



MULTNOMAH LAWYER

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

September 2012
Volume 58, Number 8



On Service

by Greg Moawad
MBA President

The state of North Carolina has a stunningly powerful uniform jury instruction in criminal cases. (I can hear copies of the *Multnomah Lawyer* being turned to Page 2 throughout the Northwest right now.) For the eight of you still with me, it reads, “The highest aim of every legal contest is the ascertainment of the truth. Somewhere within the facts of every case, the truth abides, and where truth is, justice steps in garbed in its robes and tips the scales. In this case you have no friend to reward, no enemy to punish; you have no anger to appease or sorrow to assuage. Yours is a solemn duty to let your verdict speak the everlasting truth.”

“Yours is a solemn duty to let your verdict speak the everlasting truth.”

Headly stuff for jurors. This instruction is meant to make jurors put aside their own interests, biases and baggage in an effort to make certain the truth is discovered via verdict. It’s a lofty goal – but I often wonder how achievable it is. Especially when I can’t say we, as lawyers, are always taught to value the truth over winning. (This article isn’t about you – it’s about us.)

Which brings us to the word of the day: service.

The progeny of the word “service” can be nouns, adjectives or verbs. One can perform a helpful act for a person, thereby providing service. One can supply utilities or commodities, such as electricity, and deliver service. One can also perform the duties of employment, such as those provided by a waiter – and serve a customer. I can serve a tennis ball. If I understand pop culture at all, I am also aware that one can finish an exceptionally choreographed dance maneuver, complete with backup dancers and a light show, cross your arms and announce, “You got served.” For those of you who aren’t as into teen dance movies as my wife Heidi is, consider Derek Zoolander’s walk-off against Hansel. I now realize that explaining a teen dance movie reference with another movie reference probably isn’t particularly helpful. Then again, of the eight of you reading this, a few may now understand. A man or woman may sign up to serve in a military force, aka the service. Finally (in terms of this article, not in terms of *Merriam-Webster*), in our profession, one can deliver a subpoena on a party, a witness or a third party – thus effecting service.

Think for a moment about your start in the law – at the beginning, who or what did you think you served in your practice? For most of us, I would wager that we strove to serve our clients’ needs by “winning” cases either by verdict or by settlement. That’s because, for most of us, we quickly learned that serving your clients’ needs could also pay large dividends in serving your own needs: for housing, food, a car, etc., in the form of repeat business, promotions or enhanced salary. While many lawyers get past that thought – that prevailing for our clients is the highest purported goal of the justice system – some don’t. And I

“...we quickly learned that serving your clients’ needs could also pay large dividends....”

would argue that those lawyers who don’t get past that thought too narrowly define “service” in the legal profession.

Some in our profession don’t always view their job in the larger justice system as getting to the truth in a dispute. How often have you: 1) heard someone say they are going to “paper the other side to death,” in order to attempt to force a settlement; 2) seen someone “unintentionally” file a late motion of substance in an effort to sabotage the other side; or 3) seen lawyers attempt to evade discovery of a document or fact in an effort to maintain a better position for their clients?

I appreciate that I am likely naïve, but I still believe that as lawyers we serve the truth. We also serve each other – even opposing counsel – in an effort to get to the truth. Yes, you owe a duty to your clients to provide zealous, unmatched advocacy to serve their needs. But we, as a profession, owe it to ourselves and to our potential juries to make certain that we also serve the truth, justice and each other.

To be blunt, I often fear we aren’t instilling, let alone expecting, lawyers to always value the truth above all else. The courts in North Carolina demand that of jurors. Shouldn’t we demand that of each other?

Side Note: Securing adequate funding for the full and effective operation of the courts is essential to allowing the public access to the justice system. Based on the recent court funding shortfalls, the MBA is establishing a Court Finance Committee to focus on designing and implementing strategies to attempt to secure additional necessary funding for the full operation of Oregon courts. If you are interested in participating, please send me an email at moawad@ohsu.com. If you would like to complain about this article painting lawyers with too broad a brush, I may be reached at heidi.moawad@mcda.us.

mba | EVENT

MBF Social

Celebrating Donors, CourtCare and Signature Video Project

Wednesday, September 12

5-6:30 p.m.

Barran Liebman LLP

601 SW Second Ave., Ste. 2300
Portland, OR

Join us as we celebrate our generous donors, CourtCare and the MBF video series on democracy issues. Meet some of our grantees and catch up with colleagues.

RSVP to Pamela Hubbs at
503.222.3275 or pamela@mbabar.org.

mba | CLE

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

SEPTEMBER

9.19 Wednesday
Deception in Negotiation and Mediation
Jeff Merrick

9.27 Thursday
Child Abuse Reporting
Amber Hollister

OCTOBER

10.4 Thursday
The Anatomy of a Derivative Action
Chris Kayser
Susan Marmaduke
Julie Vacura

10.24 Wednesday
Public Speaking for Attorneys
Judge Janice Wilson
Laura Dominic

10.25 Thursday
The Care and Feeding of Commercial Litigation Clients
Tom Gerber
Lisa Kaner

10.30 Tuesday
Effective Cross Examination
Judge Michael McShane
Judge Eric Bergstrom

NOVEMBER

11.7 Wednesday
Access to Justice in Oregon: Preparing your PTSD Client for Litigation
Suzanne Best, PhD

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See pp. 3-4 for
CLE schedule and
registration.

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DEADLINE for copy: The 10th of the month*

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*or the preceding Friday, if on a weekend.

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Washington's Business & Occupation Tax

by Mark Clift

McDonald Jacobs, P.C.



Many unsuspecting law firms that have clients who either live in Washington or who have business activities in Washington may find out that they should be filing the Washington Business & Occupation Tax (B&O tax) which is similar to a sales tax on services. The B&O tax is assessed on gross receipts with some limited offsetting deductions. Washington does not have an income tax.

Effective June 1, 2010 there was a new standard for taxing service. Under the prior rules, you generally were not subject to B&O tax unless you had some physical presence such as an employee entering Washington and performing services.

In a search for more dollars, Washington has thrown out that standard and the new rules have an "economic benefit" nexus standard as opposed to a "physical presence." Nexus is the minimum amount of activity to create the ability for a state to assess taxes.

This means that if you have a client with a Washington connection and you perform services for that client, then you may meet the new "economic" standard and be subject to B&O tax. For example, if your business is in Oregon and all work is performed in Oregon, but the client is in Washington and therefore the client derives the economic benefit from your services in Washington, you might now need to file B&O tax in Washington.

For a full list of business activities subject to the new economic nexus standard, go to http://dor.wa.gov/economic_nexus.

The good news is that there are de minimis rules, so you may not be required to file. If your business earns qualifying income attributable to Washington and exceeds one of the following thresholds, you have economic nexus with Washington:

- More than \$50,000 of payroll in Washington
- More than \$50,000 of property in Washington
- More than \$250,000 of gross income in Washington
- At least 25 percent of your total property, payroll, or income in Washington.

Unfortunately it is very difficult to determine what is considered Washington source income and you must know that amount to determine whether you need to file. The rules are complex and the intent of this article is to provide some simple examples, and you would need to do additional investigation to determine whether you have Washington revenue based on the economic benefit rules. The Washington Department of revenue expects that almost all revenue will be sourced using the first tier economic benefit rule of the six listed below.

1. Where the customer received the benefit of the service
 - a. If known by transaction, use that data. It can also be determined by a reasonable method of proportionally assignment (see examples below).
 - b. If unable to determine using #1a, but it can be determined that the benefit is primarily (more than 50%) in a single state, then the income is all sourced to that state.

If income can't be sourced under #1, the revenue would be sourced to a state using the first of the following (2-6) that applies.

2. Where the service was ordered from.
3. Where you send your invoice for payment.
4. Where the customer sends the payment from.
5. The customer's regular business address.
6. The customer's commercial domicile.

The following are examples of potential application of rule 1a. In all examples provided, the law offices are in Oregon and the work is performed in Oregon.

Example A – You write a will for a client living in Washington. All revenue is Washington sourced because the benefit of the services occurs in Washington.

Example B – You edit and finalize an employee manual for a company based in Washington. The company has 400 employees and 250 are based in Washington and 150 are based in Oregon. Total billings are \$50,000. The Washington source revenue would be 250/400 times \$50,000, or \$31,250.

Example C – You assist an Oregon based company with the purchase of land in Washington. The revenue is Washington sourced because the asset will be in Washington.

Example D – You do litigation work for a class action suit. Of

Continued on page 16

Calendar

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

SEPTEMBER

9.3 Monday
Labor Day Holiday
MBA closed

9.8 Saturday
YLS Pro Bono Pedal 2012
Visit www.mbabar.org for details

9.12 Wednesday
MBF Social at Barran Liebman
Visit www.mbabar.org for details

9.13 Thursday
YLS Winetasting Event with ORCPA & Financial Planners
Visit www.mbabar.org/yls for details

10.19 Friday
Oregon State Courts are closed

10.23 Tuesday
MBA Absolutely Social at University Club
Visit www.mbabar.org for details

10.25 Thursday
Pro Bono Fair
Visit www.osbar.org for details

10.26 Friday
OWLS Fall Conference & Workplace Leader Award Ceremony
Visit www.oregonwomenlawyers.org for details

10.27 Saturday
OGALLA 21st Dinner & Auction
Visit www.ogalla.org for details

OCTOBER

10.1 Monday
MBA Golf Championship at Columbia Edgewater
Visit www.mbabar.org for details

NOVEMBER

11.2 Friday
MBA Professionalism Award nomination deadline

Mild-mannered Attorney by Day Itinerant Jazz Musician by Night

by Marjory S. Morford
Dunn Carney et al

In spite of the incredible demands of their job, some lawyers find the time to be more than busy legal practitioners. Bill Joseph, a partner at Dunn Carney et al is a jazz guitarist when he isn't in the courtroom, taking depositions or working on a transaction. He started playing the guitar at age 19 and has performed all over the Portland metropolitan area in various bands since moving here in June 2000.

