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1906

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March 2008 Volume 54, Number 3



Mentoring: It's More Important Now Than Ever

By Thom Brown, MBA President.

One of the things I get to do as MBA President is attend a lot of MBA functions. Recently, the function was the kick off for this year's MBA mentor program. Sixty or so "older attorneys" gathered to meet 60 or so "new attorneys" at the

Hotel Monaco. During the course of the function, mentors and mentees socialized, heard from Carl Neil, recipient of the MBA's Professionalism Award in 2007, and then paired and sat together to plan the details of their relationship over the year. For most, that relationship will likely turn out to involve frequent meetings and many shared activities. For others, the relationship might involve a few meetings and activities. For all, though, the relationship will hopefully involve the mentor helping the mentee with learning local legal rules and local practice culture, creating networking opportunities and finding his or her way through some of the inevitable professional and ethical challenges new lawyers face. And, who knows, maybe the mentee can help the mentor with grasping better technology and work-life balance. Whatever the relationship is, the MBA's experience over the last 15 years shows that the relationship has long-term value and benefit to both mentor and mentee.

I've been fortunate to have had a number of mentors in the last 30 years. In law school, I clerked for Irving Steinbock, a circuit court judge. He was a kind, caring, compassionate person with great common sense and a wonderful judicial temperament. He showed me that those traits not only made an excellent judge, but an excellent lawyer as well. After law school, I clerked for Bill Richardson, a court of appeals judge (who, after I worked for him, became the court's third chief judge). He taught me how to think and write like an appellate lawyer, how to work with colleagues to come to decisions on tough legal issues, and how to be a quiet, yet effective, leader. And since coming to my firm in 1981, I've had the chance to learn from many excellent attorneys, including Randall Kester, Wally Sweek and Frank Lagesen. All of them taught me things that have proved very instrumental in the success of my career as an appellate lawyer, as my firm's managing partner for almost 14 years and the personal and professional value of professionalism and participation in professional associations and activities.

Today, younger lawyers more actively seek out mentoring than when I began practice. Indeed, the MBA's Bridging the Gap Taskforce recently learned that mentoring ranks very high as a requirement for satisfaction for younger lawyers. Unfortunately, the pace and demands of private practice today seem to leave less and less time for older lawyers to provide adequate in-firm mentoring for younger lawyers. And, at least in my experience, older lawyers often don't understand the importance of mentoring to newer lawyers and don't have (or take the time to learn) good mentoring skills. Thus, the need and demand is going up, but more and more, the needs and demands are not being adequately met, at least in the traditional ways within law firms.

Moreover, younger lawyers – about 800 new attorneys are admitted in Oregon now each year – end up working on their own or in small groups often comprised mostly of peers. They lack, then, the kind of

"layered associations" that have them work with older lawyers, from whom they can learn how to practice law well.

The MBA's mentoring program plays an important role in filling the mentoring need and gap. I encourage you to join it next year. You will make a real difference in the life and future of a young lawyer. But there are other mentoring programs. The OSB also has a program. Law firms do, too, of course. And our local judges are exploring ways in which they might be able to be more involved mentors.

All of these initiatives are great, but they can be even greater with more participation by committed, engaged mentors. And each of us older lawyers can do more, I'm sure, to give our time (within our firm, the MBA, the OSB and elsewhere) to mentor. Doing so is not only very personally rewarding but, in a significant way, ensures that future Oregon lawyers have the chance to learn the traits, skills and values that we older ones were fortunate to learn from our mentors. And that's important because the future of our profession – and the health and well-being of those in it – will be much better if there's a robust commitment to mentoring by all lawyers, young and old.

New Lawyers Meet Their Mentors

New lawyers had a chance to meet and chat with their mentors during the MBA's Mentor-Mentee Kickoff on January 14. This year, there are about 60 mentor-mentee duos in the program, designed to assist young lawyers during their first year in the workforce by pairing them with a seasoned lawyer.



Thom Brown (2nd from right) and Todd Cleek (far right) and Mentees



Janie Kim and Tamara Russell

MBA CLE

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

March

Tuesday, March 11
Annual Family Law Update
Judge Nan Waller
Thomas Bittner
Gary Zimmer

Tuesday, March 18
2008 Estate Planning Update
Scott Howard
Joshua Husbands

Wednesday, March 19
Multnomah County Presiding Court Update
Judge Jean Maurer

Thursday, March 20
Enforcing Judgments in Family Law Cases
Mark Kramer
Jeffrey Renshaw

April

Thursday, April 10
Insurance Coverage in Civil Disputes
Bill Earle
Jim McDermott

Wednesday, April 23
Wage and Hour Class Actions in Oregon
Carol Bernick
David Sugerman

Thursday, April 24
Annual Probate Update
Judge Katherine Tennyson
Helga Barnes
Tim McNeil

May

Thursday, May 1
Settlement Conference and Mediation Advocacy
Judge Kristena LaMar
Sam Imperati

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CALENDAR

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

March

4
Tuesday, MBA Board meeting

Tuesday, CEJ Annual Luncheon at The Governor Hotel
Visit www.cej-oregon.org for details.

10
Monday, April *Multnomah* Lawyer deadline

11
Tuesday, YLS Board meeting

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

14
Friday, OWLS Awards Dinner at The Governor Hotel
Visit www.oregonwomenlawyers.org for details.

18
Tuesday, MBA CLE Estate Planning Update
See insert or register at www.mbabar.org.

19
Wednesday, MBA CLE Multnomah County Presiding Court Update
See insert or register at www.mbabar.org.

20
Thursday, MBA CLE – Enforcing Family Law Judgments
See insert or register at www.mbabar.org.

25
Tuesday, YLS Drop-in Social at Thirsty Lion
See p. 10 for details.

April

1
Tuesday, MBA Board meeting

Tuesday, YLS Practical Skills CLE Seminar Series begins
See insert to register.

8
Tuesday, YLS Board meeting

10
Thursday, May *Multnomah* Lawyer deadline

Thursday, MBA CLE – Insurance Coverage in Civil Disputes
See insert or register at www.mbabar.org.

Thursday, FBA Annual Judges Appreciation Dinner at The Governor Hotel
See p. 4 for details.

15
Tuesday, Pro Bono Fair at The Governor Hotel
See p. 11 for details.

21 through May 9
Monday-Friday, CourtCare Fundraising Campaign

23
Wednesday, MBF Board meeting

Wednesday, MBA CLE Wage and Hour
See insert or register at www.mbabar.org.

24
Thursday, MBA CLE Annual Probate Update
See insert or register at www.mbabar.org.

Thursday, YLS Drop-in Social with Judges
See p. 10 for details.

