



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

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

December 2009 Volume 55, Number 11

Lawyering for Social Justice A Conversation with Steven Goldberg

By Leslie Kay, MBA President.

Steven, you grew up in Chicago, attended the University of Michigan and received a law degree from Harvard law school. How did you end up in Oregon?

My first job after law school was working at a legal aid office in Jacksonville, Florida which in 1972 was still very engaged in the struggle for civil rights. My wife and I decided to leave Florida after two years, and spent six months traveling across the country in a van. Oregon was beautiful and progressive; we also were broke and my wife found a job in Salem.

You have always been willing to represent unpopular and controversial clients and have been active in the National Lawyers Guild for many years. What led to your affiliation with the guild and taking on civil liberties cases?

The Vietnam War politicized me and many in my generation who believed that the war was unjust. There was a sense in the country of the possibility of significant political change - the civil rights movement, the anti-war movement, the war against poverty, the feminist movement. And there was a belief that law could be used to support those movements.

My first year in law school was a mix of studying and demonstrations and working with a welfare rights group in Massachusetts. That summer I worked with the National Lawyers Guild to organize a project sending law students to GI coffeehouses around the country counseling soldiers. I spent an amazing summer in Killeen, Texas, outside of Fort Hood.

Of course what I soon learned from those experiences and my work since then is that political change doesn't happen in the courts. It is the role of lawyers to support those individuals and groups working in their communities to bring about that change. In recent years I have worked on a case involving cuts to the Oregon Medically Needy program and on a challenge to an anti-immigrant ordinance in Columbia County. There were other groups in the community working on those issues; in the case of Columbia County, the Rural Organizing Project and the Northwest Workers Justice Project. We used the courts to support and to further that work. I have been fortunate and enriched to have been involved with social justice causes domestically and internationally throughout my career.

One of the cases you were involved in was the so called "Stop-Loss" litigation ... the practice of involuntarily extending the enlistments of currently serving soldiers ... can you tell us more about that case?

I represented Emiliano Santiago, a member of the Oregon National Guard from eastern Oregon, who challenged the involuntary extension of his enlistment contract and deployment to Afghanistan

after serving an eight year commitment. The challenge was based on the terms of the contract itself, and violations of various statutory and constitutional provisions. It was one of the first cases that challenged the scope of Presidential power in the context of a national emergency which was a prerequisite to extending the enlistment contracts. Although that case was ultimately lost in the Ninth Circuit Court of Appeals, it exposed the unfairness of the Army's "back door draft," and helped to fuel the anti-recruitment movement. It was also great working with amazingly gutsy people like Santiago and other GIs who only wanted the military to honor the contracts it had made.



Since 2006 you have been part of a legal team representing the Al Haramain Islamic Foundation, an Oregon non-profit corporation which was headquartered in Ashland, Oregon, challenging the Bush administration's policy of warrantless electronic surveillance. What are the legal issues at stake in the case?

The case asserts violations of the Foreign Intelligence Surveillance Act (FISA), the US Constitution, and the International Covenant on Civil and Political Rights for the unlawful interception of telephone conversations between two of the charity's American lawyers in Washington DC, and one of the charity's officers, in Saudi Arabia.

Plaintiffs learned about the interception of the attorney-client calls when a top secret classified document was inadvertently disclosed by the government. Much of the litigation up until this point has concerned whether FISA preempts the state secrets privilege asserted by the government, and whether plaintiffs can use classified documents to prove its aggrieved party status under FISA. But the legal issue at the heart of this case is whether the President of the United States can break the law - in this case, FISA - in the name of national security.

You practiced with Goldberg, Mechanic, Stuart, & Gibson for 27 years and you continue to represent labor unions and individuals in personal injury, medical malpractice, probate and divorce cases as a sole practitioner. How has that work fit into your social justice cases?

Well I have always seen the cause of workers, and the representation of unions, to be political in nature. But the truth is that 90% of my practice has been representing ordinary people who are in crisis - helping those people get through very difficult situations such as a divorce, a child custody matter or getting compensation for someone who has been injured in the workplace or in an accident. This work has been immensely rewarding. While I encourage lawyers to get involved in political cases, I appreciate the importance of the day-to-day work that we do, and never underestimate its significance.

Interview conducted, condensed and edited for brevity by Leslie Kay.

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MBA CLE

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

December

Tuesday, December 8
Leave Law Alphabet Soup
FMLA, OFLA, ADAA, OMG!
Jennifer Bouman
Jason Weyand

Wednesday, December 9
Fees - Clackamas, Multnomah & Washington County
Judge Thomas Kohl
Judge Jean Maurer
Judge Steven Maurer

Tuesday, December 15
Legal Ethics - Recent Developments
Roy Pulvers
Peter Jarvis

January

Tuesday, January 12
The State of Banking in Oregon: What You and Your Clients Should Know
Breakfast Class from 8-10 a.m.
Mary Ann Frantz
Richard Renken

Wednesday, January 20
Common Contract Pitfalls And How to Avoid Them
Brad Thies
Greg Brown
John McGrory

Tuesday, January 26
Transition Planning Preparing the Family Business for the Future
Gwen Griffith

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DEADLINE for copy: The 10th of the month*
DEADLINE for ads: The 12th of the month*
*or the preceding Friday, if on a weekend.

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Member Resource Center

Welcome to the member resource center, where you will find information of importance to members and the legal community at large.

COURTHOUSE WATCH

(This new regular feature provides MBA membership with current information about the efforts to provide citizens with safe and efficient access to justice.)

We learned this year that Multnomah County has given up on using the site selected in 2007 for a new downtown courthouse. This news was disappointing because, despite the reservations many felt about building a courthouse at the foot of the Hawthorne Bridge, at least a long overdue decision had finally been made.

We recently learned that the county will not move forward on the study that would have looked into renovating the downtown courthouse while simultaneously maintaining a substantial portion of operations in the building.

Meanwhile, the county's plan to replace the deplorably inadequate east county courthouse has recently taken a small step forward. Multnomah County Commissioners approved \$800,000 for the schematic design of a court building significantly smaller in size and budget to the one proposed last year. The real test comes in April 2010 when the commissioners vote on building vs. leasing space for the east county courthouse.

For more information about past courthouse reports, studies, photos of the downtown Multnomah County courthouse and other court-related information, go to www.mbabar.org/courts.htm.

Pro Bono Opportunities

The YLS is seeking volunteers for the Attorneys for Youth program to assist homeless and near-homeless youth in need of legal help. Attorneys

are placed on an on-call list, which is made available to local youth organizations. Volunteers agree to respond to questions about criminal, family, immigration, landlord/tenant and employment law, among other subjects, but are under no obligation to provide continuing representation to the client. Training materials and a resource list are provided. To sign up, please leave your name and contact information with the YLS Pro Bono Hotline at 503.276.2166.

Downloadable CLE Seminars

Audio recordings of our past CLE seminars are now available for download and use on your personal computer or MP3 device. Simply purchase online and download the audio and written materials in minutes. MCLE-accredited content includes Child Abuse Reporting, Multnomah County Judges Trial Practices, and Ethics Update, among others. Visit the MBA's dedicated MCLE Web site, www.oregoncle.com for more details.

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In addition to publishing classified ads in the *Multnomah Lawyer*, the MBA now posts all classifieds at www.mbabar.org. To obtain a quote, email your ad text to Carol Hawkins at carol@mbabar.org.

