



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

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

May 2010 Volume 56, Number 5

Garry Kahn, 2010 MBA Professionalism Award Recipient

By Leslie Kay, MBA President.

Garry Kahn will be awarded the MBA Professionalism Award at the MBA's 104th Annual Meeting and Dinner on May 11. The award is made each year to an attorney who exemplifies the standards in the MBA Professionalism Statement:

Professionalism goes beyond observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes and makes the practice of law more enjoyable and satisfying.

Garry, you were born in San Francisco, and later moved to Portland where you attended Grant High School and then Northwestern College of Law at night after serving in the US Marine Corps. You have been practicing law since 1962. What was your path to the legal profession?

My dad was a painting contractor and my mother, a secretary. I was not what one would think of as a model student in high school ... but I was attracted to the law and the courtroom. I would actually skip school to watch the criminal docket at what was then the Municipal Court on 2nd and Oak streets in Portland. After I served in the Marine Corps, the GI Bill paved the way for me to go to college and law school at night at Northwestern in the Park Blocks. I started out at the firm that became Pozzi, Wilson, Atchison, Kahn and O'Leary. In 1982 I started my own firm.

Can you describe your practice? Since 1994 I have practiced with my son Steve in a firm that emphasizes personal injury, wrongful death, products liability, medical malpractice and professional liability. We are a client-centered, no-frills outfit.

What is your most memorable case?

My most memorable case was probably a pro bono case. I represented a nonprofit organization that sued a hospital to enforce a 1927 contract that obligated the hospital to provide charity care to patients designated by the nonprofit. The case went to the Oregon Supreme Court - 266 Ore 448 - and raised those wonderful common law contract issues such as whether an agreement existed, laches, statute of frauds, assumption of contract, etc.... We prevailed with the court decreeing specific performance of the agreement.



How has the practice of law changed since 1962?

It has changed a lot. There were only 2000 lawyers in Oregon in 1962, which afforded more collegiality. Discovery was more informal. Some things have gotten much better such as the increase of women in the profession, but other things are decidedly worse such as lawyer advertising, the increased cost of litigation, and the size of law school debt. We used to try more cases, and used less time to do so ... now there is more emphasis on alternative dispute resolution.

You served on the Multnomah County Circuit Court Bench, correct? Yes, I was appointed to the bench in 1992 by Governor Roberts and resigned after 22 months. I realized that I preferred and missed representing and advocating for people to judging them and their attorneys.

Garry, you will receive the MBA's most prestigious award to recognize and honor your personal and professional qualities, reputation and conduct during the course of your career, including your pro bono activities. Any tips for the rest of us?

[Chuckling] I am sure there have been occasions when I have been less than professional such as in the heat of discovery, however I was advised early that one doesn't practice law in a vacuum. I have had some very good mentors at the beginning of my career. One's reputation is the most important thing that one possesses as a lawyer. One must be vigilant in maintaining that reputation.

Interview conducted, condensed and edited by MBA President Leslie Kay.

MBA CLE

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

May

Wednesday, May 5
Nonprofit Entity - Perpetuity Ain't Forever
Scott Howard
Amy Stillman
Jeffrey Thede

Tuesday, May 25
Employment Law for Non-Employment Lawyers
Dave Riewald
Charese Rohny

Wednesday, May 26
Multnomah County Judges Trial Practices
Judge Jerry Hodson
Judge Janice Wilson
Judge John Wittmayer

June

Thursday, June 3
Receivership as a Restructuring and Business Litigation Tool
Steve Linkon
Brent Summers

Wednesday, June 9
Post Judgment Collections
John Davenport
Russ Garrett

Thursday, June 10
How to Effectively Present and Defend PIP and UM-UIM Claims
Thomas D'Amore
Matthew Ukishima

multnomah bar association Annual Meeting, Dinner and Judges Reception

May 11, 2010

Photos from the event will appear in the June *Multnomah Lawyer*.

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Judge Michael Marcus, Multnomah County Circuit Court

MBA Professionalism Award Recipient
Garry Kahn

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

- East County Courthouse: Design schematics and cost estimates are underway for a new court facility in Gresham. The next big test will come at the commissioners meeting on April 22. MBA has been asked to attend the meeting. \$800,000 was set aside for the design schematics from sale of an Edgefield property (4.8 million). County staffers, including Commissioner Diane McKeel met with stakeholders. They report that there is more engagement by the community this time.
- MBA Courthouse committee members met with Commissioners Kafoury, Cogen, McKeel and Shiprack, as well as Peter Englander, who is in the PDC office. The city is considering a new urban renewal area, which may include the downtown courthouse. Peter was extremely informative about the existing urban renewal area and the possible new one. The committee will also meet with Kimberly Schneider, head of the city's economic development team.
- Leslie and Judy met April 1 with a newly established county committee focusing on the downtown courthouse, which includes Chief Justice De Muniz. Commissioner Kafoury will chair the building design subcommittee and Commissioner Shiprack the finance subcommittee.
- Chief Justice De Muniz reports that PSU MBA program has agreed to adopt

as a project: how to make the existing downtown courthouse into a revenue generating building for the county.

Pro Bono Opportunities

The Senior Law Project began in 1978 and presently operates over 25 legal clinics per month. Volunteer lawyers meet with clients at senior center locations in Multnomah County for thirty-minute sessions on any civil legal issues. Eligible individuals may receive continuing pro bono services. Training includes initial instruction and a monthly Elder Law Discussion Group to provide additional support. For more information or to add your name to the list of volunteers, please contact Andrea Szabo at andrea.szabo@lasoregon.org or 503.224.4086. (Note: Individual PLF coverage required.)

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 at 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.

CALENDAR

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

May

1-7 Saturday-Friday, YLS Community Law Week
See p.10 for details.

4 Tuesday, MBA Board meeting

5 Wednesday, MBA CLE Nonprofits and Non-Perpetuity
See insert or register at www.mbabar.org.

6 Thursday, YOUthFILM Screening
See p. 10 for details.

7 Friday, MBA Brownbag: Time is of the Essence
See Announcements on p. 4 for details.

10 Monday, June Multnomah Lawyer deadline

11 Tuesday, YLS Board meeting

Tuesday, MBA Annual Meeting and Dinner
See p. 1 for details.

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

22 Saturday, MBA Lawyers & Law Students Golf Event at Heron Lakes
Visit www.mbabar.org for details.

25 Tuesday, MBA CLE Employment Law
See insert or register at www.mbabar.org.

26 Wednesday, MBF Board meeting

Wednesday, MBA CLE Multnomah County Judges Trial Practices
See insert or register at www.mbabar.org.

31 Monday, Memorial Day MBA office closed

June

3 Thursday, MBA Social With Minority Bars
See p. 8 for details.

9 Wednesday, MBA CLE Judgment Collections
See insert or register at www.mbabar.org.

10 Thursday, July/August Multnomah Lawyer deadline

15 Tuesday, MBA Golf Event at Riverside
Visit www.mbabar.org for details.

The Corner Office

Whether to Consent or Object to Requests for Extension of Time

The Professionalism Statement developed by the MBA states in part that:

We are committed to professionalism; we believe that lawyers should solve problems, not create them. Accordingly, we will conduct ourselves in a manner consistent with the following principles:

- We will promote integrity and independent judgment. As officers of the court, we will work to support the

effectiveness and efficiency of the legal system.

- We will be courteous, fair and respectful.

We hope that all attorneys in our community would strive to meet, if not exceed, the professionalism principles stated in the MBA's Professionalism Statement. The integrity, effectiveness and efficiency of our legal system depend on it. Our commitment to professionalism and the ability of opposing attorneys

to work together in order to resolve scheduling conflicts is an integral aspect of ensuring the efficient administration of justice in our legal system.

Because we are all too familiar with the demanding schedules and tight deadlines related to litigation, most litigators in our community routinely extend professional courtesies to each other and consent to requests

Continued on page 12

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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Conflicts Revisited, Part 1: Current Client Conflicts

We last took a comprehensive look at conflicts five years ago when the then-new Rules of Professional Conduct (RPC) became effective. Given the passage of time and the continuing importance of this topic, we'll revisit conflicts over the next three months. This month, we'll examine current client conflicts. Next month, we'll follow with former client conflicts. We'll then conclude with a discussion of structuring representations to eliminate conflicts altogether.

