

A Century of Service



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

100TH ANNIVERSARY

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community.

1906 - 2006

May 2006 Volume 52, Number 5



From the President

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

Resolution No. 06-033

The Multnomah County Board of Commissioners Resolves:

1. The Board of County Commissioners desires to meet its statutory obligations under ORS 1.185 and move forward with all due speed to address the needs

of the Fourth Judicial District Circuit court. It is the Board's intent to acquire a site as the first step towards constructing a new facility for the Fourth Judicial District Circuit Court in, or in proximity to, downtown Portland's Government Center area by December 31, 2006.

2. Facilities and Property Management Division is directed to prepare and submit to the Board a Preliminary Planning Proposal for site acquisition within 60 days.

ADOPTED this 23rd day of March, 2006

Resolution No. 06-038

The Multnomah County Board of Commissioners Resolves:

1. The Board of County Commissioners desires to meet its facility obligations. It is the Board's intent to acquire a site within the city limits of Gresham, for an East County Justice Facility.

2. FPM is directed to return to the Board within 60 days with a Project Plan and site proposals that will meet the needs of Multnomah County.

ADOPTED this 30th day of March, 2006

Someday, while standing on the steps of a new county courthouse, we may look back on March 2006 as the month when it all began to take shape. The Multnomah County Board of Commissioners has declared its intent to acquire a downtown site by year's end. The commission has given every indication that it is serious about exercising its power of eminent domain as a last resort if necessary to keep the courthouse on Government Center. Time will tell, of course, but I am encouraged.

As reported in my last column, the MBA Board resolved on March 7 to support the resolution sponsored by Commissioners Naito and Rojo de Steffey, including its reference, omitted above, to the county's power of eminent domain and to the use of that power if necessary to keep the courthouse downtown.

The March 23 vote was four to one, with only Commissioner Roberts a reluctant "nay" (more on that below). The county facilities department will present a plan on May 25 to acquire a site before the end of the year.

I testified on behalf of the association in support of the March 23 resolution, but I was by no means alone. Also appearing in support were the Honorable Dale Koch, Presiding Judge of the Multnomah County Circuit Court, District Attorney Michael Schrunck and attorney Carl Hodges. These gentlemen all have been working for new courthouse facilities for many years. Indeed, the District Attorney observed that he had probably served on nearly all of the numerous blue ribbon committees and task forces since 1968 that have studied and confirmed the need for a new courthouse. Amazingly, the March 23 resolution, which admittedly calls only for a "Preliminary Planning Proposal," is the closest the county has come to taking real action to replace our

courthouse. The association will continue to do whatever it can to see this critical goal realized.

Commissioner Roberts voted "no" on the March 23 resolution with some regret. He has consistently supported a new courthouse downtown. But the project of greatest concern to his constituency is the East County Justice Facility. Commissioner Roberts' vote was a protest over the lack of progress on the ECJF. I have previously written in support of the ECJF and so I sympathized with Commissioner Robert's position and understood the reasons for his vote.

While there has been general support on the board for new courtroom facilities in Gresham, the multi-function "hub" concept of the ECJF has been short one vote for several months. That apparently changed on March 30. A resolution sponsored by Commissioner Roberts, quoted above, passed on a three to two vote. Commissioners Roberts and Linn, both long-standing supporters, were joined by Commissioner Rojo de Steffey in calling for a Project Plan and site proposals for an East County Justice Facility. Much remains to be done, obviously, before the ECJF opens its doors. But compared to the financial challenges that must be overcome to actually build a new courthouse downtown, the ECJF is practically paid for. The money is there, from the sale of other facilities in the county's inventory.

Continued on p. 4

**The Multnomah Bar Association
100th Anniversary Celebration
and Annual Meeting
May 13, 2006**

An evening celebrating *A Century of Service*
and envisioning the future

Saturday, May 13, 2006
Seven o' clock to Midnight

Portland Art Museum
Grand Ballroom
1219 SW Park Avenue

Art viewing, hearty hors d'oeuvres,
dessert, champagne toast and dancing

- 7:00-8:30 pm Music by Stolen Sweets
- 7:30-9:30 pm Hearty hors d'oeuvres
- 7:00-9:00 pm NW Center for Contemporary and Modern Art open for viewing
- 8:30-9:00 pm Short program with speaker Jack Faust
- Video presentation
- Passing of the gavel
- Donor and event sponsor recognition
- 9:00 pm Champagne toast and dessert
- 9:00 pm-Midnight Dancing to the Swingline Cubs

Dressy attire or period costumes
For more details, please call the MBA at 503.222.3275.

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Providence Health Care

MBA CLE

To register for a CLE, please see the inserts in this issue or go to www.mbabar.org.

