



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. October 2004 Volume 50, Number 9

## President's Message

By Sylvia Stevens, MBA President.



**"...serving others is the foundation of the legal profession."**

Over the last several years, the word professionalism has been used mostly to describe the values of civility and courtesy in the practice of law. Professionalism has another equally important aspect – public service – that I have been reminded of in different ways over the past few weeks.

Commending a group of lawyer volunteers, former Chief Justice Edwin Peterson recently said that service to others is the hallmark of professionalism and that serving others is the foundation of the legal profession. ABA President Robert Grey made the same point in a recent column about "citizen-lawyers." While recognizing that all citizens have a civic responsibility to engage in public service, President Grey suggests that lawyers are especially suited for it and enjoy unique opportunities to serve because our work as lawyers is indistinguishable from our nation's civic life; our training as lawyers makes us ideal civic leaders. "The law is, after all," he says, "the catalyst for the two greatest desires of all societies: liberty and justice." That sentiment was expressed again at a political "house party" last week, when one of the guests, a businessman, exhorted the lawyers to use our special skills to help voters understand the legal implications of their choices in the upcoming presidential election.

Public service has long been a value of the MBA, reflected in our mission of promoting service and leadership among our members and to the community. Similarly, the OSB Statement of Professionalism includes the Supreme Court's observation that "...the practice of law is, above all, a profession. As members of a learned art, we pursue a common calling in the spirit of public service."

Often in these pages, we call upon members to volunteer in bar activities and to provide pro bono legal services. Today I am suggesting that we need to do all of that and more. We live in an increasingly complex world and we are constantly bombarded with information

from a myriad of sources. At the same time, public understanding of our basic governmental structures and the legal underpinnings of our democratic society seems to be diminishing. We must heed the call to public service, whether we do it in a public way by leading community groups and running for public office or on a more intimate level by just being willing to speak out on public policy issues. Our legal skills will help to ensure due process, fairness, respect and honest discourse. Who better than lawyers to be positive influences on our communities, to shape our public debates and dialogues, and to share our knowledge and skills for the betterment of our world? There is no time like the present to remember and heed John F. Kennedy's words: "Ask not what your country can do for you; ask what you can do for your country."

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## MBA CLE

To register for a CLE, please see the insert in this issue or go to [www.mbabar.org](http://www.mbabar.org).

### October

**Friday, October 15**  
**Intellectual Property and the World Wide Web**  
OSB Annual Convention at the Portland Convention Center

**Tuesday, October 26**  
**Child Abuse Reporting Requirements**  
Sylvia Stevens  
Jonathan Richmond

### November

**Tuesday, November 2**  
**Diversity in the Workplace**  
Steve Hanamura

**Thursday, November 4**  
**Multnomah County Evidence Update**  
Hon. Edward Jones  
Hon. Michael McShane  
Roy Pulvers

**Tuesday, November 9**  
**New Ethics Rules**  
Speakers to be announced

### December

**Thursday, December 2**  
**Mandatory Arbitration Act**  
Victor Kisch  
Carl Neil

**Thursday, December 9**  
**Pre-nuptial Agreements**  
Josh Kadish  
Michael Yates

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\*or the preceding Friday, if on a weekend.

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# NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

**CONSTRUCTION LAW 2004**  
rev. 2d ed. edited by Richard E. Alexander, Steven R. Schell and Eric E. TenBrook. Published by the Oregon State Bar Continuing Legal Education, 2004. (\*KF 902 O7O74)

**ADVISING OREGON BUSINESSES FORMS 2004**  
revision with 22 new forms, edited by James M. Kennedy, Andrew H. Ognall and Jere M. Webb. Published by Oregon State Bar Continuing Legal Education, 2004. (\*KF 1355 O7O74)

**THE DUII TRIAL NOTEBOOK**  
8th ed. updated and revised, edited by Bill Uhle. Published by the Oregon Criminal Defense Lawyers Assn, 2004. (\* KF 2231 D85)

**LANDLORD/TENANT RIGHTS IN OREGON** 7th ed. by Janay Ann Haas. Published by the Self-Counsel Press, 2004. (\*KF 590 O7 H33)

**THE FUNDING OF LIVING TRUSTS** by Carla Neeley Freitag. Published by the ABA Section of Real Property, Probate and Trust Law, 2004. (KF 734 F74)

**LOGIC FOR LAWYERS: A**  
guide to clear legal thinking by Ruggero J. Aldisert. Published by Boardman, 1990. (KF 380 A54)

**CRIMINAL PROCEDURE** 4th ed. by Wayne E. LaFave, Jerold H. Israel and Nancy J. King. Published by Thomson/West, 2004. (KF 961 L34h)

**LINDEY ON ENTERTAINMENT, PUBLISHING AND THE ARTS: Agreements and the law** 3d ed. by Alexander Lindey and Michael Landau. Published by Thomson/West, 2004. (KF 4290 L55)

**BEYOND THE BASICS:**  
Advanced issues in commercial real estate. Course materials from the May 21, 2004 Oregon Law Institute program in Portland, (\*KF 570 O7O73b)

**TORRENS' ELUSIVE TITLE:**  
Basic legal principles of an efficient Torrens' system by Thomas W. Mapp. Published by the Alberta Law Review, 1978. (KF 679 M37)

**WASHINGTON ELDER LAW HANDBOOK** by Cheryle C. Mitchell and Fred H. Mitchell. Published by Thomson/West, 2004. (\*KF 397 W3 M57)

**FEDERAL LAW OF EMPLOYMENT DISCRIMINATION IN A NUTSHELL** 5th ed. by Mack A. Player. Published by Thomson/West, 2004. (KF 3464 P53)

**RIBSTEIN AND KEATING ON LIMITED LIABILITY COMPANIES** 2d ed. by Larry E. Ribstein and Robert R. Keating. Published by Thomson/West, 2004. (KF 1414 R52)

**STATE LRAP TOOL KIT:** A resource guide for creating state loan repayment assistance programs for public service lawyers. Published by the ABA Commission on Loan Repayment and Forgiveness, 2004. (KF 4235 S73)

**FUNDAMENTALS OF BANKRUPTCY LAW** 5th ed. by George M. Treister and Richard B. Levin. Published by the American Law Institute-American Bar Association Committee on Continuing Professional Education, 2004. (KF 1524 T24)

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# CALENDAR

To register for CLEs, please see inserts inside this issue.

## October

**5**  
Tuesday, MBA Board Meeting

Tuesday, MBA CLE – **The Dark Side of Revocable Living Trusts**  
Register at [www.mbabar.org](http://www.mbabar.org).

Tuesday, MBA "Absolutely Social - The Grape Escape" at the Benson Hotel.  
See insert to register.

**12**  
Tuesday, YLS Board Meeting

**15**  
Friday, MBA/OSB CLE **Intellectual Property and the World Wide Web**  
OSB Annual Convention at the Oregon Convention Center.  
Register at [www.osbar.org](http://www.osbar.org).

