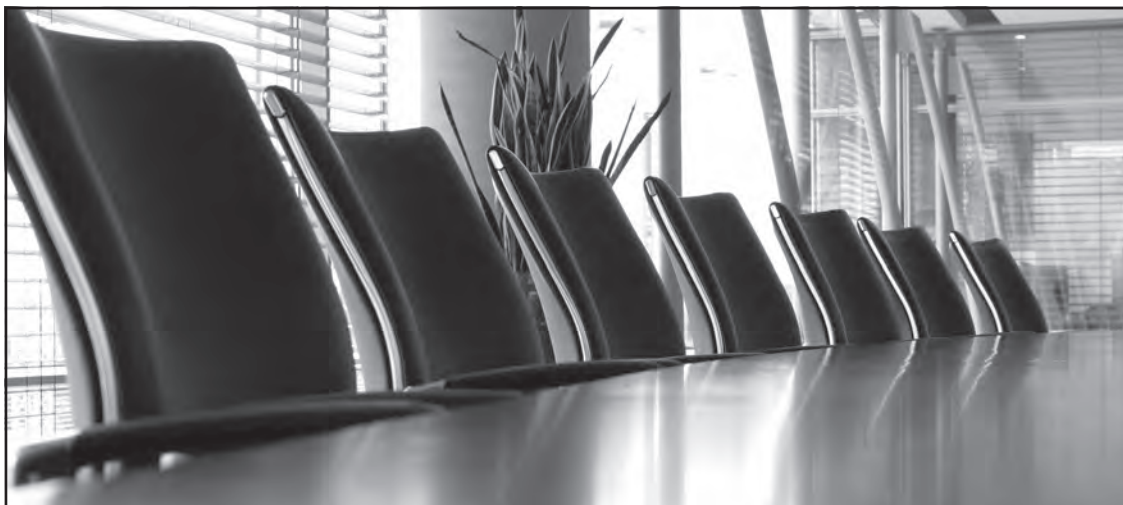


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Available Meeting Space



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

Office location:
 620 SW 5th Ave., Ste. 1220
 Portland OR 97204

Contact the MBA for details and availability at 503.222.3275.

mba | ANNOUNCEMENTS

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 "Writing to Persuade" is now available in the Members Center at www.mbabar.org. The seminar was accredited for two hours of practice skills OSB MCLE credit.

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

Oregon Attorney Assistance Program for Female Lawyers of Color with Ten or Fewer Years of Practice

From October 2 through November 6, the OAAP will facilitate a confidential support group for women lawyers of color in the first 10 years of practice or less. Participants will explore challenges in the practice of law as a woman lawyer of color, learn helpful tools and strategies for personal and professional growth, and find connection and community within a supportive environment. This group will meet weekly on Wednesdays from 4:30-6 p.m. at 520 SW Yamhill St., Ste. 1050, for six consecutive sessions. To join this group, please set up a meeting with group facilitator Karen A. Neri, JD, at karen@oaap.org. There is no fee, but advance registration is required as space is limited.

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 Presents

HOW WHAT YOU DON'T KNOW (AND KNOW) CAN HURT YOU: PROTECTING YOUR FIRM FROM SCAMS AND DATA BREACHES

Thursday, September 26
Workshop: 12-1:30 p.m.
Red Star Tavern Club Room
503 SW Alder, Portland

Law firms in particular have become targets for criminals seeking to take advantage of any and all weaknesses found. This can include technology weaknesses, such as weak passwords, unencrypted data, or outdated virus protection, or physical weaknesses through break-ins to an office or safe. Yet one of the major sources of issues for attorneys is criminals taking advantage of our trusting nature and willingness to help others through "social engineering," which is the act of gaining access to buildings, systems, or data by manipulation and exploitation of human psychology. Rachel Edwards, PLF Practice Management Advisor, will use this opportunity to discuss the PLF's recommendations for improving your security protocol, and recognizing the latest scams targeting law firms before they become an issue for you and your clients.

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

Lunch is provided.

The MBA will apply for one hour of general MCLE credit.

Register at www.mbabar.org.

Ethics Focus

Home Turf Handling Multiple Cases in the Same Courthouse

by Mark J. Fucile
Fucile & Reising LLP



Many lawyers routinely handle multiple cases in the same courthouse. In most circumstances, no unique professional responsibility issues are present when a firm's mix of cases is varied and the judges assigned are from a relatively large pool. Risks can sharpen, however, when the cases a firm handles are within a narrow practice area and a single judge or small panel handles the docket involved. In this column, we'll look at three: (1) "issue" conflicts; (2) "affidavit" judges; and (3) ex parte contacts.