May

Tuesday, May 2

Annual Probate Update
Hon. Elizabeth Welch

Wednesday, May 24

Mandatory Arbitration Training
Hon. Edward J. Jones
Bill Gibson
Eric Neiman
Nancie Potter

Wednesday, May 31

Recognizing and Handling the
Impaired Attorney
Calvin Souther
Meloney Crawford Chadwick

June

Tuesday, June 6

Serving the Board of a
Nonprofit Organization
Protecting Yourself and Your
Client
Elizabeth Grant
Scott Howard
Jeffrey C. Thede

Wednesday, June 7

War Stories: Representing
"Enemy Combatants"
Lessons from Guantanamo Bay
for Every Practitioner
Steve Wax
Tom Johnson

Monday, June 12

Mandatory Arbitration Training
Hon. Edward J. Jones
Bill Gibson
Eric Neiman
Nancie Potter

Wednesday, June 14

Charitable Giving and the Sale
of the Closely Held Business
A Case Study
Jason R. Orme
Joseph Wetzel

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*or the preceding Friday, if on a weekend.

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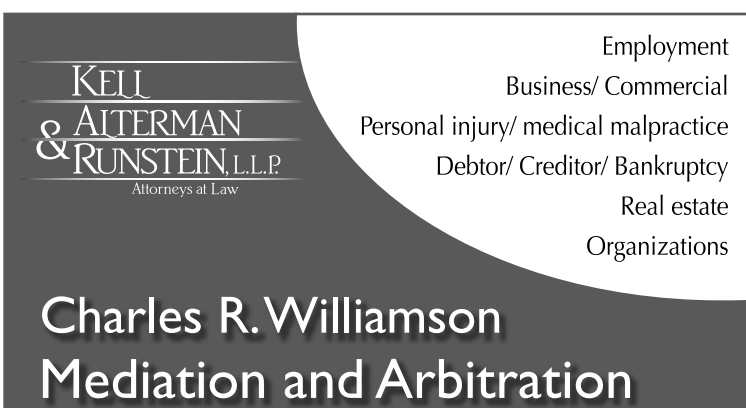
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NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

AN INTERPRETIVE GUIDE TO THE GOVERNMENT IN THE SUNSHINE ACT, 2d ed. by Richard K. Berg, Stephen H. Klitzman and Gary J. Edles. Published by the ABA Section of Administrative Law and Regulatory Practice, 2005. (KF 5105.5 B47)

A PRACTICAL GUIDE TO SOFTWARE LICENSING FOR LICENSEES AND LICENSORS: Analyses and model forms by H. Ward Classen. Published by the ABA Section of Business Law, 2005. (KF 3024 C6 C56)

THE FEDERAL INFORMATION MANUAL: How the government collects, manages, and discloses information under FOIA and other statutes by P. Stephen Gidiere. Published by the ABA Section of Environment, Energy and Resources Book Publication Committee, 2006. (KF 5753 G53)

ETHICAL CHALLENGES AND LEGAL PRACTICE: Recent developments by Stephen Gillers; Child abuse reporting by Rene C.

Holmes; and Immigrants in court, culture counts. The 18th Annual ethics CLE. Course materials from the Oregon Law Institute, November 4, 2005 program in Portland. (*KF 308 O7 G55)

HANDBOOK OF FEDERAL EVIDENCE, 6th ed. by Michael H. Graham. Published by Thomson/West, 2006. (KF8935 G73h 2006)

JUDGE FOR YOURSELF: Clarity, choice, and action in your legal career by Miriam Bamberger Grogan and Heather Bradley. Published by the ABA, 2006. (KF 297 G76)

THE MERGER REVIEW PROCESS: A step-by-step guide to US and foreign merger review, 3d ed. edited by Ilene K. Gotts. Published by the ABA Section of Antitrust Law, 2006. (KF 1655 M45 2006)

THE DISCOVERY REVOLUTION: E-discovery amendments to the federal rules of civil procedure by George L. Paul and Bruce H. Nearon.

Published by the ABA Section of Science and Technology Law, 2006. (KF 9650 P38)

TELECOMMUNICATION AGREEMENTS FOR COMMERCIAL BUILDINGS: What every real estate lawyer should know by Ajay Raju. Published by the ABA Section of Real Property, Probate, and Trust Law, 2005. (KF 2765 R35)

THE LAWYER'S GUIDE TO EFFECTIVE YELLOW PAGES ADVERTISING, 2d ed. by Kerry Randall and Andru J. Johnson. Published by the ABA Law Practice Management Section, 2005. (KF 310 A3 R35 2005)

RECOVERY FOR WRONGFUL DEATH AND INJURY, 4th ed. by Stuart M. Speiser and James E. Rooks. Published by Thomson/West, 2005. (KF 1260 S66 2005)

IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL, 5th ed. by David Weissbrodt and Laura Danielson. Published by Thomson/West, 2005. (KF4819.3 W45 2005)

CALENDAR

For a complete MBA calendar, please visit www.mbabar.org.

May

May 1-5
Monday-Friday, CourtCare Fundraising Campaign
A Jungle Gym in the Jungle

May 1-6
Monday-Saturday, Community Law Week
Visit www.mbabar.org for details.

1
Monday, YLS PDE Seminar
Visit www.mbabar.org for details.

2
Tuesday, MBA Board meeting

Tuesday, MBA CLE
Annual Probate Update
See insert or register at www.mbabar.org.

