



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. October 2010 Volume 56, Number 9



## Professionalism

By Lisa Umscheid, Ball Janik and MBA Vice President.

As I write this column, the US Census Bureau is reporting today that 43.6 million Americans lived in poverty in 2009. That's a poverty rate of 14.3 percent for last year. (The rate in the western US was slightly higher, at 14.8 percent.) To consider how dismal this statistic is, consider the definition of poverty used by the US Government: the poverty threshold last year was an annual income of less than \$21,954 for a family of four, or \$10,956 for an individual. Also last year, the number of Americans with health insurance declined for the first time since record-keeping began (23 years ago).

But the theme of this month's column, I've been told, is professionalism. Why lead an essay about professionalism with some discouraging statistics about our many fellow Americans who live in poverty and without basic health insurance?

Because the MBA's mission statement includes professionalism as one of our association's core purposes, and professionalism is linked with what we, as lawyers, can accomplish - and do accomplish - for our community. Our association's mission statement reads, "Lawyers associated for Justice, Service, Professionalism, Education and Leadership for our members and our community." The last three words are worth emphasizing: as lawyers, we are associated in the MBA for professionalism, not only for ourselves and for our profession, but also for our community.

Last month I was fortunate to take a brief vacation. While traveling out of state, on a ferry trip I struck up a conversation with a local couple, a nurse and a radio broadcaster. When they learned that I am a lawyer, they reacted with some dismay. I enjoyed a wonderful dinner with this couple, and could have spent a considerable portion of the meal telling them the many things that our local Multnomah County lawyers do that exemplify professionalism.

A few examples come quickly to mind. Local lawyers provide the bulk of funding for CourtCare, which operates a free drop-in childcare center in the Multnomah County Courthouse that serves 80 to 100 families each month. CourtCare is nine years old this year. For the fundraising drive that ended earlier this year, Oregon lawyers - 2,500 of them - contributed \$1 million to the Campaign for Equal Justice for Oregon statewide legal aid programs. Oregon Lawyers Against Hunger has raised over \$1 million since 1997. Year after year, to help diversify the bar, dedicated lawyers, law professors, returning law students, and judges volunteer their personal time to help organize or present at the three-day Opportunities for Law in Oregon summer orientation program for incoming minority law

students who will be 1Ls at our three Oregon law schools. Multnomah lawyers serve on countless civic committees and boards. And the list could go on. And on.

The MBA offers many opportunities for lawyers to serve our community in this time of economic and personal difficulty for many of our friends and neighbors. The association provides easily accessible resources for those lawyers who wish to perform pro bono work for those in need of help. To date, 47 law firms and 189 individual lawyers have signed the MBA's pro bono pledge. These lawyers have committed to take at least one pro bono matter in 2010. To find pro bono opportunities in Multnomah County, or to sign the pro bono pledge, please visit [www.mbabar.org/probono.htm](http://www.mbabar.org/probono.htm).

The MBA Young Lawyers Section does great work with and for our community. YLS volunteers conduct Community Law Week, present dropout prevention videos at local schools, and run the YOUthFILM Project, in which participating students produce short films on civics issues. We should be proud that the YLS won the ABA Young Lawyers Division Award of Merit for the YOUthFILM project. YLS lawyers also serve as Multnomah County Animal Services volunteer hearings officers. For information about how to get involved in YLS programs, visit the YLS web page at [www.mbabar.org/yys.htm](http://www.mbabar.org/yys.htm).

The Multnomah Bar Foundation is undertaking a new signature project this year. In collaboration with the Urban League, the League of Women Voters, the City Club, the Bus Project and MetroEast Community Media, the MBF will be helping to develop a series of two, five and 15 minute education videos. The videos will be shown on cable access stations around the state, as well as distributed through other channels (including, of course, the now ubiquitous YouTube). The MBF will endeavor to focus on civic themes, including civic engagement, the importance of informed voting, the rule of law and the importance of civil discourse in civic discussions.

In 1932, one of the worst years of the Great Depression, Justice Louis Brandeis wrote, "There is a call upon the [bar] to do a great work for this country." In 2009 and 2010, as in 1932, many of our friends and neighbors are confronting hardship and enduring difficulties. As lawyers, we can do much to contribute and to assist, and the MBA offers many resources to help. The MBA Web site, [www.mbabar.org/volunteer.htm](http://www.mbabar.org/volunteer.htm), is a resource for finding volunteer opportunities. Pro bono opportunities are listed at [www.mbabar.org/probono.htm](http://www.mbabar.org/probono.htm). The MBA board of directors has asked our membership committee to consider ways in which the association can offer short-term volunteer opportunities, so that the association can provide volunteer opportunities to members who wish to serve, but do not have time for a long-term volunteer commitment. Stay tuned for more resources from the MBA to assist you.

## MBA CLE

To register for a CLE, please see the inserts in this issue or go to [www.mbabar.org](http://www.mbabar.org).

### October

**Tuesday, October 26**  
**E-Discovery in State Court**  
Katherine Heekin  
Seth Row

**Wednesday, October 27**  
**Practice Tips for the Small Firm**  
Michael Heilbronner

**Thursday, October 28**  
**Expert Witnesses**  
Matt Donohue  
Richard Vangelisti

### November

**Wednesday, November 3**  
**So, You're Not a Bankruptcy Specialist?**  
Judge Elizabeth Perris  
Peter McKittrick  
Bob Vanden Bos  
Ava Schoen

**Thursday, November 4**  
**Keeping the Case on Track in Parallel Proceedings**  
David Angeli  
Zachary Wright

**Tuesday, November 9**  
**Advanced UCC Article 9**  
Justin Leonard  
Janis Timlick

**Tuesday, November 30**  
**Valuation Issues in a Changing Economy**  
Michael McCoy  
Michael McGrath  
Mark Hepner

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## Absolutely social The grape escape

**Tuesday, October 19**  
**The University Club**  
**5-7 p.m.**

*RSVP via insert in this issue.*

Featuring Oregon wines selected by attorneys Albert Menashe and Matt Levin. Drop in after work for wine tasting and catch up with friends and colleagues.

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THE MULTNOMAH LAWYER

is published 11 times per year by the

Multnomah Bar Association,

620 SW Fifth Ave. Ste. 1220,

Portland, OR 97204

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Advertising is accepted;

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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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Copy and Classified Ads: Carol Hawkins

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Design: Cyrano Marketing Solutions

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*"I only suffered two significant financial reversals in my life - once when I lost a lawsuit, and once when I won one."*

- Voltaire



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# How is Your Financial Security? The Standard

By Jim Poland, J.D.

I remember a law professor who was also in private practice, saying that he sold more insurance than most insurance agents. Through his law practice he saw the devastating effect injury and illness had on his clients' lives. As a result, he advised everyone who would listen to protect themselves and their property with insurance through well-known carriers. Our job as attorneys is risk assessment, either beforehand to protect clients or afterward in determining fault. Sometimes, we forget to do that for ourselves. If our practice is in personal injury or litigation, we have likely been exposed to the events that cause people to lose income after they suffer a disabling event. For the rest of us, we may be just like the remainder of the population, blissfully unaware of the risks to which we are exposed.

### Important information

Disabling illness or accidents are much more frequent than most of us realize. For example, almost three in 10 of today's 20-year-olds will become disabled before they reach age 67. If someone told you that your home's roof had a nearly 30% chance of

failure, would you check to see if your homeowner's insurance would cover it? We insure our homes, our cars, and our health, but we often forget to take advantage of the safety net offered by disability income insurance.

You might think that disabilities last for a few months, or a year or so. The reality is that disabilities due to an illness or accident tend to last much longer than any but the richest of us can afford. No matter your age, the statistics are sobering.