**19**  
Tuesday, LASO Open Houses  
For details, please call the Campaign for Equal Justice at 503.295.8442.

**20**  
Wednesday, Enhancing Jury Service Panel  
See Announcements for details.

**21**  
Thursday, YLS Drop-In Social at Mio Gelato  
See p. 10 for details.

**26**  
Tuesday, MBA CLE – **Child Abuse Reporting Requirements**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**29**  
Friday, BOWLIO at Grand Central Bowl  
See Announcements for details.

## November

**2**  
Tuesday, MBA CLE – **Diversity in the Workplace**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

Tuesday, MBA Board Meeting

**4**  
Thursday, MBA CLE **Multnomah County Evidence Update**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**9**  
Tuesday, YLS Board Meeting

Tuesday, MBA CLE – **New Ethics Rules**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**10-12**  
Wednesday-Friday, PLF CLE **"Learning the Ropes for New Lawyers"**  
Register at [www.osbplf.org](http://www.osbplf.org).

**18**  
Thursday, **New Admittee Social at Red Star Club Room**  
New admittees call the MBA at 503.222.3275 to RSVP.

**25-26**  
Thursday-Friday, **Thanksgiving Holiday**  
MBA office closed.

## December

**1**  
Wednesday, **East County Social at McMenamin's Edgefield**  
See Announcements for details.

**2**  
Thursday, MBA CLE – **Mandatory Arbitration Act**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**7**  
Tuesday, MBA Board meeting

**9**  
Thursday, MBA CLE - **Pre-nuptial Agreements**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**14**  
Tuesday, YLS Board meeting



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# Ethics Focus

By Mark Fucile, Stoel Rives.



## Deja Vu All Over Again: OSB Considers New Ethics Rules

At its annual meeting on October 16, the OSB House of Delegates will consider adopting a new set of ethics rules patterned on the ABA's Model Rules of Professional Conduct. If this sounds familiar – it is. Reflecting the Yogi Berra quote in the column title, the House of Delegates approved a similar package of rule changes last year. The proposal, however, stalled on the steps of the Oregon Supreme Court. The OSB – with guidance from the Supreme Court – then retooled the specific elements of the package that gave the Supreme Court pause. The OSB's Board of Governors has approved the revised package and it is that version that the House of Delegates will consider later this month.

If approved by the House of Delegates and then by the Supreme Court, the current Oregon Disciplinary Rules would be replaced by new Oregon Rules of Professional Conduct. Although the DRs date to 1970, the change would be less sweeping in practical effect than you might think. At the same time, Oregon lawyers would gain the benefit in an era of increasing cross-border practice of having a set of rules that is closer in form and format to the rest of the country.

Let's start with some background. When the Oregon DRs were adopted in 1970 they were based on the ABA's then-current Model Code of Professional Responsibility. Although some of our rules have been revised over the years, the ABA significantly reshaped its model format in 1983 with the adoption of the Model Rules of Professional Conduct and then updated those further in 2002. Since the ABA moved to its "Model Rules" format, over 40 states have followed and more are considering doing so. In light of this trend, the OSB Board of Governors appointed a special committee in 2001 to study whether changes were warranted to the Oregon rules. The committee issued a comprehensive report in January 2003 recommending that Oregon move to the "Model Rules" format. Although several twists and turns have followed since then, the proposal now on the table still includes the shift to the ABA Model Rules format and

retains most of the substance of the original package that was proposed last year.

Although the new rules would look different, the *practical effect* would be much the same. In other words, a conflict under the old rules would still be a conflict under the new rules, the requirements for consent would be very similar and a lawyer's duty of confidentiality would essentially be the same. So, why change? The OSB study committee initially took the approach that "if it ain't broke, don't fix it." After reviewing the ABA's Model Rules, however, it concluded that they would offer Oregon lawyers two major advantages over the current ones.

*First*, although the new rules retain the content of the old set, they recast them in form and format in a way that meshes better with the rest of the country. Several thousand OSB members are already members of other bars and our reciprocity partners Washington and Idaho both use the Model Rules. For lawyers whose practices take them across state lines, moving to a more uniform system will make life simpler. But, even for those lawyers whose work is solely in Oregon, the ability to draw on guidance from other jurisdictions using a similar set of rules shouldn't be understated.

*Second*, the new rules contain provisions we currently lack in Oregon that would bring additional clarity to several key areas including duties to prospective clients, spelling out who the client is when representing an entity and regularizing specific categories of temporary multijurisdictional practice.

The proposed rules are available on the OSB's web site at [www.osbar.org](http://www.osbar.org). On balance, the new rules would be a good fit for the practice environment that has evolved for Oregon lawyers since the DRs were adopted in 1970.

*Note: By way of "full disclosure," your columnist was a member of the OSB study committee that recommended the new rules.*

# ANNOUNCEMENTS

## To Attorneys Visiting Clients in Jail

The Multnomah County Sheriff's Office reminds attorneys who are visiting clients in Multnomah County jail facilities to have their OSB identification (Bar) card and a government-issued picture ID ready to present for identification purposes. If you do not have a Bar card, the jail staff will check your identity with the OSB online. Being prepared to present your ID will enable the jail staff to more quickly set up your client visit.

## MBA Bicycle Rides

Noon time rides – short and fast, with hills. Meet at the corner of Yamhill and Broadway between noon and 12:10 pm. Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or meet at the start.

## MBA East County Social at Edgefield

On Wednesday, December 1, at 5:30 p.m., MBA members and other east county attorneys are invited to socialize at McMenamins' Edgefield, 2126 SW Halsey in Troutdale. Cost is \$10. Please RSVP to Noëlle Saint-Cyr at [noelle@mbabar.org](mailto:noelle@mbabar.org).

## Juror Celebration Kicks off This Month

On October 20, judges of Multnomah County, the Multnomah Bar Association and the Chief Justice of the Oregon Supreme Court are holding a kick-off event for a year-long celebration of the importance of the jury in our community. Chief Justice Wallace P. Carson, Jr. and the President of the ABA, Robert Grey, Jr., will participate. Grey has made the American jury, the focus of his presidential initiative this year, which will culminate with a nation-wide celebration of the jury system during National Law Week in May, 2005.

The event will include a panel of speakers followed by a facilitated audience discussion on key issues relating to jury service, with the goal of finding ways to overcome barriers to full, meaningful jury participation and to enhance the jury experience overall. Examples of discussion topics include: juror pay, juror privacy, diversity in the jury pool and clear jury instructions.

If your organization would like to send representatives to the event, please contact Judy Edwards at the MBA at 503.222.3275 or [judy@mbabar.org](mailto:judy@mbabar.org).

## Center for International Legal Studies Offers Visiting Professorships

The center, in cooperation with law faculties in Eastern Europe and the former republics of the Soviet Union, offers short-term appointments to up to 25 senior lawyers from the US and Canada during spring and autumn 2006. A "senior lawyer" is at least 50 years of age and has significant practice experience in the area in which he/she proposes to lecture. The teaching term may be from two to six weeks, and the length of appointment and dates of teaching are negotiable between the appointee and host university. There is a special interest in business and corporate law, intellectual property, litigation, arbitration, and criminal procedure. The appointee will not be remunerated and must also arrange for his/her own travel; the host university will assist with lodging. For additional details or an application form, contact [cils@cils.org](mailto:cils@cils.org).

