



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. November 2008 Volume 54, Number 10



On Their Shoulders

By Michael Dwyer, President, Multnomah Bar Association.

Gratitude is a marvelous invention. It cuts across any temptation to descend into self-pity and pessimism. One simply cannot be grateful and whiny at the same time. How fortunate we are that once each year in November we are able to

pause, gather with friends and family, and offer our gratitude.

With so much to feel grateful for, come Thanksgiving we might forget to say thank you to people all around us who make our jobs as judges, lawyers and mediators easier, and our lives better. I thought this month we might take a minute to express our gratitude to those many, many people on whose shoulders we stand, by highlighting five of them.

* * *

Let's start with Multnomah County's version of Atlas and Hesperaestus, one holding our courthouse upon his shoulders, the other forging the parts that keep it running. Their mortal names are Mike Crank and Royal Forbes.

As the property manager for Multnomah County Facilities & Property Management, Mike Crank has the responsibility for keeping our antiquated courthouse open. He has worked for the county for 10 years, and two years ago requested assignment to the courthouse. Mike credits the talented and skilled county tradesmen who do double-duty to keep the courthouse running.

Royal Forbes, the Supervisor of Engineering and a county employee for 22 years, often works deep in the courthouse basement. He and his engineering team must manufacture replacement parts for our ancient courthouse when they break, because obsolete parts can no longer be found or purchased anywhere else. This invisible but essential team is responsible not only for courthouse anatomy, but also its physiology, as they keep the courthouse's metabolism humming (heating, cooling, electrical, air flow and plumbing systems) and enable us to pursue justice in its courtrooms.

* * *

On the fourth floor of the courthouse, Jacque Jurkins' passion for helping people research the law burns as brightly today as it did in 1964 when she began working in our law library. With degrees in law and library science, and decades of experience locating cases, statutes, and buried legislative histories as if she were on a treasure hunt, Jacque is herself the repository of considerable legal knowledge. This enables her to assist judges, clerks and lawyers who ask her help in framing and executing their law searches.

Her compassion for pro se litigants who come to the law library with hard-luck stories, but not the means to pay a lawyer, drives her to assist them. "I love the people," she says.

While the library was the first in the state to offer automated research, Jacque speaks knowingly of the limitations of computerized legal research. She is concerned that because search engines are friendlier to facts than theories, tomorrow's young

lawyers may lack the context to appreciate the arc of a body of law, such as the evolution of products liability law, which could have a negative impact on the further development of the law.

She is also concerned about the attempts to cut library funding at a time when the cost of legal publications is skyrocketing. The library's share of litigation filing fees, its sole source of funding, has been cut several times in recent years and is threatened again.

But it is not in Jacque's nature to see the world's blight. "Have you ever stopped and looked at how beautiful our courthouse is?" she says. "The marble, the carvings, the banister, it's really magnificent."

* * *

Not far from the courthouse, Randall Kester recently began to pack his personal belongings and close his office at Cosgrave Vergeer and Kester. Once Oregon's youngest Supreme Court Justice, he closes his career, at age 93, as Oregon's most senior lawyer. Randall has practiced for more than 66 years, served as our MBA President, and in 1991 won the MBA's Professionalism Award.

Biographical details, however, cannot begin to convey Randall's wisdom, dignity, quiet strength, and benevolence. Many lawyers have remarked that Randall is the lawyer they would most like to emulate. Not surprisingly, his acceptance remarks upon receiving the Professionalism Award contained not a word about himself, only a long list of thanks to people who had helped him along the path.

Randall possesses a wonderful gift for making people feel cared for. I worked for four years at Randall's firm many years ago, and whenever we would bump into each other at bar social events, he always asked about my family, going far beyond mere pleasantries. Upon learning that I had become president of the MBA, he took the time to handwrite a warm note of congratulations.

* * *

Finally, high above the courthouse this Thanksgiving flies the Irish soul of Michael Sweeney, who died in October. In 1989, he began his work with the Oregon Attorney Assistance Program and worked for the last 18 years facilitating interventions, organizing support groups, and serving as an alcohol and drug counselor. He also helped establish one of the first lawyer-assistance programs in the country offering a wide range of services such as the "lawyer in transition program."

* * *

Meister Eckhart said, "If the only prayer you said in your whole life was, 'thank you,' that would suffice."

Thank you, Mike and Royal, and your whole team, for keeping our courthouse standing.

Thank you, Jacque, for keeping the lamp of knowledge burning.

Thank you, Randall, for serving as a beacon of light in our profession.

And for you, Michael, our thanks take form in an Irish blessing:

May joy and peace surround you,
Contentment latch your door,
And happiness be with you now,
And bless you evermore.

Happy Thanksgiving to all.

MBA CLE

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

November

Wednesday, November 19 Eliminating Racial Bias in Justice System

Worth three Access to Justice Credits

Justice Edwin Peterson
Khalil Zonoozy

December

Tuesday, December 2 Dealing with Difficult Clients and Opposing Counsel

Worth two Ethics Credits

Roy Pulvers
Rob Shlachter

Wednesday, December 3 Ethics and a Business Sale How to advise your client who's ready to sell

Worth two Ethics Credits

Dean Alterman
Allison Rhodes

Tuesday, December 9 Developments in Employment Law Legislation

Karen O'Connor
Dan Grinfas

Wednesday, December 10 How to Deal with Injuries and Damages Arising from a Motor Vehicle Accident

Tom D'Amore
Mark Olmsted

January

Wednesday, January 21 Scientific Evidence

Linda Eyerman
Jonathan Hoffman

Tuesday, January 27 Navigating the Mortgage Crisis

Kristena Anderson
Keith Karnes
Mark Wada

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Legal Support Salaries Trend Upward New Study Provides Snapshot of Just One Crucial Element of the Hiring Process

By Anneke Haslett and Lauren Harkins of Legal Northwest.

Despite slower economic growth, compensation for legal support professionals rose in the past year. According to Legal Northwest's 2008-2009 *Staff Salary Survey*, average starting salaries for full-time support services, legal secretaries and paralegals all rose, with paralegals experiencing the greatest increase over the previous year.

"Growth in wages indicates persistent demand for highly skilled workers in the legal industry," said Lauren Harkins Niemer, branch manager of Legal Northwest, a staffing agency specializing in the legal industry and the staffing partner of the MBA. "Paralegals, in particular, offer a certain level of technical expertise that commands greater compensation. Starting wages for some paralegals increased upwards of 10 percent in the past year."