Age at onset of disability	Duration of disability*
under 40	5.1 years
40 - 44	6.6 years
45 - 49	6.6 years
50 - 54	5.6 years
55 - 59	3.8 years
60 - 64	1.7 years

\* Average duration for insured individuals for a disability lasting more than 90 days and ending before age 65, based on the individual's age when the disability begins. *Society of Actuaries, 2005.*

Could we manage that long financially if we could not create an income? And if we couldn't practice law, what would we do?

### Good news for MBA members

The really good news is now we know the risk and we can do something about it. The MBA has a valuable offer on the table for its members. It is for Guarantee Issue Individual Disability Income Insurance. No medical questions are asked. Rates are discounted at MBA member rates. The insurance carrier, Standard Insurance Company, is local and a disability insurance specialist.

Take advantage now of this offer for MBA members by calling 800.544.1662.

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# CALENDAR

For a complete MBA calendar, please visit [www.mbabar.org](http://www.mbabar.org). To add your organization or firm's annual events to the MBA online calendar, contact Carol Hawkins, [carol@mbabar.org](mailto:carol@mbabar.org).

## October

**5**  
Tuesday, MBA Board meeting

**7**  
Thursday, YLS Social with Queens Bench  
See p. 10 for details.

**8**  
Friday, November Multnomah Lawyer deadline

**11**  
Monday, MBA Golf Championship at Portland Golf Club  
Visit [www.mbabar.org](http://www.mbabar.org) for details.

**12**  
Tuesday, YLS Board meeting

**19**  
Tuesday, MBA Absolutely Social at University Club  
See p. 1 for details.

**23**  
Saturday, BOWLIO  
See Announcements on p. 4 for details.

**26**  
Tuesday, MBA CLE E-Discovery in State Court  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**27**  
Wednesday, MBF Board meeting

Wednesday, MBA CLE & Reception – Small Firm Practice Tips  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**28**  
Thursday, MBA CLE Expert Witnesses  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

Thursday, Pro Bono Fair at Oregon Historical Society  
See p. 11 for details.

**29**  
Friday, OSB House of Delegates meeting  
Visit [www.osbar.org/leadership/hod](http://www.osbar.org/leadership/hod) for details.

## November

**2**  
Tuesday, MBA Board meeting

**3**  
Wednesday, Bench, Bar & Bagels  
See p. 11 for details.

Wednesday, MBA CLE So, You're Not a Bankruptcy Specialist?  
See insert or register at [www.mbabar.org](http://www.mbabar.org)

**3-5**  
Wed-Fri, OSB PLF – Learning the Ropes  
Visit [www.osbar.org](http://www.osbar.org) to register.

**4**  
Thursday, MBA CLE - Criminal Matters in Civil Cases  
See insert or register at [www.mbabar.org](http://www.mbabar.org)

**5**  
Friday, MBA Brown Bag Expedited Jury Trials  
See Announcements on p. 4 for details.

**9**  
Tuesday, YLS Board meeting

Tuesday, MBA CLE - UCC Article 9  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**10**  
Wednesday, December Multnomah Lawyer deadline

**17**  
Wednesday, MBF Board meeting

**18**  
Thursday, New Admittee Social at Kells  
See p. 10 for details.

**25-26**  
Thu-Fri, Thanksgiving Holiday  
MBA office closed.



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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Getting Crosswise: Bar Complaints by Current Clients



One of the most vexing situations a lawyer can face is a current client who files a bar complaint against the lawyer. Client motives vary, ranging from comparatively benign pique at not having a phone call returned to more fundamental disagreements that go to the heart of the attorney-client relationship. The difficulty for both lawyer and client is magnified if the complaint is filed in the heat of litigation with long-scheduled court events looming. In this column, we'll look at two questions lawyers confront in this situation. First, must you withdraw? Second, even if you are not technically required to withdraw, should you withdraw?

### Must You Withdraw?

The OSB answered our first question last year in Formal Ethics Opinion 2009-182: "not necessarily." The opinion, which is available at [www.osbar.org](http://www.osbar.org), begins by noting that in most (but not all) situations a bar complaint by a current client creates a conflict under RPC 1.7(a)(2) because it may affect the lawyer's judgment in handling the matter.

If the client discharges the lawyer at the same time, RPC 1.16(a)(3) requires the lawyer to withdraw (or if in a court proceeding, to seek leave to withdraw under, as applicable, UTCR 3.140/ORS 9.380 or US District Court LR 83-11). Somewhat perversely, however, discharge does not always follow a bar complaint.

If the client has not also discharged the lawyer, 2009-182 finds that withdrawal is not always mandatory. In reaching this conclusion, 2009-182 relies primarily on *In re Obert*, 336 Or 640, 646-48, 89 P3d 1173 (2004), and *In re Knappenberger*, 337 Or 15, 26-30, 90 P3d 614 (2004), where the Supreme Court declined to impose a per se withdrawal rule in the analogous context of potential malpractice claims against current counsel.

Conflicts under RPC 1.7(a)(2) are waivable under RPC 1.7(b) if "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation" and the client gives informed consent. The Supreme Court in *Obert* and *Knappenberger* did not draw a bright line in the malpractice setting delineating when it would be appropriate for

a lawyer to remain, and 2009-182 doesn't either for bar complaints. Rather, each (assuming client consent) turns on case-specific facts in light of RPC 1.7(b)'s reasonable belief standard.

### Should You Withdraw?

Notwithstanding the theoretical ability to remain, it usually makes good practical sense to withdraw (or, again, if in court, to seek leave to withdraw) for two basic reasons.

First, even if comparatively "benign," a bar complaint usually signals a fundamental rift between lawyer and client over the conduct of the representation. And, even if it doesn't, most lawyers don't take kindly to clients who file bar complaints against them. Given these near universal circumstances, it is difficult on a practical level to say that a lawyer's professional judgment won't be affected by a bar complaint.

Second, even if a client is willing to consent, it is too easy to be "second guessed" later. It is worth noting, for example, that although the OSB's Legal Ethics Committee and Board of Governors issued the thoughtfully nuanced 2009-182, the bar's Office of Disciplinary Counsel argued aggressively for the per se withdrawal rule the Supreme Court rejected in *Obert* and *Knappenberger*. Neither a later disciplinary prosecution nor a civil damage claim for malpractice or breach of fiduciary duty is necessarily bound by 2009-182. Therefore, remaining on the case opens the lawyer to being "second guessed" on whether (a) a waiver was necessary, (b) any waiver obtained was effective or (c) any conflict was even waivable.

Having said that, there are situations where a court may order a lawyer to stay even when the client has filed a bar complaint. *State v. Taylor*, 207 Or App 649, 142 P3d 1093 (2006), and *State v. Estacio*, 208 Or App 107, 144 P3d 1016 (2006), are ready examples. In both, criminal defendants filed bar complaints on the eve of trial. The respective trial courts concluded in light of the timing and the nature of the defendants' complaints that the lawyers involved should remain. The Court of Appeals affirmed in each. Although *Taylor* and *Estacio* focused on constitutional effective assistance because they were criminal cases, their results also

# ANNOUNCEMENTS

### Thanks to Dennis Stenzel

The MBA thanks Dennis Stenzel, Chernoff Vilhauer et al, for his generous pro bono service to renew the MBA trademarks.

### MBA Expedited Jury Trial Brown Bag is November 5

Please plan to attend the noontime brown bag at Multnomah County Courtroom 208 on Friday, November 5 at noon. Presiding Judge Maurer and Judge Wilson will be discussing the new expedited trial process.

### MBA Web Site Now Searchable

In an effort to make content on the MBA Web site easier to find, there is now a search box in the menu list on the left side of each page of the site. Check it out!

