Third, statewide election of Supreme Court justices is appropriate to the statewide jurisdiction of our appellate courts. While a resident of Bend may have an appeal decided by a panel of judges all hailing from west of the Cascades, at least that Bend resident had the opportunity to vote for or against those justices. Legitimate government, and the perception of legitimacy, grows out of the opportunity to participate in the election of our governmental officials. Regional elections are antithetical to the appearance, if not reality, of political legitimacy.

My perspective on all of this is certainly less than Olympian. Like you, I have a position on the political spectrum and on the differing schools of thought concerning legal and constitutional interpretation. But I take as axiomatic in a democracy the sentiment expressed by the MBA board in 1910 that, “judges are required to decide questions presented to them upon legal and not upon political considerations.” At bottom, the question is whether or not regional election of our justices will promote or degrade the impartiality of the judiciary. In my view, it is not a close call. Regional election will, in Hamilton’s words, breathe the “pettishental breath of faction” into our appellate courts. I encourage you to oppose the placement of Initiative 41 on the November 2006 ballot, and to counsel your friends and neighbors to do likewise. We may not always realize it, but others look to us for guidance on these issues. Please guide them well.

The 2006 MBA Membership Drive Begins

Thank you for being a member this year. It is time to renew your membership through 2006, our centennial year. You will be receiving your renewal notice in the mail in the coming weeks. All you need to do is return your membership form with payment to continue to receive the wide range of benefits the MBA provides. Here are just a few reasons to renew:

• MBA Group Health Insurance Plan
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• Excellent, affordable and convenient CLE seminars
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If you would like more information about the benefits of MBA membership please call Noelie Saint-Cyr at 503.222.3275 or visit www.mbabar.org. We look forward to serving you in 2006.

President’s Column

By Kelly Hagen, Schwabe Williamson & Wyatt and MBA President.

“One to the President and Members of the Multnomah Bar Association:

We, your committee heretofore charged to report upon a method of nominating and electing judges without regard to politics, to be sure that residents of Jackson County do not have a greater or different interest in the impartial application of state law than do the residents of Multnomah County. Oregon law should and, owing to the Supreme Court’s role, ultimately does have the same meaning wherever it is applied. Do different judges reach different conclusions about the meaning of the law? Of course they do, but not on the basis of the parties’ addresses. Legal reasoning is not mathematics, but neither is it topography.

Second, the concept of regional interests in judicial elections is mystifying. The residents of Jackson County do not have a greater or different interest in the impartial application of state law than do the residents of Multnomah County. Oregon law should and, owing to the Supreme Court’s role, ultimately does have the same meaning wherever it is applied. Do different judges reach different conclusions about the meaning of the law? Of course they do, but not on the basis of the parties’ addresses. Legal reasoning is not mathematics, but neither is it topography.

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MBA Offers Office Depot Discounts
Through a new partnership with Office Depot, MBA members may now receive discounts on all Office Depot office products. Discounts vary and include significant reductions on a core group of regularly ordered items to be determined by the customer. To open an MBA Member account with Office Depot at no charge, or transfer your existing account to the MBA discount program, see the insert in this issue of the Multnomah Lawyer or call James Morris of Office Depot at 503.240.4516.

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Mediator
Business, Employment, Real Estate & Tort Cases

TIPS
Multnomah County SLR 12.025 allows parties to mediate cases under $50K as a substitute for “mandatory” arbitration. Additionally, mediation fulfills the SLR 7.075 ADR requirement if you file a certificate within 270 days of filing the lawsuit.

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Investing in clients has long been a dicey prospect. The disciplinary reporters are filled with cases that illustrate the conflicts—whether the lawyer handled the transaction involved for the client (see, e.g., In re Brown, 277 Or 121, 539 P2d 884 (1977)) or simply engaged in a business deal with a client where the client relied on the lawyer for legal advice (see, e.g., In re Morrison, 282 Or 796, 643 P2d 338 (1982)). And because conflicts in this setting easily translate into breaches of the fiduciary duty of loyalty, unwaived conflicts can also easily translate into claims and fee forfeiture. To generally a lawyer’s fiduciary duties (discussing the relationship that are translated into claims and fee forfeiture. 796, 643 P2d 338 (1982)). And 292 Or 884 (1977)) or simply engaged in a business deal with a client. 

Neither the old rules nor the new ones prohibit a lawyer from investing in clients, directly or in lieu of a fee. Rather, they both require clear disclosure and client consent. The new rules, however, express their wariness by making the consent requirements more exacting.

The old rule, DR 5-104(A), was comparatively general:

“A lawyer shall not enter into a business transaction with a client if the lawyer knows that the client expects the lawyer to exercise the lawyer’s professional judgment therein for the benefit of the client, unless the client has consented after full disclosure.”

The new rule, RPC 1.8(a), by contrast, is quite specific:

“A lawyer shall not enter into a business transaction with a client if the lawyer knows that the client expects the lawyer to exercise the lawyer’s professional judgment therein for the benefit of the client, unless the client has consented after full disclosure.”