"Issue" Conflicts

In many respects, a lawyer's stock-in-trade is making legal arguments that fit the facts of whatever cases come through the door. For the most part, there is nothing wrong with this time-honored approach. Conflicts can arise, however, if a lawyer presents a legal argument in one case and knows that, if the lawyer prevails on that argument, it will harm another client the firm is representing in a different case in the same courthouse.

OSB Formal Opinion 2007-177 (rev 2016) addresses "issue" conflicts in depth and across multiple forums. Oregon treats issue conflicts as a form of multiple-client conflict under RPC 1.7(a)(1). Formal Opinion 2007-177 explains (at 4) how issue conflicts can arise in the same courthouse:

"The critical question is whether the outcome in Client A's matter will or is highly likely to affect the outcome of Client B's matter... Whether it would be met when, for example, two

cases are simultaneously pending before two different trial court judges in the same county or judicial district will depend on what the lawyer reasonably knows or should know about the likelihood that one case will affect the other under the circumstances in question. For example, the outcome may depend in part on whether the issue is likely to be dispositive in one or both cases or constitutes only a remote fall-back position."

Formal Opinion 2007-177 concludes that "issue" conflicts - while rare - are non-waivable when they occur.

Lawyers who typically handle cases on the same side - such as prosecutors or insurance defense counsel - are unlikely to run into issue conflicts because they are typically arguing consistent legal positions across multiple cases. But, lawyers whose practices blend sides - such as in family law (husbands and wives) and bankruptcy (debtors and creditors) - and who handle those cases in front of a single judge or small panel of judges need to be attentive to potential conflicts that can arise out of divergent legal positions.

"Affidavit" Judges

Oregon has long had a low bar for changing a judge who has been assigned to hear a matter - as long as it is done within the timelines and procedures provided in ORS 14.250-.270. ORS 14.260(1) allows a lawyer to file a motion and supporting affidavit (leading to the colloquial term "affidavit") stating that "the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge[.]" Although ORS 14.260(1) includes a good faith

Conflicts can arise...if a lawyer presents a legal argument in one case and knows that...it will harm another client the firm is representing in a different case...

requirement, the Supreme Court has held that the requisite belief simply needs to be subjective.

OSB Formal Opinion 2018-193 (2018) examines many issues surrounding "affidavit." One in particular affects lawyers who routinely appear before the same judge or a small panel. Formal Opinion 2018-193 puts it this way (at 5):

"Filing an affidavit for change of judge can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing such

an affidavit could have on their own reputation or practice, or on their other clients in the future. This is particularly true for lawyers who practice in smaller counties where the local Bar

When handling many cases before the same judge, that very familiarity can lead lawyers to treat communications more informally - sometimes with unfortunate results.

and pool of available judges are relatively small, and for lawyers who typically represent only one class of litigants (such as in criminal and personal-injury contexts)."

Formal Opinion 2018-193 concludes that generally a lawyer must only evaluate the merits of "affidavit" the judge assigned in the specific case at hand. At the same time, the opinion counsels that a lawyer can consider the impact an affidavit might have with, for example, the other judges on a small panel of disqualifying one of their colleagues.

Ex Parte Contacts

RPC 3.5(b) prohibits a lawyer from communicating ex parte with a judge "on the merits" of a pending case. Oregon Code of Judicial Conduct 3.9(A) mirrors the lawyer version of the prohibition and CJC 3.9(B) obliges a judge receiving an unauthorized ex parte communication to notify the other parties and provide them with an opportunity to respond.

When handling many cases before the same judge, that very familiarity can lead lawyers to treat communications more informally - sometimes with unfortunate results. In *In re Hobson*, 13 DB Rptr 120 (Or 1999), for example, a lawyer was disciplined under the similar predecessor to current RPC 3.5(b). When the lawyer was on his way to deliver the judgment following a just-concluded trial to the judge's chambers, he ran into the judge on the sidewalk outside the courthouse. In the course of their conversation, the lawyer had the judge sign the judgment before providing a copy to opposing counsel. With more informal electronic communications increasingly the norm, prudent lawyers will take even more care to make sure their contacts with judges don't cross the line into prohibited ex parte communications.

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In 1983, a trail-blazing woman named Barrie Herbold co-founded Markowitz Herbold, with a vision of creating a firm where women would be leaders and litigators. Congratulations to Anna and Laura on their new positions. We look forward to seeing them carry on the Markowitz Herbold tradition.

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Around the Bar

Foster Garvey PC

Effective September 1, Foster Pepper PLLC and Garvey Schubert Barer PC will combine to create Foster Garvey PC.