Despite having a busy practice and two young children, he tries his best to play music on one of his instruments every day. He started out playing blues, folk, and rock 'n' roll, but his true love today is jazz, particularly Latin jazz. He loves the interaction with other musicians and the fact that he can walk into a room full of people he has never met and, as long as they have a chart, they can be playing jazz within minutes of getting together. Although Bill loves music, he doesn't want it to become work. Rather, he would prefer music be something he can do when he wants to and not something he has to do.

Bill was in a four-piece band called The City Lights Project that played at private events, farmers markets, for the governor, at

Pioneer Courthouse Square, and wineries. They played mostly jazz and pop music as well as some original compositions. The band recorded a CD entitled *Lights Out*, which sold well at gigs and on CD Baby. It was all great fun and then Bill and his wife Joanna (who was also in the band) started a new chapter in their life with the arrival of their first child, Adin, now five years old. Now, he and Joanna have a new band called Baby Carrots comprised of just the two of them that focuses on children's music. In addition to juggling kids, jobs and life, they have recorded one album entitled *Something to Chew On* and are in the process of recording a second album. You can buy or check out the album on iTunes. The album consists of music that both kids and parents can enjoy and provides a nice reprieve from albums parents love to hate, e.g., such titles as *100 Sing Along Songs for Kids*.

Continued on page 17





Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Deception in Negotiation and Mediation

Wednesday, September 19, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

NOTE: This class will be worth two hours of ethics credit.

An attorney's duties of honesty, zeal and confidentiality intersect when negotiating. Attorneys can be tempted to exaggerate, minimize or otherwise deceive and certain puffing is permissible. However, when attorneys cross the line into impermissible deception, severe consequences can befall both attorney and client.

Join **Jeff Merrick**, Attorney at Law for this two-hour presentation. Attendees will acquire knowledge of the "bright lines" plus a framework for analyzing the gray areas. Once attorneys understand the controlling law, they can use it as a positive tool to serve clients instead of merely fearing discipline, civil liability or criminal punishment if they cross the lines. This seminar is recommended for both experienced and new attorneys.

For more information:

Call Jennifer Nelson of Littler Mendelson at 503.221.0309. For registration questions, please call the MBA at 503.222.3275.

Child Abuse Reporting

Thursday, September 27, 2012
12:00-1:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members \$35
Non-members \$55

NOTE: This class will be worth one hour of child abuse reporting credit.

The MBA presents its annual seminar on child abuse reporting requirements. This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. Questions to be addressed include the following:

- What are the reporting requirements?
- How do I recognize reportable child abuse?
- What is it that I'm really supposed to do?
- What happens if I make a report of abuse?
- What happens if I don't report when I should have?

Amber Hollister, Deputy General Counsel of the OSB will present a lively and practical discussion of the issues.

For more information:

Call the MBA at 503.222.3275.

The Anatomy of a Derivative Action

Thursday, October 4, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

From beginning to end, litigation of shareholder disputes is always challenging particularly for closely-held companies. Join seasoned commercial litigation trial attorneys **Julie Vacura** and **Chris Kayser** of Larkins Vacura and **Susan Marmaduke** of Harrang Long Gary Rudnick, as they explore the thorny legal, factual and strategic issues that arise from the filing of the complaint to the trial of a derivative suit of a closely-held corporation. The CLE will examine the types of claims to file and not to file, the equitable relief available, the role of corporate counsel, the use of the statutory buy-out provision to preempt litigation and strategies for presenting claims at trial and preserving entitlement to attorney fees.

For more information:

Call the MBA at 503.222.3275.

Public Speaking for Attorneys

Wednesday, October 24, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

What are the most common public speaking mistakes litigators make in the courtroom? What is the number one non-verbal indicator of credibility? How do you keep from using distracting fillers such as "um," "like," "so," and "you know"? How loud should you speak and what effect does pitch have on a listener? When is it better to read a presentation, memorize it or wing it? What are effective tactics for dealing with situations where you have to improvise?

Come hear **Judge Janice Wilson** and **Laura Dominic**, Senior Consultant at Tsongas Litigation Consulting, reveal how even the most confident, talented advocates can stumble in oral advocacy, and get some tips for improving your own arguments and presentations.

For more information:

Call Heidee Stoller of Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

The Care & Feeding of Commercial Litigation Clients

Thursday, October 25, 2012
7:30-10:00 a.m.

Red Star
Club Room
503 SW Alder, Portland

Members \$55
Non-members \$85

NOTE: Registration fee includes breakfast. Breakfast available at 7:30 a.m., class begins at 8:00 a.m.

The MBA presents a breakfast program on managing commercial litigation clients. The key to most successful commercial litigation relationships is understanding the client's goals and setting realistic expectations. A number of common client misconceptions exist. Learn how to effectively respond and avoid traps. Any attorney involved in commercial litigation should attend this program.

Our speakers are **Tom Gerber**, Bullivant Houser Bailey and **Lisa Kaner**, Markowitz Herbold Glade & Mehlhaf. Tom's practice has emphasis in equipment leasing, inventory and other personal property financing, defense against construction liens, commercial collections, workouts and other specialized creditor/debtor matters. Lisa has served as lead or co-lead counsel in a wide range of complex commercial cases representing both plaintiffs and defendants. Her practice areas include securities litigation, complex contract disputes, business fraud, insurance coverage and employment.

For more information:

Call Sim Rapoport of iBridge LLC at 503.906.3933. For registration questions, please call the MBA at 503.222.3275.

Effective Cross-Examination with Judge Michael McShane and Judge Eric Bergstrom

Tuesday, October 30, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Join Multnomah County Circuit Court judges **Michael McShane** and **Eric Bergstrom**, both experienced trial attorneys and judges, as they discuss effective cross-examination techniques. Humorous real-life examples from actual transcripts will be incorporated into the presentation.

For more information:

Call the MBA at 503.222.3275.

Helping Clients with PTSD and Trauma-Related Disorders Navigate Through Litigation

**Wednesday, November 7, 2012
2:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$85
Non-members \$125

NOTE: This class will be worth three hours of access to justice credit.

PTSD expert and licensed clinical psychologist, **Suzanne Best, PhD**, will discuss the assessment and treatment of PTSD and trauma-related disorders and provide you with tips on how to help your clients navigate through the added stress of litigation. This CLE will qualify for three Access to Justice credits.

For more information:

Call the MBA at 503.222.3275.

Advising Nonprofits and Serving on a Nonprofit Board *Navigating the Rules and Avoiding the Traps*

**Tuesday, November 13, 2012
3:00-5:00 p.m.**

World Trade Center
Mezzanine Room
26 SW Salmon, Portland
Members \$55
Non-members \$85

There are an increasing number of rules, regulations, excise taxes and other sanctions that can apply to a tax-exempt entity. Whether you serve on a nonprofit board or advise nonprofits as part of your law practice, it is important to know the rules that apply to various types of nonprofit entities.

Penny Serrurier and **Michele Wasson** of Stoel Rives will address best practices in the nonprofit area to help advisors, board members, and key staff avoid conflicts of interest and apply sound fiduciary oversight. This presentation will cover private foundations, public charities, trade associations, social clubs, and similar tax exempt entities. The speakers will outline the policies and procedures that help ensure a tax exempt entity is operating in compliance.

For more information:

Call Hollis McMilan, Attorney at Law at 503.972.5092. For registration questions, call the MBA at 503.222.3275.

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mba | EVENT

Multnomah Bar Association Absolutely Social

The Grape Escape Featuring Wine Tasting

**Tuesday, October 23
5-7 p.m.**

The University Club

Drop in after work and catch up with friends and colleagues.

Register at www.mbabar.org.

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CLE CDs and materials content available at www.mbabar.org.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Or register online and receive a \$5 discount. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

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- Check VISA MasterCard
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Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

Multnomah Bar Association
620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
503.222.3275 ■ Fax to: 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.

Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available; an additional \$5 charge will apply.

9/19 Deception in Negotiation and Mediation

- Class Registration Online (\$50 Members/\$80 Non)
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9/27 Child Abuse Reporting

- Class Registration Online (\$30 Members/\$50 Non)
 Class Registration (\$35 Members/\$55 Non) \$ _____
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10/4 The Anatomy of a Derivative Action

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10/24 Public Speaking for Attorneys

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10/25 The Care and Feeding of Commercial Litigation Clients

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 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ _____

10/30 Effective Cross-Examination

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11/7 Helping Clients with PTSD & Trauma-Related Disorders

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11/13 Advising Nonprofits and Serving on a Nonprofit Board

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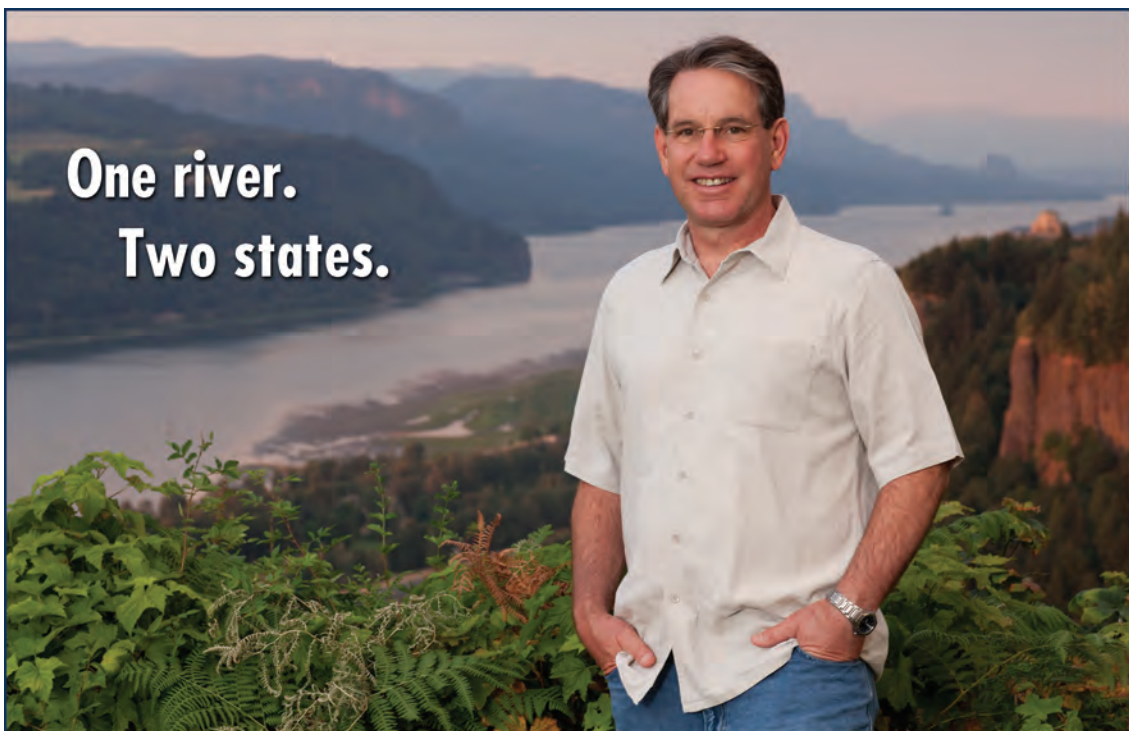
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Ethics Focus