## OSB Affirmative Action Program Presents 2nd Annual BOWLIO

Join Oregon's judges, lawyers and law students on Friday, October 29 for the 2nd annual BOWLIO, a fundraiser for Opportunities for Law in Oregon (OLIO). Win prizes and network while supporting the OSB's ethnic minority law student recruitment and retention strategy. The event begins at 6 p.m. at Grand Central Bowl. Cost is \$20 for students and \$50 for everyone else. Special guests are Governor Ted Kulongoski and First Lady Mary Oberst. RSVP by October 25 to Donna Gigoux at [dgigoux@osbar.org](mailto:dgigoux@osbar.org).

## OLIO Pours "FUN" into FUNdraising

Opportunities for Law in Oregon [OLIO] is the ethnic minority law student recruitment and retention strategy of the OSB's Affirmative Action program. OLIO is selling the 2005 Entertainment Book as a fundraiser. Entertainment Books are available now; bargains begin 11/1. There are two editions: Portland Metro and Greater Oregon. Cost is \$40. Books may be picked up at the OSB office, 5200 SW Meadows Dr., Lake Oswego. Ask for the Affirmative Action office. All proceeds benefit OLIO. Order your book by contacting Donna Gigoux at [dgigoux@osbar.org](mailto:dgigoux@osbar.org) or 503.431.6338. Checks should be made payable to The Oregon State Bar.

## OSB PLF Proposes Rate Increase

It was announced at the August 2004 Board of Governor's meeting that the PLF received an excellent audit report. The PLF Board of Directors proposes a \$400 increase in the assessment

for 2005 in October. The PLF board is proposing amendments to the plan: one change is to clarify that a case involving multiple lawyers working on the same or a similar case has one limit of \$300,000. The rewritten plan is available on the PLF's Web site.

## OWLS Seeks Nominations

Oregon Women Lawyers is inviting nominations for the 13th Annual Justice Betty Roberts and Judge Mercedes Deiz Awards. The awards recognize and celebrate the accomplishments of individuals in promoting women and minorities in the legal profession in Oregon. The recipients will be honored at the annual Awards dinner on Friday, March 11, 2005, at the Portland Hilton.

The Justice Betty Roberts Award recognizes an individual who has made an outstanding contribution to promoting women in the legal profession and in the community, by influencing women to pursue legal careers, opening doors for women attorneys, or advancing opportunities for women within the profession.

The Judge Mercedes Deiz Award recognizes an individual who has made an outstanding contribution to promoting minorities in the legal profession and in the community, by influencing minorities to pursue legal careers, opening doors for minority attorneys, or advancing opportunities for minorities within the profession. Nominations must be received by November 29. Include the appropriate nomination form available on the OWLS website ([www.oregonwomenlawyers.com](http://www.oregonwomenlawyers.com)). The nomination should also include at least three letters of recommendation and detailed information about the nominee explaining how that person fulfills the award's criteria. Please send nominations to Jeanette Thomas, OWLS, Perkins Coie, 1120 NW Couch, 10th Floor, Portland OR 97209; fax: 503.727.2222; email: [jthomas@perkinscoie.com](mailto:jthomas@perkinscoie.com).

## OWLS Luncheon

Tuesday, October 12, Gretchen Kafoury, internship coordinator for Portland State University's College of Urban and Public Affairs and former City Councilperson, County Commissioner, Oregon Legislator, WIN-PAC political action committee founder, political mentor, homeless advocate and much more, will discuss "Thirty Years of Public Service." The luncheon runs from 11:45 am-1pm at Fernando's Hideaway. Cost is \$12. Reservations are not required. For more information, contact Shari Gregory at 503.226.1057 or [sharig@oaap.org](mailto:sharig@oaap.org).

# The corner office

This column was started two years ago to answer questions regarding professionalism. In addition, it was also used to promote the MBA's Conciliation Program, which sought to provide younger attorneys and/or solo practitioners with a resource to discuss professionalism issues and how to deal with difficult counsel. For various reasons, after careful consideration and analysis, the MBA Professionalism Committee has decided to discontinue the Conciliation Program.

One reason is that there are multiple Bar-related organizations that, through mentor programs, provide the same or a substantially similar service. The following organizations are just a few

examples: The MBA's Mentoring program, OWLS, Oregon Minority Lawyers Association (OMLA), Oregon Criminal Defense Lawyers Association (OCDLA), Oregon Association of Defense Counsel (OADC), and OTLA. The contact information for these associations can be found in the "Organizations" section of the OSB Membership Directory.

The Corner Office looks forward to continuing to address a wide variety of professionalism issues that may arise in various practice areas. We encourage you to send any questions, comments, or thoughts to the MBA, c/o Corner Office, by mail to 620 SW 5<sup>th</sup> Ave. Ste. 1220, Portland OR 97204; by fax to 503.243.1881; or by sending an email to

mba@mbabar.org. Remember, maintaining the highest level of professionalism not only makes you a better lawyer, but will make your practice more meaningful and enjoyable.

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**PANEL**

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- Edward Brunet
- Ralph Cobb
- Thomas E Cooney
- Hon. Laurence Cushing
- Barbara Diamond
- Arnold Gray
- Douglas Green
- Arlen Gregorio
- Charles Holloway
- John H. Holmes

- Thomas Howes
- William King
- Hon. James Ladley
- Sidney Lezak
- Norman Lindstedt
- Noreen McGraw
- Frank Moscato
- Marvin Nepom
- Luella Nelson
- Daniel O'Leary
- Katherine O'Neil

- William Replogle
- Joe Richards
- Hon. Betty Roberts
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## IRS Takes Swipe Against Improvements to Property Already Owned by Taxpayer<sup>©</sup>

By Ronald A. Shellan, Miller Nash.



The IRS in late July issued Revenue Procedure 2004-51, which barred one method of completing improvement exchanges to property already owned by the taxpayer. The revenue procedure did, however, leave open the door to continue to use another popular method of completing improvement exchanges to property already owned by the taxpayer.

By way of background, in 2000 the IRS issued Revenue Procedure 2000-37. This revenue procedure created a safe harbor for taxpayers who wanted to complete reverse or improvement exchanges. If the rules of Revenue Procedure 2000-37 were followed, according to the IRS, the parked property would qualify as replacement or relinquished property in a tax-free exchange.

The main requirements for completing an exchange under Revenue Procedure 2000-37 is that the third party who will hold the parked property, the exchange accommodation title holder ("EAT"), cannot hold title to the property for more than 180 days. Further, the relinquished property that was to be matched with the replacement property held by the EAT in a reverse exchange had to be identified by the taxpayer within 45 days.

Taxpayers structure reverse exchanges if they have found replacement property before being able to sell their relinquished property. Taxpayers also use the safe-harbor rules to structure improvement exchanges, whereby the EAT completes improvements to the parked property before conveying it to the taxpayer.