There are two basic variants of current client conflicts. First, conflicts can arise between clients. Second, conflicts can arise between the interests of a client and those of the lawyer or the lawyer's firm. We'll look at both and then close with a review of conflict waivers.

Multiple Client Conflicts

Multiple client conflicts are governed primarily by RPC 1.7(a)(1). They occur when our representation of "one client will be directly adverse to another client[.]" In this context, "directly adverse" usually means representing one client against another in a legal matter rather than simply that the clients themselves are economic competitors. Because we owe current clients a broad fiduciary duty of loyalty, we are generally prohibited from taking on matters adverse to them for other clients. The prohibition comes in two main forms.

First, we are prohibited from representing both sides in the same matter even if the clients concerned are willing to consent. For example, we can't negotiate both sides of the same business transaction. This variant is often called a "non-waivable conflict."

Second, even if a matter is unrelated to work we've handled for another client, we are prohibited from representing one current client against the other unless both clients consent. For example, absent consent, we can't represent Client A against Client B in a transaction even if the only work that we do for Client B is unrelated employment litigation. This variant is often called a "waivable conflict."

Interest Conflicts

Conflicts between the interests of a client and those of a lawyer or the lawyer's firm are controlled principally by RPC 1.7(a)(2). RPC 1.8 also addresses a number of specific scenarios triggering this kind of conflict, such as business transactions with clients. Interest-based conflicts occur when our professional judgment for a client may be "materially limited" by our own interests, those of our firm or some other obligation. In other words, the concern is that we will "pull our punches" in representing a client in favor of our

Continued on page 6

MBA Merit Award Recipients

Award recipients are chosen for their enduring commitment to the MBA's mission of promoting justice through service, education or leadership to the MBA, the legal profession and the community.

Mark Fucile, Fucile & Reising, has provided ethics education and advice to MBA members via his Ethics Focus articles in the *Multnomah Lawyer* since 2003. He is also a frequent MBA CLE presenter.



Mark Fucile

Mary Pool has served with distinction on the MBA Equality Committee. She has led the Diversity Statement efforts for the committee, from drafting the statement to a successful marketing plan. To date, over 500 individuals and nearly 150 firms have signed the statement.



Mary Pool

Congratulations to both of these very deserving award recipients.

ANNOUNCEMENTS

CourtCare Seeks Your Support

Please look for the CourtCare insert inside this issue. The program protects children, increases access to the justice system and improves courthouse operations in a way that benefits the entire legal community.

May 7 Judicial Brownbag Time is of the Essence

The main topic of this MBA brownbag in presiding court is proceedings when time is essential. We will cover expedited motion hearings, show cause proceedings, temporary restraining orders and any other proceeding in which time is of the essence. This brownbag provides MBA members with an opportunity for informal discussion with Judges Maurer, Marshall and McKnight. Questions on other subjects are also welcome. Bring your lunch and questions to the Multnomah County Courthouse, Room 208 on Friday, May 7 at noon.

ABA Delegate

Please let Judy Edwards know if you are interested in being the MBA's delegate to the ABA by emailing her at judy@mbabar.org.

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.

Statement of Diversity Principles Available for Your Signature

The MBA Equality Committee invites you to sign the new Statement of Diversity Principles. Read the statement at www.mbabar.org/docs/DiversityStatement.pdf, and demonstrate your commitment to diversity by signing the statement online at www.mbabar.org/diversitypledge.htm.

Oregon Criminal Defense Lawyers Association

A seminar, "Facts and Law Tango: Using the Law to Get the Most from

Your Facts" will be June 17-19, at 7th Mountain Resort in Bend. Visit www.ocdla.org for details.

Children's Relief Nursery (CRN) Receives Oregon Psychological Association's Community Service Award

The annual award is given to an organization that makes the community a more psychologically healthy place by enacting programs using what has been learned from the science of psychology and bringing such programs to the people who need them. The association's board of directors chose CRN as the recipient due to testimonials by several psychologists, which reported that CRN uses evidence-based principles to help parents read children's emotional cues in order to prevent abuse. CRN also serves a needy, high-risk population.

MBA Executive Director Judy Edwards is the CRN board president.

2010 MBA President's Award

The first MBA President's Award will be presented to the Hon. Michael Marcus, Multnomah Circuit Court, at the MBA annual meeting on May 11.

Marcus was selected to receive the award for his dedication to the legal community and for championing the development of eCourt through his participation on Oregon Judicial Department Technology Committees and for his work on the eCourt Implementation and Steering Committees.

Additionally, Judge Marcus has advocated for crime reduction through evidence-based sentencing and has spent many years educating judges and the public about this approach that he calls smart sentencing. He developed and maintains the Web site, www.smartsentencing.org toward this end.

His work as the director of litigation at Multnomah County Legal Aid Service changed the landscape of landlord tenant law in Oregon, establishing the major precedents that still guide judges. At the same time, he mentored generations of legal aid lawyers, challenging them to practice law at the level of national excellence while maintaining a deep commitment to clients.

The MBA President's Award is a discretionary award made by the MBA president, with concurrence of the board, to a person who has made outstanding contributions to the bar, the bench and/or the community. There may be no award in some years. The president may nominate the recipient, who may be a lawyer or non-lawyer.



Judge Michael Marcus

Join Your Colleagues to Revitalize Juvenile Court Playroom

Robin L. Wolfe, Troy, Rosenberg & Wolfe, PC, a Portland juvenile law attorney representing children in state custody and parents involved with the juvenile court, is raising money to give these most deserving children an updated play area at the Multnomah County Juvenile Court. Robin is working with the Juvenile Court's Child Welfare Council to reach this goal.

We know from former foster children, current child clients, as well as statistical research, that it can be very important for children to come to their court hearings - to see the courtroom, meet their judge and be a part of the process. But sometimes kids don't want to hear all the details in the courtroom; or, they might need a place to wait while adult issues are discussed. These kids need a safe, creative space with toys, books, art supplies and more to make their overall experience better.

Please help us raise money to renovate the play room at juvenile court by donating online at: www.crowdrise.com/robin. Your tax-deductible, charitable donations are greatly appreciated and will benefit some of Oregon's most amazing children. Contact Robin L. Wolfe, robin@trw-law.com or Judge Paula Kurshner, paula.j.kurshner@ojd.state.or.us, for additional details.

Diversity Roundtable: Fostering Open Dialogue

By Dina Glassman and Gabby Richards.

Perkins Coie's Portland office has been hosting regular diversity roundtables for its attorneys and staff for almost three years. This is a rather simple activity, which has made a positive and important impact on the office and its people, current and future.

The discussions were intended as awareness-raising tools, but have also created a sense of community and, hopefully, reduced bias. To date, Perkins Coie has tackled many sensitive topics, including generational diversity, GLBT issues in the workplace, physical disability, religious traditions, racism and the role of gender in the workplace, to name a few.

Inevitably, the 60-90 minute discussions, often including attorney and staff panel members from colleague firms, only begin to scratch the surface on the profound topics the group is broaching. Notwithstanding, the forum brings people together to start conversations that may otherwise appear too difficult or awkward.

Gabby Richards, one of the firm's past diversity fellowship recipients and future summer associate, shares her thoughtful impressions about the benefits of such open dialogue.

"Among the topics in my Professional Responsibility class at Lewis & Clark Law School was bias in and out of the courtroom. It was a compelling and candid discussion, uncomfortable at times, that reflected a broad array of backgrounds, cultures and experiences. The topic triggered a host of concerns, including how to address situations where bias hinders professional growth opportunities or imposes an unwelcoming working environment.

"One thing upon which we all agreed is that fostering an open dialogue with colleagues is critical to preventing, addressing, and resolving bias issues. My experience as a summer associate have benefited from such a dialogue.

"As a summer associate for the past two years at Perkins Coie, I attended one diversity roundtable and was a panelist on another.