Unwelcome Visitor: Garnishment of Trust Accounts

by Mark J. Fucile
Fucile & Reising



Imagine this scenario:

You recently took on a new client in a litigation matter. The client's case is definitely not front page news, but notice of the case itself is available in many public databases. You are handling the case on an hourly fee basis. You asked the client to pay an advance fee deposit, which you deposited into your trust account. Shortly after that,

"...you receive a writ of garnishment from a third party creditor of the client based on an unrelated judgment...."

you receive a writ of garnishment from a third party creditor of the client based on an unrelated judgment that the creditor obtained against the client before you ever took on the client. The creditor's lawyer learned of the client's present case by seeing it in a public database report and guessed correctly that you might be holding an advance fee

deposit in your trust account. Because you just got the case in, the amount sought remains less than the fees that you were planning to charge against the deposit at the end of the month. What now?

A perverse by-product of the tough economic times over the past few years is that law firm trust accounts have become a target for creditors trying to collect against clients. The phenomenon is by no means unique to Oregon. Recent ethics opinions and cases from around the country reflect this unusual trend.

Lawyers who have not had the unhappy experience of having a writ of garnishment served on them sometimes assume that client funds in trust accounts are "off limits." There is, however, no general exemption for such funds under either

"There is...no general exemption for such funds under either statutory law...."

statutory law (see ORS 18.618, which defines exemptions to garnishment) or the RPCs (see RPC 1.15-1, which defines duties for safekeeping client or third party property). Again, Oregon is by no means unique in this approach. Recent cases from Washington (*Mayers v. Bell*, 2012 WL 1299327 at *3 (Wash App 2012)), Alaska (*State v. Cook*, 265 P3d 342, 346 (Alaska App 2011)), and Colorado (*In re Rubio*, 2011 WL 3613710 at *2 (Colo App 2011)) make the same point under their respective lien statutes and professional rules.

The general idea is that client funds held in a trust account, by definition, remain the client's until earned or otherwise distributed.

RPC 1.15-1(d) and (e) define our obligations when presented

with a claim by a third party to funds held in trust for a client. The former provides, in relevant part, that "a lawyer shall promptly deliver to ... [a] third person any funds or other property that the ... third person is entitled to receive[.]" The latter requires that "[w]hen in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer)

"...the property shall be kept separate by the lawyer until the dispute is resolved."

claim interests, the property shall be kept separate by the lawyer until the dispute is resolved."

OSB Formal Ethics Opinion 2005-52 addresses third party claims against trust accounts generally. It analyzes RPC 1.15-1(d) and (e) and succinctly summarizes (at 124) a lawyer's obligations when put in this difficult spot:

"As a matter of law, Secured Creditor's valid and perfected security interest entitles Secured Creditor to receive funds to the extent necessary to satisfy the security interest. That being so, the funds subject to Secured Creditor's valid and perfected security interest are funds that a third person - Secured Creditor - is entitled to receive and that may be properly paid only to Secured Creditor and not to client ... pursuant to Oregon RPC 1.15-1(d). The same would be true if Secured Creditor's lien were statutory rather than contractual in origin. If there is a nonfrivolous dispute with regard to the amount to which Secured Creditor is entitled, Lawyer would be obligated by Oregon RPC 1.15-1(e) to retain the disputed portion, or perhaps implead it, until the dispute was resolved, but must pay the undisputed portion to Secured Creditor."

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mba | ANNOUNCEMENTS

MBA Members Invited to Community Meeting on the Downtown Courthouse Thursday, September 27, 5:30-7 p.m. Multnomah County Courthouse, Room 602

On June 14, the Multnomah County Board of Commissioners heard an analysis report that detailed six potential options for the renovation or relocation of the downtown courthouse. The board then adopted a resolution to seek input from the public on the future of the Courthouse.

The Portland legal community is invited to attend a meeting on September 27 to learn more about the safety concerns with the downtown courthouse, ask questions about the options, and provide feedback to the Board of Commissioners so they can move forward with planning the renovation or replacement of the building.

To RSVP, or for more information, contact Commissioner Deborah Kafoury's office at district1@multco.us or 503.988.5220.

September is Open Enrollment Month for the MBA Health Plan

Those not currently enrolled in the MBA Health Plan can sign up this month, so now is a good time to compare your existing plan to the MBAs. While the MBA plan is not immune from the continued rise in premiums, MBA premium increases are below the national average and the plan remains competitive for many MBA members. You may review a summary of current rates on the MBA website, or call Northwest Employee Benefits at 503.284.1331 with questions.

Commitment to Professionalism

The MBA professionalism statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free professionalism statement at www.mbabar.org.

MBA Noon Time Rides

Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions.

US District Court of Oregon Historical Society Famous Cases Presentation CLE

On Thursday, October 18 at 4 p.m. the *Williams v. Philip Morris, Inc.* case will be discussed in the US Courthouse 2nd floor jury assembly room by attorneys Jim Coon, Bill Gaylord and Bill Gary. After 12 years of litigation, the \$80 million verdict in their case was upheld by the US Supreme Court in 2009.

Classroom Law Project Seeks Court Tour Guides

Tour guides lead student groups around the Multnomah County Courthouse and Justice Center one morning a month. To volunteer as a tour guide, visit www.classroomlaw.org.

The Constitution and the Citizen – the Essential Relationship

On September 11 at 7 p.m., join the League of Women Voters for a discussion with Steve Kanter, Constitutional Law Professor and past Lewis & Clark Law School dean, and the Hon. Martha Walters, Oregon Supreme Court Associate Justice, at the Multnomah County Building Board Room, 501 SE Hawthorne Blvd. For more information, visit <http://lwvpx.org> or email info@lwvpx.org.

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Update your Member Directory profile in the MBA Member Center: <http://www.mbabar.org/Membership/Login.html>



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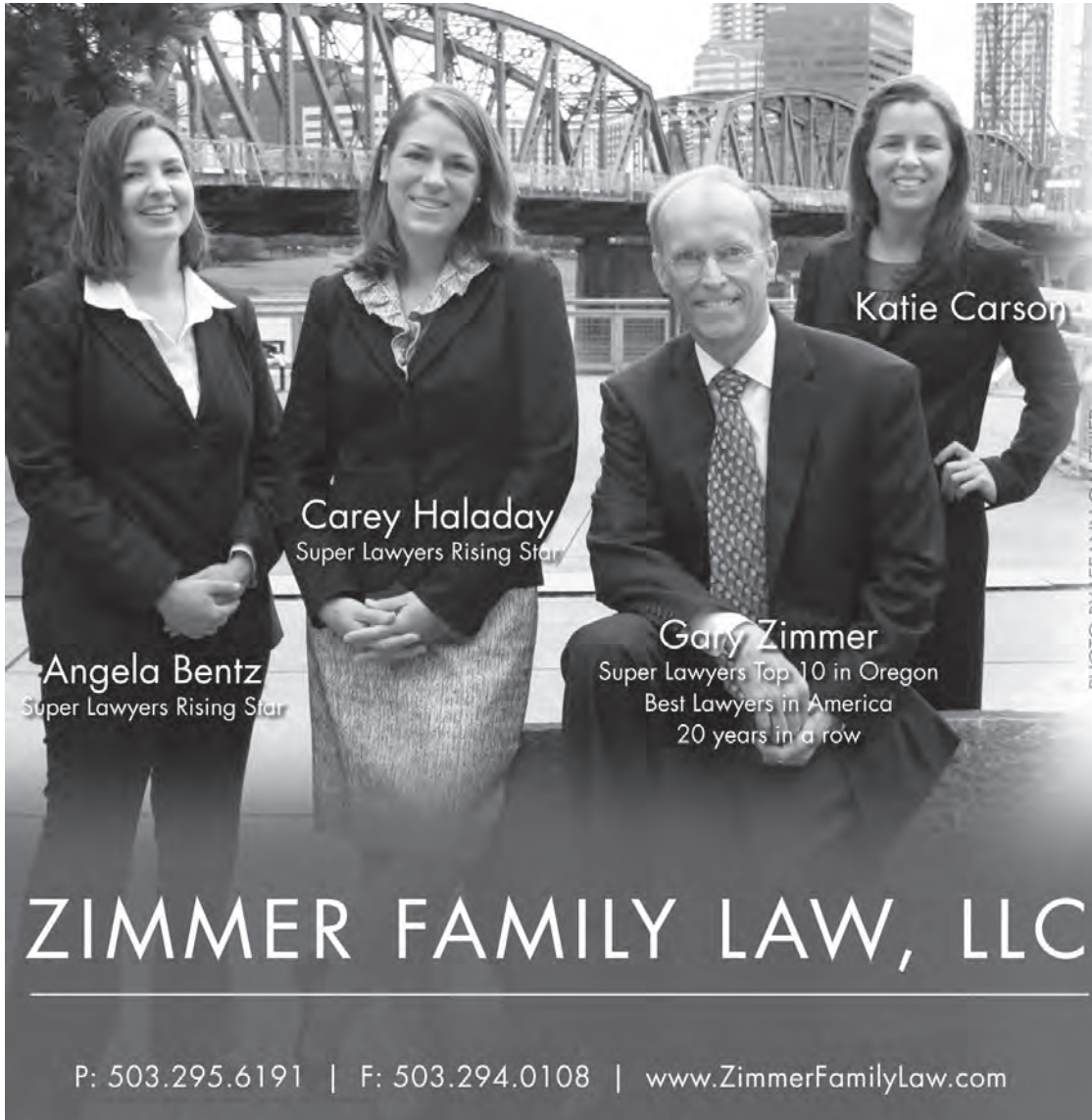
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Around the Bar



Emily Teplin Fox

Markowitz, Herbold, Glade & Mehlhaf

Emily Teplin Fox has joined the firm as an associate. Her practice will focus on commercial litigation, with an emphasis on breach of contract, partnership disputes, securities litigation, professional malpractice and other business matters.