MBA Membership Drive Continues

If you haven't yet renewed your membership for 2010, please do so. Registering online is quick and easy - simply take a few moments to visit www.mbabar.org, click "Join or Renew" and complete the secure form. If you would like more information about the benefits of MBA membership, please contact Ryan Mosier at 503.222.3275.

The Corner Office

Attorneys often encounter the intersection of professionalism and professional obligations when serving as local counsel for an out-of-state attorney. The pro hac vice rule (UTCRC 3.170) requires that local counsel "participate meaningfully" in the action. Applying that general requirement to concrete circumstances requires diligence, at the very least, and professionalism, at its highest aspirations.

The first step to avoiding problems is to make sure you have a clear understanding with out-of-state counsel and the client about the role to be played

by each lawyer. Out-of-state counsel and the client need to understand from the very beginning that local counsel cannot simply be used as a "mail drop," even if that means there will be some additional attorney fees for the client.

But even more important than complying with the specific requirements of UTCRC 3.170, an attorney serving as local counsel needs to exercise due diligence before accepting that role. If out-of-state counsel does not know the local rules and statutes or behaves like a boor, it will reflect poorly on you. Failure to ensure the professionalism of out-of-state counsel may also result in your having to try a case in which you never intended to take the lead role.

One Oregon local counsel faced that very situation in *Tahvili v. Tahvili*, 224 Or.App. 96 (2008). In that case, out-of-state counsel took the lead role in pretrial and trial proceedings. From the description in the appellate opinion, it appears that local counsel did very little to participate actively in the case. The out-of-state lawyer behaved poorly, ignoring pretrial orders and continually raising issues on which the court had already ruled.

Ultimately, the trial court required local counsel to attend the trial because the out-of-

Continued on page 4

CALENDAR

For a complete MBA calendar, please visit www.mbabar.org. To add organization or firm events to the MBA online calendar, contact Carol Hawkins, carol@mbabar.org.

December

- 4**
Friday, Judicial Brown Bag Summary Judgments
See p. 8 for details.
- 8**
Tuesday, MBA CLE - Leave Law Alphabet Soup
See insert or register at www.mbabar.org.
- 9**
Wednesday, MBA CLE Court Fees
See insert or register at www.mbabar.org.
- 10**
Thursday, January 2010 *Multnomah Lawyer* deadline
- Thursday, YLS Drop-in Social and Toy Drive at Aura
See p. 10 for details.
- 14**
Monday, YLS Board meeting
- 15**
Tuesday, MBA CLE - Recent Legal Ethics Developments
See insert or register at www.mbabar.org.
- 16**
Wednesday, MBF Board meeting
- 25**
Friday, Holiday - MBA closed

January 2010

- 1**
Friday, Holiday - MBA closed
- 5**
Tuesday, MBA Board meeting
- 8**
Friday, February *Multnomah Lawyer* deadline
- 12**
Tuesday, YLS Board meeting
- Tuesday, MBA CLE The State of Banking in Oregon
See insert or register at www.mbabar.org.
- 18**
Monday, Martin Luther King holiday - MBA closed
- 20**
Wednesday, MBA CLE Common Contract Pitfalls
See insert or register at www.mbabar.org.
- 29**
Friday, OAAP Health Insurance Seminar
Visit www.aaap.org for details.
- 31**
Sunday, Portland Center Stage presents *Snow Falling on Cedars*, followed by MBA sponsored discussion
Visit www.mbabar.org for details.

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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Helping Those in Need: Clients with Diminished Capacity



As lawyers, we are often called on to evaluate others. Opposing counsel we are negotiating against, witnesses we will be cross-examining or juries to whom we will be presenting a case are all ready examples. One of the most difficult situations a lawyer can face, however, is determining whether a client has the requisite capacity to make decisions. Lawyers who practice elder law or estate planning face this issue more frequently than the rest of us. But, even a business lawyer can unexpectedly encounter this situation if a long-time client, due to age or infirmity, no longer seems to have the capacity to make decisions in the client's interest.

RPC 1.14 addresses clients with diminished capacity from two related perspectives. First, it outlines the duty a lawyer has to a client in that situation to maintain as normal a professional relationship as possible. Second, it deals with the difficult circumstance when a lawyer concludes that a client may be in need of a guardian or similar fiduciary to protect the client. In this column, we'll look at both elements of the rule.

General Duty. RPC 1.14(a) counsels that when a lawyer has a client whose "capacity to make adequately considered decisions in connection with a representation is diminished . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." The comments to ABA Model Rule 1.14 upon which Oregon's corresponding rule is based note that even a client with some diminished capacity may be capable of making a wide range of routine decisions. The comments also stress maintaining both direct communication with the client and as normal a relationship as possible within the constraints involved.

Protecting the Client. RPC 1.14(b) and (c) address the very difficult circumstance when a lawyer concludes that due to a client's diminished capacity, the client "is at risk of substantial physical, financial or other harm unless action is taken[.]" In that situation, RPC 1.14(b) allows a lawyer to "take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad

litem, conservator or guardian." RPC 1.14(c), in turn, finds that the lawyer in that situation is impliedly authorized to reveal sufficient otherwise confidential information necessary to protect the client's interests.

Comment 6 to ABA Model Rule 1.14 outlines the factors the lawyer should consider in balancing the extent of the client's diminished capacity against the possible actions necessary to protect the client: "the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client." OSB Formal Ethics Opinion 2005-41, which addresses the Oregon rule specifically, also counsels that if the lawyer concludes that protective action is necessary, the action should be tailored to the particular circumstances, using the following example: "If . . . Lawyer expects that Client's questionable behavior can be addressed by Lawyer raising the issue with Client's spouse or child, a more extreme course of action, such as seeking appointment of a guardian, would be inappropriate."

ABA Formal Ethics Opinion 96-404, which discusses Model Rule 1.14 in detail, highlights three important qualifiers.

The first relates to the lawyer's assessment of the client's capacity. The opinion notes that the focus is on whether the client can act in the client's own interest. In other words, the fact that a client simply makes different decisions than ones the lawyer would make or, for the client's own reasons, makes what the lawyer considers "bad" decisions, doesn't necessarily mean that the client's capacity to make decisions is compromised.

The second concerns seeking the assistance of family members. The opinion encourages this oftentimes critical channel of consultation. At the same time, it also counsels that although Model Rule 1.14(b) allows the lawyer to seek protective action for the client's benefit, the lawyer should not generally represent a third party seeking formal protective action (even if a family

ANNOUNCEMENTS

Judicial Brown Bag December 4

Please plan to bring your lunch and attend a noontime discussion about Summary Judgments in Room 208 of the Multnomah County Courthouse.

Download Your Next CLE

For details, see p. 3 or oregoncle.com.

The Vanishing Civil Jury Trial in Multnomah County

The report of the presiding Judge's ADR/Vanishing Civil Jury Trial Committee is now available.

Presiding Judge Jean Kerr Maurer appointed a committee to:

- Identify the reasons for the decline in civil jury trials in Multnomah County;
- Encourage approaches that allow judges and lawyers to develop and maintain requisite trial skills in civil cases; and
- Explore if the circuit court should provide alternatives to full-blown jury trials which include not only mediation and arbitration, but also summary jury trials.

The committee conducted an online survey of lawyers and held several focus group meetings to explore the reasons why jury trials are decreasing. The November 2009 committee report is posted on the MBA Web site on the Courts page.

Redirect! Law & Order in the Theater

A partnership between MBA and Portland Center Stage invites attorneys to take part in post-show conversations around themes of law, liberty, justice and freedom. The next discussion will be with attorney Beth Allen

following the matinee performance of *Snow Falling on Cedars* on Sunday, January 31. Visit www.mbabar.org for more information.