For lawyers or law firms accepting business deals with a client, the ABAs ethics opinion on investing in clients - 00 - 418 - should be required reading. The opinion discusses in detail the concept of what’s “fair and reasonable” to the client and when that’s measured. On this last point, the ABAs ethics committee concluded that the measure of what’s fair and reasonable should be measured when the deal is done. But that’s not a uniform view. The Washington Court of Appeals, and Sharon and last Holmes v. Lovelace, 22 Wn App 470, 94 P3d 358 (2004), that the disclosure in a form specifically developed by the client’s ethical committee concluded that the measure of what’s fair and reasonable should be measured when the deal is done. But that’s not a uniform view. The Washington Court of Appeals, and Sharon and last Holmes v. 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OLAH’s Fundraiser Begins September 26
By Allyson Krueger, Barran Liebman.

Oregon Lawyers Against Hunger (OLAH) will launch its ninth annual two-week long fundraiser to benefit the Oregon Food Bank (OFB) on September 26, ending October 7.

During OLAH’s annual fundraiser, firms compete for the Golden Can Award (highest contribution per capita) and the Silver Barrel Award (highest total contribution). Last year, Heller Ehrman et al won the Golden Can with a per capita donation of $267. Lane Powell continued its eight-year dominance of the Silver Barrel award last year by raising more than $17,000.

Each dollar contributed allows OFB to collect and distribute about $8 worth of food and fund programs that address the root causes of hunger. Oregon remains among the top states in the nation for hunger.

For more information about OLAH, contact Kathy Dent at 503.778.5338. For information about OFB, visit www.oregonfoodbank.org.
The Latest Discovery Technology
By Marsha J. Naegeli & Troy S. Moody, Naegeli Reporting Corporation.

Discovery is a challenging and rewarding process. The rewards are frequently based on the speed and efficiency of data acquisition and its interpretation; the pitfalls are related to the lack thereof. Therefore, success in the discovery process is only as effective as the technology used to uncover and apply it.

The newest advances in the discovery process have recently been made in audio technology. You may ask, what's so important about audio technology? After all, reading the text of a deposition in the courtroom has been the format used by legal professionals for years. It is not that this method is unacceptable, it is simply under-convincing.

The audio portion of a deponent's testimony is critical to the discovery process. According to UCLA professor Albert Mehrabian, a pioneer in communications research, the format for presentation of information is the key to clarity and memory. His research shows that the rate of human attention for the spoken word is only a low 7 percent. That means when attorneys read aloud from the text of a deposition, juries actually retain very little of the information presented. However, when the audio transcript synchronization is utilized, the listener becomes actively involved in a whole new way. The addition of tone increases a listener's retention rate to 35 percent. The manner in which words are spoken - including tone, inflection, volume and pace - has a strong emotional impact on a jury and increases the rate of retention to increase exponentially.

A good argument with great facts is only as strong as the ability to present it effectively. The emotional impact and retention of information, the most valuable commodities in legal presentations, can be lost when an attorney is limited to reading aloud from portions of a typed transcript. It becomes even more difficult if accessing that information is slow and cumbersome.

Audio technology, in its infancy only a few years ago, has come of age. Attorneys now have the option of using the most effective tool of all: the voice of the witness. What if an attorney could evoke every heart-ach, sob, nervous stutter, angry moment or long pause that was not available with only the written transcript available? If a witness appears to be a nervous liar during the deposition process, the jury needs to hear him emphatically through his own hesitations and stammering.

Using an audio recording known as the voice file, each deposition is recorded and synchronized to provide immediate access to the transcript information. This new option employs a digitized CD of the deponent's testimony which is synchronized to the written transcript word-for-word. The audio file is linked to each word of the transcript using a unique software program, allowing simultaneous audio and visual access to any word or phrase. Also included in the package is an array of support programs for instant access to and extended manipulation of the textual material.

Attorneys can now review cases while commuting by using the latest innovation in CD recordings, thus making their day more productive. Naegeli Reporting Corporation provides this innovation free to our clientele with every transcript.

The old adage, "time and tide wait for no man" is still true today. Discovery can be a rewarding process, but only if there is significant opportunity to organize available information. Flexibility and speed of data acquisition are essential to this process. The issue for attorneys is simple: those who use the latest technology have more time to research the facts and plan an effective strategy. The ability to present data in a cogent manner is critical when influencing a jury and winning a settlement beneficial to your client.

The question should no longer be: does technology exist, but how best to apply it.

Frequently, lawyers have to decide whether to assert a technical defense or objection, which, if successful, could cause the opposing attorney embarrassment or exposure to a malpractice claim. These issues can be particularly challenging when the opposing attorney is a friend or could become a co-defendant. The attorney deals on a frequent basis. Examples of these "technicallizations" could include objecting to your opponent's Rule 21 Motion because of the failure to consult, taking a default, or resisting the opponent's request to set aside a default in certain situations.

What is the "professional" thing to do in these situations? There is no easy or pat answer.

While professionalism involves courtesy and consideration for one's professional colleagues, the principles set forth in the Multnomah Bar Association's Commitment to Professionalism can give some guidance in these situations. By keeping in mind that one of the basic principles of professionalism is fairly serving the best interests of the client and public, the following four principles are worthy of consideration in resolving the "technicallization:" * We will promote integrity and independent judgment. As officers of the court, we will work to support the effectiveness and efficiency of the legal system. * We will be courteous, fair and respectful. * * * * * * * We will only pursue litigation, engage in conduct, or take positions that have merit. * * * * * * * We will represent our clients' best interests while seeking to resolve matters with a minimum of legal expense to all involved.

