



Get Involved in the Month of May

by Martha Hodgkinson
MBA Board

**“The price of freedom is
eternal vigilance.”**

Thomas Jefferson

By the time this article goes to press, the OSB and Citizens’ Campaign for Court Funding event, a “Day at the Capitol,” will have already occurred. In many ways, the event was the culmination of months of community outreach and efforts by members of the bar, members of the community and the trial and appellate court judges to educate the voters and the legislature of the critical importance of adequate funding for Oregon courts. In other ways however, a “Day at the Capitol” is really the beginning of what must be an ongoing and vigilant effort on the part of MBA members and all Oregon lawyers to do whatever they can to educate the legislature about the critical need for adequate funding of the states’ courts. Chief Justice Thomas Balmer has made the quest for stable court funding his mission for the past year. Justice Balmer has researched the facts and figures and exposed the stark reality of the judicial budget and the impact of inadequate funding on the courts all over the state. He has spoken at multiple bar events, community meetings and to business leaders. Similarly, Multnomah County Circuit

Court Presiding Judge Nan Waller has consistently informed the MBA membership of the impact of the budget cuts on the conduct of business in Multnomah County.

The OSB Board of Governors adopted a resolution in support of stable funding for the court system on November 11, 2011 and has formed a task force of lawyers, judges and business leaders from around the state to target legislators for the purpose of strongly advocating for adequate and stable funding of the Oregon Judicial Department. The MBA has also established a Court Funding Committee to work to increase public and legislative awareness about the importance of a fully-funded court system. Recently, the MBA Court Funding Committee hired Greg Robeson of Robeson Communications to help develop and disseminate messaging focused on four critical areas: vulnerable citizens, family law, civil disputes and public safety. MBA Executive Director Guy Walden emphasizes the committee’s goal is to maintain a sustained educational effort on the importance of adequate judicial funding. In its first year, the committee will create videos and collateral material that will help tell the story of how an inadequately funded judicial system affects all of us.

The OSB and MBA efforts represent a serious commitment on the part of our profession to confront the legislature and the community with the adverse impacts of lack of court funding. It is critical, however, that the effort by the legal and judicial community continue beyond May 1. Most Oregonians have now experienced the impact of drastic cuts in court services, multiple furlough days resulting in court closures and reduction in staff. It is not a pretty picture. The bottom line is that without

stable and adequate court funding, access to justice for everyone - from the person in need of a restraining order to the criminal defendant to businesses in a civil case involving millions of dollars - is denied. The budget impacts to date have negatively affected all lawyers who practice in court as well as members of the public who rely on the court system for a multitude of services. The current challenge is even more frustrating because by constitutional and statutory mandate, the court must provide judicial services to the public regardless of the court’s ability to handle the workload. As Chief Justice Warren E. Burger observed in 1970 and which is equally true today:

“A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law - in the larger sense - cannot fulfill its primary function to protect them and their families and their homes, at their work and on the public streets.” *Burger, “What’s Wrong With the Courts: The Chief Justice Speaks Out,” U.S. News and World Report (vol 69, No. 8, Aug. 24, 1970, 68, 71 (address to ABA meeting, Aug. 10, 1970).*

The 2013 judicial department funding goals are to maintain at least the current service level budget and prevent further reductions in court operations and staff and prevent further delays in case processing. Also, the Oregon eCourt Program requires an additional \$22.9 million in bond funding and another \$4.4 million from the general fund to continue the implementation of the program in all Oregon counties. Currently only a few Oregon counties have been able to use the program. Additionally, the legislature already approved an additional three judge panel for the Oregon Court of Appeals (which is one of the busiest in the country) but those positions cannot be filled unless an additional \$3 million from the general fund is approved by the legislature. Finally, \$7.7 million in general fund money is needed to restore at least 62 positions that have been cut over the past several budget cycles and allow the courts to meet basic

Continued on page 9

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mba|CLE

To register for a CLE, please see
pages 3 and 4 or go to
www.mbabar.org.

MAY

**5.1 Wednesday
In-House eDiscovery for
Law Firms**
Tom Howe

**5.8 Wednesday
Multnomah County Trial
Practices Seminar**
Judge Stephen Bushong
Judge Jean Maurer
Judge John Wittmayer

**5.14 Tuesday
Construction Litigation**
Judge Charles Bailey
Judge Mary James
Judge Judith Matarazzo
Judge Douglas Van Dyk

**5.29 Wednesday
The Power of Presentation**
Mike Hahn

**5.30 Thursday
How Jurors REALLY Think**
Jeffrey Boyd

JUNE

**6.4 Tuesday
Litigating a Contested
Foreclosure Case**
John Bowles
Pilar French

**6.11 Tuesday
Summary Judgment Motion
Practice**
Judge Henry Breithaupt
David Markowitz

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Multnomah Bar Association
620 SW 5th Ave Suite 1220
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www.mbabar.org

mba|EVENT

Multnomah Bar Association Annual Meeting, Dinner and Judges Reception

Tuesday, May 28
Portland Marriott Downtown Waterfront
1401 SW Naito Parkway
5 p.m.

Celebrating the profession and recognizing our
colleagues

Professionalism Award Recipient
Thomas W. Brown

Register at www.mbabar.org.

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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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Get Involved in the MBA Consider Volunteering for an MBA or YLS Committee

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

Volunteering Rewards

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

MBA Committees

CLE: Plan, conduct and evaluate 30 to 35 CLE seminars, focusing on members' dominant areas of practice.

Court Funding: This committee works to increase public and legislative awareness about the importance of a fully-funded court system. Members help maintain a sustained educational effort focused on four key areas: vulnerable citizens, family law, civil disputes and public safety.

Court Liaison: The purpose of this committee is to foster constructive dialogue with the Multnomah County Circuit Court presiding judge and court administrator with regard to current practices, or to rules or procedural changes before they are implemented by the court.

Courthouse: Develop a plan with other stakeholders, including the presiding judge; court administrator; state, county, city and local officials and staff; MBA members; law enforcement; developers and local businesses, for the MBA to effectively support and advance the ongoing efforts to build a new courthouse or renovate the current courthouse.

CourtCare Fundraising: The committee's primary goal is to run the annual CourtCare Fundraising Campaign, held in the spring of each year, to raise funds for the free, drop-in childcare center at the courthouse.

Equality & Diversity: The committee's mission is to foster and expand diversity, inclusion and equality in the MBA and Multnomah County legal community and to create and strengthen a relationship of mutual support between the MBA and its diverse lawyers and bar organizations.

Golf: Plan and conduct four to six golf events between April and October, including the MBA Championship, which benefits the Volunteer Lawyers Project at LASO.

Group Health Insurance:

The committee negotiates low-cost, quality, group insurance rates for members on the MBA insurance plans.

Judicial Screening:

The committee reviews applications of pro tem and judicial appointment candidates confidentially, and reports its recommendations as called for by the MBA's board-approved process.

Membership: The committee organizes and plans social events, including WinterSmash, Battle of the Lawyer Bands, Bench, Bar & Bagels, and a First Thursday Social with specialty bars for the MBA membership at-large.

Professionalism:

The committee promotes principles of professionalism within the Multnomah County bar, through the Corner Office article, Professionalism Statement, mentor program and professionalism training programs. The committee also administers the Professionalism Award screening and selection process.

YLS Committees

YLS Futures: This committee was formed to open forums for discussion and develop steps to bridge the legal generation gap identified in a 2006 survey.

YLS Membership: The purpose of the committee is to assist in recruitment and involvement of MBA young lawyer members, to improve member participation in the YLS, and to organize a variety of activities to increase the professional and personal interaction of YLS members.

YLS Professional Development & Education: Plans education and career development seminars for the YLS.

YLS Pro Bono: Advocates for and provides support to local pro bono programs.

YLS Service to the Public:

The committee's purpose is to provide programs to engage young lawyers in community outreach activities that educate the public about the legal system, the positive role of attorneys in society, and the legal resources available to the community.