29
Tuesday, YOUthFILM Project Screening at Hollywood Theatre
See p. 10 for details.

30
Wednesday, MBA Board Election ballots due to MBA office



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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Location, Location, Location: Whose Law Applies in Cross-Border Practice?



Over the past few years, lawyers in the Northwest have seen tremendous changes in their ability to practice across state lines. Oregon, Washington and Idaho (and beyond) have had reciprocal admission with each other since 2002. All three Northwest states also adopted very similar versions of the new temporary multijurisdictional practice rule, RPC 5.5, in, respectively, 2004 for Idaho, 2005 for Oregon and 2006 for Washington. Although Oregon's version was originally adopted with a "sunset" provision, the Supreme Court made RPC 5.5 permanent last fall.

With the increase in cross-border practice, Northwest lawyers practicing temporarily in other jurisdictions increasingly face the question: Whose law applies to their cross-border practice? Again, all three Northwest states adopted very similar rules on both regulatory authority and choice-of-law when they updated their respective Rules of Professional Conduct (RPCs).

For regulatory discipline, RPC 8.5(a) as adopted in Oregon, Washington and Idaho, addresses both lawyers who are admitted in those states and lawyers who are temporarily practicing in those states under RPC 5.5's multijurisdictional practice authorization. With the former, a lawyer is subject to the regulatory jurisdiction in each state in which the lawyer is licensed no matter where any alleged misconduct occurs. In other words, an Oregon lawyer who commits professional misconduct in Washington is still subject to the regulatory authority of the Oregon Supreme Court (either directly or through reciprocal discipline). With the latter, a lawyer who is temporarily practicing in a jurisdiction under its multijurisdictional practice rule is also subject to the regulatory authority of that jurisdiction. In other words, the Oregon lawyer in the previous example would also be subject to discipline by the Washington Supreme Court.

For choice-of-law, RPC 8.5(b), as adopted in Oregon, Washington and Idaho, takes a twofold approach. For conduct that occurs in the course of a case pending before a "tribunal" (either judicial or administrative) the RPCs for the jurisdiction where the tribunal sits will control unless the rules of the particular tribunal provide otherwise. This approach is consistent with state and federal court rules in Oregon and elsewhere that generally apply the RPCs of the forum to litigation

pending before the particular court involved (such as Oregon federal district Local Rule 83.7). For non-litigation matters, the versions of RPC 8.5(b) adopted in all three states hold that the rules of the jurisdiction with the "predominant effect" apply:

"[F]or any other conduct [i.e., beyond litigation], the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur."

This is the same general approach used to assess the controlling law for lawyer civil liability outside the disciplinary context under the Oregon Court of Appeals' decision last year in *Spirit Partners, LP v. Stoel Rives LLP*, 212 Or App 295, 157 P3d 1194 (2007).

Comment 6 to the Washington and Idaho versions of RPC 8.5 expresses the hope that regulatory authorities in multiple states that are investigating a lawyer for a single matter will apply a similar choice-of-law analysis to avoid inconsistent results. Oregon did not adopt comments when it moved to the RPCs in 2005. In practice, however, jurisdictions vary greatly on whether they coordinate either (or both) choice-of-law and substantive analysis when running parallel investigations (or whether they will defer to a "lead" jurisdiction). This lack of coordination can often leave lawyers responding in more than one jurisdiction at the same time for the same conduct even if it occurred in a single state's court or the "predominant effect" was in a single state.

Does choice-of-law analysis matter now that all three Northwest states use professional rules that are patterned on the ABA's Model Rules of Professional Conduct? The short answer is yes. Although the recent amendments in all three states have brought their respective RPCs into generally close alignment, important differences remain that can have significant impact on lawyers and law firms for regulatory discipline, disqualification and civil liability.

ANNOUNCEMENTS

Update Your Practice Areas Online
MBA members may now select as many areas of practice as they would like to include in their online directory listing. If you have not already selected your practice areas, please update your listing now by visiting www.mbabar.org. The old practice areas will be removed soon.

MBA Bike Rides
MBA noon time rides – short, fast rides with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or meet at the start.

St. Andrew Legal Clinic (SALC) Board Competes in Fundraising
SALC's Board of Directors raised more than \$100,000 to support legal services for low-income families. Working in teams, board members held a friendly competition to see who could raise the most money. Winning team members JoAnn Reynolds of Yates, Matthews & Eaton; Ruth Pekelder of Gevurtz, Menashe, Larson & Howe; and Jack Lundeen, Attorney at Law, raised a collective \$25,900.

U of O School of Law Offers New Statement of Completion in Sustainable Business Law
The law school is preparing its students interested in developing

a specialty in the field of sustainable business law with a newly approved Statement of Completion in Sustainable Business Law. The new statement responds to growing opportunities for lawyers versed in both the needs of new and emerging businesses and the regulation of energy and the environment.

Federal Bar Association (FBA) Schedules Judges Appreciation Dinner
The 2008 Annual Judges Appreciation Dinner is scheduled for April 10, in the grand ballroom of The Governor Hotel. The no-host reception begins at 5 p.m. The FBA will pay tribute to the Hon. Mary M. Schroeder for her previous service as the Chief Judge of the Ninth Circuit Court of Appeals and welcomes the Hon. John Acosta as the new Magistrate Judge in Portland.

Invitation for Public Comment on the Reappointment of US Bankruptcy Judge Frank Alley
The current term of the Hon. Frank Alley, US Bankruptcy Judge for the District of Oregon, is due to expire in January 2009. The US Court of Appeals for the Ninth Circuit is considering the reappointment of the judge to a new term of office of 14 years. The court invites comments from the bar and public about Judge Alley's performance as a bankruptcy judge. Duties of a bankruptcy judge are specified by statute, and include

conducting hearings and trials, making final determinations, and entering orders and judgments.

Anonymous responses will not be accepted. However, respondents who do not wish to have their identities disclosed should so indicate in the response, and such requests will be honored.

Submit comments no later than March 17 to: Office of the Circuit Executive, PO Box 193939, San Francisco CA 94119, Attn: Reappointment of US Bankruptcy Judge Alley; fax 415.355.8901.

Association of Legal Administrators
The Association of Legal Administrators, Oregon Chapter, celebrated 30 years of success in providing networking and educational programs to legal professionals.

An evening gala at the Benson Hotel, with 100 guests, raised \$4,425 from the event's raffle and silent auction for St. Andrew Legal Clinic, a nonprofit providing legal services to low-income families.