"The latter was a discussion about disability in the workplace, and I embraced the opportunity to talk about my experiences as a wheelchair-user in a forum that facilitated candid conversation about tough issues.

"The roundtable was part of a dialogue that started nearly two years ago when I began applying for summer positions. I had frank conversations with Perkins Coie from the outset about needs specific to my disability, and the firm responded by creating an environment that is nothing short of full inclusion – from the addition of automatic openers on all internal doors in our offices to ensuring that professional and social events are fully accessible and free of barriers that pose logistical problems.

"My Professional Responsibility professor queried whether bias was a topic worthy of discussion in future courses. I enthusiastically suggest that it's a topic worthy of discussion every day."

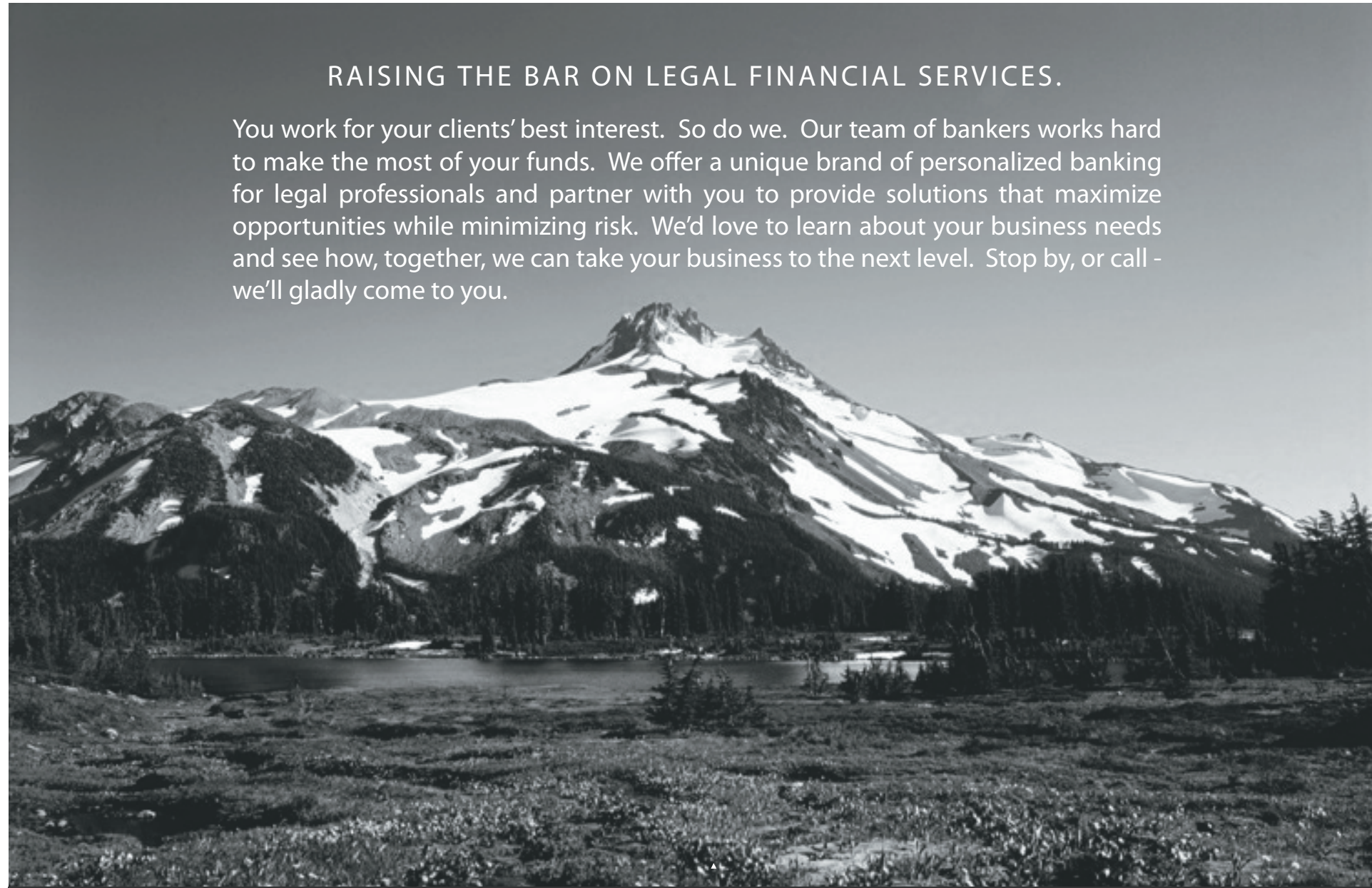


Dina Glassman is the Director of Attorney Development at Perkins Coie, where she previously practiced as a labor and employment associate.



Gabby Richards is law student at Lewis & Clark Law School. Gabby is spending a third consecutive summer with Perkins Coie, where she was the recipient of the firm's IL diversity fellowship in 2008.

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A Day in Gresham Court

By Allison Boomer.

Judge Lowe, a Gresham judge, compares the court to a small-town courthouse; he believes that it often provides a more personal experience than its larger counterparts such as the Multnomah County Circuit Court in downtown Portland. Due to the lesser volume of cases, Gresham judges often have a little more time to spend with litigants and defendants appearing before the court. Unfortunately, the Gresham courthouse also appears rather neglected, perhaps because it is smaller and more out-of-the-way.



Ceiling tiles that have fallen off due to water damage.

The Gresham court handles nearly all of the same types of cases as the Multnomah County downtown court, including misdemeanors, community court and jury trials two days each week. The court does not handle domestic violence or felony cases. Many of the cases heard at the Gresham court involve traffic violations. The dividing line between Gresham and Portland is 122nd Ave.; violations occurring east of that line are processed by the Gresham court. Partially to accommodate the large traffic violations docket, Gresham holds night court from 5-7:30 p.m. Night court turn out is usually high; the court frequently sees up to 150 people.

Despite the number of people served by the Gresham court, the courthouse itself is small. There is only courtroom and one judge's chambers, shared by several judges throughout the course of a week. Court staff work in the front office, which appears to contain up to ten workstations. Much of the building is not utilized by the court, often because it is not up to code. The entire second floor of the building, which is an old dance studio, contributes to a frightening mold problem in the building. Even those parts of the building

in use by the court are shared with other groups. For instance, the courtroom is shared with the American Legion, a veterans' group that holds meetings, socials, bingo nights, dances and potlucks at the courthouse.

In many ways, the Gresham court has outgrown its facilities. The front office has only two public contact windows; when the court is especially busy, staff set up a third "drive through" counter at a window in the door to the front office. The court lacks a private space where staff may interview defendants charged with misdemeanors to determine whether they qualify for court-appointed counsel. Those interviews are conducted in a kitchen off the rear of the courtroom that also serves as a break room for court staff. The entry to the women's restroom features a corner that is too narrow to accommodate wheelchairs. Meanwhile, the staff restrooms are located in a cold, dirty hallway at the back of the



Plastic-lined boxes catching water from leaks.

courthouse. Court staff must walk outside through a partially covered walkway, slick with rainwater, to go to the restroom.

Beyond facilities that are no longer adequate to serve the functions of the court, much of the Gresham courthouse is in complete disrepair. There is only one jury room in the courthouse. Last year, the room was plagued by a terrible carpenter ant problem. Combined with a leak, the side of the roof sagged, requiring installation of new support beams. The District Attorney's office at the courthouse has a flat roof that resembles a swimming pool during heavy rain. Last year, the office flooded during heavy rains. Mold grew despite daily efforts to dry the carpets. Perhaps the worst sight in the entire building is the second floor. The entire floor smells damp and moldy; plastic-lined boxes are scattered about to catch leaks. A few weeks ago, a waterfall flooded one of the second floor rooms, leaving a warped floor and a stained ceiling in its wake.

While the many band-aid fixes are keeping the Gresham courthouse open and operating, the court is sorely in need of better facilities. Hopefully a new courthouse is in Gresham's near future.