WinterSmash Sponsorships Now Available

The 8th Annual WinterSmash - a family-friendly bowling event to benefit Multnomah CourtCare, will be held Saturday, February 20 at 20th Century Lanes. The committee is now seeking sponsorships and raffle donations. Contact Kathy Maloney at the MBA at 503.222.3275 or kathy@mbabar.org for details.

Required Update Training for Arbitrators Already on the Multnomah County Panel

Speakers include Judge Edward Jones, Lori DeDobelaere, John Ostrander and Helle Rode. \$20 for pre-registration, \$25 at the door (if space is available). One hour of CLE credit will be sought.

Bring your lunch to Multnomah County Courthouse Room 338, from 12-1 p.m. on December 18 or January 22. Another brown-bag training will be February 12, 2010 from 12-1 p.m. at the OSB Center, Tigard. Visit www.mbabar.org for details.

Training is required to stay on the panel list.

MBA Noon Time Rides

Gather 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.

New Document Recording Fees

HB 2436 was passed by the 75th Oregon Legislative Assembly. It added fees for the recording

of documents which were already subject to other fees for "affordable housing related programs." Lawyers must submit the correct fee, usually \$15, for the real estate document to be recorded. A list of the documents exempt from this fee may be found in the bill and at the county recorder's office. Visit www.mbabar.org for more information.

Oregon Criminal Defense Lawyers Association New Lawyers Seminar

A Saturday seminar is January 30, 2010 at World Trade Center, Portland. For more information, visit www.ocdla.org.

Owen M. Panner American Inn of Court Receives Circle of Excellence Award

The American Inns of Court announced Portland's Owen M. Panner American Inn of Court is a recipient of their 2009 Circle of Excellence Award, which places the Panner Inn in the top 10% nationally.

Multnomah County Family Law Group

This group meets monthly in the first floor conference room of the US Bancorp Tower, 111 SW 5th Ave. On December 21, attorney Rose Hubbard will discuss her recently published book *Custody Evaluations: The Private War*.

To receive emails announcing future luncheons (RSVPs are requested) and important developments in Multnomah County family law courts, please contact David Bean at dib@meyerwyse.com.

member) due to the potential conflict between the interests of the client and the third party.

The third involves the guardian sought. As the opinion puts it: "Seeking the appointment of a guardian for a client is to be distinguished from seeking to be the guardian, and the Committee cautions that a lawyer who files a guardianship petition under Rule 1.14(b) should not act as or seek to have himself appointed guardian except in the most exigent of circumstances, that is, where immediate and irreparable harm will result from the slightest delay."

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 Corner Office

Continued from page 3

state counsel disregarded local rules and procedures. But the bad conduct of the out-of-state lawyer continued unabated. Ultimately, the trial judge had enough. He revoked the out-of-state lawyer's pro hac vice status and directed the local lawyer to begin to handle the trial. The local lawyer contended he was not prepared to do so and asked the court to reset the trial. The trial court rejected that application and ultimately entered a directed verdict against the local counsel's client. The court of appeals affirmed.

What lessons can be drawn from this decision? First, don't agree to act as local counsel for a jerk.

Second, make sure you understand the expectations of your judge with respect to the participation of local counsel. "Participate meaningfully" can mean different things to different judges. For example, does

it mean that local counsel must always attend trial or pretrial hearings? Better to raise the issue early and get direction from the court than to face an unpleasant surprise at a hearing or at the beginning of trial.

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.

January 2010 Statewide Tax Ballot Measures and Court Funding - *Background Information*

By Judy A. C. Edwards, MBA Executive Director.

The MBA is not taking a position on either of these measures, but the MBA Board voted to provide information to our members and to the public.

Although the legislature cut about \$2 billion from its continuing service budget, it kept core services by passing two major revenue packages. These two packages will be the subject of ballot measures for repeal in January. The new hospital and health insurer tax that funds expansion of the OHP is not being challenged.

Measure 66 – “Citizen Tax Referendum - Personal Tax Increase - House Bill 2649 (2009)”
One bill (HB 2649) increased the state personal income tax that higher-income individuals will pay over the next four years. By increasing the income tax rate 1.8% on individuals earning over \$125,000 and households earning over \$250,000, state services will have an additional \$472 million.

Measure 67 – “Citizen Tax Referendum – Corporate Tax

Increase – House Bill 3405 (2009)”

A second bill (HB 3405) increased the corporate minimum tax (now \$10) to a sliding scale between \$150 and \$100,000. It also increased taxes on corporate net income greater than \$10 million. This will generate about \$261 million for the state services.

Schedule

Ballots for the January 26, 2010 election will begin going in the mail January 8, 2010. The deadline for registering to vote in the election is January 5, 2010. Ballot wording and explanations are available at www.mbabar.org.

Voting on Oregon Ballot Measures 66 and 67

A Yes vote on either measure retains the personal and business tax packages passed by the legislature.

A No vote on either measure repeals the personal and business tax packages passed by the legislature.

Why should the MBA care?

The repeal of the tax measures are likely to have a negative effect on the administration of justice, by reducing adequate funding for court operations and indigent defense

and other areas of criminal justice. However, because we know that our members will have a wide range of opinions on the measures, the MBA is neither supporting nor opposing the measures, but rather, providing information.

Ballot Wording and Explanations

A copy of the wording and explanation of each tax ballot measure are available at www.mbabar.org and at www.sos.state.or.us/elections/.

Non-partisan Explanation of Measures

[http://ballotpedia.org/wiki/index.php/Oregon_Tax_Hike_Referendum_\(2010\)](http://ballotpedia.org/wiki/index.php/Oregon_Tax_Hike_Referendum_(2010))

Commentary in *The Oregonian*

www.oregonlive.com/opinion/index.ssf/2009/10/the_tax_measures_high_time_to.html

Proponents Information

www.ouroregon.org
www.defendoregon.org

Opponents Information

www.stopjobkillingtaxes.com
www.freedomworks.org/state/oregon

Effect of Ballot Measures, Economy and New Court Fees on State Courts

The following information was provided by Phil Lemman, OJD Legislative Communication Manager.

Tax Measures

“The budget impact to OJD if the taxes are rejected by voters is not clear, and would not be known until the legislature makes any necessary revisions to the state budget in February 2010. The legislature would need to find replacement revenue and/or make additional budget reductions if either or both of the measures lose. Below is information that will help you assess the potential impact of losing the \$733 million in revenue generated by the two measures.

“The legislature has asked the Judicial Department and other state-funded entities to submit plans on how they would reduce their General Fund budgets by up to 10 % (about \$30 million for OJD). These plans were due to the legislature on November 13.

“The OJD General Fund budget is about 2.25 percent of the overall state General Fund budget. A proportional reduction (2.25% of \$733 million) would mean a \$16.5 million additional reduction to the OJD budget. The following is a rough idea of some of the possibilities involved in additional budget reductions.”

Economy

“State Revenue Forecast. The first post-session revenue forecast projected \$139.4 million less in General Fund revenue for the biennium than in the May forecast. The projection still shows a positive ending balance for the biennium (about \$95 million). Various state reserve funds will continue to increase balances over the biennium.”