Many taxpayers want to complete improvement exchanges by making the improvements to property they already own. *Bloomington Coca-Cola* and *DeCleene* both held that such exchanges did not work. To avoid the result of these cases, since Revenue Procedure 2000-37 was issued, taxpayers have either transferred or leased the bare land on which the improvements were to be constructed to the EAT. Although the IRS will not admit it, smart taxpayers and their tax lawyers probably found a loophole.

The IRS has now partially closed the loophole by providing that the property to be improved cannot have been "owned by the taxpayer within the 180-day period" ending with the transfer of the property to the EAT. Thus, no improvement exchanges can be completed by transferring the land to the EAT. The IRS may have left open another small loophole for the patient taxpayer, who can now transfer the property to an affiliate of the taxpayer, and as long as the affiliate is not the taxpayer's agent and holds the property at least 180 days, the exchange can theoretically be completed using the safe-harbor improvement exchange rules.

Importantly, the IRS said that it was continuing to "study" improvement exchanges to property already owned by the taxpayer that are structured using a leasehold. Thus, it appears that improvements to leaseholds continue to work. Such leasehold improvement exchanges under the safe harbor were approved under Private Letter Rulings 200251008 and 20032902. These two private letter rulings both involved leases of property owned by an affiliate of the taxpayer and not the taxpayer.

The bottom line is that under the new revenue procedure, safe-harbor improvement exchanges to property already owned by the taxpayer cannot be completed by transferring the property to the EAT. It appears that such exchanges can still be structured if an affiliate of the taxpayer leases the property to the EAT, who will then construct improvements to it and transfer back the leasehold to the taxpayer within the safe-harbor time period, thus completing the exchange.

*Ronald Shellan is a partner at Miller Nash. He can be reached at 503.205.2541 or [ron.shellan@millernash.com](mailto:ron.shellan@millernash.com). Shellan is a certified public accountant, a former chair of the Taxation Section of the OSB and is the founding chair of the Portland Tax Forum.*

*This document should not be construed as legal advice or legal opinion on any specific facts or circumstances. The content is intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.*

# Around the Bar

## GARVEY SCHUBERT BARER

The ABA has appointed **Edward J. Sullivan** as the new vice-chair for its Council of State and Local Government Law Section. Sullivan, an owner at the firm, concentrates his legal practice in matters involving planning, administrative and municipal law. As vice-chair, he will assist the chair in matters relating to the section, as well as deal in national policies such as voting rights, homeland security and the environment. He is formerly the section's secretary.



Steven Shropshire

## JORDAN SCHRADER

**Steven Shropshire**, a water rights attorney and shareholder in the regional law firm of Jordan Schrader, has been appointed to the 10-member Oregon Water Trust Board of Directors. Founded in 1993, the trust is the nation's first private, nonprofit organization dedicated to acquiring water rights to restore in-stream flows. Shropshire's professional expertise will bring strength to the policy oversight capabilities of the board.

Shropshire helps firm clients understand and navigate the complex legal environment that governs natural resources, environmental and land use matters. His water law practice includes the evaluation and conveyance of water rights, the permitting and adjudication of new water rights, water transfer rights, and the creation of mitigation plans for agricultural, municipal and industrial uses. Shropshire has served as counsel on cases involving water rights issues of first impression before Oregon, Colorado and federal courts.



Jeffrey Garrett

## LANE POWELL ET AL

**Jeffrey "Jeff" Garrett** has joined Lane Powell et al as an associate in the firm's litigation department. He will focus his practice on complex commercial litigation and appellate practice, with emphasis on business torts, real estate, and corporate finance.

Lane Powell et al created the *George V. Powell Diversity Scholarship*, to be awarded to a 2005 summer associate in its Portland or Seattle office. The individual will receive a \$6,000 scholarship toward tuition and expenses during the third year of law school. The firm seeks candidates who will contribute meaningfully to the diversity of the legal community and who have a demonstrated desire to work, live and eventually practice law in Portland or Seattle. The candidates' academic achievements and record of leadership abilities, community service and involvement in community issues will be taken into consideration. Candidates must be second year students in good standing at an ABA accredited law school. Candidates in four-year joint degree programs will be considered after their third year. To obtain additional information or to apply for the scholarship, please visit [www.lanepowell.com/firmprofile/scholarship.asp](http://www.lanepowell.com/firmprofile/scholarship.asp), or contact Len Roden, Administrator of Attorney Recruiting at 206.223.6123 or email [rodenl@lanepowell.com](mailto:rodenl@lanepowell.com).



Craig Rogers



Kevin Ross

## MARGER JOHNSON & MCCOLOM

**Craig Rogers** and **Kevin Ross** have been named shareholders in the firm. Like all the firm's attorneys, Rogers and Ross combine extensive technical expertise with law credentials.

Rogers' practice focuses on litigation, licensing, opinion work, clearance studies and patent prosecution. He specializes in mechanical and electrical technology and is dedicated to a wide variety of industries, ranging from semiconductors and electronics to extreme sports, music education and forest industry products and equipment. Rogers serves as chair-elect of the OSB Intellectual Property Section.

Ross specializes in patent prosecution, with a focus on shepherding start-up and pre-IPO companies through the process of building and maximizing intellectual property portfolios. He offers extensive international and technical expertise, as well as in-depth industry knowledge ranging from digital circuits and semiconductor fabrication to computer network systems. Ross worked as an application programmer before joining the firm in 2001.

## METROPOLITAN PUBLIC DEFENDERS (MPD)

**Scott Sharp** has joined the Washington County Section of MPD.

## MILLER NASH

**Thomas C. Sand**, the firm's managing partner, will receive Lewis & Clark Law School's 2004 Distinguished Graduate Award. The award is presented to a graduate who has shown continued interest in and service to the law school and has made outstanding community achievements and contributions. The recipients of this annual award are nominated and selected by the school's Alumni Board of Directors.

Sand graduated from the law school in 1977. He has served as secretary, president, and member of the board of directors of the school's Alumni Association and is currently a member of the board of visitors. Sand is also an active member of the OSB and the MBA. He received the MBA's Award of Merit for his outstanding voluntary service to the legal profession.

## PORTLAND STATE UNIVERSITY (PSU)

**Adrienne Nelson** has been named Coordinator/Senior Attorney of PSU's Student Legal and Mediation Services, which provides legal advice and

representation on a wide range of issues as well as mediation services to PSU students.



Roman Hernandez

## SCHWABE WILLIAMSON & WYATT

Firm attorney **Roman Hernandez** was elected president of the board of directors for the 558-member Hispanic Metropolitan Chamber, the Portland OR chapter of the US Hispanic Chamber. Hernandez will serve through July 1, 2005.

Hernandez specializes in employment law, business litigation and Indian law. He served on the transition steering committee for Governor Ted Kulongoski, was recognized as a "Forty Under 40" by the *Portland Business Journal* in 2003, and has met with White House staff, including Counsel Alberto Gonzales, as part of his position with Hispanic National Bar Association (HNBA). Most recently, Hernandez and other HNBA leaders met with various Mexican government officials, lawyers, and judges while in Mexico City, including a justice on the Mexican Supreme Court.