The firm will have 180 attorneys in six offices in Seattle, Spokane, Portland, New York, Washington, DC and Beijing. The firms will conclude their financial integration on January 1, 2020.



Jesse Cowell

Roy Law Group

Roy Law Group is pleased to welcome **Jesse Cowell** to the firm. As the newest attorney on the team, Cowell was drawn by the mission of everyone at Roy Law Group: helping disabled individuals.

Cowell brings a decade of specialized experience in administrative law to the firm. This includes court and trial-like hearing litigation, in addition to briefing before state, regional and federal agencies, as well as appellate courts across the West.



Steven Mach



Jim Oliver

Davis Wright Tremaine LLP

Steven Mach has joined the firm as an associate with the real estate and land use practice group. Mach counsels real estate developers, investors, and lenders on matters pertaining to acquisition, development, and financing of real estate assets and also drafts and negotiates commercial lease agreements. Previously, Mach was an associate at the Los Angeles office of Latham & Watkins.

Jim Oliver has joined Davis Wright Tremaine as a staff attorney working with the firm's insurance, brokerage, and regulatory teams. Oliver is a former insurance



Hrishikesh Shah

broker and has been practicing law for more than 20 years, serving as a mediator, arbitrator, litigator, and in-house counsel. Oliver also currently serves on the Board of Directors of the Multnomah Bar Foundation.

Hrishikesh (Hrishi) Shah has joined the firm as an associate with the employment services practice group. Shah counsels clients on a wide array of employee benefits matters and assists plan sponsors with tax qualification, fiduciary duty, and operational issues with respect to their benefit plans. Previously, Shah was an associate with the employee benefits team at Morgan, Lewis & Bockius LLP in Chicago.



Jerome LaBarre

Jerome LaBarre

Hon. Jerome LaBarre, Senior Judge and Mediator, was recently selected for an appointment to the national panel of the Financial Industry Regulatory Authority (FINRA) as a Dispute Resolution Mediator. FINRA is responsible for overseeing virtually all stockbrokers and brokerage firms in the United States. It is the forum handling securities and employment disputes for the securities industry through mediation and arbitration.

Judge LaBarre served as a Circuit Court Judge in Multnomah County for 18 years. He presided over many complex cases and was the trial judge who handled the large BP West Coast Products class action which was recently resolved. Starting in 2018, he began his mediation practice focusing on complex business, securities, financial and employment cases. He is affiliated with ADR Support Services, Inc.

Wyse Kadish

Anne Koch has been elected President of the Board of Oregon Volunteer Lawyers for the Arts (OVLA). OVLA provides a pro bono legal clinic, workshops, and resources for low-income creatives and small arts nonprofits. Koch has served



Anne Koch

as treasurer and a board member of OVLA since 2014. For more information about OVLA, please visit www.oregonvla.org.



Jacqueline Kamins

Markowitz Herbold PC

The firm is pleased to announce that **Jacqueline (Jackie) Kamins** has joined the firm as Of Counsel.

Before joining Markowitz Herbold, Kamins spent nearly 15 years representing state and local governments. At Multnomah County, she served as Senior Assistant County Attorney handling both appeals and complex civil litigation in state and federal court. At the Oregon Department of Justice (DOJ), she served in the Special Litigation Unit, which handles the most complex and significant cases facing the State of Oregon.

While at the DOJ, she negotiated an agreement that made Oregon one of the first states in the country to cover transgender health care services for its employees.



Lauren Blaesing

Shareholder **Lauren Blaesing** has been recognized by the University of Oregon School of Law as one of its Outstanding Young Alumni for 2019. The award was created to recognize graduates who have made significant career, leadership and service contributions to their community and the legal profession within the first 10 years following graduation.

Blaesing represents business clients in complex disputes. She has litigated cases involving partnership and commercial lease disputes, non-compete and non-solicitation agreements, financial elder abuse, business torts, breach of contract, class actions, and professional negligence claims.



Elizabeth MacGregor

Lewis Brisbois

The firm is pleased to welcome **Elizabeth D. MacGregor** as a partner in its Portland office. MacGregor joins the firm's products liability and construction practices and brings over two decades of experience litigating casualty, products liability, and construction defect cases.

MacGregor is a member of the Defense Resource Institute, the Oregon Association of Defense Counsel, and the Claims and Litigation Management Alliance. She frequently participates in panel presentations and educational seminars to provide guidance and analysis to attorneys, insurance carriers, and corporations on issues relating to construction defect and products liability litigation.