Oregon Criminal Defense Association Seminar
A Juvenile Law Seminar will be held Friday and Saturday, April 18-19 at Agate Beach Inn, Newport. For programs or further information, visit www.ocdla.org.

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To take two common examples, one affecting individual lawyers and one affecting firms:

- Both Oregon and Washington have similar versions of RPC 4.2, the "no contact" rule. But, they apply RPC 4.2 differently in the entity context. In Oregon, under OSB Formal Ethics Opinion 2005-80, employees for whom a party seeks to hold the employer liable generally fall within the scope of the employer's corporate representation and are "off limits" to opposing counsel. In Washington, under *Wright v. Group Health Hospital*, 103 Wn2d 192, 691 P2d 564 (1984), however, the prohibition only applies in this situation if the employee qualifies as a "speaking agent" for the employer under the Washington evidence rules, which effectively

makes more employees potentially "fair game" to opposing counsel. An Oregon lawyer appearing in a Washington Superior Court proceeding, therefore, might permissibly contact a corporate employee directly even though that contact would be prohibited if it occurred in an Oregon Circuit Court case.

- Both Oregon and Idaho have similar versions of RPC 1.10, the "firm unit" rule. But, Oregon RPC 1.10 includes a lateral-hire screening mechanism that does not impute a lateral-hire's conflict to the firm as a whole if the new lawyer is "screened off" from the work that otherwise would create a disqualifying conflict. When Idaho updated its RPCs in 2004, it did not adopt a similar screening mechanism. Law firms with Portland and Boise offices,

therefore, may face starkly contrasting results if they are considering hiring a lawyer who is on the other side of them in a long-running case or business matter, depending on where the new-hire is located.

In an era when reciprocal licensing and the new multijurisdictional practice rule make cross-border practice much more common, RPC 8.5's choice-of-law rule offers a very practical counterpart to determining which state's law of lawyering will apply.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and Mark@frllp.com.

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Jannel Covault, *Moment's Rest*, 2004

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AROUND THE BAR



Jim Mountain

HARRANG LONG ET AL

Jim Mountain, a shareholder, was elected to the American Academy of Appellate Lawyers. The organization was founded in 1990 to recognize outstanding appellate lawyers and promote the improvement of appellate advocacy and the administration of the appellate courts. Academy membership is open only to a person who possesses a reputation of recognized distinction as an appellate lawyer.

K&L GATES

Phil Bender transferred from the firm's Portland office to its Pittsburgh office. He continues to represent clients throughout the Pacific Northwest on complex environmental matters, including permitting, regulatory compliance, agency enforcement actions and litigation.



Don Burns



Tom Sand

MILLER NASH

Don Burns is the firm's new managing partner. This change in leadership allows former managing partner **Tom Sand** to return to full-time litigation law practice.

FOSTER PEPPER

Governor Ted Kulongoski reappointed partner **Bill Hutchison** to a second four-year term on The Board of Forestry. Hutchison's practice emphasizes cooperative, corporate, real property and environmental law.



Barnes Ellis



Greg Corbin

STOEL RIVES

Partner **Barnes Ellis** was honored with the Judge Learned Hand Award for Lifetime Achievement by the Oregon American Jewish Committee in November.

Ellis, whose career with the firm has spanned more than 40 years, was on the committee that established the Metropolitan Public Defender Services Inc. (MPD). Ellis then served as chair of MPD's board of trustees for more than 30 years. He has been chair of the Oregon Public Defense Services Commission, which oversees the funding of indigent defense services statewide, since its creation in 2001.

A new principal, **Greg Corbin**, is a member of the resources, development and environment practice group and of the forest industries and renewable energy teams. He represents private and public interests on regulatory strategies, major project permitting and natural resource-related transactions.



Jessica Hamilton



Justin Leonard

BALL JANIK

Jessica Hamilton and **Justin Leonard**, both associates, were selected as Fellows for the 2008 OSB Leadership College.

Hamilton, who has been with the firm since 2003, practices in the areas of commercial litigation, real property litigation and environmental law. She serves on the Board of Directors for Portland Center Stage and is on the Advisory Board for the Lawyer's Campaign for Equal Justice.

Leonard focuses his practice in the areas of bankruptcy and creditors' rights, with particular expertise in insurance insolvency and insurance guaranty association law. Leonard serves on the Board of Directors for the MBA YLS, is a Governor-appointed public/consumer commissioner on the Oregon Health Resources Commission and is an elected representative of the OSB House of Delegates. He also volunteers his time with the Legal Aid Services of Oregon Pro Bono Bankruptcy Clinic.



Milton Stewart

DAVIS WRIGHT TREMAINE

Firm partner **Milton Stewart** has returned from his one-year leave of absence spent as special counsel to AIG Corporation in New York, one of the 20 largest corporations in the world.

Stewart has been with the firm since 1986, serving most recently as the business development and client relations partner. His 36-year legal practice has focused on corporate finance transactions. In addition to returning to his transactional practice, Stewart will return to his position as client relations partner.

VANGELISTI KOCHER

The firm has been recognized as a "Recycle at Work Business" by the Washington County Cooperative Recycling Program. Vangelisti Kocher was the first business in Washington County to be recognized with this distinction. Vangelisti Kocher focuses its practice on plaintiff's personal injury matters.

GARVEY SCHUBERT BARER

The 2008 management committee members have been selected for the Portland office. Attorneys **Stephen Connolly**, **Christine Brown** and **Eric Lindenaue** will continue to serve on the management committee. Connolly will also serve as managing director of the office. In addition, attorneys **Robert**

Weaver and **Larry Brant** were elected to serve on the firm-wide Executive Committee for 2008.

Weaver remains chair of the firm's Portland litigation group, and his practice centers on business litigation and white-collar criminal defense. Brant will continue to serve as the chair of the tax and benefits group, and his practice focuses on taxation, business, and mergers and acquisitions. Connolly's practice focuses on business, mergers and acquisitions, and real estate. Brown's practice focuses on estate planning and probate. Lindenaue's practice concentrates on litigation, healthcare and employment.

SCHWABE WILLIAMSON & WYATT

David Bartz, president of the firm, was honored by two organizations. He received the World Arts Foundation's Lifetime Achievement Award and Oregon Women Lawyers (OWLS) 2008 Judge Mercedes Deiz Award for his promotion of minorities in the legal profession.

In recognition of Bartz's commitment and dedication to equality and diversity within the practice of law, a scholarship has been established by a client in his honor at the U of O's Law School.

Bartz focuses his practice on environmental and construction litigation.



Thomas Sondag



Carolyn Vogt

LANE POWELL

Shareholder **Thomas Sondag** was elected to the American Academy of Appellate Lawyers.