Ethics Focus

Continued from page 4

own interest. For example, a lawyer entering into a business investment with a client might be tempted to skew advice to the client to protect the lawyer's investment. As long as "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation" (RPC 1.7(b)(1)) notwithstanding the interest, interest conflicts are waivable.

Conflict Waivers

As noted, some current client conflicts are non-waivable - such as representing both sides in the same transaction. Assuming a conflict is waivable, then the clients affected must give their "informed consent." "Informed consent" is defined by RPC 1.0(g) as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." RPC 1.7 and RPC 1.8 require that conflict waivers be confirmed in writing and, under RPC 1.0(g), further require that the written waiver "reflect a recommendation that the client seek independent legal advice to determine if consent should be given." Moreover, some waivers under RPC 1.8 - again, such as business transactions with clients - expressly require the client to sign the waiver (rather than simply having the lawyer's letter confirm the consent granted).

Conflict waivers involve important elements in both substance and form. On substance, they

document the disclosures made to the client. On form, failure to meet the requirements of RPC 1.0(g) will open the waiver to challenge and potentially leave the lawyer with an "unwaived conflict." The OSB *Ethical Oregon Lawyer* (chapter 20) and the Professional Liability Fund Web site both have waiver templates covering many common conflicts. The templates are useful because they contain the requisite boilerplate and because conflict waivers are not something that most lawyers draft often. At the same time, lawyers using the templates must remember that they are the ones who need to supply the critical details in the waiver that may mean the difference between "informed consent" and something that falls short.

Summing Up

Addressing conflicts appropriately (whether by declining the work involved or obtaining waivers) is central to avoiding potential bar discipline and disqualification. As noted earlier, conflicts under the RPCs can also translate directly into claims asserting breach of the fiduciary duty of loyalty. Therefore, addressing conflicts appropriately is equally central to lessening the risk of civil damage claims.

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

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AROUND THE BAR



Amy Barber

CARR BUTTERFIELD

Amy Barber has joined the firm as an associate. She will focus her practice in the area of corporate law with an emphasis on securities law, compliance and entity formation.

litigation. She is accredited through the Green Building Certification Institute.

Schwabe recently expanded its real estate practice with the addition of associate attorney **Ali Seals**.



Jill Schneider



Lisa Almasy Miller

LISA ALMASY MILLER

The OSB Board of Governors reappointed **Lisa Almasy Miller** to the PLF Board of Directors. Miller was a member of the board from 2003-2006 and chaired it in 2007. Additionally, in December, Miller was elected vice president/president elect of Clackamas Women Lawyers for 2010. She is currently available full-time as a mediator and arbitrator serving western Oregon.



Brien Flanagan



Ali Seals



Amanda Gamblin

SCHWABE, WILLIAMSON & WYATT

The firm recently named **Brien Flanagan, Amanda Gamblin** and **Jill Schneider** as shareholders.

Flanagan focuses his practice on environmental and natural resources law, including matters involving the Clean Water Act, and state and federal Superfund laws. He also assists with environmental risk assessment and allocation in business and real estate transactions.

Gamblin focuses her practice in the area of employment law, including litigation.

Schneider practices in the area of commercial litigation and construction, including construction defects, corporate disputes and trust and estate

PENOYER LAW OFFICE

Dave Penoyer recently opened his own law practice, where he continues to represent people injured and killed by the fault of others. He also does wills and trusts and soon plans to add civil rights and criminal defense to his practice areas.



Andrew Schpak

BARRAN LIEBMAN

Andrew Schpak is completing his two-year term as the ABA Young Lawyers Division District Representative for Oregon and Washington. He will then become the division's committee director, as well as its liaison to the ABA Senior Lawyers Division.

Schpak represents management in employment litigation and provides advice in employment matters.



Valerie D. Fisher

ATER WYNNE

Partner **Valerie D. Fisher** has been named to the nine-member board of directors of the OSB PLF.

Fisher chairs the real estate lending group, where her practice focuses on negotiating, structuring and documenting real estate and commercial loan transactions. She also chairs the firm's Opinion Committee and Response to Audit Letter Committee.

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.

Consider Volunteering for an MBA or YLS Committee

Please see the insert in this issue or at www.mbabar.org to sign up for an MBA or YLS committee.

assists with the nomination and selection process for the MBA Professionalism Award.

Volunteering Rewards

Meeting new people and expanding perspectives are just a few of the reasons members cite for serving on committees. When you join a committee, you become part of a team of your colleagues. As you contribute to the work of the committee, you also learn from other members. Together, our volunteers provide valuable service to the legal community.

Courthouse

Please let Judy Edwards know if you are interested in assisting with the effort to build new downtown and east county court facilities. Email her at judy@mbabar.org.

MBA Committees

Continuing Legal Education (CLE)

Plans, conducts and evaluates 30 or more CLE seminars a year. Classes are developed for attorneys in practice 10 years or longer and topics reflect various areas of practice.

YLS Committees

Futures

This committee looks at topics affecting the evolving practice of law, such as generation gap, sustainability, mentoring, work/life balance, technology, leadership and diversity and develops and implements strategies to address the issues.

CourtCare Fundraising Campaign

Plans the annual fundraising campaign for free childcare in the Multnomah County Courthouse.



The Yates Matthews & Eaton team at WinterSmash, a Membership Committee event

Court Liaison

Serves as the MBA interface with the court; fosters dialogue between our membership, the judiciary and the court administrator.

Membership

Plans drop-in, meet-the-judges, fall new admittee and winter third-year law student socials. The committee also publishes the *New Admittee Survival Guide*.

Equality

Promotes equality in the profession and justice system and identifies ways in which the MBA can promote diversity in the practice of law.

Pro Bono

Encourages lawyers to donate their time and legal skills to the poor; publishes handbooks on juvenile rights and domestic violence; coordinates volunteers for at-risk youth programs; and sponsors a nonprofit project pairing volunteer attorneys with nonprofit organizations.

Golf

Plans several golf tournaments between April and October, including the MBA Championship, which benefits the Volunteer Lawyer Project at Legal Aid Services of Oregon.

Professional Development and Education

Plans and sponsors YLS CLE seminars and sessions that help young lawyers develop their careers. These seminars address the needs of attorneys in their first five years of practice.

Group Health Insurance

Monitors quality, low-cost health insurance options for MBA members; negotiates renewal rates with insurance carriers; and explores additional services to be added to the program.

Service to the Public

Educates and serves the general public with efforts such as Community Law Week, the Dropout Prevention Program and the Imprint Program. The committee also trains and coordinates volunteer attorneys who act as judges in Multnomah County Animal Control hearings.

Judicial Screening

Screens judicial appointment candidates and makes recommendations to the presiding judge, chief justice and the governor, in accordance with the MBA process.

Membership

Plans member events, including the annual WinterSmash which benefits CourtCare.

YOUTHFILM Project

Organizes the annual filmmaking contest for grades K-12, focusing on the Community Law Week theme.

Professionalism

Creates and conducts programs that promote professionalism in the practice of law and



Tips from the Bench

By Judge Marilyn Litzenberger, Multnomah County Circuit Court.

A reminder about depositions and the Multnomah County guidelines

Judges often have occasion to read deposition excerpts submitted in support of motions or when offered at trial. When doing so, it is not uncommon to observe attorneys straying outside the boundaries of the deposition guidelines published by the bench and bar nearly 20 years ago. Those 1992 guidelines deserve dusting off and repeating once again, if for no reason other than to inform new lawyers (and remind more experienced lawyers) that they exist and were published to address reoccurring instances of “bad faith” deposition techniques that still exist in today’s practice.

First, as is the case during trial, speaking objections are not permitted during discovery or perpetuation depositions. When an attorney offers more than the legal grounds for the objection, there is a risk of contaminating the answers given by the witness or suggesting how the trier of fact should consider the evidence about to be offered through the witness. Both are improper uses of objections.

Second, there is no need or reason to respond to the objection stated, other than to rephrase the question asked. In fact, the objection should be thought of as an invitation to correct an alleged defect in the question. For example, the objection might signal that an inadequate foundation has been laid for a witness to respond to the question asked. The questioner can then step back and ask the witness the foundational questions needed to establish that the witness is competent to answer the question or that the witness has the experience and training needed to provide a reliable answer to the question.