Schwabe patent lawyer **Al AuYeung** and business lawyer **Donald L. Krahmer Jr.** will co-chair the firm's new nanotechnology and microtechnology practice group. Krahmer serves as a founding board member of Oregon Nanoscience and Microtechnologies Institute (ONAMI).

## STOEL RIVES

The firm has added **Dan Grinfas** to its 35-lawyer labor and employment group. Grinfas will join Stoel Rives from the Oregon Bureau of Labor and Industries. Grinfas is currently the director of the Bureau's Technical Assistance for Employers program, a position he has held since 1998. He will remain in his position until joining the firm, effective November 1.

## THE DON CORSON LAW FIRM

**Don Corson** announces the opening of his new law practice,

The Don Corson Law Firm. Corson was lead trial lawyer for Johnson, Clifton et al, where he practiced for 19 years. His practice will continue to focus on the prosecution of personal injury, wrongful death and related trial matters. His new phone is 541.484.2525; fax, 541.484.2929; email, [dcorson@doncorsonlaw.com](mailto:dcorson@doncorsonlaw.com); website, [www.doncorsonlaw.com](http://www.doncorsonlaw.com); mailing address PO Box 527; and office location, 975 Oak St Ste 1010, Eugene OR 97440.



Don Corson

## KATHLEEN DAILEY

Governor Ted Kulongoski appointed attorney **Kathleen Dailey** to the Multnomah County Circuit Court on Friday, August 20. Dailey assumed the position vacated by the retirement in April of this year of Judge Dorothy A. Baker.

Dailey, a native Oregonian, has practiced law in Portland since getting her law degree in 1988, first working in the area of criminal defense before moving to a private civil practice specializing in mass torts and pharmaceutical litigation. Dailey must run successfully in the November 2 general election to continue in the position.



Richard Vangelisti

## VANGELISTI LAW OFFICES

**Richard Vangelisti** has established the Northwest Nursing Home Law Center, A Branch of Vangelisti Law Offices. Northwest Nursing Home Law Center is committed to raising public awareness and preventing nursing home neglect and abuse. The firm also represents victims and their families when neglect and abuse occur.

# Tips from the Bench

By Judge John Wittmayer, Multnomah County Circuit Court.



Other bar groups have made similar awards, and encourage professionalism in our ranks.

Various bar groups, including the MBA, have worked hard on professionalism statements, and definitions of professionalism. And while professionalism may be difficult to define, we all know it when we see it. And we all can easily recognize conduct that is unprofessional. The judges all know who is and who is not professional. When a case is assigned the first thing judges want to know is, “who are the lawyers?” Not, “what kind of case is it?” Because the professionalism of the lawyers defines the quality of the experience we all have in court. It defines who we are, as members of the bar and to the public.

It is easy to be professional when things are going well. But the true measure of all of us is how we act when the going gets tough. Please think about this.

### Stipulated orders in criminal cases

The civil and family law bar accepts as routine the notion that for an order to be “stipulated” means that the document itself bears the signature of the

litigants or their lawyers before it is presented to the judge. In criminal cases, the lawyers usually just agree orally, and then one of them submits an order with some reference that it is “stipulated.” Lawyers should never do this, and judges should never sign such orders. Without the stipulation either on the record in court or shown by signatures on the proposed order, it looks a lot like an order presented by one side only, without the agreement of the other side.

### Motions in limine – don’t abuse them

Motions *in limine* are valuable tools, but they are greatly over-used by lawyers. How is it useful for you to move *in limine* to prevent the other party from injecting insurance into your auto accident case? What does that motion accomplish?

Talk to the other lawyer. If you have any real reason to think the other lawyer is going to attempt to inject something that is improper into the trial, then move *in limine* against it. But don’t expect the trial judge to rule on motions *in limine* when you have no specific reason to think the issue will come up.

### Professionalism does not define a minimum standard

The criminal laws set minimum standards to avoid criminal prosecution. The Disciplinary Rules set the minimum standards to keep our license to practice law. Professionalism is something way beyond the Disciplinary Rules – it is not just meeting the minimally acceptable Disciplinary Rules to keep your license to practice law.

In recent years, bar leaders and law schools have made an effort to bring the issue of professionalism to our attention. The MBA Professionalism Award is the most prestigious award the MBA makes each year. The list of those lawyers who have received this award is a “Who’s Who” of our legal community.



## Court Liaison Committee

The MBA Court Liaison Committee meets monthly with members of the Multnomah County Circuit Court. A summary of the committee’s charge and how it will be implemented follows.

1. Foster constructive dialogue with the judiciary and court administrator, with regard to rules or procedural changes and the SLRs prior to the court implementing changes. Alert the court to areas of potential concern to members. Also assist the court in educating members about court issues. **Implementation:** Presiding Judge Dale Koch and Court Administrator Doug Bray attend each of the committee’s meetings. A sub-committee will be appointed in January to review SLRs for presentation of comments to the UTCR Committee by spring.
2. Survey members informally on issues and encourage them to send questions regarding the Multnomah County Circuit Court. **Implementation:** Emails will be sent to the general membership.
3. Communications:
  - a. Submit monthly Multnomah Lawyer “News from the Courthouse” column regarding key court happenings, and changes. **Implementation:** Volunteers from the committee will write each article.
  - b. Continue profiles of local bench, full-time referees and appellate judges. **Implementation:** The next and final profile of the Oregon Supreme Court will be Justice Kistler. Committee volunteers will then write profiles of the Oregon Court of Appeals judges and new Multnomah County Court Judge, Kathleen Dailey and full time referees.
4. Continue informal liaison with CourtCare Program via quarterly reports. **Implementation:** MBA staff, Judge Koch and Doug Bray will continue to provide updates. Funding from the county may be in jeopardy if the county income tax repeal passes.
5. Monitor the Judicial Feedback program. **Implementation:** A sub-committee was formed to find out why it is not being used and to recommend to the committee ways to improve the program or if it should be discontinued.
6. Assist the MBA in promoting the Judicial Practices Survey publication. **Implementation:** Sub-committees representing specific areas of practice will initiate brown bag lunches with judges for the purpose of learning more about judges’ practice preferences and promoting sales and distribution of the survey results publication. Consider adding domestic relations law and other civil law questions to a new version of the survey.
7. Assist the MBA Board with efforts regarding judicial independence, court funding, courthouse facilities and/or other long-term initiatives. **Implementation:** The committee will assist the MBA Board with implanting the new public outreach plan.
8. Analyze and report recommendations to the MBA Board on protocols for obtaining information on Clackamas County and Washington County courts’ local practices and procedures. To be addressed.
9. Recruit judges to write a column entitled “Tips from the Bench.” **Implementation:** Judge Wittmayer has begun a new series in the *Multnomah Lawyer*. He is soliciting input from other judges. A committee volunteer will contact him.
10. Recruit and recommend potential committee members at the mid-year report. To be addressed.