Calendar

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

MAY

5.2 Thursday
YLS YOUTHFILM Project Screening
Visit theyouthfilmproject.org for details

5.9 Thursday
YLS Community Service Day with Oregon Food Bank
Visit mbabar.org for details

5.9 Thursday
YLS Bottle and Bottega event
See p. 13 for details

5.16 Thursday
MBA Golf Clinic & Networking Event at RedTail
See below for details

5.24 Friday
Oregon Court Closure

5.27 Monday
Memorial Day Holiday

5.28 Tuesday
MBA Annual Meeting & Dinner
Visit www.mbabar.org for details

JUNE

6.6 Thursday
MBA 1st Thursday Social with Specialty Bars
See p. 6 for details

6.14 Friday
Oregon Paralegal Day

6.18 Tuesday
MBA Golf Event
See insert for details

6.22 Saturday
SALC Race for Justice
See Announcements for details

6.27 Thursday
YLS Summer Social
See p. 12 for details

JULY

7.4-5 Thursday-Friday
Independence Day Holiday

7.19 Friday
MBA Family & Friends Golf Event
See insert for details

mba | EVENT

MBA OSCPA OBA Golf Clinic & Networking Event

Thursday, May 16
Red Tail Golf Center, Beaverton
5:30-7:30 p.m.



Don't wait for perfect weather to work on your game. We've reserved the covered upper deck of the driving range at RedTail and will have pros on hand to offer pointers and help you sharpen your swing with the aid of TrackMan™ technology.

Participants will enjoy unlimited range balls, complimentary club rental, hosted appetizers, a cash bar and a free raffle. This popular outing brings attorneys, accountants and bankers together in a relaxed setting. The event is for novice and seasoned golfers alike. Cost is \$20. Sponsorship opportunities are available.

Register by May 14 at mbabar.org or complete the insert in this issue.



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.

Multnomah County Trial Practices Seminar

Wednesday, May 8, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This year's program will feature presentations by **Judges Stephen Bushong, Jean Maurer and John Wittmayer**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. The panel will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter. The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

For more information:

Call the MBA at 503.222.3275.

Navigating the Procedural and Cultural Differences Between Local Counties in Construction Defect Cases

Tuesday, May 14, 2013
3:00-5:00 p.m.

World Trade Center
Skybridge Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Each county handles construction defect cases differently. This two-hour CLE will provide some insight into how Multnomah, Clackamas, Washington and Marion Counties approach construction defect cases. This class is intended to be different than the usual day-long seminars in that judges from these counties will be discussing: (1) current practices in their respective counties in handling dispositive motions, pretrial matters and trials; (2) hot topics that each judge has seen come up recently impacting these cases; and (3) words to the wise – what works and what doesn't from a judge's perspective.

Our speakers include: **Judge Judith Matarazzo** (Multnomah), **Judge Mary James** (Marion), **Judge Charles Bailey** (Washington) and **Judge Douglas Van Dyk** (Clackamas). The panel will be moderated by **Melissa Ward**, Spooner & Much, PC.

For more information:

Call Melissa Ward, Spooner & Much at 503.517.0777. For registration questions, call the MBA at 503.222.3275.

The Power of Presentation

Best practices, winning techniques and industry-leading tools

Wednesday, May 29, 2013
12:00-1:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members \$25
Non-members \$40
Co-Sponsored by LexisNexis Sanction

This one-hour seminar is intended to provide practical and useful suggestions to practicing litigators about technology tools for the courtroom. **Mike Hahn** is Senior Director Product Management for LexisNexis Sanction. He has provided consulting services for such landmark matters as United States v. Timothy McVeigh, the Washington DC Sniper Task Force and United States v. Hirko (Enron Broadband Trial).

This one-hour seminar will address a number of trial presentation topics including:

- Past and Present Technology
A brief overview of traditional courtroom presentation techniques, addressing their strengths and weaknesses and an analysis of new tools including trial presentation software, timeline software, and 3-D animation.
- Contingency Plans
A review of important backup measures to keep technology running smoothly throughout trial.
- PowerPoint in Opening Statement and Closing Argument
- Sample slides to illustrate thematic techniques.

For more information:

Call the MBA at 503.222.3275.

How Jurors REALLY Think: *A Live Focus Group Evaluates a Personal Jury Case*

Thursday, May 30, 2013
3:00-5:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This class will be a live demonstration of a focus group in a generic personal injury case.

Jeffrey Boyd, President of Boyd Trial Consulting, will present the evidence, arguments, and law to a group of "real" people – non-lawyers who could be jurors someday. The goal is to get the jurors' feedback on the many aspects of the case, so that the lawyers in attendance can see and hear how real people think about the issues in a typical case. This class will be useful to anyone who tries civil cases and will include a live demonstration of a highly interactive focus group. The jurors will be presented with the facts and law of a typical car crash personal injury case. Hear and see how real people process and talk about the facts and the law.

Throughout the course of his career, Jeff has tried over 100 civil jury trials and has served as a trial consultant for over 15 years.

For more information:

Call Don Jacobs, Attorney at Law at 360.695.1624. For registration questions, call the MBA at 503.222.3275.

Litigating a Contested Foreclosure Case in Oregon

Tuesday, June 4, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Judicial foreclosures have increased dramatically in Oregon due to the Court of Appeals ruling on MERS in *Niday v. GMAC Mortgage* and the mediation requirements imposed by Senate Bill 1552. Attorneys **Pilar French**, Lane Powell and **John Bowles**, Bowles Fernandez Law will discuss the key elements of litigating a contested foreclosure case in Oregon courts, from both a plaintiff and defense perspective.

For more information:

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

Members Take a Moment to Update Your Profile

Visit www.mbar.org and log in as a member to update your profile information, sign up for events and seminars at the member rate and to access other MBA member benefits.

Members may include biographical information, update their photos, add links to social networking sites and update their practice area information online.

CLE Class Registration on next page

Summary Judgment Motion Practice

Tuesday, June 11, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Judge Henry Breithaupt will discuss the law of summary judgment and the points he sees as recurring problems for attorneys. He will also review points that have been helpful, or not, to him as a judge and the framework he uses in looking at the motions and participating in the oral argument.

David Markowitz will focus on preparing and presenting oral argument of summary judgment motions. His presentation will include: deciding what to argue; how to organize the argument for maximum persuasive impact; preparing visual images to use during oral argument; do's and don'ts of delivering the oral argument; responding to judges' questions; and the secrets to persuading the motions judge.

For more information:

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



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Questions? Contact the MBA office at 503.222.3275.

webcheck

To obtain MBA member rates for seminars and events, sign in as an MBA member first:
<http://mbabar.org/Membership/Login.html>

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.mbar.org.

Registration Form

Receive a \$5 Discount when registering online at www.mbar.org.

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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.mbar.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.

5/8 Multnomah County Trial Practices Seminar

- Class Registration Online (\$50 Members/\$80 Non) _____
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5/14 Construction Litigation

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 Class Registration (\$55 Members/\$85 Non)\$ _____
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5/29 The Power of Presentation

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5/30 How Jurors REALLY Think

- Class Registration Online (\$50 Members/\$80 Non) _____
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6/4 Litigating a Contested Foreclosure Case in Oregon

- Class Registration Online (\$50 Members/\$80 Non) _____
 Class Registration (\$55 Members/\$85 Non)\$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

6/11 Summary Judgment Motion Practice

- Class Registration Online (\$50 Members/\$80 Non) _____
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mba | ANNOUNCEMENTS

MBA and YLS Committee Appointments

This is the time of year when the MBA recruits new committee members. Please see the articles on pages 1-2 and the insert in this issue to sign up for an MBA or YLS committee.

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 <http://mbabar.org/assets/documents/resources/freq-requested/profcertorder.pdf>.

Noon Bicycle Rides

Take a noon break for a short, fast ride with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or just meet at the start.

10th CourtCare Fundraising Campaign

There is still time to contribute to CourtCare! Visit www.mbabar.org to make your tax-deductible contribution now.

St. Andrew Legal Clinic 13th Annual Race for Justice

On Saturday, June 22, race to raise funds for SALC. The race begins at the Madeleine Parish on NE 24th Ave. in Portland. The Kids' Fun Run begins at 9:45 a.m. and the 5K Run/Walk begins at 10 a.m. For more information or to sign up, visit www.salcgroup.org.

mba | EVENT

MBA's First Thursday Joint Social with Specialty Bar Associations

Perkins Coie

1120 NW Couch (10th Floor), Portland

Thursday, June 6

5-7 p.m.

The MBA Membership Committee invites you to a social and celebration of the contributions of diversity and inclusion in the legal profession. Please join us for hosted food and drinks, then take a map of the nearby art galleries and hit the streets to enjoy First Thursday in the Pearl District!

Thank you Perkins Coie for hosting the event.

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

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Sign the 2013 Pro Bono Pledge and commit to taking at least one pro bono case this year <http://mbabar.org/AboutUs/ProBono.html>.