5
Friday, YLS Employment Law CLE Series continues (through May 25)
Visit www.mbabar.org for details.

8
Monday, YLS PDE Seminar
Visit www.mbabar.org for details.

9
Tuesday, YLS Board meeting

10
Wednesday, June *Multnomah Lawyer* deadline

13
Saturday, MBA 100th Anniversary Celebration at Portland Art Museum
Visit www.mbabar.org for details.

18
Thursday, MBA Golf Tournament at Heron Lakes Golf Course
See insert or register at www.mbabar.org.

18-20
Thursday-Saturday, ABA YLD Conference in Portland
Visit www.abanet.org/yld/spring06 for details.

24
Wednesday, Multnomah Bar Foundation Board meeting

Wednesday, MBA CLE
Mandatory Arbitration Training
See insert or register at www.mbabar.org.

25
Thursday, MBA Judicial Brown-Bag Session
See p. 9 for details.

29
Monday, Memorial Day
MBA office closed.

31
Wednesday, MBA CLE
Recognizing and Handling the Impaired Attorney
See insert or register at www.mbabar.org.

Wednesday, MBA East County Social
See Announcements for details.

June

3
Saturday, YLS Board Retreat

6
Tuesday, MBA CLE
Serving on a Nonprofit Board
See insert or register at www.mbabar.org.

7
Wednesday, MBA CLE
Lessons from Guantanamo Bay
See insert or register at www.mbabar.org.

9
Friday, July/August *Multnomah Lawyer* deadline

12
Monday, MBA CLE
Mandatory Arbitration Training
See insert or register at www.mbabar.org.

13
Tuesday, MBA Golf Tournament at Riverside Country Club
See insert or register at www.mbabar.org.


16-17
Friday-Saturday, MBA Board Retreat




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Best wishes to our friend and former partner, Jeffrey A. Johnson, who is now Executive Vice President and General Counsel for Wilson Construction Company.



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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

The Long View of Legal Ethics

I work in a building that, like the MBA, turned 100 years old this year. It has many traditional qualities - red brick walls, exposed timber beams and arched windows. At the same time, except for our law firm and an Irish bar, all of the tenants are cutting edge web or other high tech firms. The legal ethics rules are like my building. They have a traditional foundation but have evolved over the years to fit the changing times and demands of the practice of law.

Not too long after the MBA was founded in 1906, the ABA issued the first national set of model ethics rules, the Canons of Professional Ethics, in 1908. They were influential and were eventually adopted with variations in most states, including Oregon. Not too long before the MBA celebrates its 100th anniversary, the ABA adopted a new set of model rules in 2002 and 2003. Like the canons, the ABA's Model Rules of Professional Conduct remain influential and are being adopted with variations in most states, including Oregon. Comparing the ABA Canons with the new Oregon RPCs is a bit like taking a walking tour of my building: the foundations remain while the "tenants" reflect the dynamics of our times.

As for the foundations, let's look at three: conflicts, confidentiality and candor.

Canon 6 dealt with conflicts and, like modern day RPC 1.7, prohibited lawyers from taking on conflicting representations except where the clients involved had consented after disclosure of the conflict. In doing so, both Canon 6 and RPC 1.7 reflect the same bedrock fiduciary principle: we owe our clients a duty of loyalty.

Canon 6 also addressed confidentiality and, like current RPC 1.6, enjoined lawyers from revealing their clients' secrets and confidences. Although Oregon abandoned the terms "secrets" and "confidences" with the move to the RPCs last year, those concepts are still effectively part of our current rules by the way RPC 1.6 and 1.0(f) define the information we are to protect in terms of material protected by the attorney-client privilege and other information "that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client." Again, both the canons and the RPCs reflect a central fiduciary principle: we owe our clients a duty of confidentiality.



Canon 22 offered succinct advice on candor: "The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness." Those same concepts are now found in RPCs 3.3, which deals with candor toward courts, 4.1, which addresses truthfulness in statements to others, and 8.4(a)(3), which prohibits dishonest conduct. Again, both the old and the new rules reflect the same key fiduciary principle: the duty of honesty.

Some things, of course, have changed and like the web companies in my 100 year old building, reflect our contemporary economy and society. The lawyer advertising rules, for example, have changed significantly. Canon 27 generally prohibited all advertising and Canon 28 prohibited "stirring up litigation." RPC 7.1 through 7.5 still contain some restrictions on lawyer advertising, but they permit a broad spectrum of lawyer marketing ranging from Web sites to newspaper ads. Multijurisdictional practice is another good example. There is no mention of it in the canons. RPC 5.5 (and its counterparts around the country based on the analogous ABA Model Rule) now permits temporary practice across state borders in a wide variety of practice settings.

The original canons concluded with an interesting rule: "The Lawyer's Duty in Its Last Analysis." It, in turn, concluded: "[A]bove all a lawyer will find . . . highest honor in a deserved reputation for fidelity to private trust and to public duty[.]" That's still good advice a century later.

Mark Fucile is a partner at Fucile & Reising, where he handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation. He may be reached at 503.224.4895 and Mark@frllp.com.

ANNOUNCEMENTS

East County Spring Drop-in Social at Gresham Typhoon!