K&L Gates LLP

Kjersten Turpen joins K&L Gates LLP as a partner in the Portland office, representing employers in all aspects of employment law, including discrimination



Kjersten Turpen

and harassment litigation, wage and hour claims, and providing comprehensive employment law counseling. She regularly litigates employment cases in state and federal courts, and in matters filed with administrative agencies. Turpen is a former federal judicial clerk and currently chairs the employment practices group of the Oregon Association of Defense Counsel. She is licensed in Oregon, California and Washington.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to mba@mbabar.org.



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Tips From the Bench

Replace Your Opening Statement with a Story

by Judge Christopher Ramras
Multnomah County Circuit Court



“Mary Atkins was an athletic mother of two who enjoyed trail running in her spare time. A moment of sound, light and force altered her life forever.”

Let me tell you an opening story.

Attorneys have few chances to try cases. Statistics consistently show that around 95 percent of lawsuits settle. Less trial experience provides fewer chances to learn from one’s mistakes. This article details some common mistakes I’ve seen in opening statements. At the same time, I want to encourage you to think of your opening statement as the beginning of a story. The jury writes the ending and you want to lead them to (your) obvious conclusion.

Just before taking the bench, I sat in on an extremely smart and competent lawyer’s opening for an asbestos case. She talked for 20 minutes about the science of contracting mesothelioma, never mentioning her client. It was intellectually interesting but lacked emotional force. It was disconnected from an actual person. Almost all plaintiffs’ cases are first and foremost about people and how they’ve been harmed by the other side.

“Mr. Jackson died on a hospital bed, his once healthy body rotting from within from years of working with asbestos. His death was tragic...and completely avoidable.” In two sentences, one can get a jury’s attention and get them thinking about the big picture items that are most important to your case. Who is Mr. Jackson? How did this happen? Why was it avoidable? Who should be held responsible? A strong theme helps focus a jury.

Think of a theme as a one-to-two sentence description of your case that can be returned to and touched upon throughout the trial. Ask questions of witnesses that will evoke your theme. In the asbestos example, one might ask an expert what could be done to “avoid” such a disease? The answer “not work with asbestos” can be tied into how the situation could have been avoided if the plaintiff received adequate warnings. Hitting a theme early in an opening statement allows repetition throughout the trial. Repetition aids jurors’ memory.

An opening should also touch upon the law and the legal requirements of your claim, but this is less interesting to the jury. Discuss such matters somewhere in the middle or end of an opening. You can return to the legal requirements with more force and detail in closing.

The following are some examples of “mistakes” I have seen in opening statements. Not everyone will agree that they are mistakes, but I believe they weaken an opening.

“May it please the court, counsel and members of the jury.”

Lawyers often open with some variant of this. It is unnecessary filler, overly formalistic and boring. Strive to have your very first sentence grab the jury’s attention, much like the opening scene of a blockbuster movie.

“*The evidence will show* that Mr. Stevens was driving 50 miles per hour in a 35 miles per hour zone when he ran into the back of my client’s car. *You will hear* Dr. Paidalot state that this led to a number of soft tissue injuries and nerve damage for my client.”

A jury is instructed that opening statements are not evidence, but an outline of what the evidence will show. Reminding a jury of this in opening serves as verbal speed bumps in the path of your story. Simply put, it isn’t needed. Eliminating such language increases the force of your assertion:

“Mr. Stevens was flying down the road at 50 miles per hour that day, either ignoring or oblivious to the posted speed limit of 35 miles per hour. Ms. Johnson never knew what hit her. The force of the impact caused serious and ongoing pain. She has made repeated visits to doctors trying to, *hoping to*, regain the life she had before the accident.”

I realize the word “flying” is more of a characterization than a fact. An attorney could object, but don’t be overly fearful of this. First, many attorneys *don’t* object during openings, (more on this below). Descriptive words make a story more interesting. They make an opening sound more like a natural conversation. The key of course is moderation. Too much characterization runs the risk of turning an opening into an argument. Best to come close to, but not over, the line.

Statements akin to testifying or vouching: “I believe, I think, etc.”

I once heard a civil lawyer say: “My client claimed she had a back injury, but *I wanted to make sure, so I had her evaluated by a specialist and I learned her injuries were legitimate!*”

Continued on page 14

Multnomah CourtCare Campaign and Events Raise Over \$83,000

The annual campaign to fund CourtCare operations at the free childcare program at the Multnomah County Courthouse raised \$63,798. Over \$50,000 was raised from large firms and organizations, the balance from small firms and individuals.