Sondag is chair of the firm's appellate practice group and a member of the firm's board of directors. He has been lead counsel on more than 200 appeals in state and federal courts, and is a member of the Executive Committee of the OSB Appellate Practice Section.

Carolyn Vogt joined the firm as a shareholder in the corporate finance and securities practice group.



Mitch Baker

FISHER & PHILLIPS

Mitch Baker became a partner in the firm's Portland office. Baker has defended employers in labor and employment law matters in both state and federal courts, as well as before state and federal agencies.

COONEY & CREW

Robert Sinnott joined the firm as an associate, where he will focus his practice on healthcare law and litigation.



Carol Emory

EMORY LAW GROUP

Carol Emory was named a Fellow of the American Bar Foundation, an honorary organization of attorneys, judges and law professors whose careers demonstrate outstanding dedication to community welfare and the legal profession's highest principles. Membership is limited to one third of one percent of licensed lawyers in each jurisdiction. She is a founder of Emory Trademark & IP Protection Office in Beijing and the Legal Counsel International global attorney alliance. She is the regional coordinator for the Federal Bar Association's Export Legal Assistance Network and serves on the boards of Portland State University's Canadian Studies Program and the University of Oregon's Law and Entrepreneurship Center.

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

Tips from the Bench

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

Conferring on civil motions

On February 6, the Court of Appeals issued its opinion in *Anderson v. State Farm*. Before you file your next civil motion, you should read *Anderson* and UTCR 5.010.

In *Anderson* the defendant filed a motion to dismiss. In its motion, the defendant certified it has made a good faith effort to confer with the plaintiff. The defendant later conceded that "a form certificate was inadvertently included" in its motion. However, the defendant argued to the trial judge that its failure to comply with the rule was not material, because to do so would have been futile. The trial court granted the defendant's motion. The Court of Appeals reversed the trial court, ruling that "compliance with UTCR 5.010(3) was mandatory and that, pursuant to UTCR 5.010(1), the defendant's noncompliance precluded the allowance of its ORCP 21 A(3) motion to dismiss." The Court of Appeals ruled that futility does not excuse noncompliance with the rule.

And just a reminder: The "standard form" certificate states that a good faith effort to confer is not sufficient. UTCR 5.010(3) says the certificate will be sufficient if it "states that the parties conferred or contains facts showing good cause for not conferring." You need to certify that you actually did confer, or include in the certificate facts that permit the judge to conclude that you made a good faith effort to confer (e.g. you called the other lawyer, left a message about the purpose of your call, and he/she did not return your call).



Settlement negotiations/ judicial settlement conferences in civil cases

There has been much discussion lately among the judges in Multnomah County about whether they should continue to conduct judicial settlement conferences in civil cases. There are strong feelings on both sides of this issue. Judge LaMar continues to do this on a full-time basis, as she has done for a number of years. Other judges also make time available to the bar for this service. Some judges who have conducted these conferences in the past have stopped doing so.

But much has changed over the years. The February issue of the *Multnomah Lawyer* advertises the names of 38 lawyers and retired judges who offer these services. We have all seen the tremendous increase in the availability of these services the past 15 or so years. And over the years we have noticed a shift in the way lawyers approach settlement negotiations: lawyers frequently do not talk to each other about settlements outside of a mediation or a judicial settlement conference.

MBA Board of directors slate announced

The MBA Nominating Committee announces its slate of new directors for the term of July 1, 2008 – June 30, 2012. A profile of each candidate and a voting ballot will be included in the April *Multnomah Lawyer*.

Steven K. Blackhurst, Ater Wynne
Keith M. Garza, Attorney at Law
Susan D. Marmaduke, Harrang Long Gary Rudnick

The MBA Board elected the following officers for the July 1, 2008 – June 30, 2009 term.

President-Elect:

Leslie N. Kay, Legal Aid Services of Oregon

Secretary:

Michelle S. Druce, Wilshire Credit Corporation

Treasurer:

Lisa M. Umscheid, Ball Janik

Michael Dwyer, of Dwyer & Miller, will succeed Thom Brown as President.

Watch for ballots in the April issue of the *Multnomah Lawyer*. Ballots are due April 30.



By Dana Scheele, Hoffman Hart & Wagner and Court Liaison Committee member.

Presiding Judge's Report

Several judges relocated to other courtrooms and chambers in the Courthouse the weekend of January 4. These relocations occur as judges retire and the remaining judges, according to years of seniority on the circuit court bench, are eligible to move up to more desirable courtrooms in the Courthouse. The new lineup of judges and courtroom locations is on the court Web site.

Judge Cinniger retired and Judge Bushong was sworn in on February 4. Judge Bushong will spend two weeks at the Justice Center doing felony and misdemeanor arraignments and will then move into the misdemeanor jury trial rotation. Judge Bushong's background is as a chief trial counsel with the Department of Justice; his experience with complex civil litigation will be helpful to the court. But, first, he will spend some time presiding over proceedings in criminal actions.

Civil Motion Fees

As mentioned in the last meeting, pursuant to his authority under section 29, chapter 860 Oregon Laws 2007 (ORS 21.125), Chief Justice Paul De Muniz signed an *Order to Adopt Statutory Fees for Certain Civil Motions Effective February 1, 2008*, on December 18, 2007. In response to input from OSB President Rick Yugler, raising concerns about the motion fee implementation process, the Chief Justice then signed a second order, on January 18, 2008, to delay the implementation of statutory fees on certain civil motions to April 1, 2008. The interim time is to permit additional notice and gives an opportunity for interested parties to weigh in on the implementation. The Court Liaison Committee was asked to provide input to the MBA on this issue.

David Meyer said that the Chief Justice's order will not impact cases in arbitration or mediation. He pointed out that ORS 21.125 exempts motions made in cases assigned by the court to arbitration or mediation while the case is pending before the arbitrator or mediator, although litigants in arbitration or mediation do have to pay the arbitrator's or mediator's hourly fee or apply for a fee deferral or waiver.

Doug Bray observed that the legislature often expects the Judicial Department to generate

additional sources of revenue if the Department requests general funds for the authorization of additional judges or staff. Such an expectation may have led to the enactment of ORS 21.125. The revenue received through the civil motion fees will go into the general fund to support the operation of state government, including the Judicial Department. In the final analysis, the Chief Justice acted within his authority, pursuant to ORS 21.125, in implementing the fees on civil motions.