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Ethics Focus

Winding Down Transitioning into Retirement

by Mark J. Fucile
Fucile & Reising



I recently ran into one of the lawyers I first worked for a long (long) time ago here in Portland. He looked great and is still going strong in fulltime law practice. For him, continued fulltime practice is a great choice personally and professionally. Others, however, may choose a different path in moving toward and into retirement. In this column, we'll look at two other popular choices from the perspective of law firm risk management: closing-up shop and part-time practice.

For lawyers with solo or small firm practices... the logistics can be more complicated.

Closing-Up Shop

For lawyers retiring from a large firm, the mechanics of winding down their practices often consists of simply transitioning their work to others

at their firm. For lawyers with solo or small firm practices, by contrast, the logistics can be more complicated. Solos are truly "closing-up shop." Small-firm lawyers may be closing their individual practices without necessarily transitioning their work to others at their firm (if their partners practice in other areas). Although RPC 1.17 permits the sale of law practices, it remains a relatively little-used vehicle in part because clients are not obliged to move their work to the purchaser.

The OSB Professional Liability Fund has an excellent set of forms and checklists at www.osbplf.org that address closing a law practice generally

The OSB Professional Liability Fund has an excellent set of forms and checklists....

and retirement in particular. The topics covered range from those unique to law practice (such as closing trust accounts and file retention guidelines) to those generic to any business closure (such as discontinuing telephone service and terminating leases). The utility of the checklists is twofold. First, the checklists underscore the areas where we have specific professional obligations in closing a law practice (such as returning original wills and other comparable documents to clients and filing appropriate substitutions in pending court proceedings). Second, the checklists provide a systematic plan for closing down both the professional and business sides

of a law practice (such as client notification letters and getting out final billings).

The PLF also has information on "tail" or "extended reporting coverage." This provides continuing insurance coverage for matters a lawyer handled while in private practice but where the potential claims don't arise until after retirement. Many excess carriers have similar coverage, too, although the details vary. Tail coverage can be an extremely important element of retirement financial planning.

Part-Time Practice

Part-time practice can offer an attractive alternative to full retirement. For some, it affords a way to continue using the considerable expertise built up over a career but at a less frenetic pace. For others, it means pursuing a second act through work for a nonprofit, teaching or simply supplementing governmental or corporate retirement income with a limited private practice. The variants offer both distinct rewards and risks.

For those who are trying to combine part-time law practice with their outside interests, the difficulty is that the part-time

...a lawyer's duty of competent representation includes understanding technology sufficiently to protect client confidentiality....

matters still need to be handled on a fulltime basis. In other words, client telephone calls still need to be returned promptly and briefs still need to be filed on time. Similarly, many lawyers use technology to combine part-time practice with travel. Whether communicating with

clients from the South Seas or closer to home, OSB Formal Ethics Opinion 2011-187 (at 568) notes pointedly that a lawyer's duty of competent representation includes understanding technology sufficiently to protect client confidentiality through the particular tools being used. Therefore, the free public Wi-Fi in the local coffee shop that may be just right for sending your former colleagues pictures of your travel adventures is probably not equally right for communicating with a client about an extremely sensitive legal matter.

For lawyers pursuing second acts beyond the areas

in which they spent their careers, competence has a more fundamental ring: if you are attempting to handle something new, you need to undertake adequate study to learn the area involved or associate with someone who has the requisite experience. For example, a lawyer who spent a career handling corporate mergers will still need to learn the fundamentals of residential landlord-tenant law to meaningfully assist clients in that area at a legal aid clinic. Realizing that our mile deep knowledge in a niche practice is not also mile wide is an important start to developing a second act.

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Around the Bar



Phillip M. Bender



Shari L. Lane



Christine L. Hein



Karen L. Reed



J.W. Ring



Mark P. Strandberg

Wrenn Bender

The firm's new office is located at 621 SW Morrison Ste. 600, Portland OR 97205, phone 503.964.6730.

Founding partners are **Phillip M. Bender**, **Christine L. Hein**, **Karen L. Reed** and **J.W. (Jeff) Ring**, and **Mark P. Strandberg** is an associate.

Harrang Long et al

Shari L. Lane has joined the firm as an of counsel attorney. She will be part of the firm's Labor & Employment practice, where she

focuses on advising employers in personnel issues and labor negotiations and on representing employers facing administrative agency claims and audits.



June Wyrick Flores

Ater Wynne

The **Ater Wynne** firm has launched a blog, Telecom Law Today, www.telecomlawtoday.com. This new blog offers legal insights and updates on the continuously changing telecommunications industry and provides the firm's perspective on current issues and how they affect businesses.

Wealth Preservation and Family Business group attorney **June Wyrick Flores** was unanimously voted as secretary to the Portland Estate Planning Council Board. The board's membership is by invitation only and requires demonstration of skill as an estate planner, as judged by peers.



Courtney Angeli

Buchanan Angeli et al

Courtney Angeli is a 2013 recipient of the Honorable James M. Burns Federal Practice Award, given by the Oregon Chapter of the Federal Bar Association. As one of the leading employment lawyers and litigators in the state of Oregon, she is co-founder of the firm and also provides comprehensive employment law counseling and training to employers.



John Bachofner

Jordan Ramis

Attorney **John Bachofner** has been elected as a shareholder and board member to the firm. Bachofner, who joined the firm in 2011, is a member of its Business Law practice group, where his practice focuses on litigation and jury trials, insurance coverage, product liability, general business, bankruptcy, and creditors' rights issues.



Andrea Barton

Schwabe Williamson & Wyatt

Associate attorney **Andrea Barton** recently joined the Make-A-Wish Oregon Junior Board. This board is comprised of young professionals volunteering to advance the mission of Make-A-Wish Oregon, which is to grant the wishes of children with life-threatening medical conditions and to enrich the human experience with hope, strength and joy. These dedicated members represent several different companies, bringing fresh ideas and assistance to the foundation.

Barton focuses her practice in the area of commercial litigation. She also currently serves on the Leadership Advisory Committee for De La Salle North Catholic High School.



Richard Baroway

Tomasi Salyer Baroway

Richard Baroway received an Action Award from Cascade AIDS Project, Inc. (CAP) for over 25 years of volunteer services, including work on the Oregon AIDS Hotline, on CAP's Speakers Bureau, and in providing substantial pro bono legal services. He was a volunteer on the original speakers' bureau and has been providing CAP with pro bono legal services since 1988.



Christine Moore

Landye Bennett Blumstein

Christine N. Moore has joined the firm as an associate attorney. She will focus her practice on state and federal civil litigation and employment law.



Mary Ann Frantz



Ronald Shellan

Miller Nash

Partner **Mary Ann Frantz** has been elected to the board of directors for the Girl Scouts of Oregon & SW Washington, and partner **Ronald Shellan** has been elected to the board of directors of the Oregon Society of Certified Public Accountants Educational Foundation.

Frantz focuses her practice on equity and debt offerings, SEC reporting compliance, public and private corporate governance issues, mergers, acquisitions, sales of businesses, shareholder meetings and proxy contests, executive compensation, and business transactions.

Shellan focuses on the intersection of tax law and real estate, including estate planning, tax-free exchanges, affordable housing and low-income housing tax credits, historic tax credits, real estate law, partnership and LLC law, corporate and business acquisitions, and tax law.



Shannon Flowers

Folawn Alterman & Richardson

Shannon Flowers has joined the firm an associate attorney. Her practice includes civil litigation at both the trial and appellate levels, in areas including legal malpractice, business and commercial disputes, and trust and estate litigation. She may be reached at shannon@FARlawfirm.com or 503.546.4628.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions 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 Hawkins, carol@mbabar.org.

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Get Involved

Continued from page 1

timelines in case disposition and public safety. Moreover, it is time for the legislature to address salary increases for Oregon's state judges, whose compensation is among the lowest in the country and who have not had a salary increase in quite some time.

Yes, May 1 has come and gone, but the month of May is a good time for MBA members to pick up the charge and continue the effort that is underway to achieve stable court funding. A good place to start is to contact your state legislator to advocate for stable court funding. To find your legislator, please go to: www.leg.state.or.us/findlegsltr/. The MBA and OSB also have information and suggestions for contacting state legislators. Now is the time to keep up the momentum begun by Chief Justice Balmer, Presiding Judge Waller and others in the legal community by advocating for stable and adequate court funding in this budget cycle.