In the firm campaign, **Davis Wright Tremaine LLP** received the **Proudest Pride Award** for the largest donation from a firm, lawyers and staff. **Buchanan Angeli Altschul & Sullivan LLP** received the **Loftiest Leap Award** for the largest donation per capita. Congratulations to all, and thank you for your generous support!

WinterSmash and the Battle of the Lawyer Bands raised over \$20,000 for CourtCare. These funds will be used to furnish the CourtCare space in the new Central Courthouse.

The MBF wishes to thank all supporters, participants, and CourtCare coaches. Special thanks to the MBF CourtCare Campaign Committee: **Sarah Bond**, Chair, and members **James Oliver**, **Jeanne Sinnott** and **Ashley Vulin**.

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Loftiest Leap Award - Buchanan Angeli Altschul & Sullivan LLP



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MBA Committees

Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and the committee chair follows. If you have ideas or concerns about a particular area, please contact the chair, MBA President Sarah Radcliffe, sradcliffe@droregon.org, or the MBA staff at mba@mbabar.org.



Events

Chair: **Tony Kullen**, Wright Finlay & Zak LLP, tkullen@wrightlegal.net, 503.479.8871
Conducts member-outreach activities. Plans Bench Bar & Bagels, the Annual Golf Championship, Battle of the Lawyer Bands and WinterSmash, which benefits Multnomah CourtCare.

Continuing Legal Education

Chair: **Adrian Brown**, US Attorney's Office, adrian.brown@usdoj.gov, 503.727.1000
Plan, conduct and evaluate approximately 40 CLE seminars, focusing on members' primary areas of practice.



Court Liaison

Chair: **John Robb**, Kevin Sali LLC, john@salilaw.com, 971.407.3372
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.



Professionalism

Chair: **Jonathan Strauhull**, Multnomah County Attorney's Office, jonathan.strauhull@multco.us, 503.988.3138
Implements activities that promote professionalism and carries out the professionalism award process.

Equity, Diversity & Inclusion

Chair: **Shalini Vivek**, PSU Student Legal Services, spvivek@pdx.edu, 503.725.4556
Promotes equality in the profession, identifies ways in which the MBA can promote a diverse bar, and carries out the diversity award process.



Public Service

Co-Chairs: **W. Todd Cleek**, Cleek Law Office LLC, todd@cleeklaw.com, 503.706.3730 and **Jill Mallery**, Legal Aid Services of Oregon, jill.mallery@lasoregon.org, 503.224.4086
Explores new ways for lawyers to assist those in need in the community, in partnership with the court, pro bono, social service providers and other stakeholders.



Solo/Small Firm

Chair: **Emery Wang**, Vames & Wang, emery@vameswang.com, 503.669.3426
Plans workshops and socials tailored specifically for solo and small firm attorneys.

2020 MBA Professionalism and Diversity Awards Nominations Due November 1

Professionalism Award

The MBA Professionalism Award is one of the most highly-regarded honors an attorney in our area can receive. Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, regularly goes well beyond minimum ethical and professionalism standards, and constantly mentors others and works to improve the quality of our practice as a whole? We strongly encourage you to nominate them for the 2020 MBA Professionalism Award. Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Esteemed award recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O'Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunck, Edwin A. Harnden, Thomas W. Brown, Mark Johnson Roberts, Robin J. Selig, Bonnie Richardson, Jane Paulson and Carolyn Walker.

Diversity Award

The MBA Diversity Award honors individual attorneys, legal employers, or other legal organizations that have made a longstanding commitment to furthering diversity and inclusion in the MBA and Multnomah County legal community. The award spotlights the various efforts of individuals, legal employers, or legal organizations in fostering a

culture of diversity and inclusion, and encourages others in their own efforts.

Do you know of an individual attorney, legal employer, or other legal organization that has shown a long-term commitment to fostering diversity and inclusion in the MBA and Multnomah County legal community? If so, please complete a nomination form for the MBA Diversity Award. The nomination should include the efforts made, the impact of those efforts, and how the individual, legal employer, or legal organization exemplifies the principles set forth in the MBA Statement of Diversity.

Esteemed award recipients include Aruna Masih, Ernest Warren and Hala Gores.

The concept of "diversity" is made up of many dimensions that make it difficult to define. To the MBA, diversity is "an inclusive concept" that "encompasses, without limitation, race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status." The MBA also recognizes that "achieving diversity is an evolutionary process that requires a continued renewal of our commitment to strategies of inclusion." (*MBA Statement of Diversity Principles.*)

Former nominees may be re-nominated. To propose a nominee for one or both of this year's award selection processes, please complete and return the nomination form(s) available at www.mbabar.org or contact Kathy Modie at kathy@mbabar.org for more information.