Tomasi Salyer Baroway

Valerie Tomasi, Kathryn Salyer, Richard Baroway, Jeffrey Martin and Eleanor DuBay have formed a law firm focused on representing financial institutions, tax exempt organizations and businesses. Contact information for the new firm is 121 SW Morrison St. Ste. 450, Portland OR 97204, phone 503.894.9900, www.tsbnlaw.com.



Dennis Rawlinson



Kieran Curley



Mike Ryan

Miller Nash

Firm chair, executive committee member and partner Dennis Rawlinson has been named chair of the Portland Business Alliance.

Managing partner Kieran Curley has been elected to the board of directors of Jesuit

Volunteer Corps Northwest, and partner Mike Ryan has joined the board of De Paul Treatment Centers.

The firm's director of legal support services, Elise Brickner-Schulz, has been appointed to the board of directors for Cedar Sinai Park.



Peter McKittrick



Justin Leonard

McKittrick Leonard

Peter McKittrick and Justin Leonard announce the formation of a commercial bankruptcy and business law firm, where they will continue to advise creditors, debtors, and fiduciaries in the specialized area of commercial bankruptcy and insolvency law, as well as representing small businesses in litigation and transactional matters. McKittrick serves as a bankruptcy trustee in chapter 7 and chapter 11 cases and as a court-appointed receiver and examiner. Leonard is a former Ball Janik partner who practiced with the bankruptcy and creditor rights group. He previously served as president of the MBA YLS and was a founder of The YOUthFILM Project, the civics-related student filmmaking contest currently in its seventh year. The new firm is located on at 111 SW Columbia 11th Floor, Portland OR 97201 and at www.ml-llp.com.



Sarah Petersen

Lewis & Clark Law School

Sarah Petersen has been selected as director of Alumni Relations and Recent Graduate Advising. Petersen, a 2008 graduate of the law school, has been acting as graduate advisor and will

continue that work as well as providing support and services to all L&C Law alumni. She is in her second term as MBA YLS treasurer and third year on the YLS Board.

Samuels Yoelin Kantor

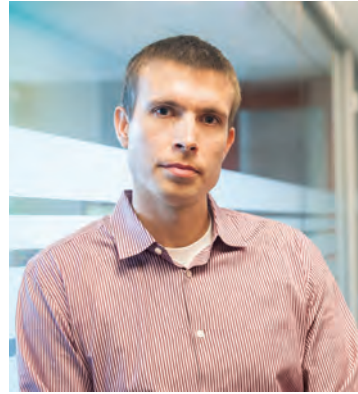
The firm opened a new office in Hood River, OR, located in downtown Hood River at 116 3rd St. Ste. 211. The 85-year-old firm has provided business and family clients with creative and cost-effective legal solutions and has worked with clients in the Mid-Columbia region for decades.

Donald Hull has a key role in establishing the new office. Hull served 22 years as circuit court judge in Hood River. Before being appointed as judge, he worked in private practice, focusing on business and estate planning, as well as litigation.

Partner Steven Seymour also has longstanding ties to the community. A municipal judge for the City of Mosier, Seymour lives in Mosier and is licensed to practice law in both Oregon and Washington. He is an expert in civil litigation, including trust and estate disputes.



Corey Tolliver



Jonathan Spare

Folawn Alterman & Richardson

Corey Tolliver has joined the firm an associate attorney. His practice includes all aspects of litigation, from discovery and motion practice to trial and appeal. Tolliver brings his experience as a business owner to his advising and representation of his clients in commercial litigation and business disputes. A primary focus of his work is in the area of legal and professional malpractice. Tolliver may be reached at corey@FARlawfirm.com or 503.546.4620.

Jonathan Spare has joined the firm an associate attorney. Spare's background in information technology and computer science is invaluable in representing his clients. His practice includes professional liability actions and business litigation. Spare may be reached at jonathan@FARlawfirm.com or 503.546.4637.



Ian Gates

DASCENZO Intellectual Property Law

Ian Gates has been promoted to partner. He has been with the firm since its founding in 2008. His practice focuses on patent and trademark procurement and client counseling, including for individual inventors, local businesses, start-ups, and Fortune 100 companies.



Román Hernández



Jeff Bird

Schwabe Williamson & Wyatt

Román Hernández, a firm shareholder, recently received DuPont's J. Michael Brown Award, which honors a member of DuPont's Minority Counsel Network (MCN) who has achieved significant success in efforts to increase and promote diversity in the legal profession and among the MCN. Hernández focuses his practice in the areas of employment law, labor law, and business litigation.

Jeff Bird, a shareholder, recently earned the Certified Exit Planning Advisor credential from the Exit Planning Institute, joining more than 131 other certified exit planning professionals worldwide. Bird is a core group member of the firm's Business Transitions Group. He has 25 years of experience assisting clients with complex business transactions.

Radler White Parks & Alexander

Denise Case is now of counsel in the firm's Real Estate and Corporate practice groups. She is in the firm's headquarters office at 111 SW Columbia St. Ste. 1100, Portland OR 97201. Case has extensive experience in transactional real estate and commercial finance.



Denise Case



Jeff Keeney



Christopher Pallanch

Tonkon Torp

The firm has launched an Information Privacy & Security practice group to advise businesses on the proper and practical management of sensitive data.

Jeff Keeney has been appointed to the foundation board of La Salle Catholic College Preparatory school. Keeney is a member of the firm's Real Estate and Land Use Practice Group. He represents local, regional and national property owners and developers in a wide range of transactional matters including acquisitions, sales and project development. He also has significant experience representing alternative energy clients, including ethanol producers and wind project developers.

Melany Savitt has joined the firm as an associate in the firm's Immigration Practice Group. Although a new lawyer, Savitt already has 10 years of experience in business immigration law. She was a non-immigrant visa training coordinator and paralegal before joining the firm in 2005 as a paralegal. Her skills and interest in immigration legal matters led her to law school. Now she is a practicing attorney in the firm's nationally recognized business immigration group.

Christopher Pallanch has joined the board of directors of the Oregon Chapter of the Federal Bar Association. He is a member of the firm's Litigation and Financial Services practices. He focuses on resolving complex business disputes as well as representing plaintiffs and defendants in federal and state court.

The Judicial Screening Process in Multnomah County

by Lisanne M. Butterfield and Alison Brown
Carr Butterfield



Lisanne M. Butterfield

In Multnomah County, the Judicial Screening Committee (JSC) of the MBA serves the primary function of screening applications for pro tem and permanent judicial positions in Multnomah County. The JSC is comprised of 24 members, including three public members. JSC members are volunteers who serve three-year staggered terms, with approximately one-third of the committee members changing every year. Among its other charges, the JSC conducts an independent confidential review of pro tem and permanent judicial appointment candidates in order to report recommendations to either the Presiding Judge or the Governor, and to the MBA President.

In order to make recommendations for both pro tem and permanent positions, the JSC appoints a subcommittee to interview the judicial applicant and verify her/his credentials. Upon completion of the

subcommittee's due diligence process, the JSC meets as a whole for a final vote. For the permanent judicial vacancies and ultimate appointment by the Governor, the JSC creates a list of "highly qualified" candidates. Placement on the "highly qualified" list requires a favorable vote from a quorum of the JSC. For these purposes, a "quorum" consists of two-thirds of the committee members present personally or participating telephonically. For permanent positions, the list of "highly-qualified" candidates is forwarded to the MBA President, who then sends a letter to the Governor. After that list is sent to the Governor, it becomes public information.

Like the permanent judicial applicants, the JSC implements a similar process for review of pro tem judicial positions. After conducting its due diligence and after a favorable vote by a quorum of the committee members present, a written recommendation is furnished to the MBA President, and the Presiding Judge. For purposes of reviewing pro tem applicants, a "quorum" is defined as one-half of the committee members present personally or participating telephonically. The pro tem appointment is ultimately made by the Supreme Court.

For all judicial applicants, the JSC relies on the follow criteria to evaluate the applicants:

- (1) Integrity and Character;
- (2) Judgment and Intellectual Capacity;
- (3) Experience (including, but not limited to, trial experience);
- (4) Industry and Diligence;
- (5) Judicial Temperament (e.g., whether the candidate would be courteous and considerate of counsel, parties, witnesses, and jurors, and whether the candidate is even-tempered);
- (6) Professional ability and knowledge of the law;
- (7) Non-discriminatory attitude and behavior regarding, but not limited to, race, ethnic origin, gender, age, disability and sexual orientation;
- (8) Contributions the candidate would make to the quality, character and diverse composition of the judiciary;
- (9) General reputation in the community;
- (10) Civic and community activities; and
- (11) Any other relevant facts that affect the applicant's ability to serve competently in a judicial capacity.

Consistent with the MBA's stated mission, the JSC relies upon its non-discrimination policy when reviewing judicial candidates: "Applicants shall be evaluated without regard to race, religion, color, national origin, sex, age, sexual orientation, marital status, disability, political affiliation, expunged juvenile record, family relationship, or any other non-merit factor." Another critical tenet of the JSC's work is the safeguarding of confidentiality, which is critical to the JSC's investigation of each applicant. The confidentiality of each reference is strictly maintained in order to gather the most accurate and objective information possible.