Let's go back to the Rule 21 Motion that was filed without prior consultation. The rules require such consultation, and judges at times have struck such motions where consultation did not occur before the motion was filed. While the professionalism calls for the lawyer to be considerate of the opponent, professionalism does not include compromising one's loyalty to the client and to the client's cause. If there is a legitimate opportunity to win the case for the client, the lawyer needs to consider pursuing that avenue, even if it means winning on a "technicallity." If the discussion ended there, the attorney probably should object to the Rule 21 Motion on the ground that there was no consultation.

However, the analysis probably does not end there, because objecting to the failure to consult might not ultimately dispose of the case. The objection could trigger another round of briefing and raise the intensity level of the litigation. The other side might be able to file a motion for summary judgment or a motion for judgment on the pleadings or follow another procedural route in order to get the issue before the court. The ultimate result might not be winning this case at this stage, but rather actually making the litigation more expensive and more contentious. In addition, trying to win the case on a technicality in that situation is going to embarrass the opposing attorney. If the considered tactic is not successful, the case will probably be more contentious and more expensive for the client for that reason as well. The lawyer in each case should probably weigh the benefits of success with such a move with the alternative of contacting the opposing attorney to discuss the situation in the best interest of all involved.

As for the default issues, similar considerations come into play. Where opposing counsel has made a technical error that opens the door for the default, the attorney might first want to consider the prospects for sustaining the default. The wake of the likely motion to set aside the default, the attorney would almost certainly lose the motion. However, the analysis probably does not end there, because objecting to the failure to consult might not ultimately dispose of the case. The objection could trigger another round of briefing and raise the intensity level of the litigation. The other side might be able to file a motion for summary judgment or a motion for judgment on the pleadings or follow another procedural route in order to get the issue before the court. The ultimate result might not be winning this case at this stage, but rather actually making the litigation more expensive and more contentious. In addition, trying to win the case on a technicality in that situation is going to embarrass the opposing attorney. If the considered tactic is not successful, the case will probably be more contentious and more expensive for the client for that reason as well. The lawyer in each case should probably weigh the benefits of success with such a move with the alternative of contacting the opposing attorney to discuss the situation in the best interest of all involved.

The final question is what extent can the lawyer decide to forebear from taking advantage of a technicality without consulting with the client. ORPC Rule 1.4 states: Cont. on p. 13
AROUND THE BAR

Dallas G. Thomsen

SUSSMAN SHANK
The firm has added Dallas G. Thomsen as an associate. Thomsen joins the business department.

TONKON TORP
Ten Portland partners were named as America’s leading business lawyers by Chambers and Partners USA 2005-2006. The practice areas and the attorneys named include: employment law; Victor J. Kirsch, corporate and M&A law; Brian G. Broglie; Ronald L. Greenman; Carol Dey Hibbs; Thomas F. Palmer; and Kenneth D. Stephens. Litigation - general commercial law, Don H. Marmaduke; William F. Martin Jr.; and Daniel H. Skorvid, real estate, Joseph S. Voboril.

DAVIS WRIGHT TREMAINE
In its third annual survey of the U.S. legal market, the prestigious legal directory Chambers USA, America’s Leading Lawyers for Business (2005-2006) has once again recognized DWT as a leading firm for the following practice areas: general commercial litigation, corporate/M&A; employment defendant and real estate. Special recognition was also given to the firm’s health law practice, which was ranked number one on a national basis.

In addition, six Portland DWT attorneys were recognized as leaders in their field in Oregon. The attorneys, as well as the practice area for which he or she is recognized, are: Daniel C. Baca, corporate/M&A; Carol Bernick, employment defendant; Eugene L. Grant, real estate; John F. McGrory, Robert D. Newell and Daniel O’Leary, general commercial litigation.

STOEL RIVES
Stoel Rives attorneys are included in Chambers USA: Guide to America’s Leading Lawyers for Business 2005 for outstanding capabilities in specific areas of business law: Chambers ranks Stoel Rives attorneys in five areas of law: corporate/mergers and acquisitions, employment, commercial litigation, real estate and environmental law. Stoel Rives tops the list of Oregon firms in the categories of corporate/mergers and acquisitions and in commercial litigation.

Lawyers and the area of law for which they were selected, include: Courtney Angeli, employment; Ruth Beyer, corporate/M&A; Paul Buchman, employment; Barnes Ellis, litigation; David Green, real estate; Dan Grinas, employment; Henry Hewitt, corporate/M&A; Chris Kitchel, employment; Gregory Mowe, litigation; Joel Mullin, litigation; Margaret Hill Noto, corporate/M&A; Edward Reeves, employment, Lois Rosenbaum, litigation; John Thomas, corporate/M&A and Stephen Walters, litigation.

BARRAN LIEBMAN LLP
Brenda K. Baumgart has been elected to the firm partnership. Her practice is focused in employment-related litigation, but includes appeals, complex commercial litigation matters, and employment-related advice work.

Todd A. Hanchett has also been elected to the firm partnership. He represents management in employment and labor law matters.

Jeffrey D. Jones represents management in employment litigation and providing advice in employment law matters.

Paula A. Barran joined The College of Labor and Employment Lawyers as a fellow. The College is a professional association honoring leading lawyers nationwide in the practice of labor and employment law. She has been practicing employment and labor law since 1980.

VANGELISTI LAW OFFICES
Richard Vangelisti was recently elected as President of the Oregon Chapter of the Federal Bar Association for the 2005-2006 term.