Included as an insert in this issue of the *Multnomah Lawyer*, Legal Northwest's annual survey reports starting salary ranges for low, average and high earners. Compared to last year's study, wages increased modestly for less skilled office workers: less experienced support services staff saw no change, while experienced staff saw wages peak at \$40,000 this year, up from \$36,000 last year. Wages for legal

secretaries increased on average; at the high end, however, \$56,000 remained the top earnings. Paralegal wages jumped, ranging from a low of \$49,000 to as high as \$75,000 this year; wages ranged from \$45,500 to \$67,000 the previous year.

The *Staff Salary Survey* provides legal employers – including firms and corporate/in-house legal departments – with an annual snapshot of starting wages. A knowledge of the going wage, however, is only one element in an involved hiring process. For employers who find that internal resources are becoming increasingly scarce for recruiting support staff, staffing agencies can help.

Although numerous staffing agencies offer administrative assistance, working with a company specializing in legal placements can ensure minimal work flow interruption. A law firm's success depends upon the quality of its human resources, and legal placement firms generally maintain their own experienced workforce in law office management and human resource recruitment. By retaining a large and diverse candidate pool, such agencies also have the ability to quickly match a candidate with a client's specific requirements.

Because employers may lack ample time and resources to narrow their field of candidates, they must have confidence in their placement agency's

screening process. Such a process should rigorously assess competency, professionalism and reliability, as well as ensure standard verification of identity and work eligibility. Some agencies administer a variety of written and hands-on skill tests to determine aptitude levels, retaining only the highest-scoring applicants. Furthermore, in-depth interviews and verification of references, and can verify a job seeker's experience, expectations and professionalism.

Finally, while starting wages are important in attracting qualified candidates, today's benefits packages must be competitive. Consider placement agencies that provide a range of valuable benefits, such as paid vacation, holiday pay, retirement plans, insurance, bonuses and scholarships.

A well established legal placement agency can furnish high-quality, cost-effective, confidential and timely staffing services. By connecting employers and job seekers, placement agencies can enable seamless personnel and career transitions.

Legal Northwest fulfills a wide range of temporary and permanent staffing needs, including legal secretaries, paralegals, litigation support clerks, receptionists, file clerks, records management, accounting/finance, technology, library staff, marketing and legal administrators. A portion of all placement fees are returned to the MBA through the Affinity Partnership. For more information, please visit www.legalnorthwest.com.

CALENDAR

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

November

4-21
Tuesday-Friday, RCL Portrait Design Online Directory Photos at MBA
Call RCL at 800.580.5562 to schedule an appointment.

5-7
Wednesday-Friday, OSB PLF Seminar – Learning the Ropes
Visit www.osbplf.org for details.

7
Friday, OADC Seminar at Oregon Convention Center
Visit www.oadc.com for details.

8
Saturday, BOWLIO at Valley Lanes
See Announcements for details.

10
Monday, December
Multnomah Lawyer deadline

12
Wednesday, MBA Board meeting

14
MBA Judicial Brown-Bag at Multnomah County Courthouse
See Announcements for details.

17
Monday, OWLS Awards Nomination deadline
Visit www.oregonwomenlawyers.org for details.

18
Tuesday, YLS Board meeting

19
Wednesday, MBA CLE Access to Justice
See insert or register at www.mbabar.org.

Wednesday, New Admittee Social at Kells
See p. 10 for details.

27-28
Thursday-Friday, Thanksgiving Holiday
MBA closed

December

2
Tuesday, MBA Board meeting

Tuesday, MBA Ethics CLE Difficult Clients and Opposing Counsel
See insert or register at www.mbabar.org.

3
Wednesday, MBA CLE Ethics and Business Sale
See insert or register at www.mbabar.org.

9
Tuesday, MBA CLE Developments in Employment Law and Legislation
See insert or register at www.mbabar.org.

10
Wednesday, January 2009
Multnomah Lawyer deadline

16
Tuesday, YLS Board meeting

17
Wednesday, MBF Board meeting

25-26
Thursday-Friday, Holiday
MBA closed

January 2009

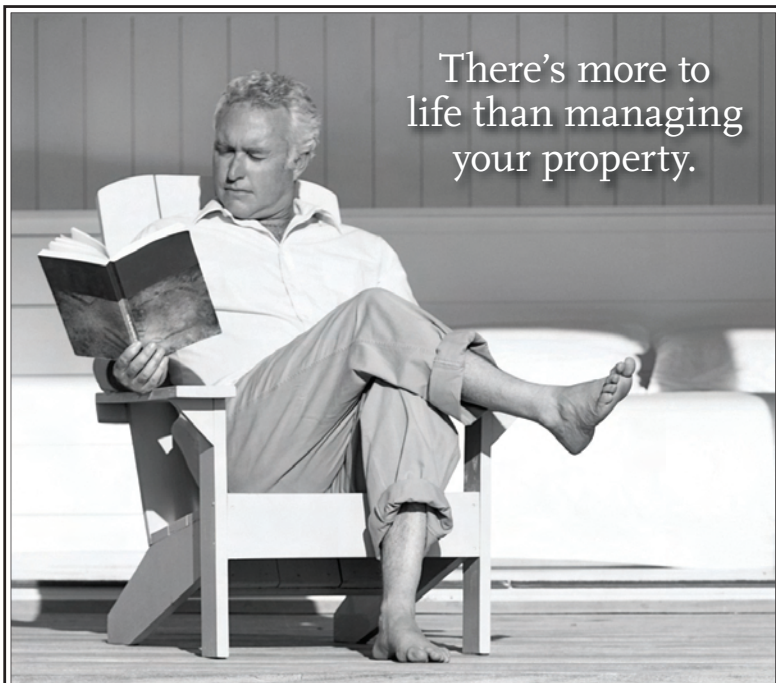
1-2
Thursday-Friday, Holiday
MBA closed

6
Tuesday, MBA Board meeting

9
Friday, February **Multnomah Lawyer deadline**

19
Monday, MLK Jr Day
MBA closed

20
Tuesday, YLS Board meeting



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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Inadvertent Production Revisted (again): New Federal Evidence Rule

When inadvertent production issues surface in civil litigation, they generally fall into three categories.

First, under the Rules of Professional Conduct, is there an ethical duty to notify opposing counsel of the receipt of what appears to be inadvertently produced privileged material?

Second, under the applicable procedural rules, how is possible privilege waiver litigated?

Third, under the relevant evidence code, has privilege been waived by inadvertent production?