The JSC has enjoyed a longstanding reputation for providing this valuable service to the MBA. Currently, the MBA is one of the few local bar associations in Oregon that has a dedicated, formally-appointed committee to investigate and evaluate judicial vacancies. Marion County has a similar process for screening both permanent and pro tem positions, and in March, 2012, reviewed three applications for pro tem positions. Other local bar associations (including Washington County) implement formal review and screening procedures for applicants who seek permanent judicial positions, but not for pro tem positions. Instead, most other local bar associations rely exclusively on their Court Administrator, who

solicits input from members of the local bar association and the Presiding Judge. With that informal input, the Court Administrator ultimately submits the judicial applications to the Oregon Supreme Court for approval. If approved, those applicants are placed on the list of approved pro tem judges.

In addition to providing this uniquely formal function to our local bar association, the JSC also processes a relatively large volume of applicants. Additional information regarding the MBA's judicial screening process may be found at www.mbabar.org. The MBA encourages feedback and input from its members. If you have any suggestions or comments to improve the judicial screening process, please contact MBA President, Greg Moawad.

Legal Aid's PROSAP Facilitation Clinic

by Sarah Radcliffe
Legal Aid Services of Oregon

According to Presiding Judge Waller's remarks at the 2012 MBA Annual Dinner, 86% of family law cases in Multnomah County included at least one unrepresented party. In May, the Multnomah County Circuit Court suspended appointments in its family law facilitation program due to budget cuts. For the past 12 years, that program had provided one-on-one procedural help to pro se individuals attempting to navigate the complicated paperwork and processes required to obtain a divorce or custody order. Now, the need for assistance in this area is even greater.

Through the Pro Se Assistance Project (PROSAP), co-sponsored by Legal Aid Services of Oregon and the Multnomah County Family Law Court, lawyers are contributing to an effort to assist the multitude of individuals who lack the resources to hire an attorney to handle their important family law matters. The PROSAP Facilitation Clinic provides an initial appointment for clients with limited English proficiency or cognitive barriers to assist them with completing their pro se documents. Legal Aid trains the attorneys who staff these appointments, since they may have little or no family law experience. After the paperwork is complete, clients are scheduled for a 45-minute appointment with an experienced family law attorney (also a pro bono volunteer) for discrete family law questions and/or document review.

Natasha Bellis began volunteering with LASO's Domestic Violence Project (DVP) about two years ago. Having had exposure to her DVP client's custody and dissolution issues, Natasha understood

the need for assistance in this area. When LASO launched its PROSAP Facilitation clinic in January 2011, she signed up to volunteer. Now that she's been involved with the program for over a year, Natasha sees the value of this assistance even more clearly. "The forms are complicated," Natasha explains, "and many individuals are incapable of understanding and filling out these forms due to capacity or language barriers. For a lot of these clients," she continues, "divorce means freedom. Usually the separation has been made, but this is the final step for peace of mind. You can see the relief on clients' faces when you tell them that there is a service available to help them fill out the forms and counsel them."

Clients participating in the program are very low-income and the spousal support or child support obtained through



Natasha Bellis assists client

a divorce can provide crucial economic security. A custody order can be critical for ensuring children's safety and stability.

Several of Natasha's clients are survivors of domestic violence. Natasha described one client who had wanted a divorce for quite some time but was unable to navigate the process due to a serious cognitive disability. Because the client's spouse had both financially and physically abused her client, breaking that

Continued on page 17

The Corner Office PROFESSIONALISM

"Sorry" Seems to be the Hardest Word

The musician Sir Elton John once sang: "Why can't we talk it over, always seems to me, that 'sorry' seems to be the hardest word." His song laments the loss of a relationship and the loss of his ability to be heard. Sir Elton John's theme is similar to a lawyer whose incivility has caused a breakdown in a relationship between advocates - and in turn the inability to be effective.

"Sorry" seems to be the hardest word when a lawyer knows he or she has acted in an unprofessional way. This single word, however, can repair a relationship between legal adversaries. It can restore a client's interest in effective resolution of a matter back to the first position.

An apology has deep roots in the traditions of a free and just society. If a wrong has been committed, an apology serves many purposes. It affirms that

as humans - lawyers included - we are fallible and must constantly strive for good. It demonstrates honesty. Finally, the sincere words of an apology provide the reconciliation for each person involved and a mutual foundation to solve the immediate challenge at hand.

The medical profession is embracing the value of an apology when medical errors occur. Nearly 30 states have passed laws that enable a medical provider to apologize to a patient who has been harmed by a medical error without the concern that such an apology would come into play in any legal action. Research has shown that these apologies can reduce the number of legal claims.

In the tradition of the "Oregon Way" of professionalism in our practice, we ought to consider the opportunities to say "I'm sorry." A misunderstood

email may warrant an apology where a telephone call may have been more effective. Or, if lawyer had a problem attending a scheduled conferral or deposition, an apology would be in order. If the lawyer appeared and incurred costs for the "no show," it makes sense for the offending lawyer to apologize and voluntarily pay costs.

A lawyer's most important tool is credibility. That credibility is built on professionalism in the effective representation of clients. Our credibility requires an apology when warranted. A sincere apology coupled with an act to ameliorate the prior wrong can provide an opportunity to build one's credibility.

As we have taught our children, we should say we're sorry when we make a misstep. "Sorry" may be the hardest word, but it makes for an easy path in our practices, for our clients, and in life.

Tips From the Bench

What Works in Civil Litigation 10 Ways to Improve Your Chances

by Judge Jerome LaBarre
Multnomah County Circuit Court

I tried my first case over four decades ago. Since then I've been asking myself the question: "What works in trials and hearings?" Here are some answers to that question which have rung true for me over the years.

1. Seek Simplicity - The seeds that blossom into the successful handling of a case are planted long before the trial or dispositive hearing. Make the complex simple so it can be boiled down and presented to the decision maker in a persuasive manner. This is easier said than done. Two ways to achieve this are to select a theme and to tell a story.

2. Select A Theme - The law is but a tool to achieve justice. Again and again as a judge I see the quest for a just and fair solution driving successful presentations to the court or to the jury. The case needs to be clothed in a theme. It works the same way in arbitration and business litigation. A few examples of good themes I have recently seen are: "She got blindsided ... she never had a chance"; "He was greedy and abused his power"; "It's all 20/20 hindsight"; "The contract wins."

3. Tell A Story - At our core we succeed members of our clan who sat in front of the campfire and told stories to each other. Judges, arbitrators and jurors are all hardwired to relate to facts which are presented in story form. That's why I believe it almost always works best to try to organize and present things in chronological order. This is how stories unfold.



4. Strong Start/Strong Finish - The first three minutes in openings and closings are critical. You have the attention of the decision maker and you need to make the most of it. Get out your theme and lay out your persuasion. Say where you are going. Long ago my debate coach spelled out the essence of a good speech: "Tell them what you are going to say, say it and tell them what you have said." Try to boil the content down to three major points. Signal that you are going to end by using words like "In conclusion" and then end on a high and persuasive note.

5. Keep It Short - I have come to believe that the ideal amount of time for most openings or closings is 20 minutes. Remember that it is really hard to hold someone's attention for even that long. When you start going a lot longer it is inevitable that the audience's attention will drift and your points will be lost.

6. Take the Decision Maker on a Journey With You - I believe in drawing charts, key words and concepts on an easel in front of the decision maker and then making that a demonstrative

exhibit. To argue damages it also works best to add up the totals in front of them. This is a human touch. It connects them to you far better than a power point or prepared chart. Use whatever practical approaches will get the decision maker involved. Low tech can be best.

7. Maximize Rebuttal - In argument and in presenting evidence the party who has the right to present rebuttal has a real advantage. Again and again I see this opportunity wasted. Litigation is a polite form of combat. Rebuttal is a place you can deliver the knockout blow.

8. Hand Out Copies of Key Exhibits - Many civil cases have tons of exhibits. But almost always there are only a small number of really important ones. Try early on to get these admitted into evidence. Then put them into notebooks for the judge, jury or arbitrator. Throughout the hearing you can repeatedly refer back to these key exhibits.

9. Focus On Damages - Civil cases are about money. Yet repeatedly I see plaintiff's attorneys who seem afraid to deal with damages. Defense attorneys love this and are given the advantage. Admittedly this must be handled delicately and with planning. But all of us know that money does not grow on trees. Unless a compelling reason is presented to make an award it will be denied.

10. Aim Toward the Verdict or Arbitration Award - Not just in openings and closings but during the evidence phase remember your goal. It's all about having the decision maker fill out the form so that your side wins. It's good to draft out the verdict or arbitration award at an early stage in your case. You will be tempted to lose sight of this. But you do so at your peril.

Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunck and Edwin A. Harnden.

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

Multnomah County Probate Court

by Hon. Katherine Tennyson, Chief Probate Judge, Multnomah County Circuit Court and Helga Barnes, Probate Supervisor

Increased volume, more practitioners, and court budget cuts make it increasingly important that the probate bar stay updated on the rules and statutes that control probate practice. Getting it right the first time means a faster result. And the cases are complex, requiring skilled attention. Those new to the area would do well to develop mentoring relationships with the many experienced practitioners. Please keep the following in mind:

- These cases have time deadlines like no other area of the law. Specific events trigger obligations to the court and to your client. Lawyers can increase their efficiency with a case management system that alerts them to statutory deadlines. The last thing you want is to be summoned before the court to explain why you missed a deadline or have to explain to your client and/or the PLF why you missed the window for objections.

- **Multnomah County prefers use of UTCR 9.160 form accountings.** The asset schedule formatted in this document is very important to show the flow of the asset from the inventory to the first annual account and thereafter from accounting to accounting. Accountings should include an informative fact narrative that adequately advises the court of the issues confronted in the administration of the estate.
- **To avoid the cost of a bond, lawyers frequently request to restrict accounts.** Multnomah County requires an Acknowledgment of Restricted Asset that has the following language: "We agree to abide by the Order. We understand that if assets are removed from a restricted account without prior court order, this institution shall be required to pay the value of those assets to the estate/conservatorship." This language alerts the financial institutions that we hold them responsible as well as

our fiduciary. Before opening accounts, confirm that the financial institution will sign the acknowledgement.