New Court Fees – “Judicial Stabilization Fund”

“HB 2287 Revenue. The legislature approved temporary increases of some existing fees and temporary establishment of new fees and surcharges,

Continued on page 6

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Tax Ballot Measures

Continued from page 5

and allocated that revenue primarily to OJD and the Office of Public Defense Services. The temporary fees and surcharges were estimated to produce \$39.6 million in revenue through June 30, 2011, primarily through civil fees (\$24.9 million) and a surcharge on crimes and violations (\$9.5 million). The two major risks involved with HB 2287 are whether actual revenue meets the projections, and how the legislature allocates that revenue in the February 2010 supplemental session (the legislature allocated 65% of revenues to OJD, up to \$6.5 million for the first eight months of the biennium)."

OJD Reduction Plan

"If the additional reductions were taken in the same priority as provided in the December 2008 OJD reduction plan (which guided the restorations using HB 2287 revenue), then OJD would:

- Impose a three-percent across-the-board reduction to all courts and divisions.

Specific impacts would vary by judicial district, but would result in losing approximately 72 staff statewide (\$8.6 million).

- Eliminate all General Funded treatment court coordinators statewide (25 positions, \$2.95 million).
- Eliminate all General fund mediation programs (6 positions, \$788,000).
- Eliminate General Fund pro se facilitation programs (12 positions, \$1.5 million).
- Further reduce information technology support to courts (18 positions, \$2.5 million).

"The reductions listed above would be in addition to the cuts already made as a result of the Legislatively Adopted Budget. Programs and services that would not be affected under this reduction scenario include the remaining Citizen Review Board program, court referees, and pre-trial release services."


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AROUND THE BAR



Sean Currie

GREENE & MARKLEY

Sean Currie has become an associate of the firm, where he will practice in the areas of commercial litigation, business law, creditors' rights and bankruptcy.



Tom D'Amore

organizations. D'Amore has been named President-Elect of the Oregon Trial Lawyers Association and was selected to serve on the board of governors for the American Association of Justice, the national organization of trial attorneys. Both associations support access to the civil justice system.



Lainie Block

Laurelhurst Chapter - a grassroots organization that is dedicated to advocating for schools and other children's programs. The organization has leveraged more than \$1.3 billion for schools and other children's programs and has lobbied elected officials for important education reforms.

SCHWABE WILLIAMSON & WYATT

Businesses for an Environmentally Sustainable Tomorrow Business Center, an organization that provides free tools and advice to help businesses in Portland become more profitable and sustainable, announced that the firm earned recognition as a Portland Climate Champion.

Dave Bartz and **Mark Long** were recently reelected the firm's co-leaders. Their reelection signifies success of the dual leadership model begun in 2001, which has been embraced by the firm's shareholders. Both will be serving their fourth terms in the leadership roles.

In addition to their management responsibilities, both attorneys are actively engaged in the practice of law: Bartz is considered one of the Northwest's leading environmental lawyers while Long is a well-respected corporate and health care lawyer.



Edwin A. Harnden

He continues to be active with the Federal, American, Oregon and Multnomah Bar committees. He is a past president of the PLF and Life Fellow of the American Bar Foundation. He has also been the president of the Oregon Courts Historical Society.

Harnden has maintained a litigation practice since 1972 and specializes in the handling of employment dispute resolution, arbitration and litigation.



Simeon D. Rapoport

SIMEON D. "SIM" RAPOPORT

Sim Rapoport joined iBridge LPO as its Executive Vice President and Chief Litigation Officer. Located in Beaverton, iBridge LPO is a legal process outsourcing company offering a full range of efficient cost-effective legal support services to law firms and corporations, including document review and other litigation support services.

Rapoport is a member of the DRI Board of Directors and the immediate past chair of the DRI Life Health & Disability Committee. He is Chair-Elect of the OSB Litigation Section and previously served on the Board of Directors of both the MBA and the Multnomah Bar Foundation (MBF). He is also a recent past President of the Association of Corporate Counsel, Oregon chapter, a recent former member of the Oregon Board of Bar Examiners and a past chair of the UTCR Committee. He may be contacted at 503.906.4365 or sim.rapoport@ibridgelpo.com.

FARLEIGH WADA WITT

The firm recently joined Lease Enforcement Attorney Network. This creditors' rights firm offers a wealth of experience protecting the interests of leasing companies and financial institutions in matters of lease enforcement, collection and recovery, replevins, workouts and bankruptcy.

THOMAS D'AMORE

Tom D'Amore is moving into new leadership positions with both the Oregon and national trial attorney



Stephen Kantor

SAMUELS YOELIN ET AL

Stephen Kantor is one of four inductees into the Ronald McDonald House Charities® of Oregon and Southwest Washington (RMHC®) Hall of Fame, which honors those whose generous contributions and abiding commitment have an enduring impact on the children and families served by RMHC.

Kantor is a business, estate and trust attorney and educator with more than 30 years of experience in the planning and administration of complex issues.



Christopher J. Pallanch

TONKON TORP

Christopher J. Pallanch joined the firm as an associate in the litigation department, where he will focus on commercial litigation.

KOLISCH HARTWELL

Lainie Block, of counsel with the intellectual property boutique firm, has begun her term as a team leader with Stand for Children's



Jennifer Gilmore

CHILD CENTERED SOLUTIONS

Staff attorney **Jennifer Gilmore** has been awarded the 2009 Skidmore Prize by Momentum Market Intelligence and *Willamette Week*. The prize recognizes commitment to the nonprofit sector. Gilmore is the first recipient selected for work in the legal profession.



Dave Bartz



Mark Long



Molly Jo Mullen



Helle Rode

MOLLY JO MULLEN AND HELLE RODE

Molly Jo Mullen and **Helle Rode** have been appointed to the Multnomah County Arbitration Commission. Both are arbitrators on the Multnomah County Circuit Court panel. Rode is a mediator and arbitrator in private practice. Mullen is a litigation partner at Bodyfelt Mount.

BARRAN LIEBMAN

The Oregon Area Jewish Committee presented its prestigious Judge Learned Hand Lifetime Achievement Award to **Edwin A. Harnden**.

Harnden is the managing partner at the firm. He was the 2001 president of the OSB and he was president of the MBA in 1996-97.



John Bachofner

BULLIVANT HOUSER BAILEY PC Shareholder **John Bachofner** has been selected for Oregon's Council on Court Procedures by the Oregon Board of Bar Governors.

Bachofner is a business, insurance and litigation attorney who regularly assists clients in both Oregon and Washington courts. Bachofner's practice focuses on litigation, day-to-day advice, and complex written opinions on insurance coverage, regulatory, products liability, business, bankruptcy, and creditors' rights issues.

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 Stephen K. Bushong, Multnomah County Circuit Court.

Don't forget your trial memorandum

Trial preparation is a lot of work. Many trial lawyers submit an optional trial memorandum along with their requested jury instructions and verdict forms. Before investing your time (and your client's money) preparing a trial memorandum, consider what you hope to accomplish by submitting it. Unless it is a court trial, don't waste your resources arguing the facts of your case in the memorandum; that is for the jury. Instead, give the judge a brief summary of the facts and focus on the legal framework for your case.

Argue the law, not the facts. An effective trial memorandum in a case tried to a jury should (1) persuade the judge to give a particular jury instruction or set of instructions; (2) alert the judge to any disputed or complex evidentiary issues that may arise during the trial; and/or (3) set the stage for anticipated motions for directed verdict. Be sure to deliver your trial memorandum to the judge well in advance of trial if you can, so the judge will have enough time to consider your legal arguments and review the authorities you have cited. If your trial does not present any unique legal or evidentiary issues, you might not need a trial memorandum.

Be careful what you ask for....