Doug also explained that in most fee statutes the language is stated clearly that a paper cannot be filed unless the fee requirement is satisfied. In the motion fee statute, there is no such language. Without this express direction, which the legislature could have added to ORS 21.125 or the Chief Justice could have put in his order, but did not, the clerk's office will still file motions and responses even if they are filed without payment of the motion fees that the filing party is required to pay. The party not paying the fee required by ORS 21.125 may face other challenges for failure to pay the fee, but a return of the document unfiled by the clerk's office will not occur absent language directing that result.

A committee member made the following recommendations: 1) since Oregon is generally an inexpensive place to litigate cases, the judicial department should impose higher filing fees which would incorporate expected motion fees instead of implementing individual motion fees; 2) for litigants requesting fee deferrals or waivers, the process should be simplified whereby they need only submit a one-page declaration stating the basis for the request, which would automatically provide the litigant with a fee deferral or waiver and; 3) ideally, law firms could set up accounts at the courthouse to draw upon for filing fees instead of having to mail in checks

There is a new statewide fee deferral and waiver process, which the Chief Justice implemented with his *Order Establishing Standards and Practices for Fee Waivers and Deferrals in Civil Actions and Proceedings Pursuant to ORS 21.682*, signed on December 20, 2007. In the Multnomah County Courthouse, by order of the presiding judge, clerks review all requests for fee waivers and deferrals. A litigant

requesting a fee deferral or waiver has to fill out an affidavit regarding her or his income level and provide proof. If a waiver or deferral is denied at the administrative level, a party has the right to ask a judge to review the decision.

Web Site Update

Carol Bernick reported that the MBA Web site content for the court pages has expanded as a result of comments by the sub-committee working on it. More judicial profiles and several links have been added, including one to "Tips from the Bench" column authored by Judge John Wittmayer. The consensus of the committee is that the MBA court page is improving.

Courthouse Relocation Update

County Commissioners have not had any board agenda items regarding the new courthouse since its last meeting. The Board has been focused on the Chair's Public Safety Plan and on jail management issues most recently, and is moving into preparation of the 2010 Budget. The new courthouse in Gresham should be completed within the next 24-30 months. The land has been purchased and a design team is being assembled to begin the architectural work.

CourtCare Update

Judy Edwards reported that the CourtCare campaign raised \$126,000 in 2007 and the 2008 campaign is gearing up. A discussion was held about the potential need for a CourtCare facility at the new Gresham courthouse and one at the Juvenile Justice Center. Doug said that, currently, there is no space at the Juvenile Justice Center for a CourtCare facility in the courtroom area of the building.

Bar Liaison Reports

Clackamas County
Kathryn Villa-Smith reported that there are new officers for the Clackamas County Bar. There is also a new procedure in place for attorneys to obtain cards from the Sheriff's office on Sunnyside and 82nd to be able to enter the back door of the courthouse and avoid the long lines in the front of the courthouse. Kathryn also reported that there are two new pro-tem judges doing the family law docket on Friday mornings; she is one of them. There are three major events

Continued on page 11

Profile - Michael C. Zusman Multnomah County Circuit Court Referee

By Kathryn L. Villa-Smith, Gevurtz Menashe et al and Court Liaison Committee member.

On June 18, 2007, **Michael Zusman** accepted the position as a Circuit Court Pro Tem Judge – Hearings Referee. He brings to the bench years of experience as a commercial litigator and business attorney.

Zusman grew up in Southwest Portland. He is a third-generation Portland resident, graduating from Wilson High School in 1976 and attending Claremont Men's College in California, where he majored in political science. During summers, he worked at his father's scrap metal business, Zusman Metals Company, where he had the opportunity to interact with a broad cross-section of Portland's community.

After graduating from college, he spent six months traveling. He describes himself as a travel fanatic and feels it is essential to see the world. As a high school

student, he was influenced by James Michener's novel *The Drifters*. His favorite travel destinations have been Australia, Thailand and Hong Kong. He loves the interaction with people, different cultures and, of course, the food.

Zusman lights up when describing his 10-year-old daughter, who participates in a local school's Spanish Immersion Program. He strongly supports bilingual education.

After law school, Zusman spent approximately 12 years working for the Grenley Rotenberg firm. He practiced in federal and state court, specializing in securities litigation. Early in his career he learned to be a disciplined writer. In 1997, he and Michael Evans formed a partnership, Evans & Zusman. He notes that his partner got to be first on the letterhead; however, he got the larger office. He practiced with Evans

and Zusman for approximately 10 years, doing commercial litigation and transactions. His legal work evolved into a niche practice, representing restaurant workers, drafting buy-sell agreements, and negotiating leases and asset purchase agreements. He has also served on the Board of Directors for Food Front and the Portland Farmers Market.

Zusman not only loves food, he is an excellent cook, specializing in bread baking. He has an interest in the deli, Kenny & Zukes, on 11th and Stark. The delicatessen uses his bread and bagel recipes. When he was serving on the Board of Directors for the Portland Farmers Market, he sold his bagels at Saturday Portland Farmers Market at Portland State University and proudly reports he made a profit. On his first day at the market, he made 30 dozen bagels. He sold out in one hour.

Zusman continues to use his writing skills as a food writer for *The Oregonian*. You will find his writing in the dining pages of "Arts and Entertainment," including the "Platter" feature, where he describes news tidbits about local restaurants in Portland. He wrote an article on artisan chocolate that was featured on the cover of "FoodDay." He is happy to describe his favorite restaurants.

Approximately six years ago, Zusman volunteered to be a pro tem judge, hearing summary judgment motions in Multnomah County. He loved the work and had the opportunity to preside over two civil jury trials. The first was a medical malpractice case and the second a battery case against a patron at a bar. He also heard a construction case, which is still on appeal. Although he



Judge Michael Zusman

was required to take a significant pay cut, he finds he loves going to work everyday. As a referee, he hears FED cases, small claim cases, stalking cases and traffic cases. Zusman loves the legal process and the day-to-day interaction with the public. He feels very strongly that each individual should be treated with respect. He speaks highly of the staff at the Multnomah County Courthouse.

Zusman states he was never a "serious student," however, his intellect and passion for the law becomes quickly apparent. Multnomah County is indeed fortunate that Judge Zusman has chosen to serve on the bench.

How to Get the Most from Your Bank

By Elise Bouneff, Vice President, Professional Banking Officer, Bank of the Cascades.

Attorneys provide valuable counsel to clients on critical business decisions. So where do attorneys go when they need expert advice? It is often the firm's banker who steps in to advise lawyers on issues related to both the firm's and the client's business. Banks have a lot to offer to today's law firms - by asking yourself a few simple questions, you can determine if your firm is getting the most from your bank.