If the questioning attorney ignores the opportunity to cure the objectionable defect in his question, then he is taking a risk that his question and the witness’s answer will be excluded at trial. This is true whether the deposition was to perpetuate testimony for trial or taken during discovery. Remember, discovery depositions may become trial testimony if the



witness becomes unavailable for trial due to death, illness or some other unexpected event.

Finally, the only permissible bases for instructing a witness not to answer during a deposition are: (a) the question asked invades a privacy right recognized by statute or the constitution; (b) the answer would reveal a privileged communication or disclose work product; or (c) the question amounts to harassment of the witness.

If a deposition is being conducted using “bad faith deposition techniques” either because the witness is being harassed by the questioning attorney or being coached by speaking objections or instructed not to answer without a proper basis for that instruction, the deposition may be suspended briefly for the purpose of contacting the court to present an oral motion to limit the deposition or to instruct the witness to answer. Alternatively, the parties can continue the deposition and subsequently file a motion to compel answers to the questions or a motion for a protective order so that the objections will be resolved prior to trial.

What are foundation questions and why do they matter anyway?

There is an art to asking deposition questions that will further your client’s case. It is important, however, not to overlook the importance of asking the witness the foundational questions necessary to insure the witness’s answers will be admissible at trial on in support of a motion for a summary judgment. Remember, a deposition answer is an out-of-court statement that cannot be



By Elizabeth Knight, Dunn Carney et al and Court Liaison Committee member.

Presiding Judge’s Report

Judge Maurer discussed two informative reports. First, *The Vanishing Civil Jury Trial In Multnomah County* report which analyzes why fewer civil disputes are being tried in the courtroom. Judge Maurer discussed the importance of ensuring there are civil jury trials, as the jury trial is fundamental to our legal system. The report is available on the MBA Web site. Second, the University of Denver’s Institute For Advancement of the American Legal System recently published a report entitled *Civil Case Processing in the Oregon Courts*, which analyzes civil case processing in Multnomah County. The report gave Multnomah County Circuit Court a high ranking in terms of its case management system, and the institute plans to use Multnomah County as a model for other jurisdictions. The MBA Web site will provide a link to this report.

Doug Bray discussed a spreadsheet entitled *Justice System Surcharge Account Revenues and Distributions, 2009-11 Biennium*, which compares revenue collected to date from the fee surcharges imposed by HB 2287 with initial projections. The spreadsheet shows that after five months, collections from the fees are lagging the forecast by 40%. While there is concern that this will result in a significant shortfall by June 30, 2011 (the date the fees will sunset), the shortfall is getting smaller each month, and by the end of the biennium the shortfall will hopefully be greatly reduced.

There is a new committee formed by Chief Justice Paul De Muniz called the Court Efficiency Work Group (CREW) which is looking at ways the state courts can improve efficiencies. The group is in its early stages and has had one meeting to date.

Please visit www.mbabar.org for the latest information on the east county court facility.

Downtown Courthouse

There is a new joint public/private committee evaluating how to solve the issue of a new downtown courthouse. Commissioner Deborah Kafoury is the chair of the committee, and other committee members include Commissioner Judy Shiprack, Chief Justice De Muniz, Mike Schrunck, the MBA president and other local attorneys.

Spring Brownbag

Eric Dahlin reported that Judges Maurer, Marshall and McKnight are the panelists for the May 7 “Time is of the Essence” brownbag at the courthouse in presiding courtroom 208.

Other State Court Issues

The recent managing partner roundtable hosted Chief Justice De Muniz, who discussed, among other issues, the new filing fees. A suggestion was made to sell “ticket books” to expedite the process of paying the fees.

offered for the truth of the matter asserted unless you have laid the proper foundation to exclude it from the definition of hearsay or to establish it fits within an exception to the hearsay rule. Educate yourself on what questions are needed to achieve this purpose. There are many resources on this subject in the Multnomah Law Library. One such reference is *Evidentiary Foundations* by Edward J. Imwinkelried.

Another reminder: Don’t forget to mention Rule 403

Speaking of objections, do not forget, as many lawyers do, to couple an objection based on relevancy with an objection under Rule 403. The threshold for relevancy is very low, but Rule 403 allows the court to weigh the probative value of the evidence against its prejudicial effect. Think of it as getting a second bite out of the apple.

Likewise, while a party offering propensity evidence under Rule 404 may be able to articulate an alternative reason the evidence

should be admitted, Rule 403 can provide a separate basis for excluding the evidence. If the evidence is particularly prejudicial, be sure to ask the court to make “403 findings” on the record to avoid a remand directing the court to do so after your appeal.

The rules of evidence serve the purpose of insuring that inherently reliable evidence will be admitted and inherently unreliable evidence will be excluded. The rules are part of the tool box that all trial lawyers should bring with them to court.

Finally: Jury instructions – discuss them early and often with your trial judge

Jury instructions can be key to winning your case, so give careful thought to them when outlining your trial strategy and preparing for the first day of trial. The uniform instructions may suffice for a routine negligence case arising out of a motor vehicle accident, but most other civil cases require special instructions or at least modifications to the uniform instructions. Be prepared to discuss your proposed jury

instructions and to state any objections you have to another party’s proposed instructions in a preliminary conference with your trial judge before voir dire.

As a general rule, if your opening remarks include a discussion of the burden of proof or what you and your opponent must prove during the trial, be sure you have requested those instructions and discussed them with your trial judge. The court may wish to instruct the jury regarding some of the claims and defenses in the case prior to your opening statements. In any case, the court will be better informed of the legal issues if you identify the instructions that you are requesting at the outset and provide your judge with the statutes and cases supporting those proposed instructions.

Remember, jury instructions can create legal error in your case and be the basis for reversing an otherwise favorable verdict, so make sure your trial judge is well informed and has sufficient time to read and consider your instructions.

save the date!
MBA’S First Thursday joint social with minority bar associations
 June 3, 4:30-6:30 p.m. at Perkins Coie
 (1120 NW Couch, 10th floor)

The MBA Membership Committee is pleased to co-sponsor an event with other state and local bar associations that support and celebrate the contributions of diversity and inclusion in the legal profession. Please join us along with Oregon Women Lawyers (OWLS), Oregon Minority Lawyers Association (OMLA) and the Oregon Gay and Lesbian Law Association (OGALLA) for a social with hosted food and drinks, then take a map of the nearby art galleries and hit the streets to enjoy First Thursday in the Pearl District! This event would not be possible without our generous sponsors: Perkins Coie, OGALLA, OMLA, OWLS and the MBA.

Space is limited, so RSVP to Kathy Maloney, kathy@mbabar.org, to reserve a spot.

Profile – Judge Rebecca Duncan, Oregon Court of Appeals

By Sheila Potter, Bullivant Houser Bailey and Court Liaison Committee member.

Rebecca Duncan, the newest judge on the Oregon Court of Appeals, didn't actually set out to be a judge. It took the encouragement of her colleagues and friends in the appellate bar, not to mention her new colleagues on the bench, to persuade her that the next step was to take the skills she's developed over the years as one of the top criminal-defense lawyers at the appellate level, and put those skills into service as a judge.

After she moved here from Wisconsin, Duncan began her Oregon career with Metropolitan Public Defenders, where she was a trial attorney for years, first in Washington County and then in downtown Portland. But although

“Many lawyers would not have been comfortable as a prosecutor and a criminal defense attorney...”

her Oregon law career has focused on public defense, Duncan's first law job was actually spent on the other side of the criminal bar: a summer internship for a District Attorney's office in Wisconsin, in the course of which she researched and wrote motions on a variety of cases, with a special focus on a single criminally negligent homicide case. Many lawyers would not have been comfortable

as a prosecutor and a criminal defense attorney - but Duncan enjoyed her experience on each side and feels that she could have been as comfortable as a prosecutor as she was on the defense. “You need good people on both sides, for the system to work right,” she said.