May is an important month for two other MBA programs as well. First, as you will see elsewhere in the newsletter, May is the kick-off for volunteer signups for MBA committees. If you have already volunteered for a committee in the past, then you know how rewarding committee participation can be. If you have never been on an MBA committee, please consider joining one this year. Each MBA committee serves a valuable function in the MBA, from creating and organizing CLE classes to advancing and promoting diversity in the legal community, screening qualified judicial candidates, and the ever-popular golf tournaments. Committee membership is a great way to get to know your fellow MBA members, learn something new and add to the strength of the MBA itself.

May also brings Community Law Week, a public outreach program sponsored and staffed by the YLS. The last issue of the newsletter described the agenda for events scheduled during Community Law Week, April 27

through May 2. The YLS does a tremendous job in organizing and running all of the activities that take place. This year, the theme for Community Law Week is, "Realizing the Dream; Equality for All," in recognition of the 150th anniversary of the Emancipation Proclamation.

One of the highlights of Community Law Week is the celebration of young filmmakers at the YOUthFILM Project Awards ceremony and film screening. The YLS reaches out to elementary, middle and high schools in the community and invites each school to create a short film encompassing certain elements addressing the theme of equality for all. This year there were 25 entries in the YOUthFILM competition. The films will be judged by YLS Community Law Week committee members and the winning films will be screened for the public, including invited Multnomah County Circuit Court judges, at the Hollywood Theatre in Northeast Portland on May 2 at 6:30 p.m. Oregon Supreme Court Chief Justice Thomas Balmer will award prizes for the winning films.

This year, the YLS also developed a YOUthFILM Project mentorship program in order to provide the chance for students interested in civics and government to learn about the law from an attorney. The program matches a mentor with a group of student filmmakers in order to teach students about the law relevant to the year's theme. The mentor also helps the filmmakers develop their ideas for their film and assists them with planning and execution of the film. Nadia Dahab is an MBA YLS member and an attorney mentor for this year's YOUthFILM project. Nadia is a law clerk for Supreme Court Justice Rives Kistler and a 2012 graduate of the University of Oregon School of Law. She volunteered with a group of students at Self Enhancement, Inc., a nonprofit organization that sponsored the YOUthFILM Project as an after school program serving at-risk urban youth. Nadia worked with about 15 students who she described as "smart and very creative," who faced the challenge of grappling "with issues of inequality they see every day in their lives as middle school students." The students discussed equality based on race, gender, sexual orientation, socio-economic status, education and a variety of other bases for inequality. Nadia observed that in addition to organizing and creating their film, the students learned valuable lessons on equality and the importance of the American judicial system in promoting equality for everyone. The experience was fun and rewarding for Nadia. The YOUthFILM Project mentorship program is another example of a positive, successful community outreach program sponsored by the YLS committee members for Community Law Week. The program is also a great example of the power and positive impact of our members who volunteer their time and talents in the MBA.


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Tips From the Bench

by Judge Stephen K. Bushong
Multnomah County Circuit Court

Credibility

Lawyers often ask, "How can I enhance my credibility with the court?" Here are some suggestions.

- *Choose your battles wisely.* Not every dispute is worth bringing to the attention of the court. Before filing a motion, making an objection, or arguing a point, consider whether it is really necessary or even worth it.
- *Don't overstate your position.* Don't suggest that yours is the only reasonable position; that is rarely the case. Don't say that every court previously addressing the issue ruled in your favor unless you are certain that is true. Don't argue that a particular case is controlling if it is distinguishable, or if you really mean that language in the opinion supports your position even though the holding may not.
- *Don't mischaracterize your opponent's position.* It may be easier to refute your opponent's points if you mischaracterize them, but you lose credibility with the court. Be fair - and neutral - in describing your opponent's position before pointing out flaws in the reasoning.
- *Don't feign ignorance.* Attorneys sometimes argue: "we don't understand their argument"; "we can't figure out what they want in this document request"; etc. Usually, that's not really the case. So don't pretend that it is.
- *Acknowledge your weaknesses.* All arguments are not created equal. Some are stronger than others. If the point you are arguing is not your strongest, don't be afraid to admit it. The judge already knows, anyway, so you haven't lost anything.
- *Concede when necessary.* If the other side has come up with a winning argument, you might just need to concede. You gain nothing by continuing to advance a losing argument.
- *Embrace your creativity.* If you're arguing for a new rule of law or a logical extension of an existing rule, say so. If you're making a point for appellate purposes only - arguing that a controlling case from the Oregon Court of Appeals was wrongly decided, for example - tell the court that's what you're doing.
- *Answer the question.* If the judge asks a question, answer the question directly before trying to explain or qualify your answer. Don't try to avoid the question even if it strays from your prepared argument. Don't answer a hypothetical question by saying, "that's not this case." Of course it isn't; that's why the question is hypothetical.



Reminders

When submitting a proposed form of order or judgment, include a certificate describing how you have complied with UTCR 5.100. A "Certificate of Service" usually isn't enough unless it specifies - in addition to stating the date and manner of service - that you complied with the rule by serving opposing counsel at least three days before submitting the order or judgment to the court and received no objection.

Before filing a motion, check the Multnomah County Civil Motion Panel Consensus Statements. Those statements were recently reviewed and reaffirmed by the motion panel with some minor modifications. If the subject of your motion is addressed by a consensus statement, your motion probably will be decided the same way unless you have a good reason for seeking a contrary ruling. If that is the case, tell the court that you're seeking a ruling that is contrary to a consensus statement (see discussion on credibility, above).

Before calling the court on a deposition dispute, check the MBA deposition guidelines. Most judges will follow the guidelines in resolving your dispute. If you think your "speaking objection" or instruction not to answer is warranted despite the guidelines, tell the judge that you've read the guidelines but think your situation is different (see discussion on credibility, above).

Call your assigned motion judge to schedule oral argument on your motion promptly after you file the motion, or after the motion judge is assigned, whichever occurs first, even if you think that a hearing may not be necessary. Judges' calendars fill up quickly. If the motion is resolved before the hearing, notify the motion judge so it can be taken off the docket.

Jury Polling

If the jury returns an unfavorable verdict, ask the judge to poll the jury. You have nothing to lose at that point, and you might as well find out if the verdict is lawful. If the verdict is favorable, be sure to confirm the results of the jury poll on the record. Otherwise, you might end up trying the case all over again. See *Congdon v. Berg*, 256 Or App ___ (April 3, 2013).



News from the Courthouse

by Erick Haynie
Court Liaison Committee

Presiding Judge's Report

Oregon eCourt Countdown

Judge Waller pointed out that the Multnomah County Circuit Court's website now displays an countdown clock to May 14, 2014 for the court's transition to an electronic case, document management, and eFiling system. Judge Waller emphasized that the transition to a computer-based document system will be seismic in nature. There are several phases of implementation between now and May of 2014. Litigants and the public need to be informed and patient with the court as it implements the new system.

The court also asks that attorneys plan ahead to the spring of 2014. Between March 17 and June of 2014, the scheduling of discretionary motions and trials will be limited. Only essential matters on the civil docket will be addressed during this time period so that the court's staff can focus on training and an orderly transition to the eCourt system.

Judge Waller also encouraged Multnomah County practitioners to look to, and study, other jurisdictions that will be transitioning to the eCourt system before Multnomah County. Jackson, Linn, Crook, Jefferson and Yamhill Counties are operating currently in the new system. Three coastal counties, Clatsop, Columbia and Tillamook, will implement on August 12. Engaging with these eCourt jurisdictions now will likely make things much less complicated for Multnomah County practitioners once Multnomah County implements the new system in May 2014. Judge Waller stated that the new system will replace OJIN - on May 12, 2014, OJIN will no longer be the "register," the official record of any case, in Multnomah County.

There is a "serious need" to educate lawyers on the new Oregon eCourt system. The system's eFiling process will become mandatory for members

of the OSB six months after a court has the eFiling system activated, as the efficiency gains of the new system will only work if all counsel participate in eFiling. Judge Waller described the new case management and eFiling system as stable and dependable.

eFiling Fees in Oregon eCourt

The eFiling system is now available for Yamhill County Circuit Court. By June, the eFiling system will also be available to Oregon attorneys to file in Crook, Jefferson, Linn and Jackson County Circuit Courts. Attorneys anywhere in Oregon can enroll and go through the online training now to begin eFiling in the five circuit courts in which it is available and every circuit court implemented hereafter. There is a fee to use the eFiling system. The fee is \$10 per "envelope," and the system will allow for multiple pleadings and documents all in the same case to be filed within a singular envelope. The fee will be paid through a credit card system. The eFiling system is accessible now from the OJD webpage: select the "I am an Attorney" option, and go to "On Line services" on the "Attorney Page."