1. Does your bank understand your firm and business goals?

Whether you have an established practice or new partnership, your bank should understand your business plan. It should also understand the special services or sub-specialties of your firm. The more conversant it is with your firm's practice areas, the better it can serve your special needs.

2. Does your bank understand the specialized financial needs of law firms?

Your banker should be knowledgeable about the legal profession and state bar rules to ensure you receive sound banking advice. Your bank

must understand the process of establishing special accounts unique to lawyers and be able to counsel you on client-trust account policies, uncollected funds, holds on funds, IOLTA accounts and more. It should be able to help you establish these accounts as needed on short notice with reasonable or no fees.

3. Does your bank want your business?

Your banker shouldn't be waiting for you to call; he or she should be checking in with you regularly. Your banker should have genuine interest in your firm's needs and issues, and should be ready to discuss your challenges and offer solutions.

4. Does your bank create networking opportunities for you?

If your bank understands your business and specialties, it can be thinking of ways to help you build your practice or streamline operations by creating networking opportunities, offering introductions to potential clients and suggesting new business ideas.

5. Is your bank local, regional or national?

Bank mergers and acquisitions can transform a once-local community bank into the local outpost of a national enterprise. You should know who is in charge, where the headquarters are located, and how decision-making is organized to determine if this bank fits your needs.

6. Does your bank share your firm's values?

Whether your bank is active in the community, in legal organizations, or is a public supporter of a specific community cause or issue, its public activities and decisions can have an impact on you. Choose a bank that reflects the values of your firm and can enhance your own reputation.

In today's world, banking is an integral part of your firm's business. Work with a bank that customizes solutions based on your needs rather than one that tries to fit you into a one-size-fits-all process. Take the time to evaluate your current banking relationship to be sure you're getting the most from what can be a successful and rewarding partnership.

MBA WinterSmash 2008 Sponsors

Thank you to the sponsors who helped make the Sixth Annual WinterSmash a success.



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MBA Group Insurance Update

By David Dean, MBA Group Insurance Chair.

The group health insurance program is one of the MBA's most widely used member benefits. Unlike most "one size fits all" group insurance policies in which all of a law firm's employees are limited to a single insurance plan chosen by the law firm, the MBA health insurance program allows employees in a participating firm to select their own plan from a menu of different plans with two insurers – Kaiser and Providence. The plans range from moderately priced, traditional EPO plans to benefit-rich but more expensive PPO plans, to low-cost, high-

deductible tax advantaged Health Savings Account Plans. All plans have no limitations for pre-existing conditions and are guaranteed issue – no one can be turned down for coverage. Employers also have the option of adding dental and vision coverage.

The MBA plans are easy to administer. The employer receives one invoice and writes only one check for the monthly premium regardless of the number of plans employees select. In addition, Northwest Employee Benefits provides all COBRA administration.

United Health Care (UHC) has chosen to withdraw from the MBA group insurance program. Providence has agreed to add an additional plan option, which will provide members who formerly had UHC access to the limited number of providers that are part of Providence's wide provider network at benefit levels similar to those under the most widely used UHC policy previously offered by the MBA.

One of the most frequently overlooked areas of insurance coverage is long-term care insurance. While everyone purchases fire insurance for their home and automobile liability insurance, relatively few people carry long-term care insurance. However, while the risk that your home would burn down is only 1 in 1,200 and the risk that you will have a serious automobile accident is 1 in 240, the risk that you will require long-term care at some time in your lifetime is

Continued on page 11

NEW FEATURES ADDED TO MBA COURTS PAGE

The MBA has expanded its Courts page to include more judge profiles. By clicking on "profiles," you'll find articles on Multnomah County Circuit Court judges, Appellate Court judges and Oregon Supreme Court Justices.

The Courts page also includes a link to archives of the popular "Tips from the Bench" column, along with the latest news on the filing fee schedule and the newly adopted SLRs.

To learn more, visit www.mbabar.org/courts.htm.

YLS Board of Directors Slate Announced

The YLS Executive Committee announces the slate of new directors for the term of July 1, 2008 – June 30, 2011.

Lainie Dillon, Stoel Rives
Jennifer Durham, Bodyfelt
 Mount Stroup & Chamberlain
Christiane Fife, Schwabe
 Williamson & Wyatt

Kimberly Griffith, Judicial Clerk,
 Malcolm F. Marsh

Watch for ballots in the April issue of the *Multnomah Lawyer*.

The YLS Board elected the following officers for one-year terms:

President: **Andrew Schpak**,
 Barran Liebman
 President-Elect: **Justin Leonard**,
 Ball Janik
 Treasurer: **Klarice Benn**, Abbott
 & Paris
 Secretary: **Katie Lane**, Portland
 General Electric

YOUTHFILM Project 2008 Kicks Off

By Judith Parker, Schwabe Williamson & Wyatt and YOUTHFILM Project Committee.

On January 6, the Interstate Cultural Center in North Portland was filled with the sounds of over 80 students, parents and MBA YLS members. The YOUTHFILM Project hosted the first annual kick-off party to inaugurate its 2008 project, a student filmmaking contest presented by the YLS. It gives students in kindergarten through the 12th grade an opportunity to express themselves creatively, learn more about the rule of law, win prizes and have fun.

Last year more than 30 students submitted movies on the topic

of democracy. The movies were screened at the historic Hollywood Theatre in conjunction with the ABA's Law Week. Prizes were awarded by Oregon Supreme Court Chief Justice Paul De Muniz and the movies were screened in front of eager moviegoers.

This year's YOUTHFILM Project movies will be screened for the public at the Hollywood Theatre in Northeast Portland on April 29 at 6:30 p.m. during Community Law Week 2008. Once again, prizes will be awarded by honorary guests including Chief Justice De Muniz.



Prizes include iPod Shuffles, gift iTunes cards, movie tickets and others. All entries will be entered into a drawing for a video iPod and additional prizes.

Mark your calendars now for this exciting event!

Meet Kaori Tanabe

By Will Glasson, Scarborough, McNeese, O'Brien & Kilkenny and YLS Pro Bono Committee.

Many readers will recognize her name. But from where? Did your paths cross at an MBA, OSB or Oregon Minority Lawyers member event? A meet and greet at Lewis & Clark Law School? Or did you celebrate one of her many wins as a University of Portland tennis star? Regardless of how you meet her, Kaori Tanabe's outgoing personality, energy, and extensive volunteering experiences surely make an impression.