As a trial lawyer, Duncan enjoyed the quick pace of a heavy trial docket (“You're never bored, and the stories are great,”) but she found that her greatest pleasure came from preparing and arguing motions, where she could take the time to sort through the pieces of a puzzle and then put them together into a persuasive and compelling argument for the court. As a result, she then moved to the Office of Public Defense Service's Appellate Division in 2000, where she continued to represent low-income clients but handled their appeals. After a few years, Duncan was named the chief deputy defender, one of the two managers in the appellate division, where she was responsible for day-to-day management of the office, helping the office to grow while ensuring that the work produced by the office continued to meet the high standards it set for itself.

Duncan liked devising creative and compelling arguments in support of her cases - and especially enjoyed oral argument, which she views as a

conversation between the attorneys and the judges, all of them earnestly seeking to arrive at the answers to complex and novel questions. Appellate argument hones a lawyer's advocacy skills, Duncan finds: A lawyer must be precise but flexible, and agile enough to argue persuasively for a consistent result while nonetheless following the course of a conversation that is always alive and always moving in new directions. Happily, Duncan found that she and her office always

“Everyone understands and respects the system and we all want it to work.”

enjoyed a “great relationship” with the DOJ attorneys representing the state and also with the judges. “Everyone understands and respects the system and we all want it to work.”

Duncan's close and respectful relationship with the courts deepened when Judge Walter Edmonds announced his retirement. Colleagues and judges who knew her work encouraged her to apply for the open position. It had been 20 years since a criminal defense attorney had joined the court, and Duncan's supporters successfully made the case to her that she had

worked in the appellate courts for long enough that her skills and experience would be an asset to the court. The Oregon Court of Appeals accepts every appeal, and grants oral argument in every case in which the parties request it; Judge Duncan points out that this gives the judges an enormous workload, but that it also means that hers is the court of last resort for most Oregonians.

Judge Duncan was appointed the Oregon Court of Appeals in January. She likes the job enormously so far and is enjoying the new challenges. When asked about practice tips for lawyers appearing before the court, Judge Duncan said that the first question every attorney should carefully examine, before filing a notice of appeal, is whether the case actually belongs in the court. The results are often controlled by issues of preservation and the standard of review - if the best issues were not preserved, or if the standard of review makes reversal unrealistic, there may be nothing that the client can gain from appealing to a higher court.

Judge Duncan also recommends that lawyers spend time narrowing, deepening, and defining the issues they raise on appeal; they should know what points or arguments the court must accept in order



Judge Rebecca Duncan

for them to prevail and focus on them. Lawyers should also focus on how the outcome they seek will affect the development of law. They should think about the legal repercussions of a decision in their favor; they should be able to state the rule of law for which they are advocating and be able to discuss how that rule might play out in later cases with different facts.

Judge Duncan and her husband have two daughters. She views her work as part of the legacy that she will leave to her children. Her career choices have been driven by her commitment to public service, access to justice, and fidelity to the rule of law. Should her girls ever look back on her work, Duncan's goal is that they will find that she was true to her vision of interpreting the law with clarity and integrity, and that the legal community, and the community at large, benefited from her service.

Evans Van Buren Receives Pro Bono Award of Merit

By Cathy Petrecca, Pro Bono and LRAP Coordinator, OSB.



One thousand nine hundred and twenty. That's about how many pro bono clients **Evans Van Buren** has helped in the 32 years he's been volunteering for Legal Aid's Senior Law Program. He has prepared countless wills, answered countless questions and eased the concerns of countless low-income seniors.

He began volunteering when the Senior Law Program was first developed in 1978, and he's still there, 32 years later, volunteering the first Wednesday of every month at the Southeast Impact Senior Center on Belmont. He helps seniors with issues that, to them, seem overwhelming. “The questions they have are big and heavy and weigh on their minds,” he says. But, to him, they're straightforward, especially after answering similar questions for so long.

This year's recipient of the Pro Bono Award of Merit, Van Buren was admitted to the OSB in 1976, and has always considered pro bono service an important part of his solo practice. He found it to be a good

way to “get his oar in the water” as a new lawyer, and now considers it to be his contribution to the profession. He finds the seniors that he assists to be incredibly appreciative of his time and advice.

The Pro Bono Award of Merit is presented annually to a lawyer who has set an example for our legal community in his/her dedication to providing pro bono services to those clients who are unable to afford them. Certainly, 32 years of volunteer service to seniors is a shining example. But Van Buren doesn't stop there. He also mentors new volunteers, and is a regular participant at Legal Aid's monthly Elder Law Discussion Group meetings.

In addition to his volunteer time with seniors, he spent time offering legal assistance for Coast Guard members, when he was a Coast Guard Reservist, drafting wills and offering advice to Coasties. That took him to towns such as Brookings, Coos Bay and Garibaldi.

Van Buren counsels those who are considering volunteering, especially with seniors, to be patient, to be a good listener, and to be humble about what you know and don't know. As for Van Buren, the next first Wednesday of the month will find him, again, on SE Belmont, helping to assuage the concerns of another group of seniors.

Lawyers & Law students golf event saturday, may 22 at Heron Lakes, Portland

Law students will enjoy an excellent opportunity to play golf with Portland Metro area lawyers and judges at Heron Lakes Greenback Course. Open to all law students, Lewis & Clark, University of Oregon and Willamette University law schools are partnering with the MBA to keep the registration affordable for students. Supported by OMLA and the OSB Affirmative Action Program, the focus of this event is to get law students, particularly students of color, to come to the game of golf and have the opportunity to meet and network with the legal community. Foursomes will be made up of two law students and two lawyers or judges.

Register to play at www.mbabar.org/docs/golf.pdf or contact Pamela Hubbs at 503.222.3275 or pamela@mbabar.org.

Anne Steiner, Senior Law Project Award Recipient

By William Penn, Lewis & Clark Law School.

Anne Steiner is the recipient of the 2010 Senior Law Project Volunteer of the Year Award. The Senior Law Project, operated by Legal Aid Services of Oregon (LASO), is the longest running pro bono project in the state of Oregon operating continuously since 1978. Through the project, volunteer attorneys provide free 30-minute consultations to anyone over 60 and continuing representation to financially qualified individuals. The award recognizes attorneys who have shown extraordinary commitment to the project in the previous year.

After becoming an Oregon bar member in 2006, Anne almost immediately started volunteering with the Senior Law Project. Since then, Anne has shown great flexibility in helping the project, volunteering to attend hard-to-staff clinics in east Multnomah County and filling in for other volunteers on short notice. In 2009 alone, Anne staffed 10 Senior Law Project clinics and helped 47 pro bono clients. Anne has gone beyond taking a matter that matters and has helped Multnomah County's community of elders receive access to justice.



Anne is a solo practitioner focusing her practice on estate, guardianship and elder law issues. In addition to work and pro bono, Anne is raising a family.

Anne's pro bono efforts show that new lawyers can contribute as well as their seasoned counterparts. Her efforts also show that there is time in every hectic schedule for pro bono, even for those managing their own practices and raising growing families.

The Senior Law Project Volunteer of the Year Award is presented to a lawyer (or lawyers) who has displayed a special commitment to pro bono services via the project.

Pro Bono Spotlight: David Kracke

By Abra Cooper, Schwabe, Williamson & Wyatt.

David Kracke's pro bono work on behalf of brain injury survivors and their families serves as an example of how one attorney can improve the lives of those who have suffered significant losses. Kracke, an attorney with Nichols & Associates, has represented brain injury survivors for much of his career and is on the board of the Brain Injury Association of Oregon (www.biaoregon.org).

Since becoming involved with the BIAOR, Kracke has dedicated significant time and energy to improving the lives of those who have suffered brain injuries, fighting for their legal rights, and working to prevent similar tragedies in the future.



Kracke first became involved with the BIAOR five years ago, after the organization took note of the integral role Kracke played in convincing the Oregon Legislature to close a loophole in the uninsured motorist statute that prevented victims of carjackings to recover for their injuries from their insurers because the vehicle causing the injury belonged to the victim and not the uninsured motorist.