Nomination forms are due November 12 to the MBA. The MBA will present the recipients of the Professionalism and Diversity awards at the MBA Annual Meeting on May 13, 2020.

Inaugural Lawyers for Literacy Campaign Raises \$55,000 for Children's Literacy Nonprofit

by Alayna Herr
Start Making A Reader Today

Over 50 Portland-area law firms and organizations partnered with SMART (Start Making A Reader Today) to launch Lawyers for Literacy, a competition to see which firm or organization could raise the most contributions and recruit volunteers. SMART provides one-on-one reading support and access to books for Oregon's youngest readers.

The first-time campaign exceeded its goal by 70 percent and raised over \$55,000, which will make it possible for SMART to fully

serve 170 local students. The following firms received honors for raising the most funds during the two-week competition:

- Large Firm: Miller Nash Graham & Dunn LLP
- Midsize Firm: Garvey Schubert Barer PC
- Small Firm: Thede Culpepper Moore Munro & Silliman LLP

"SMART's mission has always resonated with the business community because literacy is linked to a strong future work force - and that link is particularly strong in the legal

community," says Chris Otis, SMART Executive Director. "This partnership was a natural fit, and we thank all who participated for their commitment to helping children in our community discover the magic of a shared book."

Legal professionals interested in learning more about Lawyers for Literacy can contact Alayna Herr, SMART Development Officer, at aherr@getsmartoregon.org or 971.634.1626.

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!

Willa Perlmutter and Tyler Killeen Pro Bono Spotlight

*by Gabby Hansen
YLS Pro Bono Committee*

This month we are excited to feature two attorneys who have been active volunteers with the Legal Aid Services of Oregon (LASO) Night Clinic: Willa Perlmutter and Tyler Killeen.

Willa serves as the chair of Stoel Rives’s OSHA group and co-chair of the firm’s mining group. She has over 30 years of experience with litigation and regularly counsels clients on a broad range of issues related to mining operations. Prior to joining Stoel Rives, Willa served as counsel at Crowell & Moring LLP and at Patton Boggs LLC in Washington DC, an attorney-adviser for the US Department of the Interior and a supervising attorney in the office of the Alaska Legal Services Corporation in Juneau. Willa has been volunteering with the clinic since 2017.

Tyler is an associate in Stoel Rives’ commercial litigation group. He graduated from the University of Oregon School of Law where he was a member of the Order of the Coif and was the Executive Editor, Oregon Law Review. Tyler has been volunteering with the clinic since 2018.

LASO co-sponsors the Night Clinic with attorneys from Stoel Rives and Dunn Carney. The clinic consists of two sessions each month during which prescreened low income clients are scheduled for a consultation appointment to sit down with an attorney to discuss their legal issue. The clinic provides assistance with various issues including consumer law, small claims, criminal record expungements, landlord/tenant damage claims, estate planning, and uncontested guardianships. Stoel Rives and Dunn Carney have been co-sponsoring the clinic since 1992 and 2013, respectively. Since 2007, over 1,060 clients have been scheduled for the clinic and more than 5,660 hours have been spent helping clients resolve their legal issues.

A typical night at the clinic includes meeting with four to five potential clients to get a sense for the basic facts of their case. After this consult, the volunteer attorney determines if they can represent the individual

and sets up official representation through an engagement letter. Willa explained that after the initial meeting, the process progresses much like any other attorney-client relationship; there are follow-up meetings to gather additional facts and the volunteer attorney does legal research to determine what is needed to address the client’s legal issue.

Although the clinic assists with a range of topics, Tyler and Willa have primarily handled cases involving debt collection and landlord-tenant issues. Although the cases that they have handled could have, in theory, resulted in litigation, Tyler and Willa have both had a 100 percent success rate for their clients through drafting well-crafted letters to the opposing party. Willa explained that this success, while exciting, also highlights how important the clinic is to the community.

Both Tyler and Willa stressed that pro bono work is part of a well-rounded legal career. Willa emphasized that since her position with legal aid at Alaska Legal Services Corporation, she has made sure that her practice always included pro bono work. Not only can you go to bed at night knowing that you have truly helped someone, she explained, but, as a lawyer new to Oregon it was a good way to make friends in the legal community. Similarly, Tyler noted that he felt that it was important to be involved in pro bono work from the very start of his career as a practicing attorney. “Pro bono work is part of practice,” said Tyler.