A Tokyo native and graduate of Lewis & Clark Law School, Kaori's commitment to lowering the barriers to competent legal services is clear. Her pro bono resume includes volunteering for the Catholic Charities Immigration Services and Oregon Law Center, where Kaori used her fluent Spanish-language skills to provide family law services to immigrants.

Kaori explained that her pro bono activities are not driven only by altruism. As a new attorney, volunteering with

organizations has also allowed her to learn about different areas of law. "I think volunteering creates a win-win situation. People in need get helped, and I get to learn new things, feel good about myself and get involved with our community," she said.

Kaori's community service activities extend beyond her training as an attorney and advocate. She has volunteered at the Portland Food Bank and recently completed a training program qualifying her to provide community mediation services throughout Portland's diverse neighborhoods.

Kaori is currently an attorney at St. Andrew Legal Clinic's (SALC) Washington County office. St. Andrew provides family law services to low-income individuals and families that do not qualify for Legal Aid assistance. Previously, Kaori interned with the Multnomah County Attorneys' Office and the Mentor Graphics Corporation.



Kaori Tanabe and Mami Fujii at a recent YLS event

YLS Friends of Trees

The YLS Service to the Public Committee hopes you'll get involved in the community this spring season with Friends of Trees. We have arranged for a tree planting at Stella Olsen Park in Sherwood on March 29 from 9 a.m. to 1 p.m.

Tree planting in our urban forest benefits everyone by slowing climate change, cleaning our air and water, reducing storm water runoff, lowering heating and cooling costs, providing

habitat for wildlife, and making our cities pleasant and beautiful places to live, work and play. But our urban forest requires active public stewardship to flourish. We hope you'll join us in planting and mulching native trees and shrubs. Friends of Trees will provide gloves, tools and guidance.

To volunteer or for more information, contact Anil Karia at anil.karia@tonkon.com.



YLS Law Student Open House

The YLS Membership Committee organized an Open House for law students which took place on February 8. The event was hosted by Tonkon Torp, and law students from all three of Oregon's law schools attended the event. Law students discussed their goals and the practice of law with members of several YLS committees.



Lewis & Clark Law School students Robin McGinnis, Natasha Richmond and Thomas Richmond at February 8 social

celebrate march madness
 meet and mingle with other
 young Lawyers

You are invited to the YLS drop-in social to celebrate March Madness and watch some NCAA men's basketball tournament semifinal games. Appetizers will be provided courtesy of the YLS Membership Committee. Join us on Tuesday, March 25 from 5:30-7:30 p.m. at the Thirsty Lion Pub, located at 71 SW 2nd Ave.

Annual YLS Judges Social & CourtCare Fundraiser

The YLS will hold its annual Judges Social and CourtCare fundraiser on April 24. The social will be held in the Clubroom at the Red Star Tavern and Roast House from 5:30-7 p.m. and is generously sponsored by Schwabe Williamson & Wyatt. Please join fellow young lawyers and federal and state court judges for this casual opportunity to network and socialize.

The YLS will also sponsor a raffle drawing at the event to benefit CourtCare at the Multnomah County Courthouse. CourtCare is a free, on-site drop-in childcare center for families who must bring children with them to the courthouse. Raffle tickets will be on sale at the event. They can also be purchased beforehand at the MBA office or from YLS Membership Committee members. You do not need to be present at the drawing to win.

What: YLS Judges Social & CourtCare Fundraiser
Where: Red Star Tavern and Roast House, 503 SW Alder St., Portland, OR 97204
When: Thursday, April 24 from 5:30 - 7 p.m.

Please mark the date and spread the word. See you there!

MULTNOMAH BAR ASSOCIATION

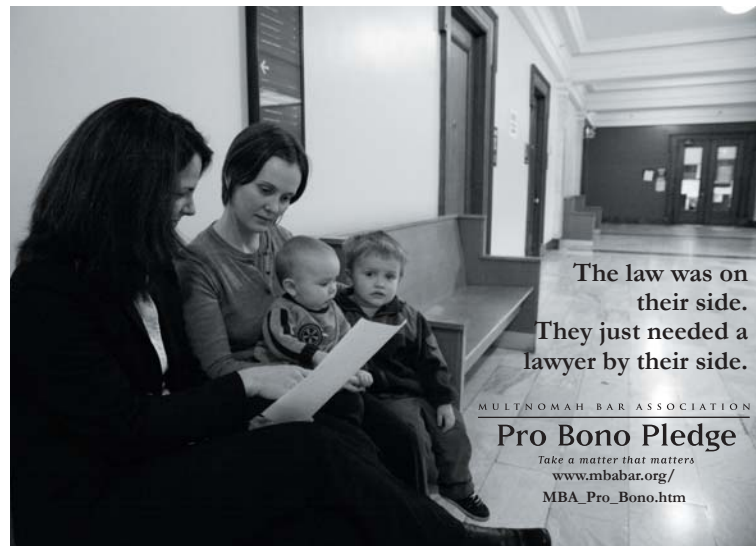
Pro Bono Pledge

Take a matter that matters

The following firms have signed the 2008 Pro Bono Pledge for law firms. Sign the pledge at www.mbabar.org/MBA_Pro_Bono.htm by March 31 to have your name added to the list of "charter members."

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 Todd Trierweiler & Associates
 Tonkon Torp LLP
 Vangelisti Kocher LLP
 Zipse, Elkins & Mitchell



4th Annual Pro Bono Fair

Tuesday, April 15, 2008

The Governor Hotel
 614 SW 11th Avenue
 Portland

Two FREE CLE Programs
 2:30-5:00 p.m.

Planning for Incapacity - Disability Trusts,
 Guardianships/Conservatorships,
 and Power of Attorney

Pro Bono Opportunities Information Fair
 5:00-5:45 p.m.

Pro Bono Challenge Awards Ceremony
 5:45 p.m.

All events are free of charge.
 To register for CLE Programs, contact Shelley Dobson at
sdobson@osbar.org or (503) 431-6404.

www.osbar.org/probono/probonofair.html

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Group Insurance

Continued from page 9

1 in 2. Long-term care can cost between \$50,000 and \$100,000 per year and is increasing in cost at the rate of 4% to 7% each year. While Medicare and traditional insurance policies provide for some coverage for short-term skilled and intermediate care in a nursing home or other similar facility, they don't provide for custodial care, intermediate care lasting longer than 60 days or skilled care lasting longer than 100 days. The result is a serious gap in a person's insurance coverage that, if not addressed, can have a significant impact on a person's retirement savings. To fill that gap, the MBA offers an excellent long-term care insurance policy through Metropolitan Life Insurance and John Hancock Life Insurance. The policies are individually rated, so the younger you are at the time you purchase the policy, the lower your rate. MBA members and their employees, as well as their parents, grandparents and adult children, are all eligible to participate in this program.