Trial lawyers are generally competitive by nature. They like to *win* when they ask the judge to receive or exclude certain evidence, give a requested jury instruction (or decline to give an instruction requested by opposing counsel), grant a motion for directed verdict, or grant a mistrial. But the goal is to win the case, not the argument. If you "push the envelope" on a particular point and prevail at trial, you might be setting the case up for reversal on appeal.

Before testing the limits of the rules of evidence in proffering evidence that might not be admissible (but might have an effect on the jury), consider whether the disputed evidence is really worth the risk of a remand for new trial. Before moving for a directed verdict, or urging the court to give a favorable (but perhaps legally questionable) jury instruction, consider how the issue might look to an appellate court. If you convince the trial judge, but an appellate court sees things differently, you may have to try the case again. Is that in your client's best interests? If you think a mistrial might be warranted, do you really want to start over? If you get what you ask for, you might end up winning the argument but losing the case.

The Vanishing Civil Jury Trial

Are jury trials in civil cases becoming increasingly rare? What, if anything, should lawyers, judges and the court do about this? The answers may be found in a



report issued November 6, by the Presiding Judge's ADR/Vanishing Civil Jury Trial Committee. The report may be accessed at the MBA Web site, on the Courts page.

Questions from MBA members

Are appearances by telephone disfavored? Do telephonic appearances hurt your case?

Under UTCR 5.050 (2), a court must grant a request for appearance by telephone if the requesting attorney's office is more than 25 miles from the courthouse. The 1987 commentary explains that the court may - but is not required to - grant a request for appearance by telephone if the attorney's office is less than 25 miles away. I would never penalize a party or lawyer for requesting appearance by telephone.

Judges understand that lawyers are busy; not every scheduled court appearance justifies the time and expense of coming to the court in person. I also don't think it makes any difference if one party's lawyer appears in person and the other appears by telephone. However, if there is a possibility that testimony or other evidence might be offered at the hearing - a show cause hearing, or hearing on a petition for attorney fees, for example - the lawyer may be at a disadvantage if he or she is not there in person to cross-examine witnesses or review exhibits firsthand.

Why don't judges specialize in hearing certain types of cases, e.g., criminal, civil, dom rel, probate, juvenile, etc.?

Some specialization occurs under our current system. Ten of the court's 38 circuit judges are assigned to family law dockets; those judges hear domestic relations, juvenile, probate and domestic violence criminal cases. We also have judges assigned to handle special dockets such as the DUII Intensive Supervision Program (DISP), the STOP drug court, and the mental health court. We do not have separate criminal and civil dockets assigned to judges that would hear only one type of case, but the presiding judge may specially assign a civil case to a particular judge in advance of trial where appropriate for the efficient resolution of the case.

Personally, I prefer to hear both civil and criminal cases; many judges feel the same way. And as

Continued on page 12



By John Rothermich, Garvey Schubert Barer and Court Liaison Committee member.

East County Courthouse

Judge Maurer reported that the east county courthouse project is still moving forward in stages. Judge Alicia Fuchs is the court's representative on the design committee for the new Gresham facility. There is not absolute certainty that the east county courthouse will happen, but \$800,000 has been committed for schematic design. If built, the new courthouse will be located in the Rockwood area of Gresham. Judge Maurer noted that the existing east county facility is unacceptable.

Downtown Courthouse

Judge Maurer reported that the county chair, Ted Wheeler, has decided to table another look at the possibility of renovating the downtown courthouse rather than build a new one. This renovation option was the subject of a year-long study by HOK Architects, for a prior county board of commissioners, who adopted its findings. That study, published in 2003, concluded that renovation would be more costly than building a new courthouse. She hopes that the county will continue to consider a site for a new courthouse. The current, proposed site, at the west end of the Hawthorne Bridge, is owned by the county. That site, however, presents certain challenges in terms of building height and set-back limitations. The \$9,000,000 that the Portland Development Commission has committed for preparation of that site for a new courthouse remains available to the county.

Fees and Possible New Budget Cuts

Judge Maurer noted she is not getting much attorney feedback regarding the new court fees. She has noticed that ex parte parties do arrive with their \$10 checks. The new procedure does not seem to be creating delays or lines in the courtroom.

On a related topic, Judge Maurer was asked whether there was a way to avoid the need for lawyers to bring in a \$10 check every

time they appear at ex parte. Perhaps firms could establish accounts from which the fee could be deducted. Judge Maurer responded that the court is aware of the inconvenience. Any formal solution to this issue would require OJD to take action statewide. Judge Maurer encouraged committee members to share their suggestions and concerns with her.

Judge Maurer reported that the OJD has been asked to submit a 10% reduction plan to the state Legislative Fiscal Office indicating how the department would implement the cuts. Dealing with an additional 10% cut would be very difficult. Multnomah County court is currently already 14 positions down due to the \$1.2 million dollars it cut based on the budget approved in June. These staffing cuts are in addition to the 10 furlough days all employees must take in the 09-11 biennium. Doug Bray noted that an additional 10% cut would be equivalent to a 22.6% cut in operational funds for the remainder of the biennium because the reduction must be taken from the remaining 16 months of the two year budget cycle and cannot be taken from constitutionally protected judicial salaries.

Judge Maurer noted that at the end of the last biennium, when staff was hit by furloughs, the circuit court judges statewide established a fund to help with emergency needs. They raised approximately \$60,000 for furloughed employees in need of financial assistance. The collected funds were disbursed to 159 OJD employees statewide, based on demonstrated financial need; 62 of the awards went to Multnomah County employees.

Judge Kelly Skye

Judge Skye will take office on December 7. Prior to taking the bench, she worked in this community as an attorney for the Metropolitan Public Defender, Inc., and as a legislative representative for the Oregon Criminal Defense Lawyers' Association. Most recently, she has been the assistant general counsel and then general counsel to Governor Ted Kulongoski.

Elimination of Chief ADR Judge Position

Judge Maurer reported that Judge LaMar's position as Chief of ADR was eliminated upon her retirement. Now that many ADR avenues are available to parties, the position is no longer necessary. Some judges will still do civil settlement conferences on Fridays. Judge Maurer noted that parties requesting such conferences should be well-prepared and serious about settling. Few things are more frustrating for a judge than spending two or three hours on a settlement conference when the parties are unprepared or unwilling to settle.

Report Regarding the "Vanishing Civil Jury Trial"

Judge Maurer appointed a committee to study why civil jury trials are vanishing. She noted that one myth that continues to be frequently mentioned is that lawyers believe there is no certainty on trial dates. She said this is not true in Multnomah County. Once lawyers have fixed a trial date and are ready to go, the trial will go on the day assigned. Judge Maurer noted that there were issues getting trials out on time in the past, but this was no longer true. (A copy of the survey report may be found at www.mbabar.org/courts.htm.)

Brown Bag

The brown bag will be on Friday, December 4 at noon in the presiding judge's courtroom. Judge Henry C. Breithaupt, Tom Christ and Nena Cook will facilitate a discussion focused on summary judgment practice and circuit court practices. Members of the circuit court will also be on hand for this discussion.

Statewide Tax Ballot Measures

The MBA will provide members with information about the two new ballot measures being voted upon. See related article on p. 5.

Profile - Presiding Judge Barbara Johnson, Clark County Superior Court

By Shawn Lillegren, Cosgrave Vergeer Kester and Court Liaison Committee member.

Clark County Presiding Judge **Barbara Johnson** loves her job and is proud to have served as a judge for over 22 years. Given her strong qualifications and warm personality, litigants in her court are very fortunate to have her on the bench.