### One Time Volunteer Opportunities Available

The MBA is developing opportunities for one-time and/or short-term volunteer opportunities for our members, with the idea of offering less of a time commitment than association committees generally require. If you are interested in participating in volunteer opportunities outside of association committees or have suggestions/ideas for the MBA, please contact Judy Edwards, [judy@mbabar.org](mailto:judy@mbabar.org).

### Take a Matter that Matters

Sign the MBA 2010 Pro Bono Pledge at [www.mbabar.org/probono.htm](http://www.mbabar.org/probono.htm) and commit to taking at least one pro bono case this year.

### 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.

### October 12 Queens Bench Luncheon

Queens Bench is recognizing Domestic Violence Awareness Month on the 12<sup>th</sup> at 11:45 a.m. at Trees Restaurant in downtown Portland. The featured speaker is Samantha Naliboff from Volunteers of America. Cost is \$14 and there is a vegetarian option. No RSVP necessary. For more information contact Susan O'Toole at [esusan.otoole@gmail.com](mailto:esusan.otoole@gmail.com).

### Oregon Criminal Defense Lawyers Association (OCDLA) Seminar Schedule

The 6<sup>th</sup> Annual Juvenile Law Training Academy is at the Hilton Eugene and Conference Center October 18-19. To register, visit [www.ocdla.org/seminars](http://www.ocdla.org/seminars).

The 25th annual Death Penalty Defense Seminar, "Raising the Bar," is October 22-23 at the Agate Beach Inn in Newport. For a look at the program, go to [www.ocdla.org](http://www.ocdla.org).

### BOWLIO is October 23

The OSB Affirmative Action Program's Opportunities for Law in Oregon (OLIO) annual fundraiser will be Saturday, October 23, from 6-9 p.m. at Pro 300 Lanes on SE Powell in Portland. Come and bowl in your Halloween costume. For

more information on the OLIO program, visit [www.osbar.org/aap/programs.html](http://www.osbar.org/aap/programs.html).

### Family Law Group Meetings

The Multnomah County Family Law Group meets in the first floor conference room of the US Bancorp Tower. October 25, Judge Maureen McKnight will address the group and on November 29, the guest will be Linda Scher. If you would like to receive emails from the group, contact David Bean at [dib@wysekadish.com](mailto:dib@wysekadish.com). Volunteer speakers and suggestions for future meeting topics are always welcome.

### Oregon Women Lawyers (OWLS) Invites Nominations for 2011 Roberts, Deiz Awards

OWLS seeks nominees for its 19<sup>th</sup> annual awards, which recognize and celebrate the accomplishments of individuals in promoting women and minorities in the legal profession and community in Oregon. The recipients will be honored at the annual dinner on Friday, March 11 at The Governor Hotel in Portland.

Award nominations must be received by Wednesday, November 17. The nomination form and more information is available at [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org).

### 2010 MBA Annual Report

You may learn more about the MBA and its committees' accomplishments in the 2010 MBA Annual Report, now available at [www.mbabar.org](http://www.mbabar.org).

have more general application. RPC 1.16(c) requires lawyers to comply with court rules governing withdrawal and allows them to remain on a case notwithstanding an otherwise disqualifying conflict if ordered by the court: "When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."

### Summing Up

The safest practical approach for lawyers faced with this uncomfortable dilemma is often to seek leave to withdraw and to follow the court's directive if ordered to remain on the case.

*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](mailto:Mark@frllp.com).*

IN MATTERS OF TRUTH AND JUSTICE, THERE IS NO DIFFERENCE BETWEEN LARGE AND SMALL PROBLEMS, FOR ISSUES CONCERNING THE TREATMENT OF PEOPLE ARE ALL THE SAME.

— Albert Einstein

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# You May Know Me....

By David Bean, Wyse Kadish.



And I hope you do. I've made an effort to get to know a lot of lawyers in our community. I do this for a variety of reasons. First, I get most of my good family law referrals from you. Second, I enjoy connecting folks in need of a good lawyer with the right lawyer. Third, networking is easier and more fun when you walk into a room and see people you know.

As a result of my efforts:

- I do most of my business by referral. This saves my firm advertising dollars and leads to higher quality clients;
- People think of me as a resource, when they need to be connected; and

- I actually look forward to and enjoy events like the MBA's Annual Dinner and the Campaign for Equal Justice luncheon.

People occasionally compliment my marketing skills. I love this positive feedback because it assures me that deliberate practice pays off. While networking may come more naturally to me than it does to many others, I would not enjoy the success I enjoy without a great deal of effort. One of my long-time martial arts instructors taught me that attention over time equals results. If you take a short cut, something gets cut. So, if you want good results, you have to put in attention over time. If you want your results very quickly, you can get them, but you have to give a lot of attention to your goal. If it is less important to accomplish your goal quickly, you can give it less attention over a longer period of time.

Depending on what's going on in my life, the attention I give to my marketing efforts varies. At a minimum, I write personal notes (about three per week, which means I reach out to at least 150 people per year); I have lunch with actual and potential referral sources; and I serve

on committees, often in leadership positions. When time allows, I attend open houses, socials and other events that allow me to meet more people.

My former boss, Albert Menashe, told me (and I often tell other young lawyers) that client development is much like growing apple trees. At first, it takes hard work to prepare the land, plant the seeds, water and look after them. Then nothing substantial happens and an impatient soul can get frustrated and give up. However, if you continue to nurture them, in time, the trees will begin to grow and provide a bit of fruit. Once you've given them ample attention for enough time, they will provide more fruit than you can eat on your own and you get to share it with others.

If one of your goals is to bring in enough business to keep yourself busy and to feed work to others, practice networking deliberately. Partner with someone to set goals, report on your progress, and give each other constructive feedback. Identify marketing activities that

you will enjoy and therefore be more likely to engage in. Here are a few ideas: Meet with and listen

to clients so you can help them understand their needs (off the *Continued on page 7*)

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# Experts for Trial - Satisfying the Gatekeeper and Surviving Directed Verdict

By Richard J. Vangelisti, Vangelisti Kocher and MBA Board director.



We practice in the information age. Many of the issues we encounter in our cases require specialized knowledge. This specialized knowledge in turn often requires lawyers to retain experts for trial. To that end, experts are intended to help and persuade the fact finder, and often ensure survival of a directed verdict motion.

While it may be fun to learn something new from an expert, use of an expert for trial can involve extraordinary time and cost for a client. In some instances, expert costs can make a case cost-prohibitive for a client. In effect, the doors of the courthouse are closed for some clients who have legitimate claims. The focus of this article is to briefly identify when an expert is *required* and what hurdles may lie ahead.

The basic standard is that "expert testimony is required if the issues are not within the

knowledge of the ordinary lay juror." *Vandermay v. Clayton*, 328 Or 646, 655, 984 P2d 272 (1999). Experts are generally - but not always - required for complex issues, including medical science, valuation, causation, forensic accounting, reasonableness and necessity of medical bills, particular standards of care, or industry standards.

The case law varies widely on when an expert is required. Compare *Vandermay v. Clayton*, 328 Or 646, 655, 984 P2d 272 (1999) (expert testimony *not* necessary in legal malpractice case in which lawyer did not warn clients about lack of indemnification in contract because issue was straightforward) with *Childers v. Spindor*, 91 Or App 119, 754 P2d 599 (1987) (expert testimony necessary in legal malpractice case in which plaintiff alleged a breach of the standard of care in use of discovery in dissolution of marriage case).

Counsel should research the case law for guidance on whether expert testimony is required to survive a directed verdict on a claim. A constant challenge is that what an ordinary juror knows can vary with locale and time. When in doubt, retain an expert for trial. The opposing party may have an expert at trial in any event.