All three areas have seen significant developments over the past few years. On the ethical duty to notify, the ABA adopted a new ethics rule in 2002, Model Rule 4.4(b), generally requiring counsel receiving what reasonably appears to be an inadvertently produced confidential document to notify the other side. Oregon followed in 2005 with RPC 4.4(b) paralleling its ABA Model Rule counterpart. Both the ABA in Formal Ethics Opinions 05-437 (2005), 06-440 (2006) and 06-442 (2006) and the OSB in Formal Ethics Opinion 2005-150 (2005) then adopted further guidance on the ethical duty to notify, echoing and amplifying on the text of the new rules. On the procedural front, the federal rules were amended in 2006 to create a specific process under FRCP 26(b)(5)(B) generally prohibiting the recipient from using an inadvertently produced privileged document until the court handling the case has ruled that privilege has been waived. In late September, Congress passed and the President signed legislation creating Federal Rule of Evidence 502, specifically addressing the evidentiary question of whether privilege has been waived through inadvertent production. The new rule, which had been proposed by the Federal Judicial Conference, became effective immediately.

The professional rules, both in Oregon under RPC 4.4(b) and nationally under ABA Model Rule 4.4(b), make plain that whether privilege has been waived is a question of applicable evidence law rather than ethics.



FRE 502 outlines the criteria for waiver in federal proceedings and binds state courts as well if a ruling in a federal case comes first. It applies to both the attorney-client privilege and the work product rule and controls regardless of the basis for federal jurisdiction. FRE 502(b) is framed in the negative and finds that no waiver occurs if:

- “(1) the disclosure is inadvertent;
- “(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- “(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following . . . [FRCP] 26(b)(5)(B).”

Like the 2006 amendment to FRCP 26, FRE 502(e) encourages the parties to proactively agree in advance to procedures for handling inadvertently produced documents.

Both the Senate report accompanying the new rule (S.2450, available at www.senate.gov) and the Judicial Conference's report forwarding the proposal to Congress (available at www.uscourts.gov/rules) note that electronic communications - particularly email - have greatly expanded the scope of discovery across a wide spectrum of cases and that the cost of screening for privilege had increased in tandem. The theory of the new rule is to reduce the cost of discovery by limiting waiver through inadvertent production to situations where the party involved truly did not take reasonable steps to prevent disclosure. How that goal plays out in actual practice remains to be seen.

For lawyers in Oregon's federal court, the practical substance of the new standard is not far from the current court-made one articulated by such leading cases as *In re Sause Brothers Ocean Towing*, 144 FRD 111, 113-15 (D Or 1991) (federal question) and *Tinn v. EMM Labs, Inc.*, 556 F Supp2d 1191, 1198 (D Or 2008), citing *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or 336, 342-43, 838 P2d 1069 (1992) (diversity). Codification of a standard, however, in combination with the adoption of RPC 4.4(b) in 2005 and FRCP

ANNOUNCEMENTS

Online Directory Photos to be Updated

It's been almost two years since member photos were added to the MBA online membership directory. If you missed out two years ago or would like to update your photo, RCL Portrait Design will be back to photograph members for the directory.

Photos will be taken at the MBA office and there is no fee to members. A professional portrait photographer will photograph you and you will be able to view your proofs immediately and select your picture for the directory. You will also have the option of purchasing your portraits for your own use.

Appointments are available from November 4 through November 21. Please call RCL Portrait Design at 800.580.5562 to schedule your appointment.

If you prefer to submit a photo, please email a 143 pixels tall x 107 pixels wide jpeg photo to kathy@mbabar.org.

MBA Judicial Brown-Bag

Please join an informal discussion with Judges Wilson, Wittmayer, Hodson and Bushong about motion practice and discovery on Friday, November 14 at noon at the Multnomah County Courthouse in presiding court, Room 208.

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.

Members Needed Oregon's Sesquicentennial Approaches - Historical Extravaganza Planned

As part of the 150th anniversary year of our state, a Northwest History and Heritage Extravaganza is being planned by

the Oregon Historical Society and Oregon Heritage Commission. The event will be centered in the Portland area from April 15-18, 2009.

The MBA is looking for members who are interested in volunteering to work on historical information and events. If you would like to participate, please contact Carol Hawkins at carol@mbabar.org.

OWLS Invites Nominations for Roberts-Deiz Awards

Oregon Women Lawyers is inviting nominations for the 17th Annual Justice Betty Roberts and Judge Mercedes Deiz Awards. The awards recognize and celebrate the accomplishments of individuals in promoting women and minorities in the legal profession in Oregon. The recipients will be honored at the annual awards dinner on March 13, 2009, at The Governor Hotel in Portland.

Both awards recognize individuals who have made outstanding contributions to promoting women in the legal profession and in the community.

Visit www.oregonwomenlawyers.org for nomination forms and additional information. The deadline for receipt of nominations is November 17.

BOWLIO

The annual networking and fundraising event for the OSB Opportunities for Law in Oregon (OLIO) program, will be held at Valley Lanes in Beaverton, OR, on November 8, from 6-9 p.m.

The cost to attend is \$50 for non-students and \$20 for students. Students: if you need assistance with the admission fee, please contact Cheryl Taylor at ctaylor@osbar.org. Bus transportation will be provided from U of O and Willamette law schools.

There will be contests, prizes, pizza, networking opportunities and (of course) bowling!

For more information contact Cheryl Taylor, ctaylor@osbar.org.

The Oregon Criminal Defense Lawyers Association (OCDLA) Schedules Winter Conference

Oh, the Cases You'll Try!

The upcoming OCDLA Winter Conference, is set for December 5-6 at The Benson Hotel in Portland.

December 5 at 6 p.m., retired Judge Linda Bergman will receive the Ken Morrow Lifetime Achievement Award from OCDLA. The event is open to the public. Tickets start at \$60 and may be purchased by calling 541.686.8716. For details, visit www.ocdla.org.

St. Andrew Legal Clinic Benefits from Wine Tasting & Auction

Leaders in the legal and business communities came together on September 16 to enjoy fine wine and raise over \$100,000 for legal services for low-income families. The Markowitz Herbold Wine Tasting & Auction, held at the University Club in Portland, benefited St. Andrew Legal Clinic (SALC), a nonprofit supporting low-income families in Multnomah, Clackamas, Washington and Columbia Counties. This is the third year the law firm has hosted a wine auction benefiting SALC.

For more information, go to www.salcgroup.org.



Denny Rawlinson and Matt Levin



Pamela and David Markowitz

26(b)(5)(B) in 2006, brings a level of uniformity to questions surrounding inadvertent production in federal civil litigation that this evolving area has not seen before.