STOOLL STOOLL ET AL
The following firm attorneys have been recognized: Robert Stoll, Gary Berne and Rob Schlichter have been honored by Chambers USA: America’s Leading Lawyers for Business. Keith Ketterling and Tim DeJong have been recognized by their peers as leaders in business litigation and intellectual property, respectively, in the Portland Business Journal’s “Best of the Bar.”

DUNN CARNEY ET AL
Brian Cable has joined the firm as an associate. Cable will focus on business and commercial law with his primary areas of practice being corporate governance, securities, mergers & acquisitions and corporate finance.

DUNN CARNEY ET AL
Michael W. Shackelford’s practice focuses on general corporate law and corporate finance transactions, including venture capital financings and mergers and acquisitions.

A new member of the firm’s management committee is Juliana Wellman, chair of the global trade and intellectual property group. Continuing management committee members include Jonathan Ater, chair of the health law group and Frank Langfitt, chair of the litigation department.

WINEMILLER WIESELMAN
Kristen Winemiller announces that Jacob Wieselman has joined her in the formation of Winemiller Wieselman, located at 121 SW Salmon St. Ste 142, Portland OR 97204, phone 503.222.2310 and fax 503.222.2864. The firm will focus on white collar criminal defense and complex civil litigation. Wieselman moves to Oregon with more than 20 years of experience in criminal and civil litigation, including health care, professional liability, construction and business litigation.

CARVEY SCHUBERT BARER
Jeffrey F. Nudelman, an owner in the firm’s Portland office, was elected President of the University of Oregon Alumni Association. Nudelman has also been reelected as a second term as President of the Oregon Chapter of the American Jewish Committee. Both positions run through July 2006.

KELL ALTEMAN & RUNSTEIN
Jennifer Kampuala recently returned from touring the Marshall Foundation in Lexington and Williamsburg, Virginia, and Washington, D.C., as the 2004 General George C. Marshall Public Leadership Award Recipient. The Marshall Leadership Award is presented to a Clark County, Washington resident under the age of 35 with a four-year college degree who demonstrates leadership potential. Kampuala was nominated by the American Cancer Society and her nomination was endorsed by Congressman Brian Baird.

LANE POWELL
Catherine S. Travis has been elected Vice Chair of the State Accident Insurance Fund (SAIF) Board. In May, Travis was appointed by Governor Kulongoski to serve on the SAIF Board.

Travis has more than 20 years experience in business reorganizations, workouts, debtor- creditor and bankruptcy law. In addition, she has more than 10 years’ experience as a commercial arbitrator with the American Arbitration Association.

GEVURTZ MENASHE
Marshall Spector has been appointed chair of the Allocations Committee for the Jewish Federation of Greater Portland, where he oversees the distribution of funds raised during the Federation’s annual campaign.

Shawn N. Menashe has been named to the junior board of the Make-A-Wish Foundation of Oregon. Menashe has also been elected as the 2005-2006 Chair of the ASB’s Family Law Section of the Young Lawyers Division.

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MILLER NASH
Sarah Lowinger, an associate in Miller Nash’s litigation department, has been elected to the board of the juvenile Rights Project, Inc., where she will serve a three year term from 2005 to 2008.

We celebrate Mert’s 40 years with Lane Powell, and wish him the best as he leaves to embark on a new adventure – Wilson Dispute Resolution.

While he is no longer our partner, he will always be a colleague and our valued friend.

LANCE WILLSON NCT • 503.378.3000 • www.lanepowell.com

Celebrations
S E P T E M B E R  2 0 0 5
By Judge John A. Wittmayer, Multnomah County Circuit Court

**Tips from the Bench**

**Reinstatement of Dismissed Family Law Cases**

Family law cases are frequently dismissed for a variety of reasons - only later to have the parties, or one of them, seek reinstatement. The Petitioner may have delayed having Respondent served, or the parties may be trying to reconcile, or struggling over the terms of a settlement. Chief Family Law Judge Elizabeth Welch has announced a new policy on reinstatement of dismissed family law cases.

Effective immediately, after a family law case is dismissed, it may be reinstated only under the following circumstances: 1.) On the joint request of the parties; or 2.) upon presentation of a Stipulated Judgment; or 3.) on the request of the Petitioner if the Respondent has not yet been served. If it was dismissed for failure to serve the Respondent, it will only be reinstated if the reinstatement request is within one year of the date of filing.

**Amended Judgments in Criminal Cases**

It is not unusual in criminal cases for defense counsel, the DA's office or court staff to discover an error or unintended entry in either the form 'Temporary Sentencing Order' that is prepared in the courtroom by the clerk, or the printed Uniform Criminal Judgment that is prepared subsequent to sentencing. It has been common practice in this courthouse for years to correct such errors when the printed Uniform Criminal Judgment is prepared or prepare an Amended Judgment later. These changes have usually been made without a subsequent hearing, and without the Defendant's consent or waiver of his/her right to be present. It may now be clear that this practice is not appropriate.

On July 27, 2005, the Court of Appeals issued an opinion in State v. Mathew Jacobs. One of the several issues on appeal in Jacobs was the authority of the trial judge to sign an "opinion and order on sentencing" that was not what the trial judge announced in open court with the Defendant present. The Court of Appeals reaffirmed the long-standing principle that a defendant in a felony criminal case has the right to be present for sentencing, and that the sentence must be announced in open court in the defendant's presence. ORS 137.030(1). See also State v. Bommer, 307 Or 598, 600 (1989).