If you have questions about the MBA health insurance program, please contact our plan administrator, NW Employee Benefits, at 503.284.1331 or check its Web site at www.nwebi.com. If you have any suggestions for the MBA's health insurance plans, contact the MBA's Member services Director, Guy Walden, at 503.222.3275.

News from Court

Continued from page 8

that the Clackamas County Bar organizes every year: the appellate judges' dinner in October, an annual CLE in November and a dinner to roast a prominent member of the Clackamas County Bar.

Clark County

Brett Bender reported that the Clark County Bar puts on a golf tournament and bike ride every year. Brett recommended the Washington Courts Web site as a resource; he said it is filled with helpful information.

County Coordination

Mike Lewton reported that the county coordination committee is meeting soon and he will provide us with an update at the next meeting.

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, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic 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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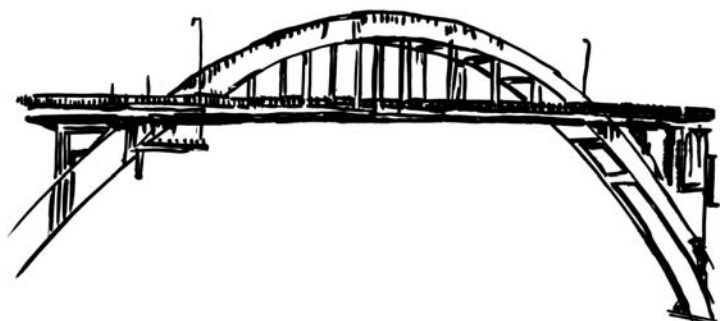
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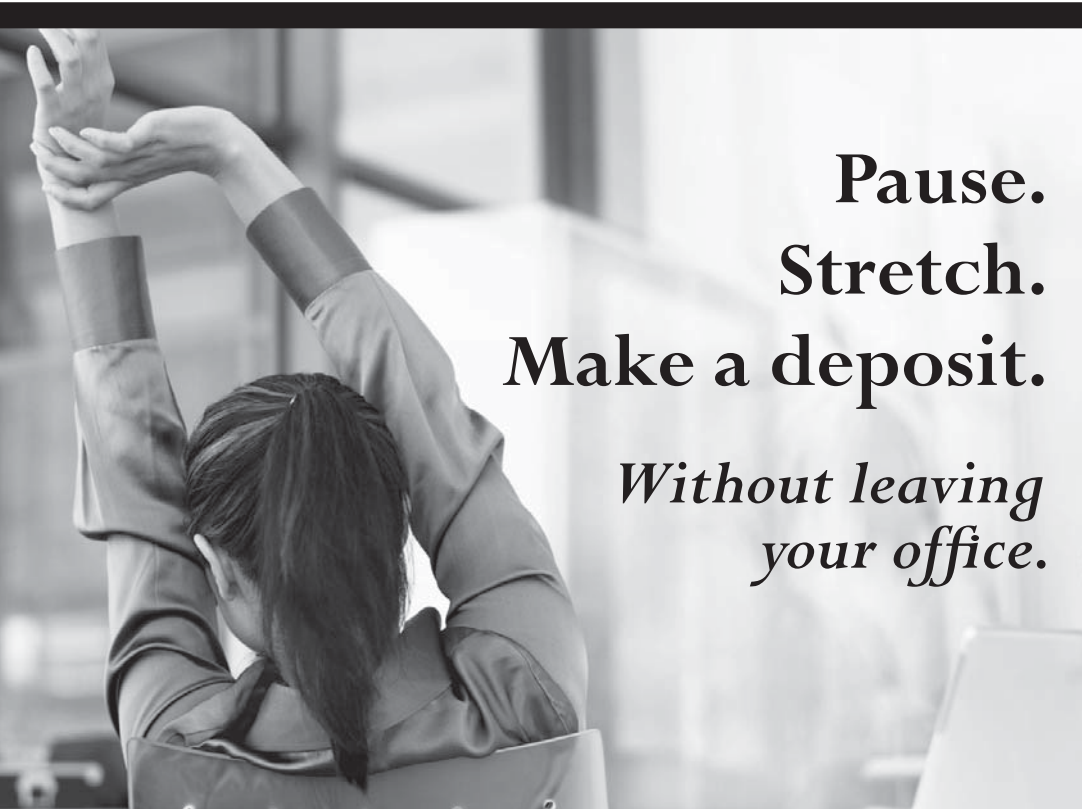
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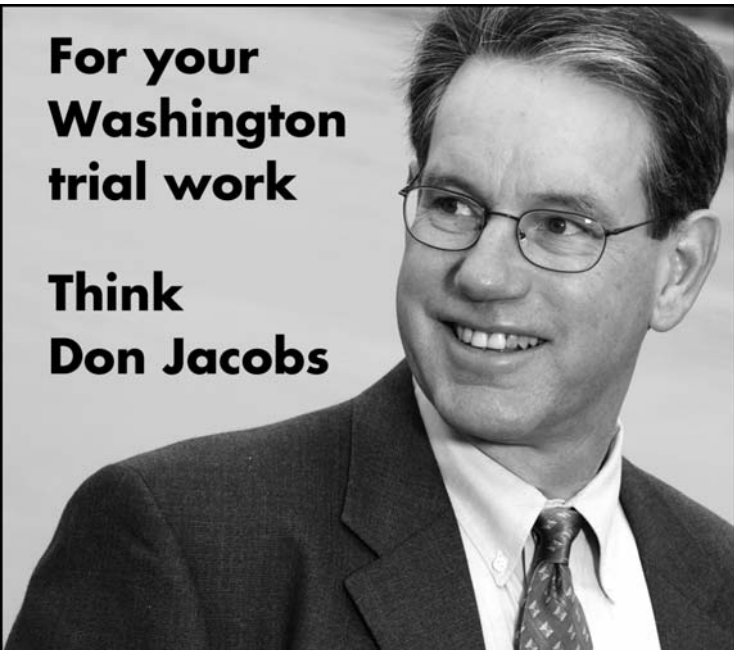
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If you are involved with, or know of any nonprofit organizations whose mission is to educate voters and potential voters about the judicial system – and possible threats to the rule of law – we want to hear from you.

Many nonprofit organizations in the Pacific Northwest have expressed interest in starting or expanding civics education programs, but they haven't been able to do so because of a lack of funding.

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With generous contributions from community members and law firms, the MBF has provided more than \$40,000 in grant funding for the purpose of increasing civics education and participation.

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