- **Ex Parte and Special Set Matters.** All probate ex parte must be scheduled in advance by calling the probate department. If a hearing on a matter in probate will be one day or longer, attorneys should contact the probate department to set the matter on the ex parte docket so a judge can be directly assigned.
- **SLR 9.015** requires all documents pertaining to probate matters to be filed with the probate department. Proposed orders require audit of the court file before approval by the judge. Filing directly with a judge will add at least two days to the process and sometimes as much as a week if the judge is out at Juvenile Court.
- **Trust Administration** matters shall be filed in the probate department and heard by the chief probate judge or designee. (SLR 9.015(2)). Do not file cases involving trust administration in the civil department as it will simply necessitate transfer by the Court.
- **Mediation** is required in all probate, guardianship, conservatorship and trust matters in which an objection or document placing the matter in dispute has been filed. (SLR 9.016; SLR 12.045) "We don't think we can settle" is not an acceptable reason to waive mediation.
- **Communication with the Court.** The probate department is open to the public from 8-5 p.m., Monday through Friday, except holidays. **Due to budget cuts, the telephone hours are now 8:30-10:30 a.m. and 1:30-4:30 p.m.** The telephone number at the Multnomah County Courthouse is 503.988.3022, Option 4.

2013 MBA Professionalism Award Nominations Due November 2

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 or 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 2013 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.

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,

League of Women Voters Present Voter Education Forum Series

With a \$1,400 grant from the MBF, the League of Women Voters of Portland will present four voter education forums at the Multnomah County Building.

- Tuesday, September 18, 7 p.m.** Ballot measure forum, state measures
- Tuesday, October 2, 7 p.m.** Portland City Commissioner, Position 1

Thursday, October 4, 7 p.m. Ballot measure forum, local measures

Monday, October 8, 1 p.m. Portland Mayor

Contact Barbara Fredericks at 503.524.0835 or bhf8448@aracnet.com for details.



webcheck

September is Open Enrollment Month for the MBA Health Plan – those not currently enrolled in the plan can sign up this month. See a summary of premiums and benefits at www.mbabar.org



MBA Committees

Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and the committee chair follows. If you have ideas or concerns about a particular area, please contact the chair, MBA President Greg Moawad or the MBA staff at 503.222.3275.



Jonathan Corey



Heidee Stoller

Continuing Legal Education

Chair: **Heidee Stoller**, Ater Wynne, 503.226.8616
Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice 10 years or more.



Keil Mueller

Court Liaison

Chair: **Keil Mueller**, Stoll Berne, 503.503.227.1600
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.



Heather Decker

Equality & Diversity

Chair: **Heather Decker**, Attorney at Law, 503.786.2886
Promotes equality in the profession and identifies ways in which the MBA can promote a diverse bar.



Jim Oliver

Golf

Co-Chairs: **Jonathan Corey**, Corey Law Group, 503.208.3333 and **Jim Oliver**, American Family Insurance Co., 503.403.1880
Organizes golf outings, including the MBA Championship Tournament, which benefit the Volunteer Lawyers Project at LASO. Last year, the committee raised over \$20,000.



David O'Brien

Group Health Insurance

Chair: **David O'Brien**, Hart Wagner, 503.222.4499
Manages quality, low-cost health and other insurance plans for MBA members.



Heidi Moawad

Judicial Screening

Chair: **Heidi Moawad**, Multnomah County DA's Office, 503.988.3162
Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.



Melissa Beyer

Membership

Chair: **Melissa Beyer**, Farleigh Wada Witt, 503.228.6044
Conducts member-outreach activities and plans drop-in socials and WinterSmash, which benefits Multnomah CourtCare.



Maya Crawford

Professionalism

Chair: **Maya Crawford**, Legal Aid Services of Oregon, 503.224.4086
Implements activities that promote professionalism and carries out the professionalism award process.

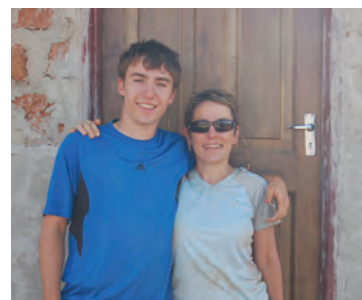
Carol Bernick Devotes Two Weeks to "Habitat for Humanity" Project in Zambia

Carol Bernick, partner-in-charge at Davis Wright Tremaine's Portland office, recently returned from a month-long visit to Africa, during which she spent two weeks working on a Habitat for Humanity project in Zambia.

It was the second international Habitat for Humanity experience for Bernick, who went to Honduras three years ago.

"I was looking for something that would provide a meaningful opportunity to interact with people," says Bernick, describing how she first became interested in working with the group. "I typically represent corporations, not individuals, and don't get the chance to feel like I have a direct impact on people's lives." She adds: "I didn't want to be teaching, lawyering, or otherwise doing something intellectual. I loved the physical aspect of what Habitat does."

With a longtime desire to visit Africa, Bernick and her 17-year-old son Austin ended up joining a dozen other Habitat participants from around North America at a small Zambian village called Chipulukusu.



Austin and Carol Bernick

their stay. "With no running water or electricity in the village, it does make it easier to finish a house," she observes.

The trip provided a unique opportunity to make connections with the Zambians, who mostly speak English and who "are among the friendliest people I've met," says Bernick. "For someone who lives in Portland and practices law, it's a unique opportunity to get into such close contact with another culture. You are literally in these people's homes working alongside them. They were so appreciative of our being there and welcomed our questions."

Habitat, of course, requires its beneficiaries to invest "sweat equity" of their own, and Bernick says they certainly did

so. "They got there before I did and were still there working when I left. The community made us lunch and it was pretty amazing the portions they would eat compared to what they would serve us. They would consume maybe a thousand calories a day, while lifting brick and mortar nine hours a day. I felt guilty taking a drink of water."

The new homeowners are also required to contribute \$3,000, over some period of years, into a community fund, as payment for their houses. But Bernick knows that will be a challenge. "There's no economic base to tap into," she says. "The copper industry is gone. The area has zero tourist attraction.



A Habitat for Humanity house

Zambia is the third-poorest country in Africa, says Bernick, and, like many African nations, has been decimated by AIDS. It's also a landlocked country with no industry. "Chipulukusu lies in an area known as The Copper Belt," says Bernick. "But copper mining has been taken over by the government and it's a shadow of what it used to be." Men in the community were mostly absent, she says, and there were children (and chickens) everywhere. Most of the children could not afford the books and uniforms needed to attend school.

Forty to fifty brick-and-mortar houses are being built in the town, mostly by Habitat volunteers. "The bricks are made on-site of red clay dirt, sand, cement, and water," says Bernick. "The mortar is mixed by hand on-site on the ground. Each house is about 400 square feet with four rooms, four windows, and a tin roof."

Bernick and her group completed two houses and three-quarters of an outhouse during



Community members host a house dedication ceremony

There are very few rich people, so not a lot of service industry. There's a bus that comes into the neighborhood, but it's expensive and unreliable. People mostly survive growing vegetables for themselves. So it's tough to figure out how to begin making a living. But having stable housing should help."

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Register by September 21 for the October 1 Golf Championship at Columbia Edgewater
mbabar.org/Calendar/Event/116-MBA-Golf-Championship

Jobs Young Lawyers Section

From the YLS President

by Duke Tufty



Beginnings are important. They provide a healthy chance to reflect, set goals, and make changes. I realize it's not 2013 yet. But for attorneys, the year tends to track the academic year more than the calendar year. The same is true for the YLS. This month marks the start of another year filled with MBA YLS socials, CLEs, and volunteer and pro bono opportunities.

Most of us are aware that connecting with others is critical to ensuring one's future success. Of course, knowledge doesn't always translate into action. We are all busy, whether we are building our careers, keeping in touch with family and friends, or taking care of ourselves. Because those demands aren't likely to disappear, it is essential to be thoughtful and deliberate with your time and energy. To that end, the YLS offers a strong line-up of programs that will help you to meet your professional goals, meet new people, do some good and have fun in the process.

This year, the YLS wants to help you develop a habit of making new connections. I'm asking every YLS member to attend one event each month, meet one new person at that event, and follow up with that person later. Both the YLS and the larger MBA provide ample opportunities for you to achieve that goal, including volunteer and pro bono programs, CLEs,

and networking events with attorneys and other professionals who can help you and your clients. When you see an event that you are interested in, calendar it and set a reminder. The MBA makes this easy with the handy "add to calendar" feature on our website. Once you've got it calendared, *actually* go to the event, even if you can't stay for long. Finally, meet someone new. You can still catch up with everyone there that you know, but don't be shy about introducing yourself to others. After all, that's part of why you're there! At a minimum, you will meet some great new people. Even better, you may get a lead on a new job, develop referral sources, find people to refer work to, or just learn something new about the world.

Getting involved is a simple but powerful formula for building a successful legal career and strengthening the local bar. The law is not a solitary profession. We work together, refer work to each other, support each other and, sometimes find ourselves on the other side of the table. The most successful lawyers are also often the most connected lawyers. If you make a habit of making and maintaining connections, you will create a rich network of friends and resources that will benefit you and your clients throughout your career.

We are very excited about our programming and hope that you will take advantage of what the YLS and MBA have to offer. Join a committee, write an article, attend a CLE, or join us at one of our many networking events. If you have an idea about how the YLS can help you, or how you can contribute to the YLS, please email me at duketufty@dwt.com. I'm looking forward to a great year and hope to meet you soon.

Google Alerts

by Charley Gee
YLS Futures Committee chair



What are your former clients saying about you? Does that judgment debtor have a new job yet? How are your competitors marketing themselves? Is someone selling a knock-off of your client's product? What is the other side's expert witness blogging about?

Google Alerts is a powerful, but simple, information gathering tool. The service gives attorneys and their staff a free and easy way to stay apprised, by email alert, any time a desired phrase is "indexed" by Google.

What are Google Alerts

Quite simply, a Google Alert is an automated Google search that emails you whenever it finds new results for your search phrase. An example would be the Google Alert I have set for my name. Every time a webpage posts new content with "Charley Gee" in it, I receive an email. By doing so I can see what is being written about me, by me, or to me.