Formalizing the rules in this area will also likely highlight a sometimes overlooked aspect of inadvertent production: disqualification risk to the recipient.

Both existing federal (see, e.g., *Richards v. Jain*, 168 F Supp2d 1195 (WD Wash 2001)), and

Oregon (see, e.g., OSB Formal Ethics Op. 2005-150) authority note that if a recipient of inadvertent production simply uses the documents involved without first getting a ruling that privilege has indeed been waived, the recipient is at risk of being disqualified if that lawyer "guessed wrong" and a court later finds that privilege remained intact. In that event, the reasoning is that one side has used the other side's privileged material without permission and there is no other way to "unring the bell" to remedy

that unauthorized knowledge other than disqualification.

Mark Fucile of Fucile & Reising LLP 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.

The Safety and Soundness of Oregon's Community Banks

By Patricia L. Moss, CEO of Bank of the Cascades; President & CEO of Cascade Bancorp.

A year ago, no one would have predicted the significant upheaval experienced by the nation's financial institutions or financial markets this past September. As I write this article in October for the November *Multnomah Lawyer*, a \$700 billion bailout package was just passed by Congress to inject liquidity and restore the flow of credit to businesses and the consumer. While the current economic cycle may take more twists and turns before settling on a path to recovery, the plan should help many banks find relief and help credit markets begin to function.

Over the past several months, depositors have posed tough questions to bankers about the safety and soundness of individual institutions, and the protection of their business and individual accounts. As a partner to the MBA, Bank of the Cascades provides deposit and cash management services for the MBA, and serves as

banking advisors to many MBA members and firms. Please be assured that Bank of the Cascades is safe and secure, profitable and has the resources to meet the needs of our depositors and the communities we serve.

While Oregon's banks are not immune to what's been happening at the national level, and many have been hit particularly hard, there is some good news: community banks remain stable and open for business. In fact, community banks are particularly well suited to help in challenging economic times like these.

1. *Banks have capital reserves.* Banks must have adequate reserves to cover loan losses, but capital is the ultimate cushion against losses that are unexpected. The FDIC rates banks based on their level of capital relative to their risk. A "well-capitalized" rating, such as the rating we hold at Bank of the Cascades, signals financial strength and should offer an extra measure of confidence for customers.

2. *Banking regulations are in place to ensure responsible business practices and strong financial health.*

Banks are regularly examined by on-site independent auditors as well as by state and federal examiners to ensure that deposits are safe and secure. No doubt the dramatic failures of the past year will result in more stringent regulations to protect both banks and depositors even more.

The bailout plan also includes increased FDIC insurance coverage limits for banks. As of October 3, FDIC insurance coverage has been raised to \$250,000 per depositor with the limit increase guaranteed through December 31, 2009. The increased limits are a significant benefit for community banks to help assure customers that their deposits are safe.

3. *Banks are here to meet the needs of their communities.* Core deposits remain the life blood of banking, allowing



community banks to continue to lend needed money that fuels growth in our local markets.

While I wish I could predict when we will return to stable market conditions, I cannot. However, I do believe Oregon's community banks are well positioned to weather this storm, take advantage of future opportunities and provide banking services that will support growth as the Oregon economy becomes fully re-engaged.

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Children's Relief Nursery Cheers Others

By Judy Edwards, MBA Executive Director.

"The best way to cheer yourself is to try to cheer someone else up."

Mark Twain

Mark Twain was right on the mark, just as he was with so many of his quips.

The work we do to help others not only cheers them and us, but gives nourishment to our souls and extra meaning to our lives. It rounds us out as members of the community and the humane race. [intentional spelling]

Here's just one story. An 18-month old child came to the Children's Relief Nursery (CRN) one day, not yet crawling or walking. Poverty and lack of shelter delayed the boy's normal development because he lived in a car with his family all those months. With no place to explore or move around safely, he was severely delayed developmentally. To a casual observer, he may even have seemed to have had mental and physical disabilities.

When the parents learned about the CRN and its program for families at risk and its mission of preventing child abuse and neglect, they were greatly cheered to discover that there were people who cared enough about their situation to help them. The CRN staff engaged the boy in activities in the program's developmental and therapeutic classrooms and provided mental health and speech therapy. Mental health probably doesn't come to mind for most people when they think of an infant or 18-month old. However, we find more and more that poverty and lack of shelter and security traumatize children and they benefit greatly from mental health therapy, even at their youngest stages.

The boy's parents participated in CRN parenting classes and received food as well as clothing for the boy and their other children. CRN staff helped the family access other services available to people of such low economic means.

When the boy graduated from the CRN program at the age of three, he was fully up-to-speed in physical, mental and speech capabilities expected of a child his age. The parents confessed that had it not been for the helping hand provided by the CRN, they likely might have ended up in jail and their children in foster care.

This is but one story and I could tell you many. The families that come to the CRN are ones with whom most of us would never cross paths. They're part of the unseen members of our community and without someone to cheer them and help them, they can become burdens to our community. The annual cost for a child and his or her family to participate in the CRN program is about \$8,000. We know that foster care for one child is about \$15,000; juvenile detention close to \$30,000; and prison upwards of \$40,000 per person.

For me, and many others, we would much rather devote some time and resources to programs like the Children's Relief Nursery, than have to pay for foster care, juvenile detention and prisons.

Cheering children and families at risk more than cheers my family and me. The reward is immeasurable.

Judy was recently elected president of the Children's Relief Nursery and has been a director for four years.



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AROUND THE BAR

GARVEY SCHUBERT BARER
Vincent P. Cacciottoli has joined the firm as an owner in the Portland office and will head the firm's employee benefits and executive compensation practice group.



Jan Kitchel

Fujii focuses her practice in the areas of tax and estate planning. She helps employers develop employee benefit and retirement plans and ensures their compliance with the Employee Retirement Income Security Act. She also assists individuals in estate planning.



John B. Dudrey

BARRAN LIEBMAN LLP
John B. Dudrey has joined the firm, where he will represent management in employment litigation and provide advice in employment law matters.



Mami Fujii

SCHWABE, WILLIAMSON & WYATT
Jan Kitchel, a shareholder in the firm, was recently inducted into the American College of Trial Lawyers.

Kitchel has been with Schwabe for more than 30 years. A member of the firm's litigation department, his practice focuses on personal injury, wrongful death, medical malpractice, insurance coverage, business, probate, securities, commercial litigation and motorcycle accidents.