The DA's office should expect any changes to the sentence that are not announced in open court with the defendant present are subject to challenge on appeal. Defense counsel may expect negligence claims, bar complaints, and post-conviction relief proceedings if the defendant is subject to a written judgment that varies from what was announced in open court. The current forms used for felony sentences require counsel to review and initial the form. Counsel should be sure it is correct when counsel initials the form.

If I knew as a lawyer what I now know as a judge…

I have often thought that lawyers and judges could do their jobs better… things I have learned as a judge are not very helpful. A few suggestions:

- Get your written materials to the judge early enough to be read by the judge.
- Keep your written materials short and to the point.
- Use headings in bold type in your memorandum.
- Don't string citations - give the judge the best case that supports your position. Quote from the cited case in your memorandum.
- Rarely rely on cases that are not from the Oregon Supreme Court or the Oregon Court of Appeals, and attach copies of out-of-Oregon cases when you must cite those cases.
- Pay the hearing fee before the time set for the hearing if you want to be on the record.
- Show up on time and call the judge's office if you will be delayed. If you are tied up in another court, ask the clerk there to email the clerk where you are going to be late.
- Don't object to testimony just because you might have a valid objection - think about whether the testimony is harmful to your case and only object when necessary.
- Don't treat the lawyer on the other side of the case like the enemy. He or she is probably just doing his/her best for their client, just like you are.
- Don't expect judges to sort out conflicts in your calendars when you argue about a new date for a trial or a deposition. It is up to the lawyers to work this out or at least clarify the issues before appearing before the judge.
- Be realistic about how long your matter is going to take in court. Other people have cases too, and they deserve to be able to predict when it will be their turn.
- Talk to the other lawyer and stipulate to as much as possible. Narrow the issues the judge must decide to those issues about which you have a legitimate dispute. This approach will save money for your clients and allow more time to concentrate on what is really important.
- Talk to each other about settlement before you arrive at the courthouse for the hearing or trial.

**MBA Committees**

**Continuing Legal Education**

Chair: Stephen Williams, Metro Public Defender, Inc. 503.223.9100

Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice ten years or more. The curriculum reflects areas in which MBA members practice.

**Court Liaison**

Julia Hagan, Gevurtz Menashe et al 503.227.1515

Serves as the MBA's interface with the court and fosters dialogue between the MBA leadership, the judiciary and the court administration. Provides constructive feedback to the judiciary.

**Equality**

Lisa Umscheid, Office of Metro Attorney 503.797.1544, Ext. 3128

Promotes equality in the profession and identifies ways in which the MBA can promote diversity in the practice of law through outreach to racial minorities.

**Tips from the Bench**

By Judge John A. Wittmayer, Multnomah County Circuit Court

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Profile: David V. Brewer, Chief Judge of the Oregon Court of Appeals

By Jennifer Ottiker, Hoffman Hart & Wagner and Court Liaison Committee.

If your faith in the law is thin or if you have lost sight of why you chose the law as a profession, sit down for five minutes with David Brewer. His love of the law and commitment to the profession are infectious. His presence is both humble and commanding. He is passionate and committed but also kind and professional. And if the measure of a person is partly reflected in the words or deeds of those close to them, then he is as good as they come. He recently celebrated his 25th anniversary with his wife, Myrna. His children exhibit the same desire to learn and explore as their father. His son just got back from Romania and is on his way to teach in Korea, his daughter is on her way to study in Chile. And those who know Judge Brewer are enthusiastic in singing his praises.

Prior to our meeting, I’d been warned that he would probably not show up for our meeting. When I asked why people thought he would be reluctant, he paused, and admitted that he was thinking of me as an old friend and simply trying to forget that he was being interviewed. You see, he explained, I just don’t like this kind of things - never been the kind of person to initiate law school text and none of it ever seemed like work. And the friends he made in law school are among those he continues to count among his closest.

Out of law school he started working with Herb Lombard and stayed for the remainder of his years in private practice. It was a true general practice, taking anything that came in the door. Not surprisingly, he remains close friends with his partners from his civil practice.

He did not plan to become a judge; he loved his private practice. A group of lawyers from Eugene asked him to consider a vacancy on the Lane County Bench because of his business background. He agreed to “put in” but, out of concern for his clients, he resolved that if he was not appointed, he would not try again. He was appointed to the Lane County Circuit Court in 1970 by Rita Roberts. When he got the call from then Governor Roberts, he thought it was a friend playing a joke until she reassured him that she was indeed the Governor.

When asked about memorable experiences in Lane County, he recalled his first criminal trial. A teacher had been hit head on by a meter dealer. After the trial, she was being threatened in the hall by the dealer’s friends. Judge Brewer heard the commotion from his chambers and stepped out to see what was going on. His judicial assistant, Sharon, grabbed him by the collar and said, “Kid, you just got hired, don’t go near that door on your coat.” He got the message, the role of a judge is different.

His appointment to the Court of Appeals happened in much the same way as his Circuit Court appointment but to him, was an even greater surprise. Prodding from colleagues combined with his thirst for new experiences and knowledge prompted him to apply. He has been at the Court of Appeals since 1999 and now serves as its chief. As a judge, his work ethic is well known. As the chief, the judges describe him as one of the best “managers” they’ve worked with.