How to Setup Google Alerts

Setting up a Google Alert is an easy seven-step process:

1. Go to www.google.com/alerts;
2. Enter the phrase you want to search for (e.g. your name or the name of your firm);
3. Select where you would like your results to come from (I prefer the shotgun approach of "Everything" to begin with);
4. Select how often you would like to receive an alert. You can always change

this, so I suggest selecting "As-it-Happens" and then slimming it down if you get overwhelmed;

5. Select whether you want "Only the best results" or "All results." Google does a pretty good job of cutting down on duplicates while preserving results, so I usually go with "Only the best results;"
6. Select the email address you would like the results delivered to; then
7. Click "Create Alert" and you are done.

Tips on Using Google Alerts in a Legal Setting

There are many uses for Google Alerts in both litigation and transactional settings, and your imagination is the only limit. Here are a few of my uses with examples:

Your name and your firm's name.

This is the most valuable use for Google Alerts. It gives you an up-to-date glimpse at what others are saying about you and your firm, as well as what others may be seeing about you if they Google you.

What your clients are up to.

Is your personal injury plaintiff blogging about climbing Dog Mountain this weekend? It would be nice to know that before next month's deposition. Is your corporate client catching flack in online reviews for a bad product or service? Are they expanding or collapsing? You can use Google Alerts to monitor a wide range of online behavior.

Developments in areas of interest.

This is what I "power use" Google Alerts for. Instead of taking time to look for, sort through, and process developments in a certain area, I let Google Alerts bring me the information.

Narrow phrasing can help you focus in on a particular area of interest. My firm is active in encouraging the passage, nationwide, of Vulnerable

Roadway User laws that protect bicyclists and pedestrians using the roads. Since "Vulnerable Roadway User" is such a tailored term for what we are interested in, I have set a Google Alert that tells me every day what, if any, new content has been generated with that term in it. Often it is a blog or comment on an old story, but sometimes an alert reveals another state legislature considering Oregon's model as a bill. I can then use that bill number to track it through another Google Alert. A bill number is a narrow search phrase, returning only a few hits a week.

Broad search phrases also return valuable results. I am involved in the Portland bicycle scene professionally (as a "bike lawyer") and personally (as a daily bike commuter and bike-fun advocate). Because of this I have a Google Alert for Portland AND Bicycle. This broad search term returns hundreds of hits a week, but Google Alerts formats their emails in such a way that sifting through the results is quick and painless and reveals many stories that would otherwise be buried in Google search results.

Guerrilla Tactics. Most firms don't have the resources to pay someone to keep tabs on all the players in a case. Set a Google Alert for the name of your opposing party in a case and you may be amazed at what they say on the Internet. Set one for the name of opposing counsel to see where they are being mentioned or what they are saying. Set one for the name of experts and maybe you could learn what they are publishing or what others are saying about them.

Using Google Alerts as an information gathering tool can be overwhelming, so you will probably need to adjust the settings based the volume and frequency of alerts. Once you get used to the outpouring of information, though, you can hone Google Alerts into a powerful tool for your practice.

mba yls | EVENT

YLS Wine Tasting Social

Blackbird Wine Shop House
(NE Fremont & 44th, Portland)

Thursday, September 13

5:30 - 7:30 p.m.

Please join the YLS, Financial Planning Association, and Oregon Society of Certified Public Accountants for this casual opportunity to network and socialize.

The registration fee of \$15 includes wine tasting and hors d'oeuvres. Reservations are limited to 35 guests per group. Advance paid reservations are required.

Please register with Kathy Modie, kathy@mbabar.org, to reserve your spot.

Hello! I am the new *Multnomah Lawyer* YLS Articles Editor for the upcoming year. I will be compiling and approving articles, announcements, and other fun columns for inclusion in the YLS section of the *Multnomah Lawyer*. If you have ideas for something you would like to write, contact me. If you're more of a James Patterson-type (too many good ideas for you to possibly write them all yourself), let me know and we will find other esteemed YLS members to co-write them with you. I am looking forward to a good year of fun and informative articles and columns.

Sean Ray
sray@barran.com



YLS Committees

YLS members serve on committees designed to address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and contact information for the current committee chair follows. If you have any ideas or concerns to share about a particular area, please contact the chair, YLS President Duke Tufty, or the MBA staff at mba@mbabar.org.



Tyler Volm

YLS Professional Development and Education Committee

Chair: **Tyler Volm**, Elliott Ostrander & Preston, 971.230.1067

Organizes YLS CLE seminars, as well as career development presentations. Recent topics included Starting Your Family, Keeping Your Career and Starting Your Own Firm.



Mackenzie Hogan

YLS Membership Committee

Chair: **Mackenzie Hogan**, Harris & Bowker, 503.293.0073

Assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. It also publishes the *New Admittee Survival Guide*.



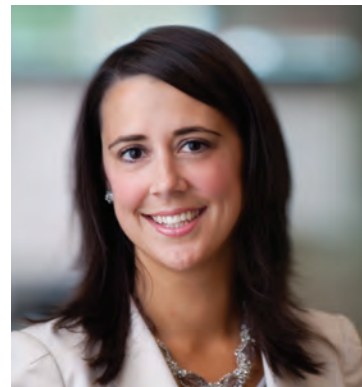
Jovita Wang

YLS Pro Bono Committee

Chair: **Jovita Wang**, Miller Nash, 503.205.2456

Coordinates the Nonprofit Project, publishes the domestic violence and juvenile rights

handbooks and encourages involvement in pro bono service. The committee helps organize the annual Pro Bono Fair and holds an annual fundraiser to support the pro bono community.



Paige De Muniz



Julie Nimmicht

YLS Service to the Public Committee

Co-Chair: **Paige De Muniz**, Gevurtz Menashe et al, 503.227.1515

Co-Chair: **Julie Nimmicht**, Law Offices of Geoff Bernhardt, 503.548.4000

Provides lawyers with opportunities to become involved in the community, such as Community Law Week, Community Service Days and the Imprint Program. Organizes the YOUthFILM video contest for students on various democracy-related topics.



Charley Gee

YLS Futures Committee

Chair: **Charley Gee**, Swanson Thomas Coon & Newton, 503.228.5222

Identifies and studies issues surrounding the "Generation Gap," writes articles and organizes events.

Oregon Lawyers Rock 'n' Roll the 2012 ABA Annual Conference

by Traci Ray
Barran Liebman

The ABA's 2012 Annual Conference was held in Chicago, Illinois from August 2-7. Although this ABA conference was the third that I have attended as the MBA YLS delegate, it was my first Annual Meeting. The Annual Meeting was a little different from the prior conferences I had attended, mainly for two reasons: (1) there was an "Assembly" portion in addition to the CLEs that lasted two days; and (2) not only was the Young Lawyers Division (YLD) meeting, but the "Big" ABA was meeting as well. The experience was awesome, and the Oregon representation was strong. Among those representing our state at the "Big" ABA level were our Attorney General, Ellen Rosenblum, and our OSB president, Mitzi Naucner.

(ONLD Delegate), and Traci Ray (MBA YLS Delegate). The YLD portion of the conference was comprised of four CLEs, honorary speakers, and the YLD Assembly. The assembly, where the YLD delegates sit state by state to vote on resolutions, also included three ceremonies. The first ceremony highlighted six Outstanding Young Military Service Lawyers

"Their service to our country, and our profession, were hands down the most inspirational part of the conference."

(JAG) YLD members. Their service to our country, and our profession, were hands down the most inspirational part of the conference. The second



Presentation of the 2012 ABA YLD Service to the Bar Award of Achievement. Pictured from left to right, Collin McKean (ONLD Delegate), Michael Bergman (past-chair of the ABA YLD), Ben Eder (ONLD Delegate), Jason Hirshon (ONLD Delegate), Andrew Schpak (MBA HOD Delegate), and Traci Ray (MBA YLS Delegate). Photo by Christina BeDell, Imaging & Event Gallery Manager at Oscar Einzig.

Additionally, the conference included some interesting twists as Lollapalooza was in town. Lawyers and rock 'n' roll – what a great mix for the windy city.

Within the ABA YLD, Oregon was represented by Andrew Schpak (MBA HOD Delegate), Jason Hirshon (ONLD Delegate), Ben Eder (ONLD Delegate), Collin McKean

ceremony recognized three YLD attorneys for their work in child advocacy. The work of these attorneys was truly incredible, and all three of them made a huge impact in the lives of the children they helped. The third ceremony was the presentation of the "Awards of Achievement" to exceptional County/State Bar CLE programs.

Among the recipients of these awards were Oregon's very own Foreclosure and Social Security Disability Law CLEs, which won the highly coveted Service to the Bar Award. Laura Salerno Owens, of Barran Liebman, and Simon Whang, of the Oregon Department of Justice, put together the "Handling a Foreclosure Case" CLE while Karen Clevering, law clerk to the Hon. Janice M. Stewart, and Lizzie Holsapple, of Slindle Nelson, organized the "Social Security Disability Law" CLE. The CLEs were held in February and May of this year, and were widely popular, attracting hundreds of attendees.

In addition to the awards of achievement presented during the Assembly, there were also individual awards that recognized the hard work of ABA YLD members. Andrew Schpak, Barran Liebman, was awarded his second "Star of the Year" Award from the outgoing ABA YLD Chair, Michael Bergmann, for his work as the Conferences, Programs, and Products Director. Andrew is now the ABA YLD Secretary-Treasurer and will Chair the Division for the 2014-15 bar year.

Overall the conference was educational, inspiring, and rich in networking opportunities. There was a focus on jobs for lawyers, an emphasis on fighting human trafficking, and the continued sharing of ideas to help each county/state bar serve its members. As our distinguished "rock-star" speaker, The Hon. Ann C. Williams of the U.S. Court of Appeals for the

"...the conference was an opportunity to pay homage to those that worked so hard to pave the way for all young lawyers..."