This after-hours member event is on Wednesday, May 31, 5:30-7 p.m. Drop in for a visit with your colleagues.

Volunteer Lawyers Needed for Classroom Law Project

The first MBA 100th Anniversary Gift Fund grant is going to the Classroom Law Project's "We the People" program, which will be expanded to four new schools for the next school year. Attorney volunteers are needed to help make the program successful. The volunteers will work with high school students at Parkrose and Franklin High Schools. Attorney volunteers are also needed for middle school programs that are being created. The curriculum materials focus on landmark US Supreme Court cases, the constitutional convention, responsibilities of US citizens and the philosophers Locke and Montesquieu. Please contact Marilyn Cover or Emily Kropf at Classroom Law Project for more details, office@classroomlaw.org or 503.224.4424.

Queens Bench

On May 9, Katherine O'Neil, OWLS past president and current ABA House of Delegates member, will speak at the annual New Members' Luncheon. For more information, please contact Barbara Smythe at barbara@barbarasmythe.com or Nicole DeFever at nicole@defever.com

OWLS Award

Oregon Women Lawyers is looking for a legal employer that has truly shattered the glass ceiling by creating a healthy work environment that enables women and minorities to advance in their careers and achieve a healthy work-life balance. The professional association is seeking nominations for its new Workplace Leader Award.

The Workplace Leader Award will recognize a legal employer who is making innovative and effective efforts to promote any of the following values:

- a healthy balance between work and life;
- acquiring and maintaining a diverse workforce; and
- maximizing opportunities for women and minorities to succeed in the workplace and advance to positions of influence and leadership.

Nominations for the Workplace Leader Award will be taken through June 1, 2006 and should be sent to Leslie O'Leary at Williams Love et al, loleary@wdolaw.com.

For information about the award or about Oregon Women Lawyers, call 503.595.7826 or visit www.oregonwomenlawyers.com.

United States District Court, District of Oregon

Public Notice: Appointment of a Full-Time United States Magistrate Judge in Medford, Oregon.

On February 28, 2007, Judge John P. Cooney will retire as a United States Magistrate Judge for the District of Oregon and the Judicial Conference of the United States has authorized the appointment of a full-time United States magistrate judge to fill the vacancy. Applications must be submitted by potential nominees and physically received in Portland Clerk's Office location not later than 4:30 p.m. on Friday, June 2, 2006.

For position details and an application form, go to www.ord.uscourts.gov.

President's Column

Continued from p. 1

in the elimination of deferred maintenance costs, and other savings. All that is needed is the political will to make it happen.

I have been critical in this space of the political obstacles to a county-wide courtroom solution. It therefore is only fair to commend the board for its recent successes in pulling

together to address the needs of the justice system and the community it serves. Please join me in extending a hearty "congratulations" to our county commissioners.

[Mention your MBA membership to receive a premium discount!]

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The Corner Office

As most of you know, the MBA has published a Statement of Professionalism that it hopes lawyers in this county will adopt and follow. While it is relatively easy for lawyers and judges to profess that they subscribe to these precepts, the true test of a lawyer's professionalism lies in his or her ability (and willingness) to adhere to them during the many moments in each day when the lawyer communicates orally or in writing with opposing counsel, judges and even the lawyer's own client. What the lawyer says (or does not say) and how the lawyer says it becomes, in many ways, a measure of the lawyer's professionalism.

To simply read the Statement of Professionalism and profess a willingness to abide by that statement is not enough. To truly appreciate how they should apply in everyday situations, a lawyer needs to spend some time thinking about those situations and how to reconcile the conflicting motivations and pressures that come into play. Sometimes it is important for lawyers to analyze their behavior norms and professionalism to help them perceive ways in which they can improve. That is the challenge of this month's *Corner Office* article.

Two factual scenarios are presented below, followed by a series of questions that are raised in the scenario. Take some time with your partners, associates, or those with whom you share an office and discuss these issues. Then, send your answers to the questions to the MBA office and the MBA Professionalism Committee will try to develop a summary of your responses as well as our own impressions. The results will then be published in an upcoming issue of the *Multnomah Lawyer*. In other words, it's your turn to tell us what professionalism means to you.

SCENARIO 1

Julie Jordan is asked to defend a new suit filed against her client, Challenge Corp. After reviewing the file, it appears clear to her that three witnesses are critical. All of

them, however, are non-parties and all of them reside in another city out of Oregon. On Tuesday morning, Julie telephones all three and determines that they can be available for depositions on the following Monday and Tuesday. She learns that none of them has yet been contacted by the plaintiff's attorney, Hank Hammer. Julie therefore "schedules" all three witnesses for depositions on Monday and Tuesday, arranges for them to be served with subpoenas (to insure that they will show up), and then sends out a formal notice of depositions, by regular mail to Hank. Hank receives the notice on Thursday and discovers that he already has court appearances for Monday and Tuesday.

Should Hank call Julie, or move for a protective order immediately?

Is sending out notices of depositions without prior discussion with opposing counsel the professional thing to do?

Assume that the number of days of notice given to Hank was proper under the applicable Rules of Procedure. Does this satisfy Julie's professional responsibilities to Hank?