He is a man who allows his conduct to speak for itself. When asked to reflect on his career, Judge Brewer is not forthcoming about the “big” cases, he truly believes that every case is important and that every person deserves the chance at justice. To learn that he worked with both sides to reach a plea agreement in the Kip Kinkel blood shooting case, or that he facilitated a settlement in the litigation surrounding the new hospital in Springfield, or about his special appointment by the Supreme Court to conduct pre-hearing investigations in the PERS litigation (only a few of his high profile cases), you will have to do some outside research.

At this point in his career, when passion for the law and justice might be waning, Judge Brewer’s is insatiable. He is distinctly aware of the challenges facing the preservation of an independent judiciary and is not daunted. He appreciates the role of a judge in an important and unique one in preserving and promoting democracy. He remains committed to and actively involved in ensuring that legal services are available to all. He is an inspiration, albeit a reluctant one.

Multnomah Bar Foundation Formed

As a part of the celebration of the 100th anniversary of the Multnomah Bar Association, the MBA Board has reestablished the Multnomah Bar Foundation in order to bestow a gift from the legal profession to the community. In keeping with the 100th anniversary’s celebration of A Century of Service, the charge of the Multnomah Bar Foundation is to raise sufficient monies to fund programs before the centennial celebration. The mission of the foundation is to “promote community understanding and access to the justice system.” A suggested motto for the foundation is “Because justice is for Everyone.”

Much thought and effort has been devoted by the MBA Board in determining whether to reestablish the foundation, and to then reconstitute it. Penny Serrurier of Stoel Rives has generously devoted many hours of time and effort, and provided counsel for the necessary paperwork such as the incorporation application, charter and obtaining appropriate governmental approvals – including necessary approval from the Internal Revenue Service so that contributions to the foundation are tax deductible.

The initial members of the Board are Ruth Beyer, David Ernst, Michael Greene, Cathy Keenan, Jeff Matthews, Robert Neuberger, Robert Newell, Katherine O’Neill and Sylvia Stevens. The MBA Board appoints members of the foundation board, who serve three-year terms.

Galerie d’Art Sylvie Platini

Exhibits at MBA

Through the generosity of Jean-Luc Laminette, Director of Galerie d’Art Sylvie Platini on Broadway, the MBA board walls have had a beautiful display of oil, water and pastel painting as well as fiber art for over a year. Since there is no budget for MBA owned artwork, Jean-Luc was asked if he would consider exhibiting some of his fine art at the MBA and he accepted the invitation.

We thank the Galerie d’Art Sylvie Platini, which is a French gallery located on the Lake of Annecy near the Alps and the US branch at 507 SW Broadway, opposite the Marriott Hotel. All artists represented by the gallery are internationally known and include European contemporary figurative painting and sculpture, with one exception, Barbara Shapel, who is a prominent Northwest fiber artist. Her work is currently on exhibit in the MBA board room.

Barbara Shapel focuses exclusively on fiber art. Her two-sided quilts, where the back is the reflection of the front, offers the viewer a different perspective of the same piece. She is an award winning quilter and her work is in many private collections and has appeared in a number of shows and locations. Besides the MBA Board room, her quilts can be seen at the Galerie d’Art Sylvie Platini and Brown’s Gallery in Boise, Idaho.

The artist’s statement: “Light, line, color, texture and fabric fascinate me. I am particularly fascinated by the changes in the look of the quilt as varying amounts of light pass over the surface of the piece. The creation of surface texture is achieved through the use of a variety of threads and thread colors. Some of my work features densely quilted patterns which are achieved with little or no marking done on the surface of the quilt - it is like drawing with an electric needle instead of a pencil.”

Quilt by Barbara Shapel, “Migration”
What Partners Want from Associates

Don’t let “business casual” be the work you produce

Seventh Part of a Series

By Gregory C. MacCrone, Attorney at Law.

Time ripens all things; no man is born wise,” said Miguel de Cervantes, author of the seminal Don Quixote de la Mancha.

Cervantes’ protagonist had hands-on answers to the problems he saw troubling society. Unfortunately, for Senators Quinste and Pauze, his solutions often were horribly wrong; hence, such expressions as “quixotic” came to describe one who was idealistic, but often impractical.

Learn From Your Mistakes

Associates need not suffer such trials of impracticality.

One “means to success is learning from your mistakes. Expect to make them, but recognize the circumstances around each mistake and anticipate similar situations in the future and learn from them,” offers Reuel K. Fish of McMinnville’s Cummins Goodman Fish Denley & Vickers.

It is important to consider the missteps and oversights we have made and to reflect on the things we could do to improve our performance.

By admitting you are unable to spend immediate research time on Partner A’s CLE chapter because of Partner B’s more pressing, deadline-intensive matters, you allow yourself the grace of less stress. Moreover, you establish the opportunity to succeed by actually exceeding an expectation and completing both projects.

Truth be told, most mistakes are of the non-lethal variety even in law practice. Not only are they not often fatal, they are often unavoidable. You are going to make them just as your supervising attorney did and continues to do.

While it is a nice thought, it is impossible to eliminate mistakes in all the things we do. The goal, then, should be to recognize that “mistakes happen” and will continue to occur with greater complexity and consequences even as we mature. Instead of seeking to lower our “mistake quota,” far more is to be gained by learning more quickly from the mistakes we do make.

Jerome Lidz, the hiring partner at Harrang Long Gary Rudnick “expect[s] the associate to learn something from every project he or she works on.”