Even if an expert is not required to survive a directed verdict motion, expert assistance may

be beneficial to the case. First, an expert may help counsel with claims, case theories and discovery requests. Second, experts can help identify the likely opinions of the opposing party's expert. Third, experts can help efficiently present voluminous or complicated information. These benefits of an expert may outweigh the costs.

If an expert is required to survive a directed verdict, counsel should ensure that their expert is "qualified" and has admissible opinions. The court may have a gatekeeper role at various junctures before or during trial, often depending on if and when a party makes a challenge. An expert must be "qualified" under OEC 702. Again, reference to the case law can provide helpful guidance. OEC 702 provides: "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise."

Although qualified, an expert's opinions must be admissible. The usual hurdles are challenges for relevancy, reliability and OEC 403 grounds. The most notorious challenges are to "scientific" evidence under OEC 702. If a challenge is expected, counsel should be familiar with the governing authorities. See, e.g., *Jennings v. Baxter Healthcare*

## 2011 MBA Professionalism Award

### Nominations Due November 5

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 2011 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, Judy D. Snyder and Garry L. Kahn.

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 available at [www.mbabar.org](http://www.mbabar.org) or contact Kathy Maloney, Professionalism Committee staff liaison, [kathy@mbabar.org](mailto:kathy@mbabar.org) for more information.

*Corp.*, 331 Or 285 (2000); *State v. O'Key*, 321 Or 285 (1995); *State v. Brown*, 297 Or 404 (1984); and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579, 113 S Ct 2786, 125 LEd2d 469 (1993).

In sum, early and informed decision making by counsel on if and what expert may be necessary for trial is critical for trial success.

On October 28, the MBA is hosting a CLE on "Experts - Effective Strategies for Preference, Preparation and Presentation at Trial" presented by Richard Vangelisti and Matthew Donohue. See the enclosed flyer for more information.

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# AROUND THE BAR



Andrew Schpak

the regional board for the 9th Circuit - North. This new board will conduct regional meetings and act as the liaison between the college and local law schools. It presented its first regional meeting in conjunction with the recent ABA meeting in San Francisco, featuring a presentation on labor and employment issues that arise with social networking.



Melissa Healy

#### BARRAN LIEBMAN

**Andrew Schpak** has been appointed to serve as the MBA Delegate to the ABA House of Delegates. He is the ABA Young Lawyers Division Committee Director, a member of its Leadership Advisory Board and as the division's liaison to the Senior Lawyers Division. Schpak represents management in employment litigation and provides advice in employment law matters.

**Melissa Healy** has joined the firm, where she will focus her practice on representing management in employment litigation and providing advice in employment law matters.



Holly Pettit

#### LAW OFFICE OF ROBERT MCGAUGHEY

**Holly Pettit** joined McGaughey as a civil litigation associate. Her practice focuses on civil business litigation, including insurance coverage, employment, construction defect, lender liability, securities and contract disputes.

#### LUELLA NELSON

**Luella E. Nelson**, an arbitrator and mediator in Portland, has been selected by the College of Labor & Employment Lawyers as an inaugural member of



Román D. Hernández

#### SCHWABE WILLIAMSON & WYATT

*Latino Leaders* magazine names 101 top influential Hispanic leaders in the US. For the second consecutive year, **Román D. Hernández** was identified as being a national leader in the Hispanic community.

The firm received the annual Hispanic National Bar Association Corporate Partner of the Year Award, given to organizations for their contributions to the Hispanic legal community.

STAHANCYK, KENT & HOOK New associate **Meghan E. Warning** has joined the firm's Central Oregon office.

GARVEY SCHUBERT & BARER **Jennifer Bragar**, a land use attorney, was elected to serve on the Executive Committee of the Real Estate and Land Use Section of the OSB effective January 2011.

**Michael O'Connor**, a litigation attorney, has been elected president of the Cascade AIDS Project (CAP) Board of Directors. O'Connor is an experienced trial lawyer, practicing in the areas of business, commercial, employment and class action litigation.



Kara Govro

#### KARA GOVRO

**Kara Govro** has moved her law office from the Pearl to downtown. Though still a sole practitioner, she now shares a suite in the Jeffrey Center with **Ronald Elzinga** and **Greg Levinson**. She continues to focus on bankruptcy and employment law.

#### RICHARD RIZK

**Richard Rizk** is Far West Ski Association's 2010 Safety Person of the Year. He developed a winter safety speaker awareness series which addressed winter driving, terrain park safety, ski risks and the law, and ski patrol advice. Richard also contributed significantly to development of the Northwest Ski Club Council's Prepared Informed Ecological campaign, which addresses safety issues.

Rizk has resolved disability, injury, environmental and property damage claims of all sizes in many states. He may be reached at 1332 SW Custer Dr., Portland OR 97219, phone 503.245.5677.

#### TONKON TORP

Members of the firm's environmental and natural resources practice group really walked the talk in July. Armed with heavy work gloves and plenty of mosquito repellent, a group of attorneys, staff, family members and friends spent the morning pulling ivy at Tryon Creek State Park.



Attorney Kimberlee Stafford wrestling ivy

Practice group chair **Max Miller Jr.** organized the event and hosted a lunch for his volunteer crew after the morning's effort.

*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.*

#### You May Know Me

*Continued from page 5*

clock, if need be). Write articles. Attend networking events. Present to groups or at CLEs. Collect and give away business cards. Create and use a good elevator speech (if people don't know what you do, they can't send you business). Thank people who send you business. Call me ... we'll do lunch.

## A Jungle Gym in the Jungle 2010 Multnomah CourtCare Campaign

You helped us reach our goal!

Over \$100,000 was raised during the campaign to fund the free daycare for children at the Multnomah County Courthouse. The CourtCare Campaign raised \$67,600 from large firms and organizations, \$12,800 from small firms and \$15,500 from February's WinterSmash benefit bowling event. The MBA contributed \$5,000 and the YLS raised \$1,000 at their annual CourtCare raffle.

The MBA wishes especially to thank **Kristin Eaton**, Yates, Matthews & Eaton and **Hwa Go**, Harrang Long Gary Rudnick, for co-chairing the campaign.

The **CourtCare Proudest Pride Award** for the largest donation from a firm went to **Davis Wright Tremaine**. The **CourtCare Loftiest Leap Award** for the largest donation per capita went to **Buchanan Angeli et al.**

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**Special Thanks To Davis Wright Tremaine** for donating their office and refreshments for the campaign results party, **JoLynne Zimmerman**, Williams Love O'Leary & Powers PC, for her continued support of the program.



Kristin Eaton, Dana Sullivan, Francie Cushman, and Hwa Go celebrate the CourtCare Campaign results

## Tips from the Bench Hearsay - A Vest Pocket Rule

By Judge Leslie Roberts, Multnomah County Circuit Court.

*Litigation is the pursuit of practical ends, not a game of chess.*  
- Felix Frankfurter

This month's edition of Tips from the Bench speaks to an aspect of evidence law that seems to provide challenges to many trial lawyers: the split-second decision to object to the offer of testimony mentioning what someone else said. All too frequently a resulting hearsay objection is, and should be, overruled. The lawyer loses credibility and the objection detracts, if only momentarily, from the issue at hand. Futile hearsay objections are sand in everyone's sandwich.

The course of trial gives no opportunity for a systematic walk through the twists and turns of the hearsay rule and its exceptions. What is needed is a short cut that works, at least in most instances, almost without thought. Fortunately it is at hand, because the hearsay rule is not just a group of arbitrary definitions and exceptions: it is a necessary and logical part of the time-honored machinery by which we seek truth in litigation.

We have the ancient rule against hearsay because we have an equally ancient veneration for the power of cross-examination to expose untruth. The two go hand in hand. The hearsay rule exists to ensure that no witness's testimony that should or could be tested by cross-examination, escapes cross-examination. So the key is, do you need to test the truth of the statement by cross-examination? If the answer is no, you can't and shouldn't object.