After a client suffered a brain injury and was denied coverage pursuant to that statute, Kracke worked with the Oregon Legislature for two sessions to get the law changed.

In 2009, Kracke's efforts were rewarded with the passage of Max's Law, a law requiring all high school athletic coaches to be trained to recognize the symptoms of concussions, with the hope being that such education will prevent brain injuries to high school athletes. The law is named for Max Conradt, a former star athlete and scholar in Waldport who suffered a significant brain injury as a result of a concussion when he was permitted to play football while still recovering from an earlier concussion. Kracke played a major role in formulating the law and lobbying on its behalf, including testifying

in front of both houses of the Oregon Legislature and writing an op ed piece for the Oregonian.

In June 2009, Gov. Kulongoski signed Max's Law and it went into effect July 1. Kracke views his work with the BIAOR, and particularly time and effort spent pushing for the passage of Max's Law, as "a chance to make a difference and prevent tragedy in the future." Thanks in part to Kracke's efforts, Max's Law had garnered national attention and is a significant step in preventing brain injuries such as the one suffered by Max Conradt in the future.

University of Oregon School of Law Green Business Initiative

By Kimberly Burkland Pray, Assistant Director, Green Business Initiative and YLS Futures Committee member.

In 2007, the Uof O School of Law created the Green Business Initiative, one of the first law school programs in the country designed to expand teaching, research and outreach opportunities in an emerging academic area at the intersection of law, business and the environment. The initiative, which houses its Portland classroom and offices in the LEED Gold certified White Stag Block, provides a venue for discussion and inquiry about how the law can support the businesses and entrepreneurs who are changing the way people interact with the environment.



The 2009-2010 Oregon Law Green Business Initiative Student Association Executive Board

The initiative introduced a number of new green business courses to the curriculum, including courses in energy law, green building and construction, the law of wine,

and sustainable tax and business practices. In April 2009, the Lundquist College of Business partnered with the law school to offer a new joint JD/MBA in Sustainable Business Practices.

The Green Business Initiative Student Association boasts more than 60 active members. In 2008, the students raised approximately \$40,000 to enable the law school library to create a large and important sustainable business collection, which is unique among law libraries in the Northwest. The student group has now held three successful green business symposia – the first focusing on renewable energy, carbon policy and sustainable development, and the second on "Growing a Green Economy."

May YLS Social Features Wine-tasting

On Thursday, May 20 from 5:30-7:30 p.m., please join the YLS at Vino Paradiso for a wine-tasting social. There will be a selection of wines and light hors d'œuvres, as well as tasting "scorecards" to keep track of your observations. Vino Paradiso is located at 417 NW 10th Ave. Registration is required at \$15 per person, and is limited to the first 50 guests. Please RSVP to Kathy Maloney at kathy@mbabar.org by May 10.



April Social Recap

On April 7, over 40 attorneys gathered in north Portland to socialize and learn about brewing craft beer at The Side Bar at the 5th Quadrant, a venue of the Old Lompoc brewing company. In addition to sampling the numerous Old Lompoc specialty and seasonal beers, the group toured the microbrewery's facilities and received an explanation of the brewing process and of some of Old Lompoc's special beers (aging beer in wooden whiskey casks, what a great idea!). The YLS Membership Committee, which puts on monthly socials for young lawyers in the community, organized and co-sponsored the event with Markowitz, Herbold, Glade & Mehlhaf, P.C.



Call for Volunteers Portland's Original Iron Chef Competition Benefits the Children's Relief Nursery

This year's 9th Annual Portland Original Iron Chef event needs volunteers from the MBA to assist with its annual event. It takes place on Saturday, May 22 at the Hilton Grand Ballroom in downtown Portland. Proceeds from the event benefit the Children's Relief Nursery (CRN).

The evening begins at 5:30 p.m. with a silent auction and competition for the People's Choice Award. The competitors provide appetizers during the social time. They are Chef Gregory Denton of Metrovino, Chef Chris Thompson of Iorio Restaurant and Chef Ben Bettinger from Beaker and Flask. Dinner, a live auction and the Iron Chef Competition, follows at 7 p.m. with the rivalry raging between reigning Portland Iron Chef Adam Sappington of The Country Cat and contender Chef Andrew Garrett of Café Nell, who won the People's Choice award in 2009.

Why support CRN? Because CRN provides valuable services to families within the Portland area to prevent the abuse and neglect of children from birth

through age four. Recipients of CRN's services include families living below the poverty line, who reside in North Portland and have a minimum of one child under the age of five. The families who benefit from CRN's programs are facing difficult challenges in their lives and are in need of support, parenting education and respite services.

CRN's emphasizes the creation and reinforcement of secure, stable and safe relationships between parents and children. CRN emphasizes the importance of maintaining the social and emotional well-being of young children.

Your support of the 9th Annual Portland Original Iron Chef event plays a crucial role in allowing CRN to continue its work with vulnerable children and at-risk families in the community.

If you are interested in volunteering, please contact Elaine Goeders at elagoe@saif.com. Volunteers will work directly with guests and need to be available from 4-8 p.m.

YLS Selects Award Recipients

By Justin Leonard, YLS President.

I am pleased to announce the 2010 recipients of the YLS Award of Merit and the YLS Rookie of the Year Award. The awards will be presented at the MBA Awards Dinner on May 11. All of this year's winners stand out as incredible volunteers who have dedicated tremendous time and energy to the YLS and its mission, which is to provide leadership opportunities and professional development for young lawyers and to involve them in pro bono and public service.

Award of Merit recipients



Collin McKean

Collin serves as co-chair of the YLS Futures Committee, as well as participating in the ONLD Futures Workgroup and volunteering his time for MBA events such as the 9th Grade Matters Program and the Lewis & Clark Career Center's programs for recent grads. Besides a history of accomplishments with the YLS, Collin has also been active with the ONLD and served as an informal liaison between the organizations. Most recently, Collin has been instrumental and tireless in improving the technical features and capabilities of the YLS, including enhancements to the Futures Committee's website, the addition of Web 2.0 commenting features to Futures articles and incorporation of services provided by LinkedIn and Facebook. Collin has a background in family law and litigation and recently formed McKean Law Office.

Slone Pearson

Slone is a member of the YLS Service to the Public Committee. She is being honored for the development of three new programs that support Central City Concern (CCC): arranging volunteers for a Mock Interview Program to help teach critical



interviewing skills; providing access to legal information services for veterans at CCC's "Veteran's Stand Down & Job Fair" event; and planning a social and fundraiser on May 5 to benefit CCC's Employment Access Center (EAC). The EAC assists local individuals on the path to self-sufficiency through employment and prepares them to live productive lives as skilled workers, ready to fill the needs of local businesses. In addition to her inspired efforts to create these new CCC programs, Slone serves as co-chair of the Community Law Week subcommittee. An associate at Hagen O'Connell, Slone specializes in international trade regulation.



Josh Ross

Josh has served on YLS committees since 2006, first on the Service to the Public Committee and then as a founding member of the YLS Futures Committee. One nominator described him as a "workhorse" because he has done so much to benefit the YLS over the years. Most recently, Josh was instrumental in forming an alliance with the City of Portland to coordinate the "9th Grade Matters" Youth Corps program. The 9th Grade Matters event took place in July 2009, and provided at-risk youth with an

opportunity to tour a law firm and the Multnomah County Courthouse, and participate in group discussions with Judge Adrienne Nelson, attorneys and law office staff. The goal was to broaden the horizons of the ninth graders and show them career options that they may not have previously considered, including legal secretary, IT staff, paralegal or attorney. When not working on YLS projects, Josh is a senior litigation associate at Stoll Berne.