Although some might feel nervous about practicing in an area that is outside of their expertise, both attorneys stated that they were well supported by LASO in their representation of clients scheduled through the clinic. Tyler said that LASO understands the work the attorneys put into their representation of their clinic clients and as such, they are willing to provide subject matter resources if a case involves an area outside an attorney’s expertise. Although the clinic is only staffed by attorneys at



Willa Perlmutter



Tyler Killeen

Dunn Carney and Stoel Rives, both Tyler and Willa encourage attorneys to reach out to LASO or similar organizations to offer their help. These types of organizations can always use additional attorney-power, explained Willa. This is a sentiment echoed by Julia Olsen, Regional Director of the Portland Regional Office of LASO who provided us with the following statement of appreciation for the efforts of attorneys like Tyler and Willa:

“Low income Oregonians are shut out of the justice system when they lack resources for legal help. To address the justice gap, Legal Aid is able to provide services to a greater number of clients each year through our pro bono programs, such as the Night Clinic. Attorneys who volunteer with the Night Clinic provide legal services to clients who otherwise would not have access to the legal system. Through the Night Clinic we are effectively increasing access to justice to many low income Oregonians each year. We thank Stoel Rives LLP and Dunn Carney LLP, the volunteer attorneys, and all those who help in the coordination of the Night Clinic for their dedication and continued support.”

Learn about pro bono volunteer opportunities available at LASO by visiting www.lasoregon.org.

mba yls | EVENT

Blackbird Wine Social
Thursday, September 26
5-7:30 p.m.
Blackbird Wine Shop
NE Fremont & 44th, Portland

Please join the YLS, Financial Planning Association, Oregon Society of Certified Public Accountants and the National Association of Insurance and Financial Advisors for this casual opportunity to network and socialize while enjoying an evening of wine tasting and cheese pairings.

The registration fee of \$25 includes wine tasting and hors d’oeuvres. Space is limited, advance registration required.

Register today at www.mbabar.org.

YLS CLE
Ex Parte Matters
A Tri-County Overview on
Protocols and Professionalism

Tuesday, October 20
4-6 p.m.
Standard Insurance Center, Atrium
900 SW 5th Ave., Portland

MBA Members: \$30; Non-Members \$50

Judge Patricia McGuire, Multnomah County Circuit Court, **Judge Theodore Sims**, Washington County Circuit Court, and **Presiding Judge Kathie Steele**, Clackamas County Circuit Court, will discuss the varying rules governing ex parte matters in the tri-county area. The judges will present a broad overview of the rules governing proper motion practice, ex parte protocols and appearances, and professionalism issues.

To register see the insert or visit mbabar.org/cle

YLS Committees

YLS members serve on committees designed to address the needs of newer lawyers and offer tailored volunteer opportunities. A synopsis of each committee charge follows with contact information for the current chair. If you have any ideas or concerns to share about a particular committee, please contact the chair, YLS President Holly Hayman at hhayman@lg-llc.com, or MBA staff at mba@mbabar.org.



YLS Pro Bono

Chair: **Anthony Blake**, Markowitz Herbold PC, anthonyblake@markowitzherbold.com, 503.295.3085
Encourages involvement in pro bono service and provides support to organizations. Coordinates Wills for Heroes clinics.



YLS Continuing Legal Education

Chair: **Maxine Tuan**, Wyse Kadish LLP, mt@wysekadish.com, 503.228.8448
Organizes CLE seminars and career development presentations specifically intended for newer attorneys.



YLS Service to the Public

Chair: **Amelia Andersen**, Immigrant Refugee Community Organization, ameliaa@irco.org, 541.968.9337
Provides opportunities to become involved in the community, such as Community Service Days, the Imprint Program and the Objection! Poetry Slam.



YLS Membership

Chair: **Jessica Schuh**, Schwabe Williamson & Wyatt PC, jschuh@schwabe.com, 503.796.2057
Assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction.

Pro Bono Pour Fundraiser Recap

Thank you to everyone who supported the fundraiser on August 15. The event raised more than \$2,000 to benefit the Volunteer Lawyers Project at Legal Aid Services of Oregon. Attendees enjoyed good company and refreshments while bidding on silent auction items.

Thank you to the following firms for supporting the event:



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Tips From the Bench

Continued from page 10

An attorney is not a witness in the case. It is objectionable to state personal beliefs or what you “did” in a case. The above statement combines testimony of a non-witness and improper vouching for the plaintiff’s veracity.

Oregon Rule of Professional Conduct 3.4(e) prohibits lawyers from asserting “personal knowledge of the facts in issue except when testifying as a witness” or from stating “a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil

litigant or the guilt or innocence of an accused...” I suggest reading *United States v. Young*, 470 U.S. 1 (1985) for a thorough analysis of what constitutes improper attorney comments during arguments under the ABA Model Code of Professional Responsibility. The Model Code language is very similar to the Oregon Rule of Professional Conduct.