Suppose both Julie and Hank dig in their heels with Julie insisting that the depositions proceed as scheduled and Hank refusing to alter his own schedule or send another lawyer in his stead. What are the potential consequences for the remainder of the litigation?

SCENARIO 2

Steve Stickler and Bruce Boggins have been negotiating the sale of the stock of Eureka Enterprises for many weeks and the negotiations have been frustrating, especially for Steve, who represents the sellers. Numerous drafts have gone back and forth, with Bruce's clients (the buyers) invariably asking for changes and additions. Steve therefore erupts when Bruce calls and says that his clients now want to add still another restriction on the post-sale activities of the sellers. Bruce then suggests a way

of making his request more palatable to Steve's clients: Bruce will retype the current draft, add the new restrictions and then have his clients sign the revised draft before he sends it to Steve. Steve's clients will thus be assured that this is it, and that all they have to do in order to close the deal is sign the revised draft.

Steve agrees. Bruce then sends him a new draft, signed by Bruce's clients. Steve reviews it, notes that

all of the minor changes that he and Bruce agreed to have been made, and calls in his client. Steve failed to notice that this signed agreement does NOT include the additional post-sale restriction that Bruce had asked for. His clients DO note the omission (after Steve has related to them his conversation with Bruce) and are immediately eager to sign the agreement AS IS.

Continued on p. 11

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Tips from the Bench

By Judge John A. Wittmayer, Multnomah County Circuit Court.

In civil litigation ORCP 43A allows a litigant to serve on another litigant a request for production, seeking whatever documents the requesting party thinks appropriate. ORCP 43B sets forth the procedure for these requests, and provides that the request shall specify a reasonable time for a response.

In my experience, counsel receiving a request for production often takes a casual approach to the “deadline” for production set forth in the Request. This is a big mistake. ORCP 43B provides that one receiving such a request must comply, unless that party objects before the time specified in the request. While this is usually not much of a problem, when a later dispute arises about the scope of the request, if no objection was made before the deadline in the request, one loses the opportunity to object to the scope. I have frequently granted motions to compel production of things that may have arguably not been subject to production when no timely objection was made.

Practice tip: When you need more time to respond to a request for production, agree with the requesting lawyer to an extension of the deadline that was set out in the request. And confirm that agreement with an email or a letter so there will later be no misunderstanding about it. That way, if you later need to object to any specific request, you will not have lost your opportunity to object.

Motions to compel production

When adverse counsel has not responded to your request for production, when is the right time to file a motion to compel production? How many times have you felt like you were “strung along” by adverse counsel, with repeated promises to get you the documents you requested long ago? And now you find yourself up against a trial date, and there may not be enough time for your motion to compel before the trial date.

Practice tip: After a reasonable extension, when the other lawyer is not objecting to what you have requested, and you just need to be able to depend on a deadline for production, you might consider a stipulated order compelling production, which would include whatever deadline you and the other lawyer agreed upon. This approach would avoid a motion to compel, with all the delays associated with the motion process. Then, when the deadline in the stipulated order compelling production has passed, without production, you will be in a position to take whatever next step you think appropriate.



I also suggest that if you think you have to file a motion to compel production, you not wait so long after repeated assurances have gone unfulfilled. You should file your motion to compel at least as early as receive notice of the first trial date. This will give you the time necessary to avoid the last minute rush as a more realistic trial date approaches.

Diagrams and charts - visual aids for the jury in trial

Too often in trial a lawyer will ask a witness to move to the easel in the courtroom and draw a diagram for the jury to illustrate the witness’ testimony. While the jury waits, the witness draws the scene, inserts the street names, etc. And too often under the pressure of the courtroom, the witness does a poor job of drawing the diagram. The witness may mislabel streets, get the direction arrow wrong, or simply forget important details.

The solution to this is for you to have a good diagram prepared before you get to the courtroom. You can show it to your witnesses so they can verify for you in advance that your diagram is accurate. All your witnesses can usually use the same diagram, which help to avoid inadvertent errors.

The same principle applies with numbers you may wish to write on the easel during opening statement or closing argument. Many of you may not have the best handwriting, which is even more troublesome when you are trying to write the numbers on the easel with a lot of people watching. I can’t tell you how many times I have seen lawyers make math errors on the easel in front of the jury. The solution to this is just like the solution to the need for a good diagram of the scene: prepare it before you get to the courtroom.

MBA and YLS Committee Terms Begin July 1

This issue of the *Multnomah Lawyer* includes the committee volunteer form for MBA and YLS Committees. Please return your completed form to the MBA by June 1, 2006.



By Susan E. Watts, Kennedy Watts et al and Court Liaison Committee member.

Judicial Vacancy

Judge David Gernant resigned his circuit court position and became a Senior Judge on March 31, 2006. Judge Gernant will continue to sit in Multnomah County as a senior judge until his replacement is in office. Five lawyers have filed for his open position. They are Lane Borg, Julia Philbrook, Cheryl Albrecht, Kathleen Payne and Trung Tu. The League of Women Voters held a Candidates Forum on April 17. The election will be held on May 16.