Judge Johnson was raised in Walla Walla, Washington. Her mother worked as a legal secretary and her father worked as an attorney. After high school, she attended the University of Washington and received a Bachelor of Arts in English Literature. After graduation, she entered the University of Washington School of Law and received her JD in 1975.

Judge Johnson began her legal career as a deputy prosecuting attorney for King County. Her fellow prosecuting attorneys included former governor Gary Locke, and US District

Court Judges Marsha Pechman, Robert Lasnik and Richard Jones. Four years later, she moved to Vancouver, Washington and entered private practice. She was in private practice for six years before she considered serving as a judge. She received encouragement from her peers to pursue an open seat on the bench and was appointed by Governor Booth Gardner in 1987. She was the first female judge in the history of Clark County Superior Court.

During her years on the bench she has earned a reputation for being intelligent, fair and well-prepared. In addition to managing court administrative issues, she manages her own trial docket. She enjoys the subject matter variety her trial docket provides.

Off the bench, she has served on the Task Force on Courthouse Security that published Courthouse Public Safety Standards. She has served on the faculty of the Washington

State Judicial College, on the Washington State Law and Justice Advisory Council, and the Governor's Juvenile Justice Advisory Committee. She is a member and has served as vice-president of the Simpson Inn of the American Inns of Court in Vancouver. In 2006, the Washington State Trial Lawyers named her Judge of the Year.

Judge Johnson is a member of the Vancouver Rotary and has served on many volunteer boards and commissions, including the Clark College Foundation, Clark County Child Abuse Council and the Clark County Boundary Review Board. She has served as vice president and trustee of the Clark County Bar Association and as president of the State Board of Directors of Washington Women Lawyers.

She is married to a retired journalist and enjoys gardening, reading, hiking and other physical fitness activities.



Judge Barbara Johnson

Judge Johnson will present a CLE with Don Jacobs on January 27, 3-5 p.m., World Trade Center, "Clark County Presiding Court Update."

2010 MBA Professionalism Award Nominations Sought

The MBA Professionalism Award is one of the most highly regarded honors an attorney in our area can receive. Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, who regularly goes well beyond minimum ethical and professionalism standards, who constantly mentors others and works to improve the quality of our practice as a whole? We strongly encourage you to nominate him or her for the 2010 MBA Professionalism Award. Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Past esteemed recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O'Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor and Judy D. Snyder.

Continued on page 11

Safekeeping Your Bank Funds

By Judy A. C. Edwards, MBA Executive Director.



Many questions continue to swirl around all of us about the safety of our bank deposits, especially as we hear and read about banks failing here in Oregon and elsewhere. Recently, the MBA extensively researched the topic of FDIC insurance. Amazingly enough, we learned in our research that not all bankers are knowledgeable about the various FDIC insured options available. We hope you find the information below helpful to you, your firm and your clients.

The most important statement we can make is: confirm with your banker that all of your bank funds are fully FDIC insured and ask about the bank's policy on notifying customers if they exceed the \$250,000 FDIC limit.

Like our members, the MBA board and staff have fiduciary responsibilities as stewards of the

organization's money. Between the Multnomah Bar Foundation, the MBA operating accounts, and members' health insurance premiums, the organization is responsible for a significant amount of funds. The message to you is that the board and staff have made sure that all of these funds are fully FDIC insured.

Below is the result of our research that provides insight on structuring bank deposits so they are fully insured. We thank several members of the board for their work on this subject, especially MBA Treasurer **Michelle Druce** and MBA Secretary **Lisa Umscheid**, as well as **Elise Bouneff**, SVP at Bank of the Cascades and **Richard Renken** at Oregon's Division of Finance and Corporate Securities.

Fully Insured Accounts
Certain bank accounts are fully FDIC insured for any amount and not subject to the \$250,000 limit. These accounts include:

- **Noninterest-bearing checking accounts:** These accounts are fully insured for any amount. One could have millions in an account and still be insured as long as the bank is participating in the FDIC's Transaction Account Guarantee Program, otherwise known as TAG. This is something you should check on with your bank. The information is also available on

the FDIC Web site. The address and link are included below.

- **NOW accounts:** The acronym stands for Negotiable Order of Withdrawal. These accounts are fully insured for any amount. Again, a depositor could have millions in an account and still be insured as long as the bank is paying 0.5% or less in interest and participating in the FDIC's TAG program.
- **IOLTA accounts:** IOLTA accounts are fully FDIC insured to an unlimited amount. There is no restriction on the amount of interest earned on IOLTA accounts.

Here is an excerpt from the FDIC's order mandating the TAG:

"The FDIC extended its temporary Transaction Account Guarantee Program through June 30, 2010. This program provides depositors with unlimited coverage for noninterest-bearing transaction accounts at participating FDIC-insured institutions. The unlimited coverage applies to all personal and business checking deposit accounts that do not earn interest (including Demand Deposit (DDA) accounts), low-interest NOW accounts (NOW accounts that cannot earn more than 0.5% interest), Official Items, and IOLTA accounts." For more

information, visit: www.fdic.gov/news/news/financial/2009/fil09048.html.

Accounts Subject to \$250,000 Limit

- **Interest-Bearing Accounts:** Accounts subject to the limit are interest-bearing accounts, other than NOW accounts, and include money market accounts/investment sweep accounts and timed deposits (CDs) of the bank in which you have deposits. The total of all accounts of this type including CDs in one bank, in aggregate, cannot exceed \$250,000 for a single tax identification or social security number. In other words, the MBA, using its one tax ID number must count all aggregate funds in these types of accounts as part of the \$250,000. All MBA monies in excess of that limit are in noninterest-bearing checking accounts and NOW accounts.

- **CDARS:** Certificate of Deposit Account Registry Service (CDARS) is a US Government investment instrument and is a group of CDs from banks across the nation, kind of like a fund of CDs. For more FDIC information on CDARS, go to: www.fdic.gov/regulations/laws/rules/4000-10220.html

Answers to General FDIC Questions and FAQs

www.fdic.gov/deposit/deposits/insured/faq.html

Questions such as the following are answered at this Web site. *How can a depositor tell whether a bank is insured? Whose deposits does the FDIC insure? and How long does the FDIC take to pay insurance on deposits after an insured bank fails?*

State of Oregon Banking Division

Oregon's banks and trusts are regulated by the Division of Finance and Corporate Securities within the Department of Consumer and Business Services. The head of the department is Richard L. Renken, Program Manager. He was very helpful to us in our research and will be part of an **MBA CLE on the state of banking in Oregon on January 12**, along with **Mary Frantz** of Miller Nash. He can be reached at 503.947.7427 and richard.l.renken@state.or.us.

In Conclusion

It is clear to me that an individual, firm or company does not have to spread its money around to various banks to keep deposits safe. From my experience, spreading deposits around to several banks causes confusion and creates the possibility of losing track of where all your money is located. It may be better to concentrate on structuring bank deposits so they are insured. If you have questions, please contact me at 503.222.3275 or judy@mbabar.org.

Meet Teresa Statler

By Emily Aanestad, The Larson Law Firm and Abra Cooper, Schwabe, Williamson & Wyatt.

It's hard to imagine someone whose work is more timely and fulfilling than that of Teresa Statler. Statler, who has her own immigration law firm in Portland, has helped numerous refugees and immigrants seeking political asylum in the United States.

She has had the opportunity to assist people from diverse backgrounds and locations. Recently she has worked with people from Iraq, Haiti, Turkey, and various parts of Africa. Clients, who find her through immigration services and word of mouth, have gained political asylum as a result of her work. While a large amount of Statler's work is low-bono or pro-bono, it is the outcomes and results of her work that really matter.