Mami Fujii, an associate, was recently appointed to the Ambassador Board of Friends of the Children – Portland. The organization is a nonprofit that provides Portland's most at-risk children with long-term mentors. It matches paid and professionally trained mentors to children in the Portland community, selecting kindergartners and guiding them through high school graduation. Once a child is assigned to a mentor, or as Friends of the Children refer to them – a Friend, the child and Friend spend a minimum of 16 hours per month in and out of school together.



Rachel Robinson



Jennifer Oetter

WILLIAMS KASTNER
Rachel Robinson has joined the firm as an associate.

Jennifer Oetter joins the firm as of counsel. She has 12+ years of experience in civil litigation and the representation of hospital and health care professionals. Her practice at Williams Kastner will continue to serve the health care community.



Karen E. Harris

BULLIVANT HOUSER BAILEY
Karen E. Harris has joined the firm as an associate in the Portland office's tax practice group.

Harris focuses on corporate and business entity transactions, ESOPs, equity plans and deferred compensation, ERISA matters, tax-exempt organizations and estate planning, trusts and probates. She also works with Bullivant's sustainability industry group, with emphasis on green tax credits.

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.

FALL CLE classes include specialty CLE credits

Attorneys seeking CLE credit before the end of the year can register to attend MBA CLE classes, or order the audio replay and materials in advance. The fall schedule includes:

Access to Justice (November 19; 3 Access to Justice Credits)

Dealing with Difficult Clients (December 2; 2 Ethics Credits)

Ethics and a Business Sale (December 3; 2 Ethics Credits)

For more information, see the insert in this issue of the Multnomah Lawyer, visit the CLE registration page at www.mbabar.org, or call the MBA at 503.222.3275

Online Directory Photos to be Updated

It's been almost two years since member photos were added to the MBA online membership directory. If you missed out two years ago or would like to update your photo, RCL Portrait Design will be back to photograph members for the directory.

Photos will be taken at the MBA office and there is no fee to members. A professional portrait photographer will photograph you and you will be able to view your proofs immediately and select your picture for the directory. You will also have the option of purchasing your portraits for your own use.

For a professional quality and uniform directory, we recommend the following dress. Women: Suit jacket or solid-colored long sleeved blouse. Men: Dark jacket and tie.

Appointments are available from November 4 through November 21. Please call RCL Portrait Design at 800.580.5562 to schedule your appointment.

If you prefer to submit a photo, please email a 143 pixels tall x 107 pixels wide jpeg photo to kathy@mbabar.org.

The Corner Office

Professionalism means something a bit different to almost every lawyer. The length of the OSB Statement of Professionalism (almost a full single spaced page) attests to the fact that it is a subject with many facets. When we face complex or ethereal topics, there is a temptation for our eyes to glaze over. As in a marriage, concerted effort is required to keep the relationship healthy, even when the subject feels like it should be innate knowledge. If we fail to identify the importance and place of professionalism in our own practice, we risk becoming complacent and the profession as a whole suffers.

I would encourage you to consider how you might engage professionalism aside from simply professionally. There are many opportunities to accomplish this in a structured way. The MBA Professionalism Committee holds lunch panel discussions with Professionalism Award winners and judges in a variety of venues. The committee also regularly conducts outreach to our newest peers through the mentor program and Lewis & Clark Law School. One of the simplest acts to make professionalism a

subject of conversation among your partners and your clients is to prominently display the Statement of Professionalism (available free from the MBA) in your office.

If you or your firm wish to benefit from participating in the activities listed above, please call or send an email to the MBA office. The continued health of this exceptional practice environment we enjoy is our own responsibility. Don't take for granted that your peers will always act with respect and civility. Become involved and make sure of it.

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. The MBA will protect the anonymity of those submitting questions.

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Tips from the Bench

By Judge Stephen K. Bushong, Multnomah County Circuit Court.

Civil Motions - Motions Panel Consensus Statements

Before filing a motion in a civil case, attorneys should always check the Civil Motion Panel Statement of Consensus (available at www.ojd.state.or.us/mul/civil_motion_panel_consensus.pdf). Although the consensus statements are not binding, judges ordinarily will make rulings that are consistent with the consensus statements. This remains true, even with many new judges on the bench hearing civil motions. If there is already a consensus statement on the issue presented in your motion, you should consider whether filing the motion is in your client's interests. If you decide to file the motion anyway, you should cite the consensus statement in your motion and be prepared to explain why the consensus statement should not be followed in your case. As a practical matter, the party seeking a ruling that deviates from a consensus statement has the burden of convincing the court that there are good and substantial reasons to deviate from the consensus statement in that particular case.

The Civil Motions Panel can modify or delete existing consensus statements if it is apparent that there is no longer a consensus among the judges deciding civil motions on a particular issue. The panel may also adopt additional consensus statements if there is a consensus among the judges deciding civil motions on a particular issue. If you believe that there is already a consensus among judges on an issue that is not reflected in the current consensus statements, or that an existing consensus statement should be modified or deleted because it is no longer an accurate statement of the judges' rulings (not because you wish it weren't so), please notify Judge Janice Wilson, Civil Motions Panel Chair.

Responses to MBA member questions

MBA members have submitted many thoughtful suggestions and questions they would like to see addressed in this column. Here are some of the recent questions and my responses:

What do judges expect at prima facie hearings?

I expect the party to present admissible evidence establishing the right to the relief claimed and the amount of damages they seek. The evidence can include witness testimony - in person, deposition excerpts, or affidavits - and exhibits. I sometimes will ask questions of witnesses to clarify or expand on their testimony. I also expect the lawyer to explain how the evidence fits together to establish the right to relief and the amount of damages sought.



How do judges approach attorney fee petitions? When do we accept or modify the amount claimed? Does the size of the case matter?

Attorney fee awards must be reasonable; what is reasonable in a given case will depend upon a number of factors. If there is no objection to the amount claimed, I may assume that the amount requested is reasonable and award that amount. If there are objections, I review the objections and the factors set forth in ORS 20.075. The amount involved in the case and the results obtained are factors listed in the statute, so the size of the case matters. The OSB's Economic Survey and recent decisions by other judges in this community - both state and federal court - often are helpful to me in determining a reasonable hourly rate.

During a deposition, should attorneys explain the basis for objecting to a question? What if the objection is to the form of the question?

Under the MBA deposition guidelines, explaining the legal basis for an objection is permissible - and desirable - in order to give the questioner an opportunity to re-phrase the question. "Speaking" objections and colloquy between counsel about an objection are not appropriate. "Objection, leading" or "objection, calls for speculation" are appropriate. "Objection, the witness already said X;" or "objection, you're trying to confuse the witness into saying something that she doesn't mean" are not appropriate.