## MBA Judicial Practices Surveys Available – Buy Yours Now! –

The MBA produced a new, comprehensive *Judicial Practices Survey* in 2003. The results of this survey of Multnomah County judges regarding preferred courtroom practices is available for purchase. It comes in a three-ring binder and members receive a discount.

Many lawyers find the information contained in this survey to be an important part of their trial preparation, because it provides valuable details as to how each judge views:

Bench trials	General courtroom protocol	Sidebar conferences
Challenges	Judgments	Telephone testimony
Closing argument	Jury instructions	Trial exhibits
Court reporting	Jury questions	Voir dire
Deposition testimony	Motions	Witnesses.
Experts		

This useful tool is available for purchase from the MBA office at \$50 for members and \$65 for nonmembers. The price includes shipping and handling. Please make your check payable to the Multnomah Bar Association and send your order to the MBA at 620 SW 5<sup>th</sup> Ave. Ste. 1220, Portland OR 97204.



## ABA Provides Tool Kit to Respond to Court Criticism

The ABA has created a tool kit to help in responding to criticism of the courts, the judiciary and lawyers. An excerpt follows, but the complete tool kit may be viewed at [www.abanct.org/barserv/criticism.html](http://www.abanct.org/barserv/criticism.html).

“America’s lawyers and judges come from all walks of life, serve in communities all across the country, and represent all political views. As a profession, their interests and priorities lie not in partisanship or power, but in the pursuit of justice and the challenge of ensuring that every citizen enjoys the liberties and opportunities to which they are entitled.

“The legal profession has never been immune from criticism, but in recent years disdain for lawyers and judges has bordered on the hysterical, as they have increasingly been held up as scapegoats or caught in the crosscurrents of debates over the hot-button social issues of our time.

“As a result, Americans are becoming increasingly cynical about the fairness and equity of the legal system. This is a dangerous trend. When people think of the role of lawyers in our society, they should not think of a burden dragging us down, but rather a force carrying us to new heights. To allow politics to interfere with the courts is to undercut 200 years of constitutional tradition.

“The American Bar Association has responded with the following items, which we encourage you to use in response to unjust attacks on the judiciary, the courts and the legal profession.”

The Website provides documents on the following:

### Response to Lawyer- and Judge-bashing

- An Open Letter from ABA President Dennis W. Archer to the Democratic National Committee and Republican National Committee
- Sample op-ed on lawyer-bashing
- Sample letter to the editor on lawyer-bashing
- Sample op-ed on judge-bashing
- Sample letter to the editor on judge-bashing

### Medical Malpractice/Tort Reform Resources

- Medical Malpractice FAQ
- Medical Malpractice Myths v. Reality
- Sample op-ed on Medical Malpractice
- Sample letter to the editor on Medical Malpractice

### Links to additional resources and studies

- ABA Judicial Division Model Program on Responding to Criticism of Judges (Contact the Judicial Division for print copies and for copy of accompanying video)
- Search “Tort Reform” and “Criticism of Court Judges” in ABA’s Bar Cat knowledge base
- ABA Response to U.S. Chamber of Commerce ads undermining public confidence in American judges and the legal system
- ABA Resources on Medical Malpractice Reform
- ABA Standing Committee on Judicial Independence Resource Kit
- ABA Governmental Affairs Office
- Center for Justice and Democracy
- Association of Trial Lawyers of America
- Debunking Urban Legends About the Civil Justice System
- The Real Frivolous Lawsuits In America: Businesses Suing Businesses

## Nano, Microtechnology Holds Economic, Scientific Promise

By Al AuYeung and Donald L. Kraemer Jr., Schwabe Williamson & Wyatt.

Last year, Congress passed the 21st Century Nanotechnology Research and Development Act, authorizing \$3.7 billion over four years for emerging technologies beginning in 2005. The legislation puts into law programs focused on research and development in nanotechnology.

Nanotechnology is the science and technology of manipulating matter at the atomic scale.

This means the creation of new materials such as super-strong and ultra-light materials. It requires a combination of disciplines in biology, chemistry, physics and material science. Nanotech is expected to affect almost every aspect of our lives – from the medicines we use, to the power of our computers, the energy supplies we require, the food we eat, the cars we drive, the buildings we live in and the clothes we wear.

A new coalition – including Oregon’s three largest public universities, the Governor’s office, the state’s congressional delegation, legislature and industry – has targeted this key new area of economic opportunity for the region.

The alliance, called ONAMI – the Oregon Nanoscience and



Al AuYeung



Donald L. Kraemer Jr.

Microtechnologies Institute – leverages the complementary research strength of Oregon State University, University of Oregon, Portland State University, Pacific Northwest Laboratory and private sector players such as Hewlett-Packard, Intel Capital, Pixelworks and FEI.

ONAMI’s research includes development of a wide range of very small, super-efficient devices – from fist-sized heat pumps and matchbox-sized dialysis filters to higher capacity chips for the semiconductor industry and the next generation of ink-jet printers. These innovations will likely lead to new business opportunities for Oregon.

ONAMI is seeding an industry that will demand lawyers who possess multi-disciplinary skill in corporate law, science and technology, patent and intellectual property law. This unique collaboration among industry, academia, federal and state government and the legal community will help build a new generation of Oregon companies based on technology innovation. For more information on ONAMI, go to [www.onami.us](http://www.onami.us).

Al AuYeung and Donald L. Kraemer Jr., co-chair the new Nanotechnology and Microtechnology Practice Group, as well as the Technology and Business Practice Group at Schwabe Williamson and Wyatt.

## MBA Membership Drive Underway

The 2005 MBA membership renewal drive has started, and you will receive your membership renewal notice shortly. If you have questions about your membership, please call Guy Walden at the MBA at 503.222.3275.

Thank you to Mark Hackett of Davis Wright Tremaine for helping the MBA develop its wage and hour compliance policy and its new employee handbook. We sincerely appreciate the time and expertise he donated.

—Judy Edwards

# YLS Welcome Letter

By W. Todd Cleek, YLS President



*"Small cheer and a great welcome makes a merry feast."*  
—Shakespeare, *The Comedy of Errors*

Whether you're just picking up your bar results or pushing the envelope of the "young" lawyer category, we welcome your membership and participation with the YLS. This Bar year is waking from its summer sabbatical with great vigor. As you read this, YLS committees are likely having first meetings, planning new events and opportunities tailored for the

modern young attorneys of Multnomah County. What are you waiting for?

A wise and well-thought-of former MBA President recently reminded me of an important principle of community and bar activities. You get out what you put in. The energy and time that you put into a committee project today is the beginning of a path to future leadership opportunities. It is also the foundation of relationships and friendships that will support you throughout the peaks and valleys of your career.