(We all know that cross-examination can serve other purposes than to test the truthfulness of specific testimony that was previously given. Cross-examination may add to that testimony related but favorable information and provide context. The only function of cross-examination relevant to the hearsay rule, however, is its role to expose falsehood.)

Let us say that witness Mary is being asked to testify to what Joe (not present at court) said. Mary is in court, making a statement about what she heard - i.e., Joe talking. Mary's account of what she heard is not hearsay because she is available for cross-examination to test if she heard it or not. Our concern is not with what Mary heard, but with what Joe said. The possible hearsay problem lies in the need to cross-examine Joe, who is not present for examination. The question you should ask - the pocket hearsay rule - is simply whether you want to test the truth of Joe's statement.

If Mary's testimony is, "Joe asked me where I was going," you can't object, because you don't need to test whether Joe's statement was true or false; it couldn't be either one. A question can't be inaccurate. Don't make a hearsay objection.



(I've had hearsay objections in just this situation, however.) It is meaningless to ask the "truth" of a question, and therefore equally misguided to raise a "hearsay" objection.

A proponent of testimony may assert that a statement is "not offered for its truth." (That was true of Joe's quoted question.) Again, however, the pocket version of the rule provides a litmus test.

Assume Mary said, "Joe told me the business is making millions!"

If the relevant issue for the trial is the motive of Mary to seek to obtain an interest in the business, you don't need to prove that Joe was wrong or right about profitability. (In fact, Mary probably now knows to her grief that it was a lie.) Therefore you don't need to cross-examine Joe and should not object on hearsay grounds (except, if you wish, to ask the court for a limiting instruction to the jury). All that was relevant in that case was the effect of Joe's story on Mary's motivations. Joe could have been blowing smoke for all that it matters to the case. Don't object.

On the other hand, if the same testimony is offered against your client (who is not Joe) in a partnership dissolution proceeding and the very issue is the value of the partnership business, you must object. The truth of the statement is vital, and must be tested by cross-examination of the person who asserts that the business is, indeed, profitable.

If your own client is Joe, you can't object to Mary's testimony about what Joe said. The pocket rule shows why. A person - Joe in this case - does not need to cross-examine himself. The pocket hearsay test - do you need cross-examination - is answered in the negative. The difficulties, if any, are simply whether the statement can fairly be characterized as Joe's statement because (let us say) it was supposedly made in his behalf by a representative (such as an employee of Joe, Inc.) rather than by an individual party named in the complaint (i.e., Joe). For instance, the dispute frequently depends on whether the employee who made a damaging admission was speaking about a matter within the scope of his duties. (See OEC 801 (4)(b) (D).) (The pocket hearsay rule does not help sort out that issue, which is a problem of the law of agency.)



By Mark Peterson, Lewis & Clark Legal Clinic and Court Liaison Committee member.

### Presiding Judge's Report

The overriding issues facing the court are budgetary. Four of the 12 referees have been laid off. This means judges are now presiding over Justice Center courtroom functions (arraignments, probation violations, diversions and Community Court) that had been handled by referees up to September 1. Referees continue to hear traffic, eviction, and small claims cases. Referees also continue to hear juvenile cases, as contemplated by statute, at the Juvenile Justice Center.

With the additional workload being assigned to judges, there will be fewer judges available for civil and criminal case assignments. Judge Maurer is proud of this court's record of getting cases to trial. In the past four years, where the attorneys have reported that they are ready, no civil or criminal case has been set over due to the unavailability of a judge to hear the case. Some cases have been put on standby but, when the attorneys have been ready and could be flexible regarding standby, all cases have been able to get before a judge and/or a jury. With the added Justice Center responsibility for judges, she will be watching closely the impact on the court's ability to assign cases for trial.

Judge Maurer discussed the new expedited civil jury trial program implemented by Uniform Trial Court Rule 5.150. That program allows counsel to opt to get their cases to trial in four months. The parties are not required to elect an expedited trial at the commencement of a case, but are cautioned to make the election early in the litigation. The expedited trial program is

Note, by the way, that the pocket rule shows why you may, indeed, object to a hearsay statement by a co-defendant or co-plaintiff. The fact that these out-of-court speakers are parties to the case is nothing to your client: you still need to test their reputed statements by cross examination. It is only your own client whom you have no need to cross examine.

There is a long litany of exceptions allowing hearsay

not intended exclusively for small cases. It was created to address a concern that too few cases go to trial due to the expense of litigation and an urban myth that civil jury trials have been crowded out of the court's docket. A consequence of these concerns is that the community assessment of claims and their value which a jury provides is being lost. Also, too few attorneys, some of whom will become circuit court judges in their careers, are getting any civil trial opportunities.

Judge Maurer reported with pleasure that the long-awaited new east county courthouse in the Rockwood area appears likely to become a reality. There will be three courtrooms with a potential for one more. The county commissioners are supportive. A final vote authorizing construction to begin is planned for late October. Everyone recognizes that the current facility is woefully inadequate.

Judge Maurer reported that the county commissioners are generally supportive of replacing or renovating the downtown county courthouse. The MBA's committee has been helpful in these discussions. Chief Justice Paul De Muniz is providing valuable state leadership in the local committees established by the Board of County Commissioners. There are two committees: a facility committee chaired by Commissioner Deborah Kafoury and a finance committee chaired by Commissioner Judy Shiprack. The cost and financing are challenges. Also, a decision must be made whether to build a new courthouse or to renovate the existing building. Fifty thousand dollars has been allocated for a study on the option to remodel the existing building

in evidence regardless of the susceptibility of the out-of-court speaker to be called as a witness. OEC 803. The good news is that the pocket rule sort of works, even there, because in practical reality you don't really want to cross-examine those witnesses.

The OEC 803 exceptions exist because there are assurances of credibility that have been traditionally (or legislatively) regarded as at least equivalent to cross-examination as an assurance of reliability. Even if the relevant

during operations. A 2003 study indicated that a remodel would not be cost effective, but changes in construction and remodeling capabilities have prompted a second look at this possibility.

Judge Maurer said that the newly enacted court fees have been the source of some confusion. The committee received a copy of the Initial Report of the OSB Court Fees Task Force. The new fees schedule has not raised as much revenue as the legislature anticipated, although it was noted that a filing fee of greater than \$20,000 was paid in a civil action with 20 parties and a large prayer for damages. Pleadings or first appearance documents which are not accompanied with the proper fee amount were being returned to counsel.

A change in policy has been put into effect. Such documents will be held so long as there was an attempt to pay the fee, and the filing party will be given notice to pay the difference necessary correct the amount or show cause why the document should not be stricken. This opportunity to cure has been successful in resolving the return of pleadings and first appearance documents. Motions, orders and judgments will still be returned if a fee is required and not paid.

### Miscellaneous

All MBA members are encouraged to forward ideas and questions for the regular "Tips from the Bench" feature in the *Multnomah Lawyer*.

Judy Edwards reported the MBA has pledged up to \$10,000 as a match to secure funding for a video conferencing cart that can be used throughout the courthouse.

witness was produced, your cross-examination would probably consist of, "No questions for this witness."

The most commonly used exception to the hearsay rule in civil trials is the exception for business records. (Remember that "business" for this purpose sweeps broadly, including every sort of regular institution, association, or calling.) For instance, assume water usage is at issue. The witness with first-hand knowledge is the

*Continued on page 13*



## Profile - Judge Eric Butterfield, Washington County Circuit Court

By Carson Bowler, Schwabe Williamson & Wyatt & Court Liaison Committee member.

**Judge Eric Butterfield** was appointed in March to the Washington County Circuit Court by Governor Kulongoski to fill the seat vacated by Judge Mark Gardner.