There are security access issues in eCourt that make it difficult presently for attorneys and the general public to have access to court records and documents on the web. The difficulty has to do with identity and access management. These issues are being addressed, but it will be a few months before web access to case documents will be possible.

Free and open access to public court records remains through in-person requests at the courthouse, but the document will be a viewable electronic image in most cases.

TurboCourt Interactive Forms

The eCourt system will also make expanded use of the TurboCourt interactive forms. These forms are very helpful for self represented litigants. The availability of the TurboCourt document services is important for improving access to the courts for the self-represented, while reducing staff time needed for document assistance and

improving the quality of the documents produced for filing.

Legislature and Judicial Department Funding

Judge Waller indicated her understanding that, based on current budget discussions in Salem, funding for the Oregon judiciary system for the next budget cycle will not allow the Multnomah County Circuit Court to maintain current service levels. Judge Waller indicated that full funding of the judicial system at the current service levels will require some amount of additional revenue from other sources than simply forecast general fund growth for the 13-15 biennium. She encouraged the bar to keep up personal contacts with all of the legislative delegation to push for full funding of the judicial system. Based on the current status of the discussions, there is cause for concern, Judge Waller concluded.

On May 1, there will be a public rally in Salem to support the judicial system. This is viewed as a "Court Day" for the public to demonstrate its support for the societal importance of a functioning judicial system in Oregon.

Summary Judgment Practice

The court's current practice for handling summary judgment motions is to assign the motion to one of a panel of pro tem judges who volunteer their time to preside over these matters. When a motion for summary judgment is assigned to an attorney pro tem, counsel in the action may make an ex parte appearance to request an order transferring the hearing to a "sitting judge." Currently, Judge Henry Breithaupt is handling all summary judgment motions not handled by the pro tem panel. The court is currently evaluating whether it should change its policy to provide that if there is a request for a "sitting judge," then the motion judge for the case, assigned at the Initial Case Management Conference (ICMC), would hear the summary judgment motions. No final decision has been made on this issue.

Continued on page 15

Thomas W. Brown Receives 2013 MBA Professionalism Award

Thomas W. Brown, a partner at Cosgrave Vergeer Kester LLP, will receive the 2013 MBA Professionalism Award on May 28, at the MBA annual meeting and dinner.

The MBA Professionalism Award, the organization's highest honor, recognizes candidates who exemplify, not simply meet, the standards set forth in the MBA Professionalism Statement:

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

Thom has been practicing law for 30 years. His nomination for the Professionalism Award was supported by numerous attorneys and judges.

Here are a few of the things his nominators and supporters said about Thom:

- "The justices and judges of our appellate courts know that his skills are of the

highest level - and they hold him in high regard accordingly."

- His is "one of the most sensitive, sincere, generous, and honest people I have known. His legal work is impeccable. He is a most worthy advocate, but, at the same time, one of the most professional."
- "He is not only universally respected, he is universally admired."
- "Thom has earned the right to be arrogant, I suppose, but you will search in vain to find arrogance in his being. To the contrary, Thom is possessed of that refined sense of humility that sets him and previous award recipients apart."
- "Thom has given countless hours of his life to continuing the legal education of others, not only as a speaker and writer, but also as a mentor to young lawyers, both inside and outside his firm."

Thom is a fellow of the American Academy of Appellate Lawyers and the Litigation Counsel of America; he is a



Thomas W. Brown

master in the Owen M. Panner Inn of Court and is a member of the historical societies for the U.S. District Court of Oregon and U.S. Supreme Court. And, his history of service to the bar is extensive. He has held many volunteer positions with the OSB, MBA and Multnomah Bar Foundation and has served on the board of the Classroom Law Project. He was president of the MBA in 2007-08. Thom is admitted to the state bars in Oregon, Washington; to the federal court bars in these states, as well as the Ninth Circuit Court of Appeals and the U.S. Supreme Court.

Congratulations to Thom Brown, a most worthy recipient of the 2013 MBA Professionalism Award.

Eric Dahlin and Andrew Schpak Receive 2013 MBA Merit Awards

This year's very deserving MBA Merit Award recipients are Eric Dahlin of Davis Wright Tremaine and Andrew Schpak of Barran Liebman. MBA Merit Award recipients are chosen for their enduring commitment to the MBA's mission of promoting justice through service, education or leadership to the MBA, the legal profession and the community.



Eric Dahlin

Eric Dahlin has devoted many hours to serving the MBA, including his current service on the Courthouse Committee; three years of service on the Equality Committee and three years on the Professionalism Committee including one year as chair. He most recently served two years as Court Liaison Committee Chair. Outside of his MBA volunteer service, Eric has helped to further the MBA's mission in a number of critical

ways including nearly 600 hours of service as a volunteer pro tem judge, as an arbitrator in Multnomah County's mandatory arbitration program, and as a volunteer arbitrator in the OSB fee arbitration program. In addition, Eric serves as outside general counsel (pro bono) to Boys and Girls Clubs of Portland and team coach for the Jefferson High School mock trial team.



Andrew Schpak

Andrew Schpak has served with distinction as an MBA volunteer since he began practicing law in 2004. He has served on five YLS and MBA committees and chaired three of them, served on several working groups and task forces, was president of the YLS Board from 2008 to 2009, and currently serves as the MBA's delegate to the ABA House of Delegates. In addition to all of the volunteer time Andrew has devoted to

the MBA, he also acts as the ABA Young Lawyers Division's Secretary-Treasurer and will chair the division during the 2014-15 bar year. Andrew also serves as president of the Board of Directors of the Hollywood Theatre and vice-chair of the Board of NWEEO/Affirmative Action Association.

Suzana Malek Receives Michael E. Haglund Pro Bono Award

by Sandy Hansberger
CEJ

Suzana Malek has been selected as the recipient of the Michael E. Haglund Pro Bono Award. This award goes to a young lawyer who, in the tradition of Mike Haglund, founder of the Volunteer Lawyers Project, has displayed a special commitment to pro bono services in a project sponsored by the VLP or the MBA YLS.

Suzana has been selected to receive the Haglund award because of her work with legal aid's Pro Se Assistance Project (PROSAP) Facilitation Clinic. PROSAP is a brief service family law clinic, where experienced family law attorneys provide document review to pro se family law litigants before they file their paperwork with the court. In the past, prior to having an appointment with a lawyer or volunteer, pro se family law litigants would meet with a Multnomah County Courthouse

Mary Lou Haas 2013 Pro Bono Award of Merit Recipient

by Maya Crawford
Legal Aid Services of Oregon

Attorney Mary Lou Haas is the 2013 recipient of the MBA Pro Bono Award of Merit for her years of service to the OSB Debtor Creditor Section Legal Aid Bankruptcy Clinic. Mary Lou started volunteering with the bankruptcy clinic in 1997 while she was still working for the Department of Justice. Although she could not represent individual clients, she helped teach the "know your rights" classes at the beginning of each evening clinic. In 2002 when she retired from the DOJ, Mary Lou began representing clients through the clinic in their Chapter 7 Bankruptcy cases. She is an excellent example of an attorney dedicating herself to a "second season of service," having represented more than 50 clients during the past 10 years. In 2012 alone, Mary Lou volunteered over 85 hours representing bankruptcy clinic clients.

When asked what motivated her to continue doing pro bono work after retirement, Mary Lou stated, "I wanted to use my skills doing something worthwhile. We work hard to become lawyers and obtain the license to practice law. I was not ready to put that privilege on the shelf. The Active Pro Bono Status is a wonderful way to stay a vibrant member of the profession." Mary Lou also noted that she "received a lot of gratification from representing real people who were in financial dire straits. It always felt good to know that I had helped them." Mary Lou remembers many of her pro bono clients with



Mary Lou Haas

fondness, and recounted a few stories. She described helping a client in the late stages of AIDS file for bankruptcy to help ensure his estate was in order when he died. She has worked with clients who are or have been homeless. One such client's home was her jeep. Mary Lou also related the story of a 90-year-old client she helped by writing cease and desist letters to creditors to stop their harassing behavior. Mary Lou is still on that client's Christmas card list.

According to Legal Aid, Mary Lou never shied away from complicated cases. She treats all of her clients with dignity and respect. Mary Lou is currently wrapping up her last couple of cases. At that point, she will be joining her husband, retired Judge Harl Haas, children and grandchildren in "official" retirement. The MBA, OSB Debtor Creditor Section and Legal Aid thank Mary Lou for her many years of service to low-income bankruptcy clients, and for serving as an excellent role model for the meaningful work that retired attorneys can do.