If you're new to participation in the YLS I strongly encourage you to explore our committees for an opportunity that suits your fancy. A small sample of some of the choices you could make include:

- Help plan YLS involvement in the 100 year anniversary celebration of the MBA with the Membership Committee;
- Match a needy 501(c)3 entity

with volunteer legal services on the Pro Bono Committee's Nonprofit Project;

- Organize a training session for a new round of Hearings Officers in the Service to the Public's Animal Control Hearing Project;
- Develop a new series of "Beyond the Basics" continuing education with the CLE Committee; and
- Convene a "Sole/Small Practitioner Summit" on the Professional Development Committee.

We're also happy to welcome back those of you returning for another year of YLS service. It's your experience and institutional knowledge that have given us award winning programs in past years.

If you are looking for ways to get involved, please approach me or one of the YLS Board members at any upcoming MBA event or contact Kathy Maloney at [kathy@mbabar.org](mailto:kathy@mbabar.org) to fill out a volunteer interest form.



## Network with the Membership Committee

By Anne Koch, YLS Board member, Motschenbacher & Blattner

The Membership Committee of the Young Lawyers Section (YLS) has an array of exciting events planned for the upcoming committee year.

The Membership Committee's role is to assist in the recruitment and involvement of YLS members, to improve member participation, and to produce a variety of activities to increase the professional and personal interaction of members. One way the committee accomplishes these goals is through the planning of social and other networking events (...thus earning its nickname, "the fun committee").

Headed up by chair Kristin Sterling, one objective of this year's committee is to review and integrate suggestions from the recent YLS online survey. Survey participants weighed in on the effectiveness of the drop-in socials. For those who haven't attended one, drop-in socials are casual events held several times each year at various bars and restaurants in the downtown area. These events provide a laid-back environment for young attorneys to catch up with colleagues and law school friends. Approximately 50% of the members have attended a drop-in social. While most respondents like the informal setup, many people prefer social events with a speaker or activity. The Membership Committee therefore hopes to offer more structured events this year.

In addition to several drop-in socials, the Membership Committee is looking forward to coordinating the following events:

- New admittees will be welcomed to the bar on November 18 at the Red Star Tavern. This yearly event has proven to be a great opportunity for the MBA YLS to introduce itself to the bar's newest members.
- At December's holiday drop-in social, the Membership Committee will also hold its annual toy drive.
- February will bring the second annual Open House for Oregon's third year law students. The open house provides soon-to-be graduates a chance to meet Multnomah County attorneys, and for the MBA YLS to introduce itself to these students early on.
- In March, the committee hopes to plan a second joint social event with the City Club of Portland's New Leaders Council. Last year's event, which featured Presiding Judge Dale Koch as the speaker, was a successful and well-attended event.
- The annual judges social will be held in April, where Multnomah County and federal judges will be invited to come mingle with young lawyers. Judges' clerks and staff will also be encouraged to attend.
- The committee will finish off its year with an "alternative" social, with a fieldtrip to a baseball game or similar activity.

We hope you can join the YLS for these events! The next drop-in social will be Thursday, October 21 at Mio Gelato (25 NW 11th Avenue) from 5:30 to 7 p.m. The committee year should be lots of fun — we look forward to seeing you!

## Tales from the Trenches

*Tales from the Trenches is a recurring feature, in which young lawyers share their "war stories." The authors remain anonymous.*

When I started my practice three years ago, I did not want to give up any potential business. For the first year, my practice looked like this:

Potential client: "I have an 'S' corporation with one other shareholder. I heard I need a buy-sell agreement. Is that something you can draft for me?"

Me: "You bet. Let me check my schedule to see when I can get that out to you." (I would then look at my blank calendar for 10 seconds.) "Looks like I have some time available next week, would that be OK?"

Potential client: "Sure. Can you email it to me?"

Me: "Yes, I can."

I would then spend the next week reading the *Advising Oregon Businesses* like it was Holy Scripture, calling more experienced business attorneys, and spending so much time at the Multnomah County law library that I knew Jacqué's vacation schedule to Wisconsin. By the end of the week, I at least

had a clue as to what a buy-sell agreement was and for what circumstance it was intended.

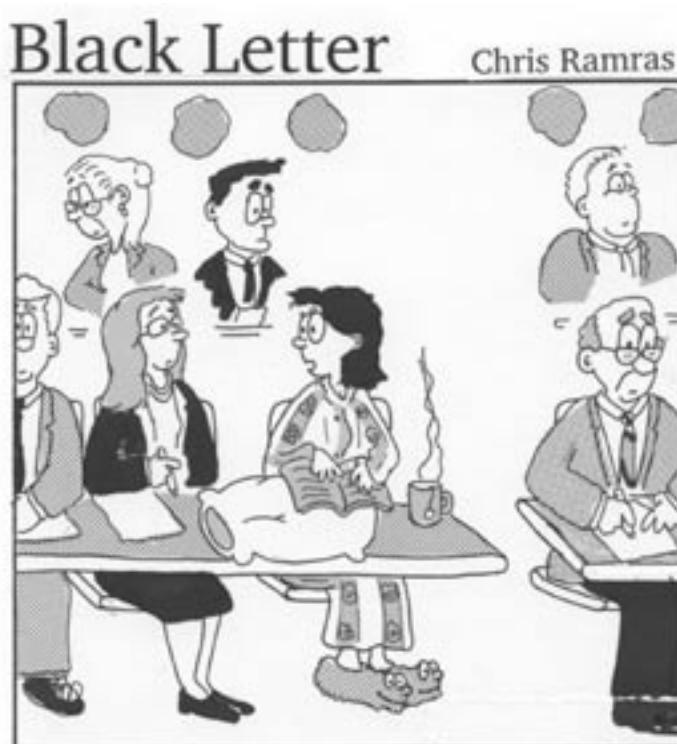
Within days of delivering the work product to the client, I would get another phone call from another potential client asking about manager-managed limited liability

companies and the process would start over again.

After the first year, my trips to the library dwindled to once every couple of weeks and the harassing – bordering on stalking – phone calls lessened to a modest, yet still needy duration.

### Life's unpredictable, eat dessert first!

The Multnomah Bar Association Young Lawyers Section is holding a drop-in social at Mio Gelato (25 NW 11th Avenue) from 5:30 to 7:00 p.m. on Thursday, October 21, 2004. This is a casual get-together and great opportunity to meet other young lawyers. Come with your friends and co-workers for some early evening desserts and coffee.



FRANKLY, I'M HERE SOLELY FOR THE CLE CREDITS.

### New YLS Director

Elizabeth C. Knight has been appointed to the YLS Board to fill the seat vacated by Jim Filiault. Her term runs through June 30, 2006.

# Pro Bono Opportunities in Multnomah County

Many of the programs listed below have training materials and mentors available to assist new volunteers. All programs listed, except those that are starred (\*\*), are OSB-certified programs. Volunteers for OSB-certified programs are covered by PLF insurance and do not need independent coverage. Volunteers who donate over 40 hours of pro bono work in the calendar year with these programs are eligible for vouchers to be used towards OSB CLEs.

## Community Development Law Center

This project of the Campaign for Equal Justice and Legal Aid Services of Oregon assists non-profit organizations involved in housing and other community development activities.