My first clue that this judge defies convention came when he repeatedly insisted that he be called "Eric." Clue number two came when he suggested that we meet for lunch at a sleepy McMenamans on Old Cornelius Pass Road. My third clue was when he arrived on a black Buell XB12Ss, not a ride for the timid.

Judge Butterfield's journey from small-town Connecticut to circuit court judge has been as unpredictable as my initial introduction to him.

Judge Butterfield was born in Waterbury, Connecticut in 1965, where he lived until third grade and learned to play hockey. His father was an academic, and the

Butterfields moved to Kansas City, Kansas, and again to Seattle.

After high school, Judge Butterfield attended undergraduate school at the University of Washington. He enlisted in the US Marine Corps Reserve after graduating with a degree in political science and spent the summer between college and law school at boot camp.

Although his childhood vision of being a fighter pilot was waylaid by not having the eyesight to match the dream, Judge Butterfield was activated during his final year at Willamette University College of Law by the Marines for duty in the (first) Persian Gulf War. He served as a combat engineer in Saudi Arabia and Kuwait and finished as a sergeant in 1994.

After returning from active duty, Judge Butterfield completed his law degree and became a member of the OSB in 1992. Not one to shy away from challenge or adventure,

Butterfield moved to Guam with his wife and took a job at the firm of Baumann & Hull, doing primarily criminal defense. He spent four years in Guam, and despite living in a house with a tempting view of the surf, he and his wife decided to move back to Oregon to start a family.

Back in Oregon, Judge Butterfield began working at the Washington County office of Metro Public Defenders. He worked there 11 years, ultimately becoming a chief attorney. He and his wife, Lianne, have two daughters and a son. Butterfield has taken an active role in parenting and has spent countless hours coaching youth athletics.

When Governor Kulongoski appointed Butterfield to fill the seat vacated by Judge Gardner, the Governor made special mention of Butterfield's "stellar reputation with judges, prosecutors, public defenders, other attorneys and

law enforcement in Washington County." Since being sworn in, Butterfield has dived into the position with the same passion and distinctiveness that he brings to his family and personal pursuits.

Judge Butterfield has predominantly worked the criminal docket as a new judge. His experience as a lawyer has given him a thorough understanding of the strengths and weaknesses of the criminal justice system, and he has a keen interest in seeing that system run efficiently and effectively. He has taken the time and effort to visit with the sheriff's department and jail programs' staff to understand how his judicial decisions affect those agencies that implement sentences, from incarceration to probation, to rehabilitation and counseling.

He also derives great satisfaction when the justice system improves the lives of those in it. He takes special interest and pleasure in



Judge Eric Butterfield

trying to motivate people in front of him to correct their behavior and become better citizens. At the Washington County Jail, one is just as likely to find him talking to a deputy about jail operations as to see him talking to a sentenced criminal about his or her probation. Judge Butterfield's judicial philosophy is measured and practical. He respects lawyers who can focus on the primary issues that need to be decided.

He appreciates counsel who can zealously represent their clients in a professional manner, and who do not feel compelled to advocate

*Continued on page 12*

## Don Marmaduke - A Legacy of Integrity He believes that "a lawyer's calling is one of life's highest"

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

The third profile in our series of some of our local legal icons features **Don Marmaduke**. He's practiced law in Oregon since 1953 when he became a member of the OSB and started at Stael Rives. In the two prior years, he was a member of the MA bar after graduating from Harvard Law School in 1951. Don was MBA president in 1979-80 and received the MBA highest award, the MBA Professionalism Award in 1994.



Don Marmaduke and Mike Schrunk

After working at Stael Rives for 18 years, through partnership, he withdrew to form the first public interest law firm in Oregon. His partners were Charlie Merten, Noreen Saltveit McGraw and Larry Aschenbrenner. They were inspired because of their "interest in civil rights law, constitutional law generally and consumer protection ... the turmoil in the world and the civil rights movement all coming to a boil intrigued us to try to make things better."

Three and a half years later, Fred Torp asked him to head up the trial practice for a new firm being formed by him and others leaving Stael Rives. That moment in 1974 led to today's Tonkon Torp law firm. Those leaving Stael Rives

"separated as friendly rivals, working together as colleagues at times and on other occasions on opposite sides as adversaries." He always retained the highest respect for the lawyers at Stael Rives.

As typical of someone who has had many significant milestones in his career, he had a difficult time identifying his most memorable event in his career because there "have been so many that have made law so interesting." Becoming a lawyer advocate "opened the door to the most fascinating career I could ever have become involved in." He found the "trial part fascinating: being an advocate for a cause for a client, trying to present the client's position most effectively and having the opportunity to use one's legal skills and training to deal with a wide variety of clients, witnesses, judges, lawyers and experts. It's a wonderful mix of people and personalities and problems they bring up ... using one's skills to try to solve the problems never gets boring."

He credits his grandfather, William T. Hall, in whose home he was born and raised, for his becoming a lawyer. "He thought being a lawyer was the best thing a person could be ... he had worked on the railroad from Portland to Spokane sorting mail. He'd go down to our basement and give speeches he'd memorized that were given by famous people such as Clarence

Darrow. He could have been a great orator himself. I idolized him." There were times when his grandfather would take him to the courthouse to witness trials, going from courtroom to courtroom. There were times later when Don "would be trying a case and turn around and see him in the back of the courtroom enjoying the scene."

Don has especially liked "several things: the early analysis of the problem and developing the strategy, interviewing and identifying witnesses, orchestrating the presentation and the trial itself, particularly the cross examinations as much as anything else. The outcome was sometimes very gratifying and sometimes disappointing," but those were the ones he says he learned the most from.

Any surprises when he entered law? Mostly they were "unexpected discoveries ... the personal and professional value of becoming engaged in bar committees, pro bono, networking and community work, and how much value it brings in friendships, professional opportunities and experience." He discovered that collaboration with others helps find the best solutions to problems. "Free thinking gives you new insights that add much value to the problem solving process."

Advice for other lawyers, particularly younger ones? "It's important to think about the big picture and the long run, not

just the narrow, short term. Ask yourself what's the test of time going to do to the outcome if I decide to do it one way or another. See it from others' eyes. If you don't have collaborative opportunities, think how someone else would look at this and how will they see it playing out in 10 years. Earn people's trust whether friends or foes. You will have credibility and influence on how others will act if they trust what you say." Don has a "personal bias, that there is inherent value in simplicity. If people recognized that they could improve writing analysis, speaking, all kinds of things. I guess the last thing is hold to basic values, keep your word, do your best and follow the golden rule."

Many of us know about his work in Mississippi in 1965 to desegregate the Neshoba County Courthouse in Philadelphia Mississippi. They "sued to equalize rights of blacks including free access to the voter registration area in the basement. In those days segregation was written into the constitution and statutory language of the state, but was in conflict with the federal constitution. In Mississippi at that time it was not at all clear what the outcome would be in the desegregation case because the substantial population basically claimed states' rights." He called the courageous acts of the local African Americans amazing.

Asked what he'd like his legacy to be, he responded with, "I harken back to my grandfather who believed that a lawyer's calling is one of life's highest and that if someone were to say that Don



Don Marmaduke and his faithful companion Annie

Marmaduke tried to follow the golden rule, I would rest easily in my grave."

Asked what encouragement he would give to other lawyers, especially those trying to get started, he said, "Become engaged, contribute your time and skills where they're needed. Don't be a potted plant, widen your network of friendships with other lawyers ... repeated exposure to fears builds confidence, take a chance and go out and do your best. The more times you do it the easier it will be for you."