Much of Statler's recent work has involved assisting Iraqi interpreters, who have worked with Americans in Iraq, to obtain permanent resident status or an immigrant visa under the special immigrant interpreter program. While communication can be risky - associating with Americans is dangerous - Statler takes the little information available to her and assists her clients in procuring asylum in the United States. Each client has a unique and touching story. In fact, in 2009 *USA Today* published an article detailing the tribulations of one of Statler's clients - an Iraqi interpreter who eventually received a US visa in March. With clients who often fear for their lives and have little funds to assist in their struggle, her commitment is extraordinary and admirable.



Teresa Statler

In addition to her practice, Statler serves on the board of Immigration Counseling Service, a non-profit law firm that provides legal assistance to immigrants seeking US citizenship.

YLS Futures Committee

By Sarah Petersen, Bullard Smith et al and YLS Futures Committee Co-Chair.



The "youngest" of the YLS committees is the Futures Committee. Now entering its second year, the committee is tasked with "bridging generations" in the legal profession, encouraging younger lawyers to participate in the legal community and studying issues of particular interest to younger attorneys.

The YLS Futures Committee was formed in response to the findings of a 2006 MBA joint committee of the Managing Partners Roundtable and the YLS, formed to study a perceived "generation gap" in the legal profession. The joint committee commissioned a fact-finding survey. The results were published in a report entitled "Bridging Generations:

Traditionalists, Baby Boomers, Gen Xers, and Net Gen" and are available at www.mbar.org/publications.htm.

One of the report's findings is that younger lawyers, particularly those born between 1965 and 1980, showed a "declining satisfaction" with their careers, and only 10% of this group expected to be working fulltime with their current firm. Those same attorneys strongly emphasized "work/life balance" as a significant motivator in their professional lives and indicated a need for more mentoring, better communication of expectations and compensation and more flexibility.

The committee has used the findings of the "Bridging Generations" report as a springboard to open a forum for discussion, strategic planning and possible concrete steps to "bridge the gap." For instance, the committee tries to critically consider reasons for the apparent declining satisfaction among younger lawyers, and look at how that fact reflects changing conditions and values among lawyers generally.

In addition, the committee seeks to develop and implement strategies to address topics identified by the committee and the generation gap report as being of particular interest to younger lawyers, including Sustainability, Mentoring, Work/Life Balance, Technology and "Tech Mentoring," Styles of Leadership, and Diversity. Because we believe that these topics are of interest to lawyers of all ages and experience levels, the committee has focused on these topics as ways to open discussion within the MBA legal community, and to encourage lawyers and law firms to creatively adapt to the changing landscape of the legal profession.

If you are interested in learning more or joining the Futures Committee, please contact one of the co-chairs, Collin McKean of Gevurtz Menashe (cmckean@gevurtzmenashe.com), or Sarah Petersen of Bullard Smith et al (spetersen@bullardlaw.com), or visit the Committee's webpage at www.mbar.org/YLSFuturesCommittee.htm.

2010 Young Litigators Forum Offers Practical Legal Education

According to Felix Frankfurter, "[I]tigation is the pursuit of practical ends, not a game of chess." *Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 69 (1941). But, as the young litigator quickly learns, litigation is a process governed by strict rules and calculated strategy. It is not long until litigation begins looking like ... well ... a chess match.

Fortunately, your colleagues from the Multnomah County bench and bar are here to help you. Your YLS Professional Development and

Education Committee is pleased to announce the 2010 Young Litigators Forum. This well-honed series of for-credit CLE seminars gives newer lawyers essential tools to develop practical litigation skills. The Young Litigators Forum addresses fundamental litigation subjects ranging from "Intake and Case Management" through "Post Trial Matters." Though each CLE is sure to discuss rules and strategy, the committee used practicality as the main criterion for selecting topics. The series aims to help you become a skilled and well-rounded

litigator for the benefit of the legal community and those we serve.

The real value of the Young Litigators Forum lies in the deeply experienced lineup of presenters. On February 24, 2010, David Markowitz will lecture on the topic of depositions. During this one-hour lunchtime CLE, Markowitz will share some of the many lessons he has acquired during his decades

Continued on page 11



YOUthFILM Project 2010

By Tim Crippen, Kivel & Howard and YLS YOUthFILM Project Committee member.



On May 6, 2010 at the Hollywood Theatre, the YLS YOUthFILM Project holds its annual screening event. Students from around Oregon and Southwest Washington will present homemade short films on civics themes and compete for prizes. This fall and winter, however, YOUthFILM Project Committee members are recruiting. Members are seeking the attention of teachers, principals, and parents to encourage their kids to participate in this year's competition. With success, the screening event in May will be the biggest ever.

The 2009 screening event featured films selected from more than 20 student submissions celebrating the birthdays of Abraham Lincoln

and the State of Oregon. For the 2010 event, students will make films addressing emerging challenges and enduring traditions in the 21st century. Suggested topics include making a political advertisement or a portrayal of life without a justice system. Prizes will be awarded by honorary guests, including Oregon Supreme Court Chief Justice Paul J. De Muniz. Prizes include iPod Shuffles™, gift cards to the iTunes Store™, and movie tickets.

Filmmaker registration forms are being distributed in late 2009. Student films must be submitted by March 12, 2010. Until then, YOUthFILM Project Committee members will be working with principals and teachers to encourage schools to include the project in their curricula. The committee encourages everyone to check out www.theyouthfilmproject.org and consider supporting the project. Contact YOUthFILM Project Committee members, or send teachers, principals, or young people (K-12) to the YOUthFILM Web site to help encourage participation in this great and enriching event.

celebrate the season
at the YLS drop-in social
and toy drive

Thursday, December 10
Aura
1022 W Burnside
5:30-7 p.m.

Please bring a new, unwrapped toy for Toys for Tots and help bring holiday cheer to children in our area.

On October 8, the YLS Membership Committee hosted a drop-in social at Clyde Common in downtown Portland. The event was well attended, and Clyde Common provided an excellent setting for young lawyers to gather after work and socialize. The YLS would like to thank Schwabe, Williamson & Wyatt for sponsoring the event.

Thank you to all who attended the social. We hope you will join us for the next drop-in social on December 10 at Aura.

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The MBA Statement of Diversity Principles Opportunity for Everyone

By Mary Pool, MBA Equality Committee member.

The MBA invites you and your law firm or organization to sign the MBA Statement of Diversity Principles. The statement is a key opportunity for every lawyer, law firm and organization to publicly acknowledge their commitment to diversity, at all levels, in the legal profession.

The MBA is committed to advancing diversity in the profession by making it more inclusive and reflective of our society. A diverse profession means that all members of the bar will have the opportunity to fully participate in all aspects of the profession. We believe our profession and communities will be richer and more energized by the variety of people and ideas that comprise a diverse legal community.

Although our legal community has made great strides in promoting diversity, The statement was adopted to further our already strong commitment to a diverse legal profession.

Statement of Diversity Principles

The Multnomah Bar Association and the signatories hereto remain committed to fostering diversity in the legal profession. Diversity is an

inclusive concept and encompasses, without limitation, race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status.

With greater diversity, we can be more creative, effective and just, bringing more varied perspectives, experiences, backgrounds, talents and interests to the practice of law and the administration of justice. A diverse group of talented legal professionals is critically important to the success of every law firm, corporate or government law department, law school, public service organization and every other organization that includes attorneys.