Contact: Leon Laptook, 503.471.1180, leon.laptook@lasoregon.org

## Legal Aid Services of Oregon, Multnomah County Office

- **Bankruptcy Clinic.** The OSB Debtor-Creditor Section and LASO co-sponsor this clinic that provides information and representation to low-income individuals who are considering bankruptcy or who have already filed as pro se litigants.
- **Domestic Violence Project.** Pro bono attorneys represent victims of domestic violence in contested Family Abuse Prevention Act, Elderly and Disabled Abuse Prevention Act and Stalking Protective Order hearings.

- **Pro Se Assistance Project.** LASO and the Multnomah County Family Law Court co-sponsor this clinic. Volunteer attorneys provide free 45-minute appointments to clients representing themselves pro se in family law matters.
- **Senior Law Project.** Volunteer lawyers provide free 30-minute consultations to client's age 60 or older at nine senior center locations in Multnomah County.
- **Social Security Panel.** Volunteer attorneys represent disabled clients in the Social Security administrative appeals process.
- **Stoel Rives Night Clinic.** Stoel Rives, LLP sponsors an evening clinic where attorneys provide advice and representation to low-income clients with civil legal issues.

Contact: Maya Crawford, 503.224.4086, maya.crawford@lasoregon.org

## Multnomah Bar Association, Young Lawyers Section

- **Attorneys for Youth.\*\*** Volunteer attorneys are placed on an on-call list, which is made available to organizations serving homeless and near-homeless teens and teens in job training programs.
- **Nonprofit Project.\*\*** Nonprofit corporations are screened and paired with volunteer attorneys who handle single-issue, non-litigation matters.

Contact: Adam Arms, 503.226.6111, aarms@mbjlaw.com

Contact: Ashley Hohimer, 503.224.5858, ashley.hohimer@millernash.com

## Oregon Law Center, Multnomah County Office

- **Neighborhood Legal Clinic.** Weekly clinics where volunteer attorneys provide consultations for common legal needs including collection, contract, landlord/tenant, unemployment, small estates and insurance defense issues.

Contact: Lori Alton, 503.295.2760, lorialton@yahoo.com

## Children's Representation Project II\*\*

Attorneys are appointed by the court to represent children who are involved in custody disputes in Multnomah County.

Contact: Heather Pool, 503.988.3060, heather.pool@ojd.state.or.us

## SOAR's Asylum Program

SOAR, a program of Ecumenical Ministries of Oregon, is a refugee resettlement agency.

Contact: Joel Lieberman, 503.284.3002, jlieberman@emoregon.org

## St. Andrew Legal Clinic

Volunteer attorneys conduct 30-minute intake interviews at a family law clinic that is held in Northeast Portland.

Contact: Rosie Grove, 503.2811.500 x20, rgrove@salcgroup.org

## PRO BONO VOLUNTEERS

Thanks to the following lawyers, who recently donated their Pro Bono services via the Volunteer Lawyers Project, the Senior Law Project, law firm clinics and the Oregon Law Center. To volunteer, please call Maya Crawford at 503.224.4086.

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## Portland Business Fees and Taxes

By Shane Abma, Portland City Attorney's Office.

On July 22, *The Oregonian* ran an article highlighting the City Bureau of Licenses' "new get-tough approach to collecting [County] business income taxes and [City] license fees." Featured prominently in the article were two attorneys that the City Attorney's Office sued for allegedly failing to pay their business fees and taxes.

As the attorney recently hired by the city to assist the bureau in collection of unpaid taxes and fees, I have noticed that attorneys represent nearly 15% of the delinquent accounts. Although there are exceptions, the general rule is that if you practice law in Multnomah County and/or Portland and you are *not* a salaried employee, you are subject to the city and county ordinances that require your business (law practice) to pay cCity license fees and county business income taxes. (See generally, Portland City Code Chapter 7.02 and Multnomah County Code Chapter 11.500. Note that there are exemptions for those who make less than \$25,000 in gross receipts per year and/or who make less than a certain number of visits into the jurisdiction.)

It does not matter where your office is located; it matters only if you do business in the city or county jurisdictions. For example, a Hillsboro-based attorney who tries a case in federal court may be subject to both the Portland business license fee and the Multnomah County business income tax. (Again, there are exceptions.) That attorney would, however, only be taxed on the income associated with his/her work while in those jurisdictions.

A failure to pay fees and taxes results in 30% late and underpayment penalties, as well as interest at the rate of 10% per annum. Moreover, a willful refusal to pay fees and taxes could potentially result in suspension of one's license. (See, e.g., *In re Complaint as to the Conduct of J. Mark Lawrence*, 332 Or 502 (2001), in which the court held that an attorney's action of willfully failing to timely file and pay his personal tax returns reflected adversely on his fitness to practice law, thus warranting a 60-day suspension.)

While most large and medium-sized firms have accounting offices that ensure these fees and taxes are paid, several solo practitioners and small firms either are not aware that these fees and taxes exist, or else simply choose to ignore them. To date, the City Attorney's Office has filed 23 lawsuits against businesses that allegedly have delinquent accounts with the city and/or county (including three attorneys). The bureau expects that anywhere between 400 and 800 demand letters will be sent in the next three months. If prior demand letters are any guide, then roughly 15% (60-120) of those new demand letters will be directed at attorneys — unless they make the effort to get their accounts current.

If you have any questions regarding whether you are subject to the fees and taxes mentioned above, whether you qualify for an exemption, or whether your account is current, please contact the Bureau of Licenses at 503.823.5157 or Shane Abma, City Attorney's Office, at 503.823.4047.

## MBA Golf Championship Raises Money for VLP

Twenty-one teams battled for top honors at the 7<sup>th</sup> Annual MBA Members Golf Championship on September 14 at Pumpkin Ridge Golf Club. Thanks to our sponsors, tournament participants and the hard work of the MBA Golf Committee Chair Paul Havel and his committee, the event raised approximately \$3,000 for the MBA Volunteer Lawyers Project, managed by Legal Aid Services of Oregon.

The Firm low gross winner was Sussman Shank, and the Firm low net winner was Barran Liebman. In the Open category, the low gross winner was the team of Justin Sawyer, Le Phan, Tony Phan and Chad Paulson. The low net winner was the team of Damon Vickers, Ronald Downs, Greg Baker and Scott Bennett. The Open and Firm low net teams and Firm low gross team each received a travelling trophy that they will keep until next year's tournament. The individual low gross winner was Thomas Melville, Attorney at Law, and the individual low net winner was Bob Carey of Barran Liebman. Congratulations to all!

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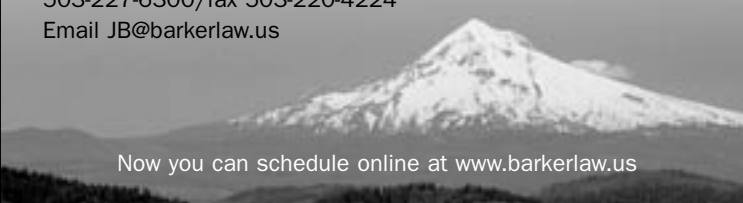
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