Suzana Malek

facilitator for help in selecting and filling out the appropriate family law forms to file with the court. In 2012, because the funding for the Multnomah County Courthouse facilitators was cut, those seeking assistance with forms had nowhere to turn. Legal Aid Services of Oregon created the PROSAP Facilitation Clinic to help fill the gap.

According to Sarah Radcliffe, legal aid's coordinator of the PROSAP Clinic, "Suzana has carried the weight of this clinic on her shoulders. Each week there are two Facilitation Clinics and Suzana staffs one of the clinics. In 2012, 57 clients were served by the clinic. Suzana met with 25 of the clients and almost all were non-English speaking clients. She is very skilled at working with non-English speaking clients."

According to Suzana, each PROSAP appointment is

about two to three hours long. Because there are no follow-up appointments, Suzana wants to make certain that the clients understand the process ahead of time. And, working with interpreters makes the appointments go longer. Suzana is in the process of working with legal aid to develop forms for clients to take with them so that they can read about parenting time and mediation.

Suzana has a special understanding of the plight of immigrants and the difficulties that language barriers can pose. Suzana's parents came to the United States from Slovakia and didn't speak English at the time. Suzana credits her father

Continued on page 19

Young Lawyers Section

Ian Macleod Pro Bono Spotlight

by Stacey Sedgwick
YLS Pro Bono Committee

For Ian Macleod, after graduation from Lewis & Clark Law School, Legal Aid Services of Oregon's statewide tax clinic was a reason to get up in the morning. "They have tremendously compelling clients," he averred, "like all of Legal Aid. If you've got the stomach to handle some of the stories, it's really easy to get up in the morning and say 'I gotta do something for them.'"

Macleod did extensive work for the clinic in 2011 and 2012, following his graduation from Lewis & Clark Law School and admittance to the bar in 2011. He's worked on a number of tax litigation and innocent spouse cases with the IRS and has become an expert on the relevant law. For him, the tax clinic was both an opportunity to gain practical experience and to provide pro bono services that really make a difference in individual lives. "I'm doing something very meaningful ... a lot of lawyers went to law school to do something like that, but when practicing attorneys moan about managing debt and long hours, pro bono work can get scary." He mentions in particular that practicing attorneys can be afraid of the pro bono client that spirals out of control, draining an attorney's time and limiting billable hours. At the tax clinic, however, most cases are of limited duration. Many cases involve straightforward forms, and even on more contentious cases, the IRS is generally willing to negotiate. "The IRS is very focused on tax justice," Macleod explains, "and is very reasonable in working with attorneys who contact them to resolve issues,



Ian Macleod

because attorneys actually know what they're talking about."

Macleod stresses however that it's not just at the tax clinic where potential pro bono attorneys can assist LASO without overcommitting themselves. "Legal Aid in general has almost bottomless need for volunteers, and their pro bono coordinators are very conscious of your needs and the over-committal of pro bono attorneys. They're very careful in what they hand out."

Macleod has also been involved with the Multnomah County Attorney's Office to draft proposed legislation on property tax justice for the 2013 agenda and is working with the Community Development Law Center to create a primer on affordable housing property tax exemptions. He is currently spending the majority of his time with his three-week-old daughter, Abigail, and continuing his pro bono activities as time permits.

For more information about the LASO statewide tax clinic, or other pro bono work with LASO, please contact Maya Crawford at 503.224.4086 or by email at probono@lasoregon.org.

YLS Award of Merit and Rookie of the Year Recipients

by Duke Tufty
YLS President

I am pleased to announce the recipients of the 2013 YLS Award of Merit and Rookie of the Year Award. The recipients will be formally recognized at the MBA Annual Meeting & Awards Dinner on May 28th. As you know, the YLS puts on a wide array of programming throughout the year. Just to name a few, the YLS develops and presents timely and practical CLEs on both substantive law and professional development, hosts networking and social activities, orchestrates volunteer and pro bono opportunities, and provides compelling content for the *Multnomah Lawyer* highlighting the local bar and its members. None of this would be possible without the many YLS volunteers who devote time and energy to making all of these things happen, and, of course, the hard work of the MBA staff, who should receive awards of merit every year, in my book.

This year's recipients exemplify the leadership, professionalism and energy that make the YLS such a strong organization. You may have heard the saying that "you get out of it what you put into it." In my experience, there is truth in this folk wisdom. After talking to the three recipients this year, I think that they would agree that they got as much out of their volunteer efforts as they put in through meeting new people, building new relationships, developing their leadership and organizational skills, and contributing to making the local bar and community better. Although only three YLS members are being formally recognized, I would like to thank everyone that has served on a committee, attended an event, or otherwise participated in the YLS this year. Thank you.

Award of Merit Recipients



Cindy Gaddis

Cindy Gaddis, Law Office of Daniel Snyder

Cindy is a second year member of the Service to the Public Committee. The YLS merged the YOUthFILM Project Committee into the Service to the Public Committee this year. She has been an enthusiastic contributor to the committee and helped in the integration of the committees by being involved with key projects that originated from both of the prior committees. She spearheaded an effort to increase participation in the YOUthFILM Project by fostering relationships with local community media organizations. As a result, the MetroEast Community Media Center has agreed to loan cameras and equipment to YFP entrants who would otherwise not have access to such equipment. In addition, Cindy helped coordinate this year's Imprint Program and served as a classroom coordinator. Finally, she did all of the little things that make for a great committee member: she attended every meeting, was the secretary and provided minutes for every meeting, and was an active contributor to discussions during meetings. With the support and encouragement of her fellow committee members, Cindy took steps to pursue her interest in plaintiff's side employment work and is looking forward to serving on an MBA committee in the future.



Andrew Ginis

Andrew Ginis, Ginis Law LLC

Andrew is a second-year member of the YLS Pro Bono

Committee. Despite commuting to Seattle two to three times a week to attend the University of Washington's Tax LLM program and running his own solo practice, Andrew has been an active contributor to the committee and gone above and beyond in fulfilling his responsibilities. Most notably, Andrew has played an instrumental role in making the committee's Pro Bono Pedal Fundraiser event bigger and better than ever. He's looking at ways to collaborate with other organizations and to hold similar events in other Oregon cities in the future. Andrew's leadership and vision will ensure that the Pro Bono Pedal keeps cycling forward.

Rookie of the Year



Alison Pear

Alison Pear, Kell Alterman & Runstein LLP

Alison moved to Portland in the summer of 2012 after practicing in Los Angeles for a number of years. After passing the Oregon bar, she started as an associate with Kell Alterman & Runstein in early 2013. Recognizing that Portland was not Los Angeles, Alison became involved with the YLS soon after arriving in Portland to become acquainted with her new local bar. She started attending events and joined the YLS Membership Committee after attending the YLS New Admittee Social. She played a key role in ensuring that the ZooLights event continued despite some logistical challenges. This year's event was hosted at the nearby Children's Museum and was a smashing success again. Alison also stepped up in helping plan new types of YLS events this year. Look for an event hosted by Bottle & Bottega on May 9th at the Rogue Distillery, where you can let your inner artist out. In addition to her committee work, Alison wrote an article for the *Multnomah Lawyer* and assisted in the preparation of the YLS survey that went out to members earlier this year. In doing so, she provided some key insights about how the MBA YLS compared to local bar organizations in Los Angeles. The secret is out, the YLS rocks (my apologies to LA) and Alison has been helping make it even better.

YLS Horoscope

A chance meeting will change your perspective early in the month. Take advantage of opportunities, but remember that they may not always be apparent at first glance. Do not be quick to judge.

Some much-awaited recognition is headed your way if you continue to do good work. Ignore those who question your abilities or dedication. You can do whatever you set your mind to. Trust your instincts.

mba yls | EVENT

3rd Annual YLS Summer Social
Red Star Tavern - Club Room
503 SW Alder St., Portland
Thursday, June 27
5-7 p.m.

Event includes hors d'oeuvres, signature cocktails, and a celebration of the YLS and its service to our community. More details to follow.

Thank you to Miller Nash and Barran Liebman for supporting this event.