Failing to object.

Counsel did not object in the above case. I would have sustained an objection. It is nice to have a collegial bar, but there *are* times when it is appropriate to object during an opening or closing.

The overly cautious opening.

The evidence will never be exactly as you outline it in opening. Never. Witnesses say odd things and judges make rulings you weren’t expecting. Don’t worry too much about this. If you have a good faith and articulable belief that evidence will be consistent with your opening, don’t hesitate to jump in and assert what the case is about. The jury won’t hold minor discrepancies between your opening and the actual

evidence against you. That said, be ready to improvise and acknowledge later that some evidence came out differently than what you said in opening. This acknowledgement helps gain the jury’s trust. Juries are willing to forgive mistakes if they don’t seem to be intentional gamesmanship.

As a final thought, practice your speaking skills. If you have time, join Toastmasters International. Practice your openings in front of a significant

other, in the car or anywhere else. Talking aloud, with or without an audience, allows you to change components as you hear for yourself how they sound. That which seemed brilliant in your mind may seem less so to your ears. Rather than write out a full opening, write an outline. You don’t want to be too tied to a precise recitation, allow some room to improvise.

I look forward to hearing your story.

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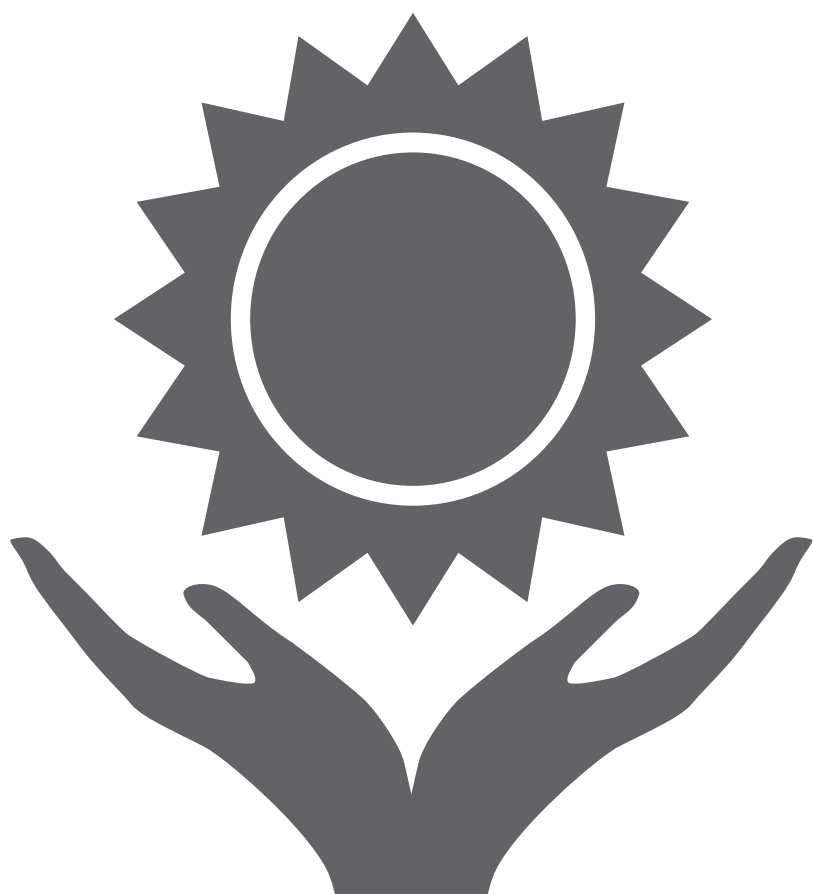
Pro Bono Volunteers

Thank you to the following lawyers who recently donated their pro bono services via the Volunteer Lawyers Project at Legal Aid Services of Oregon.

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Visit www.mbar.org/probono to discover pro bono opportunities in Multnomah County.



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Please visit www.osbar.org/osbcenter/openings.html for job details.

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- Experience taking depositions and managing fact and expert discovery
- Exceptional interpersonal and communication (written and verbal) skills
- Strong client service skills and ethics
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- USPTO admission and a technical background are a plus but are not required; however, the applicant needs to be able to understand and explain complex technologies
- JD degree from an accredited law school

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clicking Current Openings at www.schwabe.com/careers-attorneys. Inquiries are maintained in the strictest of professional confidence.

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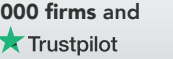
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