Courthouse Update

The Multnomah County Commissioners approved a resolution March 23 directing Doug Butler, head of the county’s facilities, to identify and acquire a site for a new downtown courthouse within one year. The ideal site would be near the Justice Center and in the area often referred to as “Government Square.” Two sites the County is

presently interested in are Two Main Place and the Lotus Block.

On March 30, the Multnomah County Commissioners approved a second resolution directing the county to identify and acquire a site for an east county courthouse. This will be a smaller project, and money has already been earmarked from the sale of land in east county. However, there is still an on-going debate among the commissioners and the chair as to whether this will be a courthouse facility only, or a larger justice facility to include space for the sheriff’s law enforcement and support functions relocated from the current Hansen Building offices and perhaps other county offices.

100th Anniversary Celebration

Invitations to the MBA’s 100th Anniversary Celebration on May 13 have been sent to all MBA

members. Tickets are limited and are selling quickly, so send in your ticket request if you wish to participate in this gala event. Visit www.mbabar.org for details.

Judges’ Brown Bag Session

Judge Christopher Marshall will host another judges’ brown bag session on May 25, beginning at noon, in courtroom 708. The fall brown bag was well received by those who attended. The spring session should be equally informative.

Judge Nelson’s Investiture

The investiture for Judge Adrienne Nelson was held at Portland State University on March 23. Many public figures, lawyers and community members attended, including Governor Kulongoski.

Visit from Uzbekistan

The Tashkent Legal Aid Society is one of the few law firms in Uzbekistan that is willing to take on high-profile human rights cases. Ergashev is one of the firm’s best attorneys, gaining notoriety for his defense work in several high profile cases. A former prosecutor, he knows the system extremely well and represents his clients in a sober and professional manner.



L to R: Nancy Bergeson, Federal Public Defender
Nancie Potter, MBA Treasurer, Foster Pepper Tooze
Joel Arellano, U of O Class of 2008
Alisher Ergashev, Defense Attorney, Tashkent Legal Aid Society
Vladimir Motalygo, US Interpreter

MBA Equality Committee Panel Meets with Jefferson Students

By Keith Garza, Tri-Met and MBA Equality Committee member.

In February, with a book of American historical documents on the line, two classes of senior government classes at Jefferson High School ventured guesses as to which Founding Father is credited with saying that “we are a nation of laws, not men.” After offering a few of the usual suspects – Madison and Franklin – one student answered the challenging question matter-of-factly: “John Adams.” And away the book went.

So began a panel discussion about careers in the law, sponsored by the MBA Equality Committee. About 50 students attended the February 8 presentation, with Equality Committee member Keith Garza peppering the panel of three lawyers with questions about their backgrounds, practice areas and likes and dislikes about life in the law. The panelists were Steven Powers, an Assistant Attorney General with the Department of Justice’s Appellate Division; Jana Toran, the Director of Legal Services for TriMet; and Professor Robert Miller of Lewis & Clark Law School.

The divergent backgrounds and careers of the panelists drove



Professor Robert Miller responds to a question from a student at Jefferson High School during a recent presentation on legal careers sponsored by MBA’s Equality Committee. To Miller’s right are fellow panelists Steven Powers and Jana Toran.

home to the students the fact that, whatever their experiences and circumstances, opportunities for a career in or relating to the law abound. Professor Miller, for example, did not graduate from law school until his forties. Toran left Portland to attend law school in Houston. And, Powers was able to share his experiences working for both the executive and judicial branches of Oregon’s government. The presentation was part of the Equality Committee’s continuing effort to bring practicing lawyers into student populations that traditionally are later under-represented in the legal community with the hope that

more of those students will direct themselves in their studies toward future legal careers.

The presentation ended as it began, by giving away another book, this one a collection of lawyer jokes and witticisms to the student who asked the best question. There were, however, two students who claimed entitlement to the text. The panel, feigning an inability to dispense solomonic justice, put to the students the manner for resolving the dispute. Their response: paper, scissors, rock – best two out of three.

Multnomah Bar Foundation Update

The Multnomah Bar Foundation was formed last year as a charitable and educational nonprofit, 501(c) (3) to receive donations for the MBA 100th Anniversary Community Gift Fund, which is dedicated to promoting civics education and participation. So far, 23 firms, 31 individuals, plus the YLS and MBA have made significant contributions. Thirty-one more members made donations through the dues check-off opportunity. The mission of the foundation is to “promote community understanding and access to the justice system.”



Jeffrey S. Matthews

Board members include Jeffrey S. Matthews, President, Sylvia E. Stevens, Vice President, David A. Ernst, Secretary/Treasurer, Robert J. Neuberger, Immediate Past President. Directors include Ruth A. Beyer, Catherine Brinkman, Michael



Classroom Law Project participants learn and share their experience. Volunteers are needed to work with the expanded program supported by the Multnomah Bar Foundation. Contact the CLP for specifics.

A. Greene, Lynn Nagasako, Hon. Adrienne Nelson, Robert D. Newell, Katherine O’Neil. Penny Serrurier of Stoel Rives generously devoted many hours of time, effort and expertise to complete incorporation and IRS applications and continues to provide counsel.