Sticker Shock Wrestling with your first pre-bill

by Alex Naito
YLS Futures Committee



You hear a lot about the challenges of starting out as a new lawyer, fresh from the safe intellectual confines of law school. There have been pages and pages written about how law schools fail to prepare students for the practical difficulties they will face once they are released into the big business that is the legal profession. Dealing with difficult clients, unforgiving partners, and wily opposing counsel. Figuring out how to bill enough hours to pay the rent, go to networking events and have a life all at the same time. And, on top of all these other challenges, there is the small matter of trying to learn the law as you go. I am not breaking new ground here, this is all something we have read before and experienced for ourselves. But there is one aspect of becoming a new lawyer that we do not hear much about heading into the profession, but something that is, at times, equally challenging. That is, coming to terms with the realities of billing for your services.

In many ways, I was prepared for the challenges of becoming a new lawyer and was braced for the sharp learning curve of reality. With so many websites and blogs like *AbovetheLaw.com* and others, our generation knows all too well what to expect when we start practicing (not that it makes it any easier). So, in everything that has transpired since I started practicing six months ago, the biggest surprise for me was my reaction to seeing my first pre-bill. It is a brutal

wake-up call, realizing for the first time that somebody is going to be paying real money for that memo you just spent 10 hours researching and writing, or the lease agreement you spent four hours reviewing.

There are many factors that can affect when this moment happens, and how it is received. For those practicing in larger law offices, this moment may not come for several months, or even years, if the partners you work for insist on handling the billing. For others, who may be starting out on their own, this moment will occur right away before they have the opportunity to feel comfortable in their practice. The shock value also varies depending on whether the bill is heading out to a large corporate client, or to a new couple starting their first business. Maybe it shouldn't matter, but the reality is that it is much harder to feel comfortable billing for our services when there is a "real" person on the receiving end. But no matter where you work, or who you work for, there is an internal conflict that new lawyers face in billing for their service and expertise.

On the one hand, many new lawyers feel guilty charging the amount they contracted for with the client. The reason for this guilt is because early on in a new lawyer's career the new lawyer may undervalue their contributions. They are still learning all the elements, rules, terminology and procedure that more experienced attorneys seem to know off the top of their heads. That creates a sense of guilt about having someone else pay for gaining that experience.

On the other hand, new lawyers feel justified because the clients sought out their services for a reason. Despite what people may say about lawyers, it is a unique profession that requires training, skill, and, most importantly, a license. And,

hopefully, the time spent by the new lawyer actually benefits the client, who should then bear the cost of that effort. Furthermore, the new lawyer just spent three years (seven, counting college) and a lot of money to get that training, skill and license. This provides the new lawyer with a sense of justification, which conflicts with feelings of guilt.

The new lawyer must also take into account the client relationship. Clients may be unwilling to pay for certain types of services. The client may be turned away from bringing the lawyer more work if the bill is too high. On the other hand, it's a slippery slope to start giving clients discounts, because soon that becomes expected, even as the new lawyer grows in expertise and provides increasing value to the client. These are considerations that the new lawyer must account for when deciding to place a number on their value.

And there are, of course, forces at work in this equation that are outside the new lawyer's control. Billing rates established by the firm or dictated by the market drive the hourly rate charged by the lawyer. But in a profession that bills by the hour (for now), there is always an opportunity for lawyers to second-guess the value for their service. Should that project really have taken two hours? Could it have been done in one? Was I productive throughout that entire time? These are questions new lawyers, faced with that first bill, must wrestle with. And while most probably won't admit to it, this internal conflict can be very distressing.

What should the new lawyer do? One solution is to seek guidance from the more experienced attorneys. In large law firms, this is easy because the partners will often automatically apply their own judgment about the value of the new lawyer's services when they ultimately send out the final, marked-down bill. For new lawyers not in large firms, the new OSB mentoring program may provide a mechanism for getting advice on this topic.

Time can also help: Time for new lawyers to obtain the experience to start believing in the work they do, and the value they provide to the client. Once that experience builds up, the internal conflict will hopefully start to dissipate, at least to some degree.

But no matter how experienced or skilled the attorney, my guess is that these feelings never truly go away. In fact, it may be even harder at times later on in a lawyer's career, as friends become clients and vice versa, and the lawyer's billable rate increases. Therefore, it is important for new lawyers to recognize this conflict early on and begin developing confidence in their integrity and experience so that they feel comfortable that their bills are a true measure of the value they provided to the client.

Rainmaking Tips for Young Lawyers

by Merrill Maiano and Tyler Volm
YLS Professional Development and Education Committee

It's May, and it's been raining for eight months straight. With summer right around the corner, why would a young lawyer possibly want to increase the amount of rain in their practice? David Markowitz and Matt Donohue, from Markowitz, Herbold, Glade & Mehlhaf PC, explained the benefits of rainmaking to a full house at a recent MBA YLS event.

Rainmaking is doing something that you otherwise would not have done to develop business for you or your firm. The benefits of rainmaking include increased income, job stability, and mobility (both within your current firm or to another firm). And, perhaps most importantly, it helps to improve your practice because it gives you more control over the quality of the matters that you handle. Sounds great, right? So, why don't more lawyers do it? Markowitz and Donohue explained that the most common reason for failing to make it rain is that the efforts rarely, if ever, lead to an immediate reward. Rather, the efforts often do not pay dividends until years later. Even those who begin by making the most earnest efforts often become discouraged by time limitations and the fact that rainmaking involves participating in activities that one may not otherwise do.

According to Markowitz, the most successful rainmakers make a personal commitment to engaging in a long-term process for developing business. Because the most successful rainmaking is the result of extended efforts, Markowitz suggests developing good rainmaking habits early in your career. Unsurprisingly, the first step is to set a goal for business generation, such as, "I would like to bring in X dollars of business by January 2014." Once you have identified your goal, there are essentially five steps that will enable you to achieve your rainmaking goals:

- 1. Identify your targets** – the individuals or organizations that have the work that you seek. Capitalize on the relationships that you already have and seek opportunities to cultivate relationships that you would like to have.
- 2. Identify the persuasive message** that will motivate your targets to give you the work that you want. Look for opportunities to demonstrate how you can help them, so that they in turn will be more motivated to help you.
- 3. Determine the delivery mechanism** for your message. In other words, figure out what activities and events you will do to get your message out.
- 4. Execute your plan** by engaging in those activities. According to Markowitz, the most successful rainmakers approach the process with an energized,



David Markowitz



Matt Donohue

"never stop selling" approach. **5. Assess, evaluate, and adjust your rainmaking plan** as necessary to make your plan work. You will increase your chances of success if you revisit your plan regularly to determine which efforts are yielding results and which are not.

Donohue explained that he has achieved success in his rainmaking efforts by building relationships and being consistent. He suggests seeking opportunities to build your relationships with your targets by asking them about their needs and concerns and demonstrating how you can help. That might involve pitching a creative solution to a prospective client or simply sending a referral to an attorney who has a complementary practice area. No matter what, deliver on your promises 100% of the time, because your initial interactions will form the foundation for a trusting relationship and your reputation in the future.

After you've developed your relationships by giving your targets what they need, be confident about asking for what you need. For example, if you are seeking referrals from other attorneys, explain your area of interest and indicate that you would appreciate their referrals in that area. The worst that can happen is that they say "no" or the relationship is not reciprocal. It's all part of the process of executing and adjusting your plans. If it doesn't work out, move on to the next opportunity.

Finally, Markowitz and Donohue recommend regularly tracking and revisiting your goals. When you achieve success, continue to set new goals to help consistently improve your performance. Most importantly, be patient and celebrate successful efforts often.

Special thanks to Karie Trujillo, marketing director at Markowitz, Herbold, Glade & Mehlhaf PC, for her help in arranging the event and to those who attended.

mba yls|EVENT

Bottle and Bottega: To the Trees!

Rogue Distillery & Public House
1339 NW Flanders St., Portland
Thursday, May 9
6-8:30 p.m.

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Julie Lohuis & Whitney Yazzolino

Senior Law Project Volunteer of the Year Award

by Cathy Petrecca
Oregon State Bar

As committed practitioners of elder law, partners Whitney Yazzolino and Julie Lohuis of Yazzolini, Lohuis and Edgel, LLP each chose that area of law with the intention of helping others. The hours they and their firm have spent volunteering at the Hollywood Senior Center show how strongly their intentions have become their reality. Their dedication to the Senior Law Project (SLP) has won them the Volunteer of the Year Award.

When they first created their firm in 2010, they identified volunteering as an important component, and their firm made a monthly commitment to the Hollywood location of the SLP and a similar commitment to the Milwaukee Senior Center. The volunteer days are scheduled well in advance on their firm calendar, and the three attorneys in their firm rotate among the two commitments.