What can attorneys do to build a good reputation with judges and court staff?

Treat all participants in court with respect; remember that court staff may observe your interactions with opposing counsel even after the judge has left the bench. Be prepared; don't waste anyone's time. Submit trial briefs, jury instructions, verdict forms, trial motions to the court in advance of trial and in the appropriate format (many judges want jury instructions submitted electronically). Know the facts and the law that applies to your case; don't overstate or misrepresent either one.



By John Rothermich, Court Liaison Committee member.

Presiding Judge's Report

Evacuation Drill

A successful unannounced evacuation drill was held at the Multnomah County Courthouse on Friday, September 26. All individuals were out of the courthouse in seven minutes. Judge Maurer acknowledged that drills can be very disruptive in a trial situation, but noted that effective evacuation is nonetheless critical. The evacuation drill was also the first test of the new building "enunciator system." The system worked very well. Drills are currently scheduled annually.

Emergency Coordinator

The court has hired an emergency coordinator, Barry Jennings, from Alaska. Mr. Jennings is highly qualified; his entire career has dealt with emergency preparedness issues. His presence will compliment the work of the existing Court Security and Emergency Preparedness Committee (on which the MBA has a representative).

Judges' Web Pages

A "Judges' Web Page" is being designed for each judge on the court's Web site. These pages will include any information judges consider important for lawyers to know. Such information might include individual practices, jury instructions and other court procedures. They hope to have the individual pages up by the end of 2008.

Choose your battles carefully; it is not necessary to fight over everything. Resist the temptation to respond unprofessionally when opposing counsel is being a jerk; always take the high road. Argue the case based on the facts and applicable legal standards; do not whine about the tactics adopted by opposing counsel or suggest that you should prevail because the other side has been so nasty throughout the case that they don't deserve to win.

eCourt

Multnomah County is one of five courts implementing the new eCourt system in April 2009. The Supreme Court is using the system now and the Court of Appeals will implement it soon. OJIN will be replaced eventually. The goal is to approach the level the federal courts have reached with PACER.

Starting in April, Multnomah County Court will start scanning small claims documents, with the larger civil cases to follow. Parties will be able to e-file civil cases.

After civil cases are electronic, criminal and domestic relations cases will follow, in that order. Attorneys will be able to view documents, file documents, pay fees, and take care of most routine filing events from their office. The court will also scan all trial exhibits, substantially reducing paper file volume. The court has scanned juvenile case files as a test project.

The server for the document management system will be in Salem, in emergency response headquarters and will be regularly backed-up. They are working to provide good network response time. Access to particular documents will be limited, as necessary, to judges, parties, etc. to protect confidentiality. The "uniformity" of the system (e.g. naming pleadings from pull-down menus) will vastly improve the situation for self-represented

parties. UTCR rules on e-filing already exist. Two versions of ORCP e-filing draft rules are on the Web site now - a short version and a long version.

Tours of Courthouse

The MBA has hosted a number of legislators on tours of the courthouse and hired a professional photographer to shoot problem areas. The MBA will create a DVD using the images to continue to bring this to legislators' attention.

The judges will host a legislative open house at the courthouse on November 12, focusing on eCourt and ballot measures and how they will change the way the courts do business.

Brown-Bag with Judges

A brown-bag has been scheduled for November 14 at noon in presiding court, Room 208 with Judges Bushong, Hodson, Wilson and Wittmayer. The discussion will include motion practice and discovery.

Report from County Liaison

Member Dawn LaGrone, Washington County liaison, reported that Andy Erwin was coming onto the bench and would probably serve in family court. There is also a new public safety commission headed by Amy Vasquez.

Tips from the Bench

Judge Maurer reported that Judges Bushong, You, Roberts, McKnight, LaBarre and Wilson have volunteered to write the "Tips from the Bench" columns.

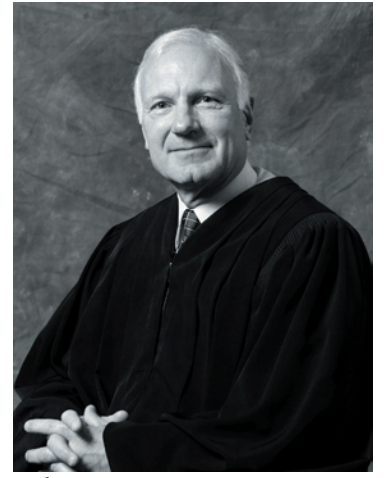
Judicial Brown-Bag

Friday, November 14 at noon
Multnomah County Courthouse, Room 208

Please join an informal discussion with
Judges Wilson, Wittmayer, Hodson and Bushong
about motion practice and discovery.

Profile - Presiding Judge Steven Maurer Clackamas County Circuit Court

By Kathryn Villa-Smith, MBA Court Liaison Committee member.



Judge Steven Maurer

The Honorable Steven Maurer was recently honored in Clackamas County for 20 years of service on the bench. For the past three years, he has served as the presiding judge.

Judge Maurer is proud of the treatment courts currently operating in Clackamas County. He declined to take personal credit for the success of the treatment courts, giving full credit to his colleagues on the bench. He described how Judge Robert Selander worked to establish the current drug court, which is highly successful in providing treatment options for offenders. It has been used as a model for other counties throughout the state.

The mental health court addresses the needs of criminal defendants who have committed crimes as a result of mental health issues. All of the judges in Clackamas County work to identify citizens in need of mental health services. The courts work with a committee consisting of members from Clackamas County Mental Health, a representative from the District Attorney's Office and a representative from the Indigent Defense Group. Judge Selander currently presides over the mental health court.

The Hon. Ron Thom currently presides over the DUII court which provides treatment services for persons who have committed alcohol-related crimes.

Judge Maurer described Judge Kathie Steele's hard work on the domestic violence court. This treatment court offers deferred sentencing options which include treatment for anger management and other alternative sentencing options.

The community court targets vulnerable communities within Clackamas County, targeting areas such as Overland Park. Judge Maurer credits Judge Doug Van Dyk for his commitment to making the community courts a success. The court addresses issues related to homelessness, drug and alcohol abuse and mental health. Numerous community groups work with the court in addressing community problems. The community court has been successful in reducing many of the problems that lead to crime.

Judge Maurer commends Judge Deanne Darling for her work presiding over the drug court for juveniles. The court process is structured to include the juvenile's family.