Strategic plans are underway for fundraising, increasing visibility and obtaining outside grants to compliment the Foundation’s work.

First MBA 100th Anniversary Community Gift Fund Grant

The Foundation has chosen the Classroom Law Project’s “We the People” program for its first grant. The program has been awarded \$25,000 to expand into

four new schools for the next school year. Attorney volunteers, who will work with students at Parkrose and Franklin high schools and two middle schools that feed into them, are needed to help make the program successful. Curriculum materials focus on landmark US Supreme Court cases, the constitutional convention, responsibilities of US citizens and the philosophers Locke and Montesquieu.

Please contact Marilyn Cover or Emily Kropf at Classroom Law Project for more details and if you would like to volunteer, office@classroomlaw.org or 503.224.4424.

MBA Past Presidents Meet

The annual MBA Past Presidents’ Social was held recently at The Hotel Vintage Plaza. It was a great time for everyone to catch up with each other and reminisce.



Peter Glade, MBA President-Elect, Susan Hammer, MBA President (1987-88) and Kelly Hagan, MBA President



Past Presidents Sylvia Stevens (2004-05), Albert Menshe (1997-98), Lynn Nagasako, (1995-96) and Monte Bricker (1993-94)



Past Presidents Michael Greene (2001-02) and Ruth Beyer (2000-01)

Judicial Brown-Bag Set for May 25

Join Judges Christopher Marshall, John Wittmayer and others in courtroom 708 on Thursday, May 25 for a brown bag lunch and roundtable discussion regarding current courthouse practice and procedures. This is an opportunity for participants to ask questions they may have regarding Multnomah County practice. Bring your lunch (courtroom rules prohibiting food in the courtroom have been suspended).

The Ebb and Flow of Balance

By Paul Burton, *Vision Mechanix*.

One recurring theme new attorneys face is balancing the demands of their careers with those of their personal lives. These are often juxtaposed against each other, leaving one a Hobson's choice.

Because each situation is unique, it is cavalier to suggest a list of pre-packaged solutions. Instead, we'll frame an alternative conceptual paradigm and provide some day-to-day coping methods within this new context.

Paradigm at Issue

Though this may be obvious to many of you, the premise of balance is too simplistic to describe a professional lifestyle in the third millennium. That is, to balance something, pros and cons must be determined. Good must be offset against bad, and rarely is work categorized as good.

And that's the rub. Work shouldn't have to be bad. In fact, given the amount of effort that it takes to develop a professional career, work should be a positive factor whenever possible.

Moreover, as your career continues to develop, what is important to you professionally and personally will change. Therefore, you will constantly be reassessing what a balanced lifestyle means. Thus, the work versus personal dichotomy never ceases.

The paradigm is simply inadequate.

And a River Runs Through it

Now consider a flowing river. Its rate depends on gradient, its current on topography. The steeper the hill or narrower the path, the faster the river flows. The larger the rocks or more ragged the riverbed,

the choppiest the water. Wide, slow areas are tranquil. Steep, boulder-strewn stretches are a cacophony of sound and water.

Life flows in much the same way. There are periods of high activity, as well as miles of reflective opportunity, and who knows what awaits us around the next bend.

Navigating this constantly changing environment requires some forethought and perspective management. Life is a long-term proposition and proper alignment should always be a primary objective. Several factors play into managing your alignment, including your familial situation, your career goals, your client and work load and any civic and other non-professional obligations you have undertaken. If you focus on where you want to be 100 yards down stream and initiate the steps you need to align yourself with that goal, you will find greater satisfaction in your life.

Fine Tuning

Staying attuned to your immediate situation always facilitates obtaining longer term objectives. Here are several ways to maintain satisfaction on a day-to-day basis.

Mandatory Personal Time

The very first thing that gets lost in our hectic worlds is time for ourselves. This is not necessarily time to ourselves; rather it's time for ourselves. To do whatever you choose. Start small – during one hour every week, do something you want to do. Spend it alone, spend it with your spouse or your child or children, spend it with a friend, even spend it with man's best friend. Don't give that hour away. If you find you need more, schedule another hour in and so on until you

find the right mix. You'll likely be more productive during your other hours knowing that your personal one is coming soon.

Manage Your Technology

Don't let technology dictate your time. If you don't know how to use it effectively and efficiently, then make time to learn how. Every hour you spend learning technology will return several fold to you when utilizing it. Similarly, if you're a whiz at but overwhelmed with technology, remember the single most important fact about any modern technology – the OFF button.

Quiet Time

Remember nap time in pre-school? This is probably the single greatest self-help tool ever invented. Whether you nap, meditate or just sit quietly for a few minutes, find a solitary place (and many places will do) and take a quick 10-minute break. Close your eyes, let the stresses of the day wash out of you, relax and re-energize. Then get on with it.

Define Your Space

Experts disagree about whether it's better to segregate your professional and personal lives or integrate them. Try one method, but do it intentionally. Drive your lifestyle, don't let others or circumstance drive it for you. At least if you're at the helm you can steer the ship.