We recognize that achieving diversity is an evolutionary process that requires a continued renewal of our commitment to strategies of inclusion. Diversity is not about quotas or different standards. Rather, the opportunity to increase diversity should be one important consideration in the decision making process. We want to hire, retain and promote our attorneys based on each of our unique criteria, while simultaneously maintaining our commitment to diversity.

We believe that all members of the bar should have the opportunity to participate equally and fully in our profession. To this end, we pledge to facilitate diversity in the hiring, retention and promotion of attorneys and in the elevation of attorneys to leadership positions within our respective organizations.

Your signature on the Statement of Diversity Principles is a symbolic and key step that will evidence your commitment to promoting diversity in the profession. We encourage you to sign online at www.mbabar.org/diversity.htm. The statement can be signed by individuals and organizations. We encourage all attorneys, legal employers - law firms big and small, governments, educational institutions, businesses, nonprofits and everyone else to sign the Statement and demonstrate commitment to diversity.

The MBA will publish a list of all law firm, organizations and individuals signing the statement in a spring issue of the *Multnomah Lawyer* and on the MBA Web site.

The Power of the Spoken Word

By Marsha J. Naegeli and Troy S. Moody.

The format for deponent discovery may have changed over the years, but the essence of the law has not. In fact, the more things in the legal profession appear to change, the more they stay the same. The way in which attorneys present cases may have changed over the past century, while the reasons they do so have not.

In the past, the standard presentation for attorneys has been to read from printed testimony, keeping the playing field relatively level. Impeachment success goes to those professionals best prepared to rebut the opposition from a position of strength. Creating a stronger defense by using the latest advances in technology and reducing pre-trial time expenditures allows legal professionals to create a stronger presentation. Using audio evidence during the impeachment process is not simply more credible, it is now also more efficient.

Time is always at a premium in the legal profession, and unless used wisely, time spent can become time wasted. This is where Naegeli Reporting Corporation can help. As the leader in the field of court reporting for the past 30 years, we at Naegeli Reporting Corporation believe that

our clients deserve the best in all areas of service. Pre-trial preparation should be streamlined, allowing busy attorneys the advantage of evaluating a wider array of information. To meet this expectation, we provide the most advanced form of audio synchronization, the latest cutting edge technology for connecting text and image.

Attorneys want to win cases, and the careful review of depositions is essential to that process. A deponent's word is powerful. In the hands of a talented legal advocate, it can become a dynamic and compelling force in the courtroom. Juries are swayed by it, and cases are won using it. In short, words and how to access them are essential to legal professionals. Thorough preparation is the foundation of success, and the ability to present testimony in its original form during arbitration or trial presentation can provide a powerful advantage.

Legal work can be exacting and time consuming, but it need not be exhausting. Streamlining the discovery process using the latest in audio technology is not only more efficient, it is more effective. Naegeli Reporting Corporation is the best litigation support firm to provide you



Marsha J. Naegeli and Troy S. Moody

with an outstanding portfolio of products and services specifically designed to give you a fair advantage over your competition. The key to successful case resolution is in the power of the spoken word. The jury and the judge care about "how" a person's words are stated. Shouldn't you?

About the Authors
Marsha J. Naegeli, President and CEO of Naegeli Reporting Corporation, and Troy S. Moody, President of Naegeli Trial Technologies, provide attorneys with a full complement of services, which include court reporting, trial presentation, legal videography, and videoconferencing. Naegeli Reporting Corporation and Naegeli Trial Technologies serve a worldwide market with offices in Oregon, Washington and Idaho.

PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in October 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, Children's Representation Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, check out the Pro Bono Opportunities in Oregon handbook, available at www.mbabar.org/docs/ProBonoGuide.pdf.

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2010 Young Litigators Forum

Continued from page 10

of complex litigation. Judge Judith Matarazzo of the Multnomah County Circuit Court will lecture about "Post Trial Matters" on March 11. Additional speakers include Caroline Harris Crowne, Jonathan Hoffman, Craig Capon, Karen O'Connor, Jason Wright and Beth Skillern. The committee plans to announce additional well-respected speakers to round off this already fabulous lineup.

Look for flyers advertising the series in the coming weeks. These flyers will contain a complete listing of topics and speakers. Seminars will occur each Thursday from January 21, 2010 through

March 18, from 12-1 p.m. in the Standard Insurance Building Auditorium located at 500 SW 5th Ave., Portland. Discounts are available for attendees who register for the entire series.

The litigation process may well resemble a chess match at times. However, the YLS Professional Development and Committee is confident you will come away from the 2010 Young Litigators Forum with practical skills you can put to work for your clients on a daily basis. We hope to see you there. Please feel free to call 503.222.3275 with any questions.

2010 MBA Professionalism Award

Continued from page 9

Former nominees may be and often are re-nominated. To propose an outstanding attorney for this year's award selection process, please complete and return the nomination form insert in this issue and available

at www.mbabar.org or contact Kathy Maloney, Professionalism Committee staff liaison, kathy@mbabar.org for more information.

Tips from the Bench

Continued from page 8

a practical matter, it is necessary for the court to have as many judges as possible available to hear criminal cases due to the number of criminal cases and the statutory and constitutional speedy trial requirements and other deadlines that apply to those cases.

In 2008, the state filed 5,970 felony cases and 18,695 misdemeanor cases in Multnomah County Circuit Court. That averages out to roughly 650 new criminal cases for each of the court's 38 judges. If some judges were specially assigned to hear only civil cases, it would be very difficult for the remaining judges to hear all of the criminal cases and still comply with statutory and constitutional requirements.

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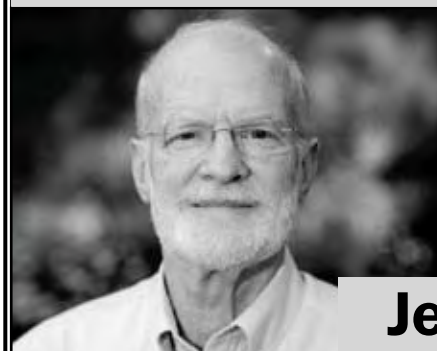
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Because of you - student filmmakers produced 20 short films based on civics and the law for the MBA Young Lawyers Section **YOUthFILM Project**, equipment was purchased for the digital camcorder lending program and students were given access to professional tools and support.

Because of you - over 400 college students and recent

graduates will take part in PolitiCorps Community Training Initiative, receiving civics skills and leadership training from the **Bus Project Foundation** and connecting them with opportunities to serve as campaign and nonprofit organization staff, advocates, community organizers and policy researchers.

Because of you - a series of English and Spanish informational segments will air over cable stations in East County, providing information about civics issues and encouraging participation. **MetroEast Community Media's** Community Involvement is Civic Engagement program will be

available as downloadable video files and will be shared with nonprofit organizations and the Multnomah County Library system.

Because of you - over 1,200 middle and high school students will have an opportunity to question adult experts in a "congressional hearing" format to discuss controversial and timely legal issues at **Classroom Law Project's** Youth Summit series, with training and lesson plans provided to teachers.

The operation of the MBF, its community activities and annual grants, is entirely supported by donations from lawyers and law firms. Your year-end gift is an

investment in the future and allows the MBF to continue to promote civics education and participation and to support the programs and projects of like-minded organizations.

Please consider a gift to the MBF as you plan your year-end charitable giving.

Invest in civics education. Invest in our democracy. Invest in our future.

To make a donation, complete the enclosed insert or donate online at www.mbar.org/foundation.htm. Gifts to the MBF are tax-deductible to the fullest extent of the law. For more information, contact Pamela Hubbs at 503.222.3275 or pamela@mbabar.org.

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