Outside the practice of law, he says that he has especially enjoyed the company of his wife and four daughters, the companionship of a loving dog, spending time at the beach, using computer technology and he enjoyed skiing with his daughters and friends. His daughter, Susan, is a lawyer at Harrang Long Gary Rudnick and is on the MBA board, currently serving as its secretary.

*Don continues his trial/litigation work at Tonkon Torp, where he can be reached, 888 SW 5th Ave Ste 1600, Portland, OR 97204.*

## YLS Plans for the Year

By Kimberly Griffith, Cosgrave Vergeer Kester and YLS President.

This is the first year in MBA history that the YLS President will be a mother of three, and only the second time that a YLS President will have given birth during her service year (current MBA Vice-President, Michelle Druce, was the first). On the eve of my maternity leave, 8.5 months pregnant, it's hard not to reflect on how pregnancy and motherhood have impacted my professional life.

Men are fortunate not to face the challenge of looking and acting professional when your feet are swollen, the baby is playing soccer with your insides, you can't catch your breath and you haven't had a proper night's rest in months. And I frankly envy the majority of fathers I know who, when they leave work, don't go by the grocery store on the way to pick up the kids from childcare, then go home and prepare dinner, bathe and put the kids to bed, wash dishes and fold laundry - all before having a moment to themselves.

But the fact remains that even though I chose the life I'm living - a life that it is very different from the daily reality

of most of the people I work with (who are men) - it leads me to sometimes feel overworked and misunderstood, and to wonder how this sort of uniquely female experience contributes to the disproportionate drop-out rate of women in the law.

For many years now, more than 45 percent of law school graduates and law firm associates have been female. And yet, according to the ABA, fewer than 31 percent of the lawyers in this country are female, only about 20 percent of law firm partners are women and female judges account for roughly 25 percent of the bench. Locally, females represent an even smaller percentage of the attorney population, with female MBA members outnumbered two to one by males.

The YLS Futures Committee has been working for the last two years to inspire a dialogue about how to create work-life balance and increase career satisfaction among other "next generation" issues. This year my goal is to identify and implement projects and initiatives aimed at supporting our female



membership, specifically, as well as working fathers of young children. One small project already underway is the planning of two networking events at family-friendly locations (many bar events are held at drinking establishments) with a kid-friendly activity, so more parents can take advantage of these opportunities to commiserate and collaborate with lawyers in other firms and organizations. If successful, we may expand this service to include free childcare at other networking and continuing education events.

Please share your thoughts and ideas on this topic by posting a comment to this article at: [www.mbar.org/YLSFuturesCommittee.htm](http://www.mbar.org/YLSFuturesCommittee.htm), or email me directly at [kgriffith@cvk-law.com](mailto:kgriffith@cvk-law.com).



## September Kick-off Social a Success

By Valerie Colas, Oregon Law Center and YLS Membership Committee member.

On September 8, the YLS Membership Committee co-hosted a wine tasting event at Blackbird Wine Shop with the Financial Planning Association (FPA) and the Oregon Society of CPAs. The event was a success with members from all three organizations tasting various wines, including selections from Bergström Winery, while networking and socializing in an informal atmosphere. Those wishing to learn more about the selected wines were given a fun and short geography lesson by Andy Diaz, the owner of Blackbird Wine Shop.

Attendees also had the opportunity to place their business cards in a raffle drawing to win gift certificates from Starbucks and DragonFish Asian Café, donated by the FPA and the YLS. Attendees who did not want to end the evening were encouraged to visit the local restaurants on Fremont. Alameda Brewhouse and Amalfi's Italian Restaurant provided gift certificates for attendees to catch up with colleagues or network with other professionals.

The YLS would like to acknowledge the support of the FPA and the Oregon Society of CPAs and give a special thanks to Blackbird Wine Shop, Bergström Winery, Alameda Brewhouse and Amalfi's Italian Restaurant.

See more YLS event photos and upcoming event information at [www.mbar.org/ylsevents.htm](http://www.mbar.org/ylsevents.htm). Pictures provided by Kelly Mason, US Courthouse and YLS Membership Committee member.



OSCPA member, Launa Mitchell and YLS member, Marisol Cordero-Goodman at the Sept. 8 social

## Pro Bono Spotlight: Natalie Hedman

By Abra Cooper, Schwabe, Williamson & Wyatt and YLS Pro Bono Committee member.



Natalie Hedman

Natalie Hedman has only been a practicing lawyer for a little over a year, but she has already made significant contributions to the community through her work with Legal Aid Services of Oregon's (LASO) Domestic Violence Project and Pro Se Assistance Program. Natalie Hedman graduated from Portland

State University (PSU) - majoring in women's studies and sociology - before heading to Florida, where she worked as a paralegal and attended law school at the Nova Southeastern University Shepard Broad Law Center. But she knew that she would eventually end up back in Portland, and that the focus of her legal career would be public interest work, specifically with victims of domestic violence and sexual assault. Her interest in domestic violence issues began long before she entered PSU, but grew stronger as a result of her course of study and involvement with the Women's Resource Center while a student there.

Hedman's predictions about her future home and career have become a reality. After graduating from law school in 2008, Hedman, her husband and children moved to Portland and she took and passed the February 2009 bar exam. While searching for

employment, Hedman decided to pursue pro bono opportunities in the community. By August 2009, she was accepting cases through LASO, and a year later, she has already handled 13 cases, including a guardianship dispute and multiple domestic violence cases. Her clients have been "kind and honest, and also very grateful," says Hedman.

In addition to accepting cases through LASO's various programs, Hedman has also volunteered with Catholic Charities and is an adjunct professor in Heald College's paralegal program, all the while balancing family life and receiving client referrals through LASO's referral service. While Hedman recognizes the fact that she is making a positive difference in the lives of her clients, she believes that she is also reaping numerous rewards through her involvement with LASO's pro bono programs.

According to Hedman, performing pro bono work has made her a "better person, mother, teacher and attorney." As she pursues a career in public interest law, Hedman plans to continue volunteering with LASO in an effort to further support those who cannot otherwise afford representation. "[Being able to hire] a lawyer can often mean 'access' [to justice] and is something otherwise associated with having privilege," said Hedman. "I believe all individuals are entitled to a lawyer and should have 'access' to the same remedies as the rest of the community."

### MBA Young Lawyers section to hold new Admittee social at Kells

The YLS Membership Committee is holding a social on November 18, from 5:30-7 p.m. to welcome lawyers who have recently been admitted to the OSB.

The event is generously sponsored by LexisNexis.

The social will take place at Kells Irish Restaurant & Pub, located at 112 SW 2nd Ave., Portland. Appetizers and refreshments will be provided. Please bring your colleagues and join us on November 18 to meet and welcome lawyers recently admitted to the OSB.



# Sign Up Now for the MBA Mentor Program

By Justin Leonard, Ball Janik and YLS Immediate Past President.

School is in session, the leaves are changing color, and your opportunity to participate in the MBA's world-class mentorship program is finally here! Our mentor program is not limited to first-year attorneys. Any YLS member is eligible to complete a brief questionnaire and be paired with a mentor for a six-month program, beginning January 2011. Simply visit [www.mbabar.org](http://www.mbabar.org) to download and complete an application before December 3.

We will review the applications and match you with a mentor. In January, the MBA will sponsor a mentor "kick off" reception, where you will be introduced to your very own mentor. You and your mentor can then design a relationship that suits your needs and availability. In addition, over the six-month program, the MBA will host a variety of optional social and educational programs for you and your mentor.