Judge Maurer also described the restitution court. This court increases the court's involvement in ensuring that offenders pay restitution to crime victims. The Hon. Kenneth Stewart is currently presiding over this court. Judge Maurer highlights this as a very important part of Clackamas County treatment courts, because it gives offenders an opportunity to "make things right" for victims of crime. In June, the court began accepting telephone credit card payments for restitution and compensatory fines. More victims are receiving payments on time and often offenders are able to pay the entire balance.

In addition to the treatment and community courts, Clackamas County has established a construction defect litigation referee program which is modeled after the program in Multnomah County. Complex construction litigation is supervised by a third party referee assisting the parties as they navigate through this complex process. Mediation is available to assist and promote the settlement process. After the case leaves the referee program, it is assigned to a specific judge.

Clackamas County now sends out all trial and hearing notices by e-mail. This is not only efficient, but it saves the county significant postage fees.

Judge Maurer described his biggest challenge as the "resource issue" of always having to do "more with less" with a budget that is not sufficient to meet all the needs of the community. He recognizes Clackamas County needs more judges. He notes one of the rewards of his work as a presiding judge is witnessing firsthand the good work and dedication of his friends and colleagues on the bench. He also speaks highly of members of the bar who serve the Clackamas County Bar Association and who donate their time as pro tem judges.

Judge Maurer strongly believes every member of the staff in Clackamas County plays a vital role in running and operating the courthouse. He presides over a quarterly teamwork appreciation meeting, recognizing employees who have excelled at their jobs. The Family Court Specialist Team was recently recognized for revamping and streamlining the FAPA docket. This has reduced customer frustration and has led to a much more efficient court staff. In addition, the Family Court Specialist Team has

created a family court page which will soon appear on the court's Web site.

As Judge Maurer details his job, it becomes very clear his first priority is to the community he serves. He describes one of his greatest rewards as having the opportunity to see the opening of the front doors of the Clackamas County Courthouse. Citizens now enter the front doors of the building, rather than having to walk down the alley into a side door. This gives the courthouse the dignity and honor it deserves. The photos currently on display also provide a window into the rich history of the Clackamas County Courthouse.

Judge Maurer has served with distinction. He exemplifies the adage that ours is an honorable profession.

What We Don't Know Really Can Hurt Us

National and local surveys indicate a strong need for civics education programs

By Karen L. Norris, MBF Development Coordinator.



MULTNOMAH BAR
FOUNDATION

As lawyers, MBA members have a clear, in-depth understanding of our laws, justice system and government. Within our legal community, it is well understood that as American citizens, we have an obligation to appreciate the significance of our liberties, become informed citizens and fully participate in the democratic process.

In contrast, surveys show that many Americans, youth and adults alike, do not possess basic civics knowledge. The ABA reports that 60% of adults surveyed were unable to name the three branches of government and only 48% could correctly explain the meaning of separation of powers.

According to The Nation's Report Card, Civics 2006, published by the US Department of Education, National Center for Education Statistics, only a quarter of high school seniors are considered proficient in civics, meaning that 75% are not prepared for the responsibilities of citizenship. Specifically, only 5% of seniors can adequately explain checks on the President's power and 70% are unable to explain the purpose of the Declaration of Independence.

A survey of American teenagers conducted by the National Constitution Center revealed that only 2% could name the Chief Justice of the US, 21% knew the number of US Senators and 9% knew which Supreme Court case found that separate but equal treatment for blacks and whites in public schools was unconstitutional.

Locally, the news is not much better. The 2006 Oregon Civics Survey, conducted by the Oregon

Coalition for the Civic Mission of Schools, reports that one-third of high school students could not identify the function of the Supreme Court and only 22% could name the US Senators representing Oregon. Sadly, only 46% of students agree that "being actively involved in state and local issues is my responsibility."

While these studies clearly indicate that students lack a proficient understanding of civics, US history and our Constitution, recent increases in federal and state standards on reading, math, and science have pushed history and civics to the background. In fact, the US Department of Education reports that weekly instructional time devoted to history and social studies has fallen by 25% since 1988.

Through grants and volunteer support, the MBF is committed to working with a range of community organizations to bridge this knowledge gap. The

"History makes clear that the Constitution can work only with the understanding, active support, and participation of millions of ordinary Americans."

— Supreme Court Justice Stephen G. Breyer

mission of the MBF is to increase public understanding of the legal system, promote civics education and increase civic participation.

Charitable donations to the MBF make this work possible. Next month, the MBA will ask its members to consider making a year-end donation to the MBF. This fundraising effort will allow the MBF to build upon this year's record political interest and voter turnout and continue to raise

the level of civics knowledge throughout our community and shape our future civic leaders.

For questions about the MBF, contact Karen Norris at 503.222.3275 or karen@mbabar.org.

The Future and MBA Members: Bridging the Generation Gap

By Bernadette Dieker Nunley, Multnomah County Attorney's Office, YLS Futures Committee Chair.

If you practice law within a group - in a firm, nonprofit, or government setting - you may have noticed the "generation gap." Literature about the "gap" explains that generations have different motivations for working and vastly divergent expectations about how their lives and careers will develop. Individuals within generations may differ widely in attributes, abilities, and interests; however, generations as groups exhibit some intriguing problems for the legal profession.

In law, Traditionalists (b. 1925-1932) and Baby Boomers (1943-1960) lead most legal organizations as partners and senior attorneys. Generally, Gen X (1961-1981) and Gen Y (1982-1994) attorneys make up a much less powerful cohort of supporting associates and assistants. If you are a solo practitioner or a law professor, you may notice a similar approach within your area of expertise.

Perhaps you've noticed that generations as groups struggle with moving their legal organizations forward in a way that is responsive to all generations' goals and needs?

Seeing the "gap" as a real phenomenon, the MBA created a joint committee to survey members about challenges surrounding the issue. The 2006 survey revealed significant distinctions

among generations regarding job satisfaction, expectations about a continued career in law, requirements for work/life balance and desire for leadership transparency and mentoring.

This year, MBA YLS created the Futures Committee to examine the gap from younger attorneys' perspectives. The YLS Futures Committee will present a series of articles identifying and addressing gap-related issues confronting Multnomah County lawyers. The committee will also highlight MBA members, firms, and legal organizations that are shaping the practice of law with innovative policies and practices to bridge the gap. The YLS Futures Committee hopes to collaborate with other groups on these issues, including the MBA Futures Workgroup, OWLS and the OSB.