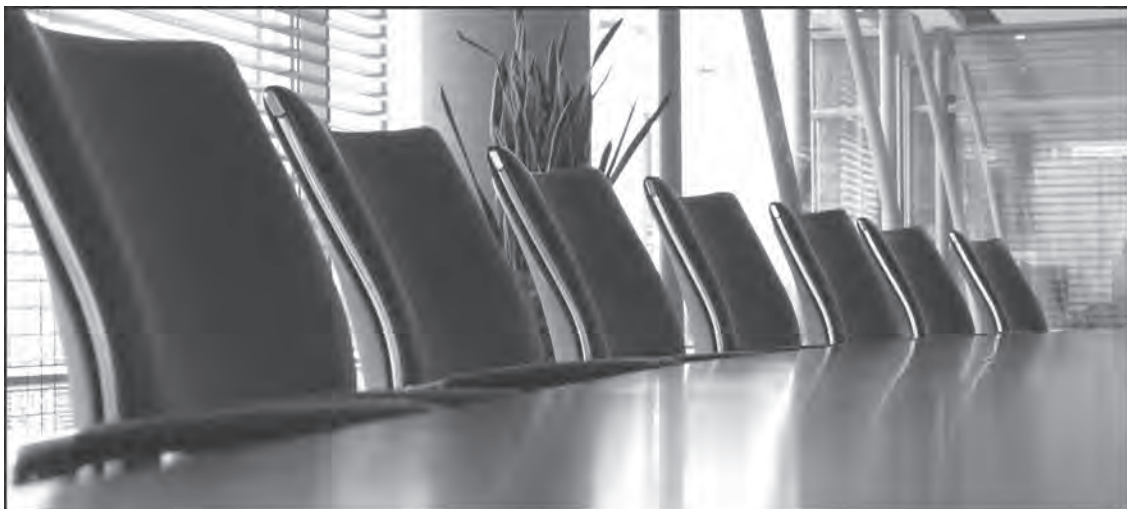
Seventh Circuit, explained, the conference was an opportunity to pay homage to those that worked so hard to pave the way for all young lawyers, to learn from their sacrifices, errors and victories, and to work together to continue to improve and evolve our profession.

mba yls | EVENT

2nd Annual Pro Bono Pedal

Grant Park, Portland
Saturday, September 8
2-5 p.m.

The 2nd Annual Pro Bono Pedal, a bike ride to benefit the Volunteer Lawyers Project (VLP) at Multnomah County Legal Aid, will be held Saturday, September 8. There are two clearly marked routes: an easy four-mile ride for families with young children, and a very manageable 10-mile route. Following the ride, participants will gather for refreshments at the Columbia River Brewing Company. The registration fee is \$20 for adults and \$15 for children between the ages of six and 14. Children age five and under are free. We hope to see you there!



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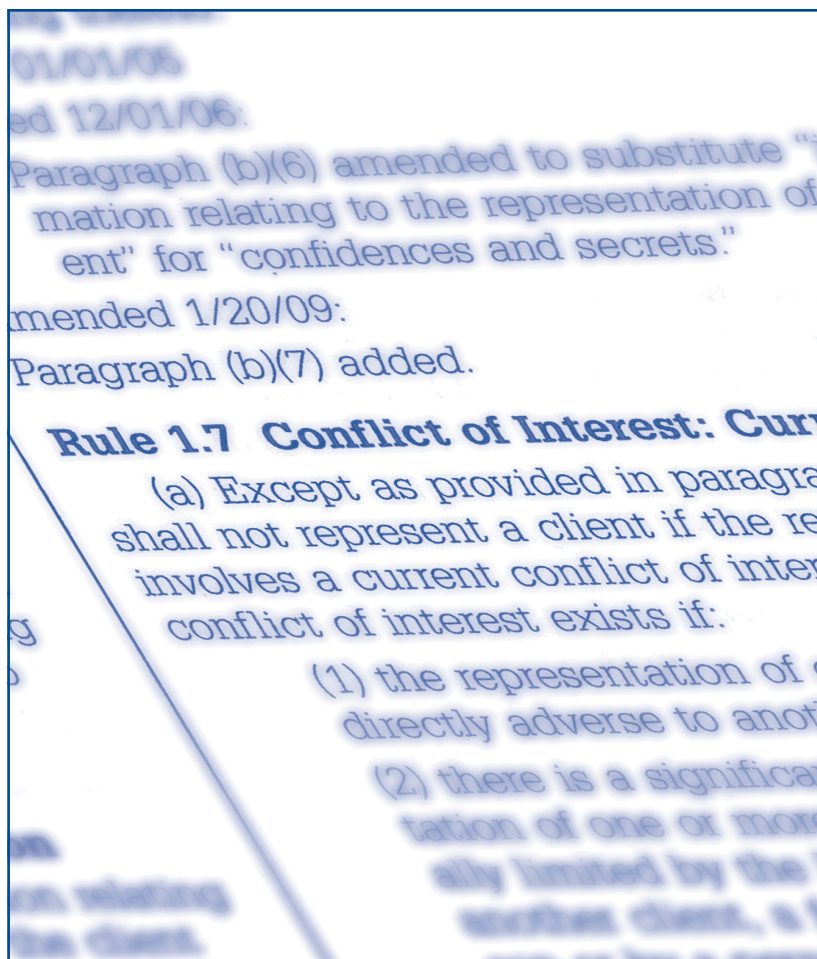
Washington's B & O Tax

Continued from page 2

the claimants, 20 out of 100 are in Washington. The Washington source revenue would be 20/100 times the total revenue related to the suit.

If you have Washington sourced income under economic nexus and you do not meet the exceptions above, you must register your business with the Washington State Department of Revenue and report and pay Washington B&O tax.

You can review the rules at the Washington Department of Revenue website, <http://dor.wa.gov/economicnexus>, and email questions to communications@dor.wa.gov or call 1.800.647.7706.



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Bill Joseph

Continued from page 2

Bill was quick to answer when asked what his favorite guitar is - a French Gypsy jazz guitar from the 1970s made by luthier Jacques Favino. It is the kind of guitar that Gypsy jazz players such as the great Django Reinhardt played in the 1930s and 40s. With its light construction and light strings, Bill says it's louder than most acoustic guitars and is always a great pleasure to play.

When he isn't playing his guitars or ukuleles, Bill is listening to his favorite guitarists - Wes Montgomery, Charlie Byrd and Django. He finds that his music makes a great conversation starter and has led to some new clients. Bill enjoys sharing the Baby Carrots CD with new contacts he meets who have children; if nothing else, it's definitely a good way to be remembered.

PROSAP

Continued from page 9

tie was very significant on an emotional level and protected her financial security since it prevented the spouse from using the client's name and Social Security number.

PROSAP volunteers may be experienced family law attorneys who want to lend their expertise to benefit those who cannot pay for an attorney, new attorneys interested in an introduction to family law or experienced attorneys practicing in totally separate areas of the law. Natasha falls into the latter group - she works with the Freshwater Trust and focuses on water rights. In addition to the satisfaction of helping people with matters that deeply affect their lives, Natasha enjoys the opportunity to do something radically different than her regular job. Plus she notes that the PROSAP Facilitation Clinic is simple to fit into a full schedule since volunteering only requires a two-hour commitment rather than ongoing representation.

For information on how to get involved in the PROSAP Facilitation Clinic or other pro bono opportunities through the Volunteer Lawyers Project, please contact Maya Crawford at maya.crawford@lasoregon.org or 503.224.4086.



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If you have at least two years of financial services litigation experience, thorough research and analytical skills and meet the criteria above, apply today. Must be a member in good standing of Oregon State Bar, Washington State Bar membership is a plus; and have Federal and State court experience and strong academic credentials.

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Experienced Attorney – Employment and Labor

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Experienced Associate - Trusts, Estates and Business

Cosgrave Vergeer Kester LLP seeks a lateral hire to join our business practice group. Successful candidate will have established client base of relatively sophisticated trust and estate planning, administration and tax, and expertise in general business, tax and charitable organization transactions. Exceptional writing, analytical and interpersonal skills, excellent law school academic credentials and an entrepreneurial approach to the practice are essential. Admission to Oregon Bar required and to Washington Bar preferred.

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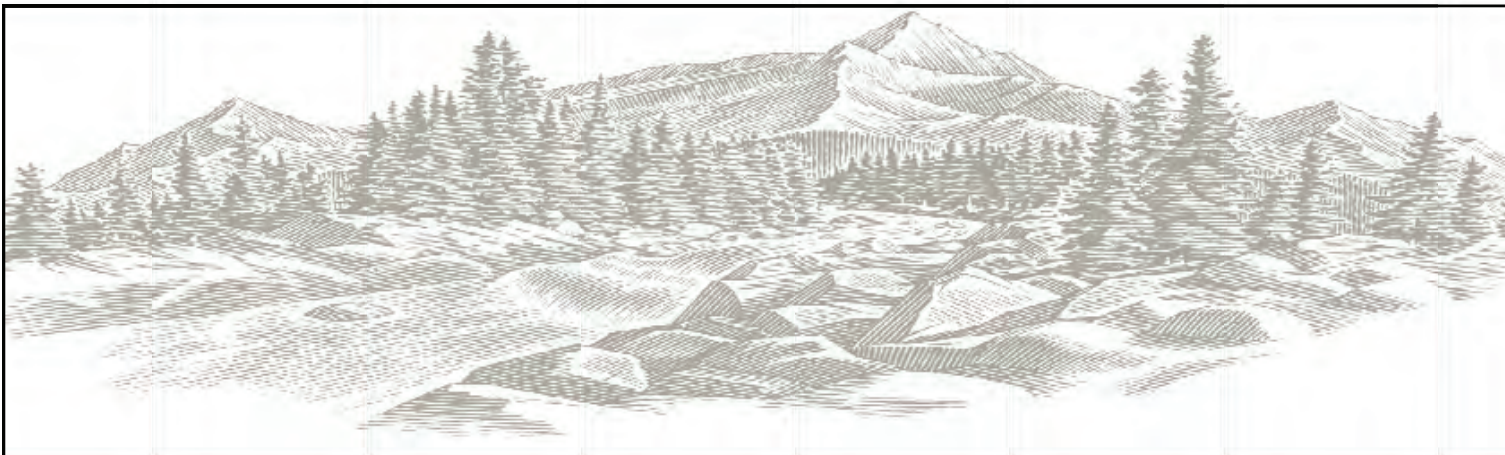
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by Pamela B. Hubbs
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