When I was a new lawyer, I was very appreciative of the support and perspective of my MBA mentor Wally Sweek, who taught me - among other things - about the importance (and great benefits) of participating in and contributing to Portland's legal community through involvement with the MBA. He gave me a historical perspective on the practice of law, and helped introduce me to the broader legal community. But, in the words of a beloved childhood mentor of my generation, LeVar

Burton, you don't have to take my word for it. Here's what one recent mentor/mentee pair have to say about the program:



"I have been a MBA Mentor for many years. My initial attraction to the program was free wine at the kickoff meeting, but I have continued because I have enjoyed my mentees. Each mentee brings a fresh perspective. Some are navigating large firm politics. Some are looking for a safe sounding board for "stupid" questions. Others are weighing career opportunities and appreciate input on practice areas and firms. All bring enthusiasm and energy to the table, and remind me of the trauma and promise of a new career. Working with Jenny this year was a real treat. She is smart and funny, and will have a great legal career. I am proud to have made a small contribution. I urge other experienced attorneys to sign up for the program."

Greg Mowe, MBA Mentor

"I signed up for the MBA's mentor program hoping to find a mentor to advise and guide me through some of the pitfalls facing new attorneys. Greg did that and more. He thoughtfully answered all my questions and gave me excellent advice on how to survive and thrive as a new attorney. I am especially grateful for his perspective on the trajectory of a legal career and how to weather challenges. Greg also provided me with an excellent example of professionalism. The MBA's mentor program for new attorneys is terrific and I urge all new attorneys to take advantage of this valuable resource."

Jenny Franks, Mentee



If you are interested, be sure to fill out your application from [www.mbabar.org](http://www.mbabar.org) before December 3. If you have any questions, please contact me at 503.944.6126 or [jleonard@balljanik.com](mailto:jleonard@balljanik.com).

## Notice to Judge Pro Tem Applicants

The MBA Judicial Screening Committee reviews applications for pro tem and full-time judicial candidates for Multnomah County. The committee meets the third Tuesday of each month, typically September through June.

Pro tem renewal candidates are asked to submit their applications at least four months in advance of the expiration date of their current appointment. There are two forms for pro tem candidates to complete; both may be obtained by visiting [www.mbabar.org/documents.htm](http://www.mbabar.org/documents.htm) or by emailing Carol Hawkins at [carol@mbabar.org](mailto:carol@mbabar.org).

The committee must have sufficient time to process the applications. The committee's recommendations and the completed applications are then sent to the presiding judge, who forwards the information to the Oregon Supreme Court for review at one of its regular meetings.

## 2011 MBA Membership Renewal is Underway

Fall has arrived, and so too has the time to renew your MBA membership for 2011. To continue to receive the wide range of benefits the MBA provides, simply take a few moments to renew online at [www.mbabar.org](http://www.mbabar.org). Here are just a few reasons to continue your membership:

- Excellent, convenient and reasonably-priced seminars and downloadable MCLE-approved content;
- Socials, volunteer opportunities and committees that provide rewarding ways to network with other attorneys;
- Resources such as the *Multnomah Lawyer*, the

e-newsletter and the Web site keep you up-to-date with news, events and a member directory;

- Exclusive member discounts from LexisNexis, Legal Northwest, Office Depot, Bank of the Cascades, The Naegeli Reporting Corporation and others; and
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For further information, please call 503.222.3275 or visit [www.mbabar.org](http://www.mbabar.org).

## Bench, Bar and Bagels Networking

The MBA is pleased to host a morning networking event "Bench, Bar and Bagels" on Tuesday, November 3, 7:30-8:30 a.m. at City Hall (1221 SW 4<sup>th</sup> Ave.) in the Rose Room on the third floor. Please join your colleagues and members of the judiciary for some light breakfast pastries and coffee. This event is offered at no cost to MBA members and judges. Non members: \$5.

Special thanks to our sponsor: Tsongas Litigation Consulting. Please RSVP to Kathy Maloney ([kathy@mbabar.org](mailto:kathy@mbabar.org)).

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## Hundreds Have Signed the Statement of Diversity Principles

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- Free CLEs to run concurrently from 2:00 to 5:00 p.m.
- Fair, Awards & Social – no registration required: 5:00 to 7:30 p.m.

To register for the CLEs or for more information, contact Karla Houtary at [khoutary@osbar.org](mailto:khoutary@osbar.org) or .503.431.6367

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**Judge Butterfield**

*Continued from page 9*

extreme positions. He also strives to respect the time of all parties involved who appear before him and works diligently to run a timely courtroom.

The filing deadline for a candidate to challenge Judge Butterfield's seat has passed without any opposition being filed. If he is reelected in November, his term will be extended for six more years. When not spending time with his family, he enjoys skiing, bicycling and riding his Buell on winding country roads.

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**Tips From the Bench**

*Continued from page 8*

meter reader. But the opposing party would not seriously try to attack the veracity of the meter reader, who was just doing her normal job and doesn't even know who lived in the residence served. Therefore, the business records exception allows use of the records of what the meter reader saw. OEC 803 (6). You still need the custodian of the records to establish that the records are, in fact, the authentic records kept in the regular course of business (but best practice is to stipulate

to that foundation when there is no good faith dispute). The pocket test - whether you need cross-examination to test veracity - gives you a common sense hint whether a hearsay exception might apply. (Of course, the pocket rule is just a proxy for the actual rule; once defending an objection to the court, you need to cite the actual rules in all their precision.)

Hearsay may also be allowed based on the unavailability of the speaker, but under very limited circumstances. OEC 804. But for the accident of death, insanity, absence, or obstinate silence of the witness, the testimony could not be presented by hearsay. Fortunately, those exceptions are few and far between. The type of hearsay - prior testimony - that can be used is strictly limited. Even that testimony can only be used if the prior testimony was subject to cross-examination by the opposing party under circumstances when that party (or a predecessor in interest) had a similar opportunity and motive to cross-examine the witness. (Notice that that "similar motive" requirement generally is a stumbling block to the use of a discovery deposition.) Even in that most exceptional of hearsay exceptions, the hearsay rule and the right of cross-examination are two sides of a single coin.

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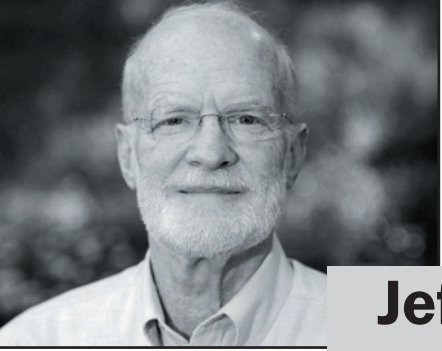
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By Pamela B. Hubbs, Office and Foundation Administrator.



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**Sarah J. Ryan**, Ball Janik LLP chairs the firm's employment law practice group and has been a partner in the firm since 1990. Her principal areas of practice are employment law and complex commercial litigation. Sarah is the author of the "Pleadings and Claims" chapter of the OSB publication *Federal Civil Litigation in Oregon*.



**Kathryn L. Villa-Smith**, Gevurtz Menashe et al is a shareholder in her firm and a compassionate advocate for resolving cases through the mediation process and minimizing the stress her clients are going through. Kathryn is a former prosecutor for the Multnomah County District Attorney's office and served on the MBA Board of Directors from 2001-2005.



**Timothy R. Volpert**, Davis Wright Tremaine LLP focuses on cases involving constitutional, commercial, education, employment and telecommunications law, with an emphasis on appellate litigation. Tim successfully represented the petitioner before the US Supreme Court in *Vernonia School District 47J v. Acton*, a landmark case holding that drug testing of public school athletes does not violate the Fourth Amendment.



**James N. Westwood**, Stoel Rives LLP is a partner in his firm and concentrates his practice in state and federal appellate courts. Among the nearly 200 appeals Jim has handled are important cases in state and federal constitutional law, insurance, banking, energy, administrative law and punitive damages law.



**Carol J. Bernick**, Davis Wright Tremaine LLP, Partner-in-Charge, Portland, is the MBA liaison to the MBF.



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