To tackle our first article, we need your help. Technology is raging along at a speed that leaves most of us a little breathless. How are technology changes affecting your practice? Do you experience a "gap" between the way older attorneys and younger attorneys use technology on the job? Is your legal organization implementing policies that take advantage of new technological possibilities? For example, do you work in a paperless office? Do technologically savvy attorneys mentor attorneys who are reluctant to use new technology?



Do you use social software (blogs, Facebook/MySpace/LinkedIn) for educating clients, networking or even hiring? Do you see a financial benefit or detriment to using new technology? Have you found ethics challenges as you change your policies? If you aren't changing your office technology, why are you choosing to stick with your current way of operating?

Send us your comments, policies, and ideas. Let us know if we could interview you and your practice about technology. We look forward to learning about and reporting the ways MBA members are responding to these challenges.

To contact the YLS Futures Committee or to submit a comment, email us at futures@mbabar.org.



Voices Against Violence

The ABA Young Lawyers Division (YLD) announced its 2008-2009 Public Service Project, "Voices Against Violence" at the YLD Fall Conference in San Diego, October 2-4. The project is a call to action for young lawyers around the country to join forces in responding to and preventing domestic violence in our communities. In addition to helping launch this project, the MBA Young Lawyers Section (YLS) and Oregon New Lawyers Division representatives attended a Supreme Court Update seminar hosted by Supreme Court scholar Erwin Chemerinsky and roundtable discussions with new lawyers from across the country.



Pictured above on the deck of the USS Midway, the Oregon delegation included (from left to right): Ross Williamson, Ben Eder, Andrew Schpak, Jason Hirshon, Paul Neese and Kim Griffith. Andrew Schpak is the YLS President and the YLD District Representative for Oregon and Washington, and Kim Griffith is a YLS Board Member and the YLS Delegate to the YLD.

Join the YLS in Cyberspace

The YLS is now on Facebook, the online networking site. If you are already a Facebook member, we hope that you join our group (Multnomah Bar Association - Young Lawyers Section). If not, it is easy to set up even a basic page and join in. Privacy settings ensure that only people you know and approve of can view your information. YLS members are encouraged to post upcoming YLS events, submit photos, and share information. Find out what the YLS Committees are doing and how you can get involved. Join up today!



MBA Young Lawyers section to hold New Admittee social at Kells

The YLS Membership Committee is holding a social on November 19, from 5:30-7 p.m. to welcome lawyers who have recently been admitted to the OSB. The event is generously sponsored by LexisNexis.

The social will take place at Kells Irish Restaurant & Pub, located at 112 SW 2nd Ave., Portland.

Appetizers and refreshments will be provided. Please bring your colleagues and join us on November 19 to meet and welcome lawyers recently admitted to the OSB.

MARK YOUR CALENDAR!

The Young Lawyers Summit
March 5, 2009, 2-5 p.m.
Hilton Executive Tower,
Downtown Portland

1 hour of Access to Justice CLE Credit
Roundtable Discussions of Issues Affecting Young Lawyers
Followed by a Social Event / Fundraiser for the Campaign for Equal Justice

Contact Andrew Schpak at aschpak@barran.com with questions or suggestions

Do You Believe in Justice?

By Maya Crawford, Associate Director, Campaign for Equal Justice.

The Campaign for Equal Justice (CEJ) kicked off its 2008 fundraising drive this September with a reception and meeting sponsored by Bank of the Cascades and The Naegeli Reporting Corporation. The campaign's fundraising drive runs each year from September to early March, with most contributions coming in during November and December. The CEJ is a 501(c)(3) organization that supports Oregon's legal aid programs, including programs based in Multnomah County such as the Multnomah County Office of Legal Aid Services of Oregon, and the Portland office of the Oregon Law Center (OLC). These offices and 15 others in communities around the state represent low-income clients with survival issues such as domestic violence, housing and income maintenance.

We've all read the headlines about the housing crisis, rising fuel and food costs and increasing unemployment. In these tough economic times, nearly everyone is feeling the pinch. But just imagine supporting a family of four on \$26,500 a year - and that's *before taxes*. This is the income level for a family eligible for legal aid's services. It is a budget where families sometimes have to choose between food and staying in their homes - certainly there is no room for legal fees. These families need our support now more than ever.

One example of how legal aid is responding to the needs of its client base is the OLC's Home Defense Project. The project, coordinated by attorney Hope Del Carlo, helps low-income home owners whose homes are in jeopardy of foreclosure.

Hope described a typical case that comes through the project. Many of the clients are seniors or disabled people who live on a fixed income. Usually, the clients had substantial home equity after years of faithful payments. They were approached to refinance their low-rate mortgage by someone who misled them about the terms of a new loan. Some of these refinanced loans carried high up-front fees and tricky adjustable rate features that quickly became unaffordable. Hope is helping clients like these resolve the legal issues surrounding their loans. She explained that "Many of these cases are difficult to resolve and because the clients have little income and huge debts, there is little assurance of recovering attorney fees. This is especially true in this age of failing financial institutions. Our clients would not receive legal services were it not for legal aid."

Diane Schwartz Sykes, managing attorney of the Portland OLC office, states, "Legal aid is only able to serve two out of every 10 people who are income eligible



Hope Del Carlo

and who have legitimate legal needs because we lack the resources. Pro bono lawyers in Multnomah County do a great job of helping us try to fill the gaps, but these programs also require resources to screen clients and find the right pro bono placement."

Ed Harnden, chair of the CEJ Board explains, "The Campaign puts your money to work by writing grants for foundation support for legal aid, by increasing state and federal funding for legal aid and by operating an endowment fund in addition to direct financial support. A contribution to the Campaign for Equal Justice is an investment in access to justice in Oregon." For more information on the CEJ, go to www.cej-oregon.org.



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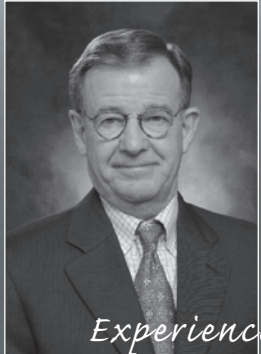
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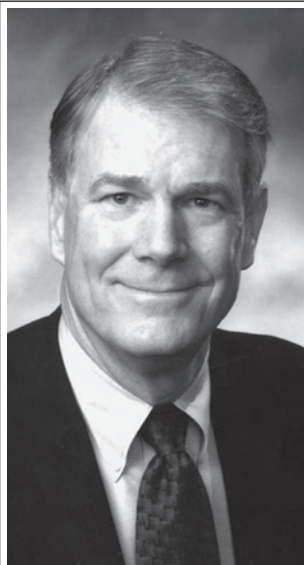
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