Throughout your professional career, you will be pressed to make time allocation decisions. The frantic pace of the world is not likely to slow any time soon, so never forget that career/personal satisfaction is an important objective. Implement some simple processes to protect yours!

Gaining Practical Legal Experience Through Pro Bono Work

By James McCurdy, Lindsay Hart et al and YLS Pro Bono Committee member.

Discussions of pro bono work often revolve around the need to provide representation to unrepresented and under-represented populations and to provide equal access to the legal system. A more holistic view of this work, however, should couple those moral principles with the pragmatic aspects of pro bono work. Due to the level of responsibility it involves, the practice provides important opportunities for young attorneys to sharpen their skills and judgment early in their careers.

Pro bono work provides an "outstanding opportunity for new attorneys not only to get involved but also to receive invaluable training opportunities in an area of law in which they hope to practice," says Raylyna

Peterson, a sole practitioner whose practice focuses on general civil law. Raylyna has been working with the Bankruptcy Clinic since 2004 and she has been continually impressed by the "high level of practical training that the volunteers receive and the access to practical skills and judges that the clinic provides."

For young attorneys interested in getting courtroom experience, pro bono work is likely to get you in front of a jury much earlier in your career than would otherwise be possible. Amanda Gamblin, an attorney at Schwabe, Williamson & Wyatt, is a perfect example. In 2005, she volunteered at Schwabe's Pro Bono Legal Clinic and was assigned a client who was facing eviction, a case Amanda ended up arguing before

a jury and winning. Although the case required her to work longer hours than usual she would not hesitate to do it again. "It was a wonderful experience and I realize that taking this case through trial was a unique opportunity and one that not many young civil attorneys have the chance to do." In addition to the courtroom experience she gained, Amanda realizes that her willingness to extend herself and take on the extra work sent her firm the signal that "I am willing, and able, to take on new and challenging tasks."

Without a doubt, pro bono work offers young attorneys experiences that can be used to prepare for the practice of law. "Representing clients at hearings for the Domestic Violence Project



On March 23, the MBA YLS held its March Madness Drop-in Social at The Slow Bar. All who attended had great time watching the games and catching up with their peers.



Kimberlee Stafford, Anna Sortun, Zach Fruchtengarten, John Belknap, Andrew Schpak, Jenni Marsh and Robin Wolfe at the March 23 Drop-in Social

Join the MBA YLS on May 10 for a Drop-in Social with PICA

On May 10 at 5:30, the MBA YLS will hold a Drop-in Social with the Portland Institute for Contemporary Art (PICA). This will be a casual get-together and an opportunity to meet other young lawyers. In addition, this unique event will include members of PICA who will have additional information about the organization and their Time-Based Art Festival. The event will be held on the 6th Floor of the Wieden and Kennedy Building (224 NW 13th), which includes a nice indoor area as well as a very large deck. Appetizers will be served.

So come out, hope for sunshine, and find out more about PICA while also re-connecting with other young lawyers. We'll see you there!

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Arbitrator Training Deadline Nears

By Richard Dobbins, Dobbins McCurdy & Yu.

In May 2005, the Multnomah County Circuit Court, based on a recommendation of the Multnomah County Arbitration Commission, implemented a rule requiring those who serve on the Multnomah County arbitrators' list to participate in periodic training on all aspects of the arbitration process. The rule requires that all arbitrators currently on the list and those seeking to be added to the list complete at least two hours of training no later than August 1, 2006. Attorneys who have not completed the training or comparable substitute training by that date will be removed from the list.

Two CLE programs, sponsored by the MBA, occurred in 2005 and were well received. However, Judge Edward Jones, a commission member,

reports that only 125-150 of the approximate 600 attorneys currently on the list attended. The commission and the court urge current members on the list and those seeking to be on the list to complete the training by the August deadline. Members of the YLS are particularly encouraged to become certified.

The final round of MBA CLEs is scheduled for May 24 and June 12, from 3-5 p.m. at the Standard Insurance Building, Auditorium, Concourse Level, 900 SW 5th Ave in Portland. Each program will be moderated by commission member Eric Neiman. Panel members will include Judge Jones and experienced arbitrators K. William Gibson and Nancie Potter. Course materials will include a set of forms relating to the selection of the arbitrator, postponements and the award. An audio tape or CD

ROM of the CLE will be available from the MBA for those unable to attend.

The panel will seek input of those attending as to how to make the arbitration process more effective. For example, consideration is being given to extending the time period within which to complete arbitration from 49 to 90 days.

The panel will also address Justice Carson's July 2005 order adopting qualification rules for court connected mediators. The mediation rules which became effective August 1, 2005 set forth the qualifications for persons holding themselves out as mediators. Attorneys who do not have the certification required by Justice Carson's order will not be listed as mediators.

PRO BONO 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 in Oregon* handbook, available at www.mbabar.org/docs/ProBonoGuide.pdf.

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The Corner Office

Continued from p. 6

What should Steve do? Should he permit his clients to sign? Should he call Bruce?

Suppose that his clients are insistent that he NOT call Bruce?

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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Panel members will travel throughout Oregon and Southwest Washington

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