This might happen by becoming more self-assured and more able to seek answers from others. Generally, it is not how many mistakes you have made, but how many of the same mistakes you have made. Make the decision to change habits that no longer (or never have) served your best professional and interpersonal interests. Focus on strengthening your weak points.

As associates, the importance of recognizing and taking responsibility for your guilt(s) of time management, errant strategy, or of client maintenance cannot be overstated. More than pop-psychology psalms, taking ownership and control of your failures and successes implies true-life domination over your happiness and sadness, over your personal and professional life.

Giving More than Lip Service to Details

While an attorney recruiter, probably 90% of the resumes I read or persons I interviewed mentioned their “attention to detail.” It was particularly ironic when one could quickly spy numerous typographical or formatting errors in their written materials.

If the devil is in the details, then for attorneys - who are often said to have a certain kinship with the devil - our detail-focused profession, the devil is in the details of the words we speak and write on a daily basis. Perhaps aside only from one’s time slips, an oral or written presentation is the only proof of the effort and energy put into an assignment. Both written and oral work product need to be meticulous and precise.

Occasionally difficult to resist, at no time should any_information of atmosphere (i.e., the fact you are wearing khakis) engender informal work product. Walk away from your work, take extra (or different) time to complete it, or ask a friendly colleague to proofread your work. Read your work backwards, if necessary.

As Randal A. Johnson of Ater/Edmonson & Lacy, “If the devil is in the details, then for attorneys - who are often said to have a certain kinship with the devil - our detail-focused profession, the devil is in the details of the words we speak and write on a daily basis. Perhaps aside only from one’s time slips, an oral or written presentation is the only proof of the effort and energy put into an assignment. Both written and oral work product need to be meticulous and precise.

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"Taking pride in your work product," is one way to hone this approach, says Ramsey A. Kritzak of intellectual property firm Klarquist Sparkman. Ask yourself, “For what quality of work would I want to pay top dollar?” and then strive to deliver the goods.

Lewis Horowitz of Lane Powell offers that one of his firm’s "biggest concerns is the 'candle power' the associate brings to the firm. We recognize, certainly, that different brains work in different ways, and we want our associates to bring it to the table.”

Associates can “bring it to the table” by recognizing their mistakes, learning from them, decreasing their frequency, and taking affirmative steps toward eliminating them in the future by paying focused attention to their avoidance.

More than lip service is necessary, but associates who take the necessary steps will go far toward the goal of a successful and fulfilling law career without “tilting at windmills.”

This is the final installment, but it is hardly the last word. Earlier on in this series, several readers suggested posying my thesis to associates themselves asking, "What do associates want from partners?" Or, "What does it take in a partner to help groom success in an associate?" I hope these articles have stirred some interest in this dynamic.

Whether your interests or needs, the YLS is ready to help. Give me a call or shoot an email if you have input or questions. If not, please save me a seat at the next drop-in social.

Eric can be reached at 503.243.3211 or ewaxler@earthlink.net.
YLS Committee Descriptions

YLS Professional Development and Education Committee
Co-Chairs: Aaron Denton, Martin Bisciof et al, 503.242.3113 and Raylyna Peterson, Mitchell Lang & Smith, 503.221.1011

This new committee combines the efforts of the former CLE and Professional Development Committees by addressing the needs of attorneys in practice less than five years. The committee organizes all CLE seminars presented by the YLS and assists young lawyers in developing their careers. The CLE classes are structured into three series: the Family Law Series, the Young Litigators Forum and the Spring Series. Non-CLE topics include contract lawyering, client development, financial planning and setting up a practice. The committee also facilitates the formation of peer-to-peer networking groups.

YLS Membership Committee
Chair: Andrew Schpak, Barran Liebman, 503.276.2156

The Membership Committee assists in the recruitment and involvement of YLS members by coordinating a variety of activities designed to increase professional and personal interaction. The committee also publishes the New Admittee Survival Guide.

YLS Pro Bono Committee
Chair: Kelly Struhs, Davis Wright Tremaine, 503.241.2300

The committee coordinates several pro bono projects, including the Nooproof Project and Attorneys for Youth, and encourages involvement in pro bono service. The committee publishes and distributes the Pro Bono Volunteer Opportunities handbook, Domestic Violence Handbook and Juvenile Rights handbook. Members also work with other local pro bono committees to organize the annual Pro Bono Fair.

YLS Service to the Public Committee
Chair: Katie Lane, Multnomah County Attorneys Office, 503.988.3138

The committee’s projects involve lawyers opportunities to become involved in the community. Projects include Community Law Week, Dropout Prevention video presentations at local schools, Dress for Success, coordinating volunteer hearings officers for Multnomah County Animal Services, and the Imprint Program, which pairs attorneys with middle school students.

25 Years Later, the Volunteer Lawyer’s Project Still Needs Your Help
By Cathy Keenan, Legal Aid Services of Oregon

While the Volunteer Lawyer’s Project (VLP) has undergone many changes during its 25-year history, its mission has always remained the same - to provide low-income clients with access to the legal system through the assistance of pro bono attorneys. The VLP was started in 1981 by the then newly formed MBA Young Lawyer’s Section. Mike Haglund was the first YLS president and he remembers the early days of the VLP. “We started the VLP after attending an ABA conference and observing how many other metropolitan areas had organized pro bono projects. YLS members were very interested in pro bono work and the VLP was a way to get more lawyers involved with helping clients in need.” Mike is proud of the lasting impact of the projects. “I am pleased that the YLS commitment to pro bono has become institutionalized and that the VLP is still strong today.”