Rookie of the Year Award recipient



Jennifer Woodhouse

Jennifer, a staff attorney at Legal Aid Services of Oregon, joined the YLS Pro Bono Committee in late summer 2009, at the beginning of the committee year, and has done an incredible amount of volunteer work in the last nine months. Jennifer serves as the co-chair of the *Pro Bono Opportunities Handbook* subcommittee, and she was also instrumental in arranging the committee's wine-tasting fundraiser. Besides recruiting a number of new volunteers for pro bono projects, Jennifer also serves as the Committee's liaison to the Legal Aid Services of Oregon Pro Bono Committee. Jennifer is described as being "hard-working, innovative, and a self-starter" and she is not intimidated by complex projects or tight deadlines. When she learned of her award, Jennifer admitted, "I feel a little guilty accepting an award for doing something that's so much fun" – a sentiment that helps explain why YLS members continue to do so much good work. Besides making a difference in the community and developing relationships with other lawyers, service on YLS committees is a lot of fun.

PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in March 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.mbar.org/docs/ProBonoGuide.pdf.

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2010 Michael E. Haglund Award Recipient - Matthew Sorensen

By Jennifer Woodhouse, Legal Aid Services of Oregon.



Matthew Sorensen is this year's recipient of the Michael E. Haglund Pro Bono Award for his substantial contributions to the Statewide Low Income Taxpayer Clinic at LASO. Matthew began volunteering as a

way to get some legal experience while searching for full-time work and contributed nearly 100 pro bono hours in 2009.

At Legal Aid, Matthew manages a caseload of around 10 cases at a time and assists with other pending tax cases. Matthew has proven to be an outstanding volunteer - he learns quickly and is both thoughtful and reliable. He is particularly adept at dealing with clients (many of whom find themselves in very difficult and stressful situations) in a way that puts them at ease, which enables him to get the information and documents needed to assist them. Matthew prepares his cases

thoroughly, is tireless in his advocacy and makes a special effort to find referrals for clients with other legal issues.

When asked about his volunteer experience, Matt comments "It is nice to feel useful, in spite of the fact that I haven't found full-time paid work yet" and mentions, "this is a great opportunity to get experience, and being able to help clients out of very difficult situations has been very gratifying." Though this award is for 2009, it is worth mentioning that Matt has already volunteered for over 140 hours

between January and March and plans to continue as a volunteer in some capacity even after he finds permanent work.

The Michael E. Haglund Pro Bono Award is presented to a young lawyer

(or lawyers) who, in the tradition, of Michael Haglund, founder of the Volunteer Lawyers Project, has displayed a special commitment to pro bono services through LASO, OLC or MBA YLS projects.



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Continued from page 3

by opposing counsel to extend filing deadlines or reschedule hearings, depositions, etc.

Please consider the following two hypotheticals, and decide what Attorney A's appropriate reaction should be in light of the MBA's Professionalism Statement:

- Attorney A and Attorney B represent opposing parties in a very contentious arbitration. The arbitrator makes a ruling in favor of Attorney A's client and awards the client a large sum of money. However, the arbitrator retains jurisdiction to determine the award of attorneys' fees and costs. While the arbitrator is still in the process of deciding the issue of attorneys' fees and costs, Attorney A files a petition in the circuit court to confirm the arbitration award. While the petition is pending, Attorney B informs Attorney A that he has been diagnosed with cancer, and asks Attorney A to consent to an abatement of the circuit court proceedings while the arbitrator is still deciding the attorneys' fee issue, so that Attorney B can get

treatment for his cancer during the abatement period without having to get another lawyer in Attorney B's office to take over the case.

There is no doubt that Attorney B was truly diagnosed with cancer and needs treatment. However, Attorney A's client needs to have the arbitration award confirmed and reduced to judgment so that the judgment will create a lien that attaches to numerous real properties owned by Attorney B's client. Attorney A knows that Attorney B's client does not want the arbitration award confirmed, and suspects Attorney B of using his cancer as an excuse to delay having the arbitration award confirmed, possibly so that Attorney B's client will have enough time to fraudulently transfer his real properties before a judgment lien is created. What should Attorney A do?

- Attorney A and Attorney C represent opposing parties in a civil litigation case. During the course of the case, Attorney A has consented to several of Attorney C's requests for

extension of filing deadlines. Both attorneys agree to a date, time and place for Attorney C to take the deposition of Attorney A's client, and Attorney C has noticed the deposition. However, one week before the deposition date, Attorney A's client finds out that his mother has been diagnosed with cancer, and that surgery has been scheduled to take place on the same day and time as when Attorney A and Attorney C had agreed that Attorney A's client's deposition would take place.

Attorney A asks Attorney C to reschedule the deposition for a day or two later so that Attorney A's client could be at the hospital while his mother is in surgery and be there when his mother comes out of surgery. Despite Attorney A's explanation and previous agreements to extend deadlines requested by Attorney C, Attorney C now refuses to reschedule the deposition without offering any justifiable reason why the deposition cannot be postponed by a day or two. What should Attorney A do?



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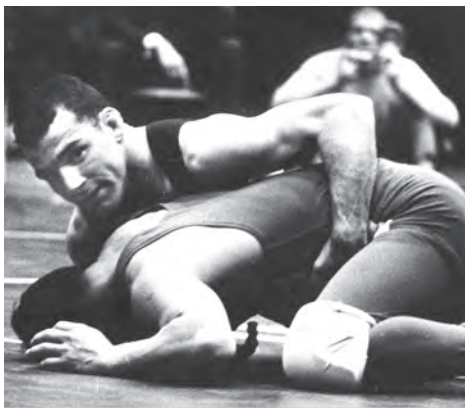
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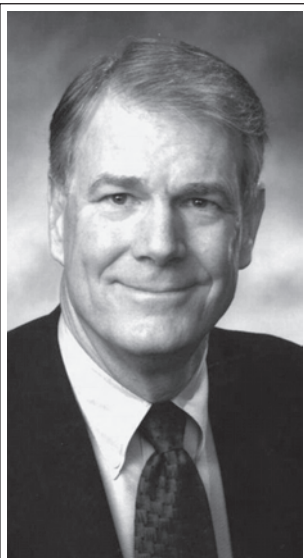
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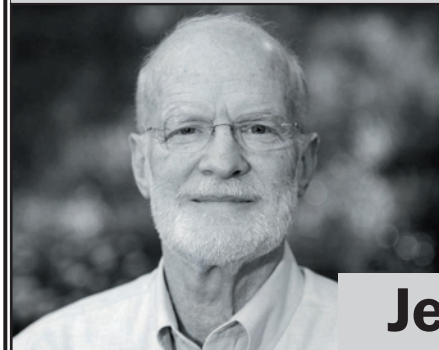
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Mike Williams, Champion of CourtCare MBF Donor Profile

By Pamela B. Hubbs, Office and Foundation Administrator.



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F O U N D A T I O N

The operation of the MBF relies upon the financial and volunteer support of the legal community. We would like to express our gratitude to our donors by sharing their profiles with our readers from time to time. This month we shine the spotlight on **Michael L. Williams**, Williams Love O'Leary & Powers and his generous support of **CourtCare**.

Mike Williams, whose practice areas include mass tort, personal

injury and product liability litigation, has been a steadfast supporter of CourtCare since the beginning. From offering his firm's financial support to his own personal donations to covering the direct mail costs to donating paralegal **JoLynne Zimmerman's** time for the nuts and bolts of the campaign, year after year Mike has always said "Yes!" to CourtCare. Generous, caring, giving. Mike is a true champion of CourtCare.

Providing access to justice for lower income citizens has always been important to Mike and he believes providing a safe haven

for children while their parents are in court is a vital component. Mike says, "There ought to be CourtCare in every courthouse in the state. Financial support for CourtCare ought to be in every state budget and a childcare facility incorporated into the design of every new courthouse."

Mike's dedication to CourtCare is contagious. Williams Love O'Leary & Powers won the Loftiest Leap Award multiple times for the largest donation per capita, including an impressive \$294 per capita in 2009. JoLynne Zimmerman won the MBA Award of Merit in 2009 for her

outstanding contribution to the CourtCare Campaign over the years. Even JoLynne's daughters got involved, creating the artwork for several of the campaign posters and stuffing CourtCare coaches' packets.

CourtCare is a free childcare program at the Multnomah County Courthouse. Open to families who have business at the county or federal courthouse and cannot afford childcare, CourtCare serves children, aged six weeks to five years.

For more information, visit www.mbabar.org/courtcare.htm.



Michael L. Williams



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