The VLP has grown from a program with one part-time staff person to an integral component of the Multnomah County Office of Legal Aid Services of Oregon (LASO), which now serves close to 2000 clients per year. While many LASO staff members contribute to VLP operations, the program is primarily staffed by attorneys, Cathy Keenan and Maya Crawford.

The VLP’s projects have changed over the years in order to respond to the changing needs of the client base. Currently the VLP works with close to 400 volunteer attorneys and oversees six pro bono projects, including the OSB Debtor-Creditor Bankruptcy Clinic, the Domestic Violence Project, the Pro Se Assistance Project, the Senior Law Project, the Social Security Panel and the Stoel Rives Night Clinic. The legal assistance provided by volunteer attorneys ranges from brief advice to contested litigation. Also, the VLP is many times the last stop for clients, as there are such scarce legal resources for low-income clients.

Maya Crawford speaks with people every day who are seeking VLP assistance. “Most of our clients are intimidated by the legal process - they just have no experience with the system and they are usually in crisis. The legal process continues whether or not a client has an attorney and the results of pro se representation can be disastrous.” Clients are extremely grateful even when full representation is not available. Maya explains, “VLP attorneys calm the fears of their clients by explaining the complex legal terms that we all take for granted. Pro bono attorneys play a vital role in our legal system.”

The VLP relies on the bar not only for your volunteer support, but also for your financial support. The annual MBA dues check-off campaign and funds raised during the MBA’s Member Golf Championship are a vital portion of the VLP’s budget. When you receive your dues statement this fall, please remember all of the important work that your contribution supports. The staff and clients of the VLP thank you for your generosity and we hope to report back to you about the success of the program at our 50th anniversary.

PRO BOONO VOLUNTEERS

Thanks to the following lawyers, who recently donated their pro bono services via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, check out the Pro Bono Opportunities Handbook available at www.mbarbar.org/docs/ProBonoGuide.pdf.

Dean Aftterman
David Aman
Brandon Benson
Brittany Berkey
Richard Biggs
Andrew Robljen
Carson Bowler
Steve Boyle
Richard Brownstein
Phyllis Burke
Leslie Bush
Brett Carson
Willard Chi
Sharon Cousineau
Bety Crofspot
Sarah Crookos
Claudia Cullison
Jeff Davis
Richard Dech
Kathleen Doll
Hon. Randall Dunn
Glenda Durwam
Kathrym Erion
Amy Fogel
Jon Fritzler
Zach Froehigardten
Greg Fullen
Bradfio Gerke
Cailin Glass
Bethany Graham
Ward Greene
Mary Loa Haas
Timothy Haeberlin
Caroline Harris Crowne
Theresa Hollis
Lauren Hook
George Hoselton
Edward Johnson
Leslie Johnson
Sam Justice
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Scott Kocher
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11

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“a. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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Each situation will require a consideration of these issues, and there is no hard and fast rule. With respect to the examples set out above, an argument can be made that it is not necessary for the lawyer to consult with the client in order to decide not to object to the Rule 21 Motion based upon the technicality and to decide not to take the default if it appears the default will not ultimately be sustained. However, if the lawyer decides to take the default and then the opposing or new counsel requests the lawyer voluntarily agree to set the default aside, that issue probably would call for a consultation with the client. It might be in the client’s best interest to voluntarily agree to set aside the default, if there is a high likelihood the court would ultimately set it aside anyway. Otherwise, the client might incur additional expense, and it might take longer to conclude the case because of these additional steps added to the litigation. This will have to be evaluated on a case by case basis.

While professionalism in many ways connotes the concept of treating others the way we want to be treated, professionalism also requires that the lawyer perform his or her ethical and competence obligations to the client. It may be that the best decision is ultimately to not seek a dispositive of the case on the technicality, but that decision should be based upon ethical considerations and whether the tactic is in the ultimate best interest of the client in the context of the whole case. In the adversarial context of litigation, professionalism means treating the opposing attorney and party honestly and with courtesy and respect, while not diminishing the quality of one’s representation of the client.

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. 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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Is seeking a full-time associate for its Commercial Litigation practice in the Portland, Oregon office. Applicants should have two to four years of experience in complex commercial litigation, preferably with some experience in construction disputes. Outstanding written and oral advocacy skills are required, as well as strong academic credentials and membership in the Oregon State Bar. Please send resume and cover letter (referencing Job #1148) in confidence to Linda Jordan, Recruiting Coordinator, Ball Janik LLP, 101 SW Main St Ste 1100, Portland OR 97204, or by email (ljordan@balljanik.com). Visit our website for information on the firm and a list of associate benefits (www.balljanik.com). Equal Opportunity Employer.

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Classifieds (cont. from p. 14)

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Multnomah Bar Foundation Formed (cont. from p. 9)

The foundation board recently received notification from the Internal Revenue Service that the foundation has been approved as a 501(3)(c) charitable nonprofit. It is hoped that the board will be expanded to include members from outside of the legal profession such as educators, accountants, bankers and members of the business community.

While plans are not complete, the foundation board anticipates proposing fundraising for annual contributions and for the establishment of an endowment.

Left to right, back row: Ruth Beyre, Jeff Matthews, Dave Ernst, Cathy Keenan, Judy Edwards, Bob Newell
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