Julie Lohuis, a 2004 graduate of the University of Oregon School of Law, first started volunteering with the SLP in



Julie Lohuis



Whitney Yazzolino

2006 and has helped more than 115 clients. Whitney Yazzolino, a 2004 graduate of Lewis & Clark Law School, began volunteering

with the SLP in 2009 and has helped more than 66 clients. In addition to staffing the Hollywood clinic on a monthly basis, each attorney takes direct referrals for homebound clients who are unable to make it to the SLP clinic.

Whitney worked as a case manager for the Multnomah County Aging and Disability Services for several years before attending law school, and knew that she wanted to practice elder law after graduating from Lewis & Clark Law School.

Julie first worked at Legal Aid Services of Oregon as a new lawyer. She worked with seniors who needed access to long-term care services, and found that she enjoyed working with them, and gravitated toward the specialty of elder law.

Two of Whitney's most memorable clients were a married couple she met through the Hollywood Senior Center who needed estate planning services. When she met with them at their home, she discovered they had a nephew with special needs. She drafted an estate plan that not only planned for incapacity during their lifetimes, but protected their nephew's public benefits by creating a special needs trust to hold his eventual inheritance. Without this type of planning for the nephew, he would have lost his public benefits (medical coverage, food stamps, etc.). She visited their home several times during the course of her representation and says, "Each time they were so appreciative and were incredibly gracious - serving me traditional Loatian tea and cookies."

Whitney and Julie agree that providing pro bono services to seniors is gratifying and develops well-rounded attorneys. Although it is not always immediately gratifying - because the clients may be difficult or you may not have the answer - if you commit to the long term and see the big picture it will pay off over time.

Yazzolino, Lohuis and Edgel's practice encompasses several areas, including estate planning, probate and trust administration, guardianships and conservatorships, planning for incapacity and long-term care.

Anne Furniss

Senior Law Project Volunteer of the Year Award

by Sarah Radcliffe
Legal Aid Services of Oregon

Anne Furniss began volunteering for the Senior Law Project (SLP) in 2007 and has served more than 290 clients. Anne is the co-recipient of this year's SLP Volunteer of the Year Award, which is given annually to a volunteer with Legal Aid Services of Oregon's SLP. As an associate at Furniss, Shearer & Leineweber, her practice focuses on estate planning, probate litigation, guardianships and conservatorships, elder law and insurance coverage issues.

A newer lawyer, Anne found that the SLP presented valuable learning opportunities - she was able to research more complicated issues and to counsel clients on real life problems. "You really learn," Anne says, "when you are required to jump in and handle questions on your own." Now, as an experienced elder law practitioner, she continues to enjoy the variety of legal issues and client interactions that arise through volunteering with the SLP.

Typical SLP cases involve debtor/creditor problems and wills or estate planning. Anne might agree to handle communications from creditors in order to relieve a senior from persistent and intimidating contact, or she may simply reassure a low-income home owner that a creditor cannot take the roof from over his head. She also drafts wills, powers of attorney, and advance directives.

Even if they have very limited financial resources, elderly clients may feel a great sense of relief when they know that their affairs are in order. Anne described one recent client who was particularly worried about what would become of his dog and cat when he passed on. The client had no family members or close friends, but he had researched various animal shelters in order to make an informed choice about their care. Still, the prospect of his pets in a



Anne Furniss

shelter caused him sleepless nights. Over the course of finalizing the client's will, Anne heard a great deal about these pets. In the end, Anne agreed to inherit the client's pets herself. Needless to say, the client felt an enormous relief - in addition to having a will drafted at no cost, the lawyer with whom he had established such rapport was willing to provide a loving home for his pets. "We tend to think of the impact these documents will have in the future," Anne says, "but they can have a tremendous impact on a client's well-being today."

As Portland's low-income population migrates east, the need for services in Gresham and East County is growing. Legal Aid has historically had difficulty, however, in staffing its Gresham YWCA Senior Law Project clinic. Anne has been working to fill this gap since 2007 by traveling to Gresham once a month to staff an SLP clinic. Anne enjoys the broad demographic represented at the Gresham clinics. Many clients have never worked with an attorney before and are reluctant to go to an office building downtown. The Gresham YWCA clinic allows them to access legal services in their neighborhood and in a less formal setting. Plus, Furniss, Shearer & Leineweber has an office in Gresham, which Anne works out of two days per week. The SLP has helped Anne establish a presence in Gresham and connect to the local community.

Seniors seek out the SLP with concerns that may have weighed heavily on them for quite some time. The peace of mind that Anne provides, sometimes simply with a clear explanation, is priceless. In the words of several of Anne's SLP clients, "she answered our questions exactly so we understood," and "she made everything seem so simple."

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News from the Courthouse

Continued from page 10

Pending Legislation

Judge Waller referenced two pending house bills that could impact the court. One is Oregon House Bill 3126, which would authorize the state treasurer to issue general obligation bonds to finance construction and improvement of courthouses, such as the new Multnomah Court Courthouse. Judge Waller said this bill is currently before the House Ways and Means Committee.

A second bill is House Bill 2561, which would allow the Oregon chief justice to assess fees for electronic applications and services. This bill is also pending before the House Ways and Means Committee.

Case Management Conferences

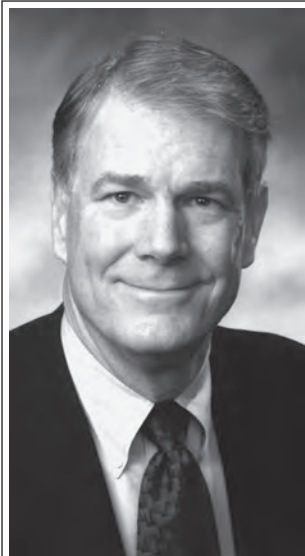
Judge Waller said that she is considering making adjustments to current pretrial case management procedures with respect to ICMC. The court is considering transitioning to electronic ICMCs, whereby parties would make written submissions rather than

requiring that ICMCs occur in person or by phone. The analysis here is preliminary and no decisions have been made.

Judge Waller said that she recognizes that the ICMCs are taking significant judicial time each week, and have presented scheduling problems for the attorneys, but also appreciates that a scheduled hearing is important to leverage counsel to actually speak with one another and effectively confer.

CourtCare Campaign

Guy Walden reported that the annual CourtCare Campaign began April 15. Guy was pleased to announce that services will be expanding to include children up to age 10. Guy also noted that the costs for the program will be going down because caregiving staff will be managed through a pooled system with hospitals that adds efficiencies to the existing staffing system.



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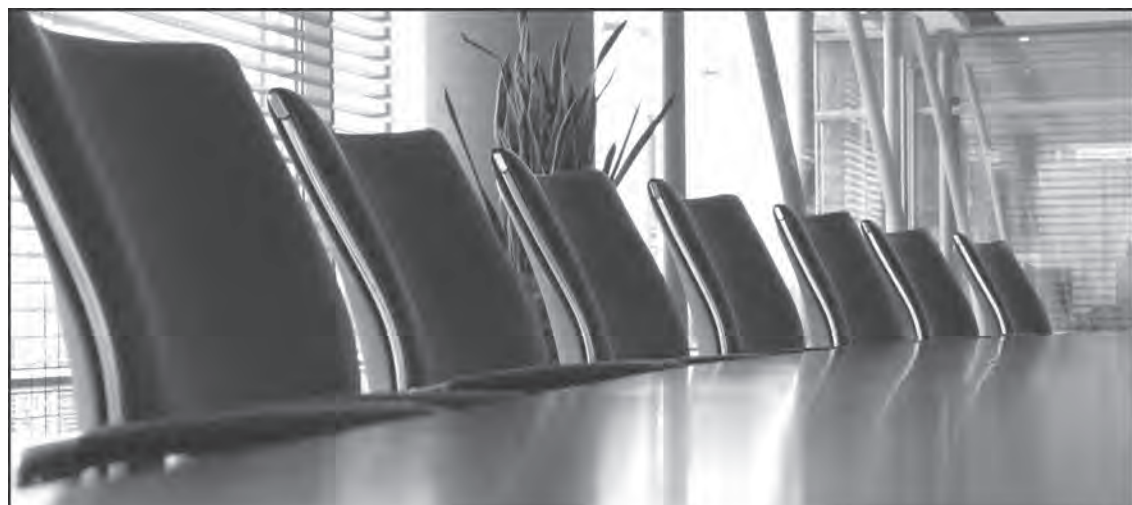
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Classifieds

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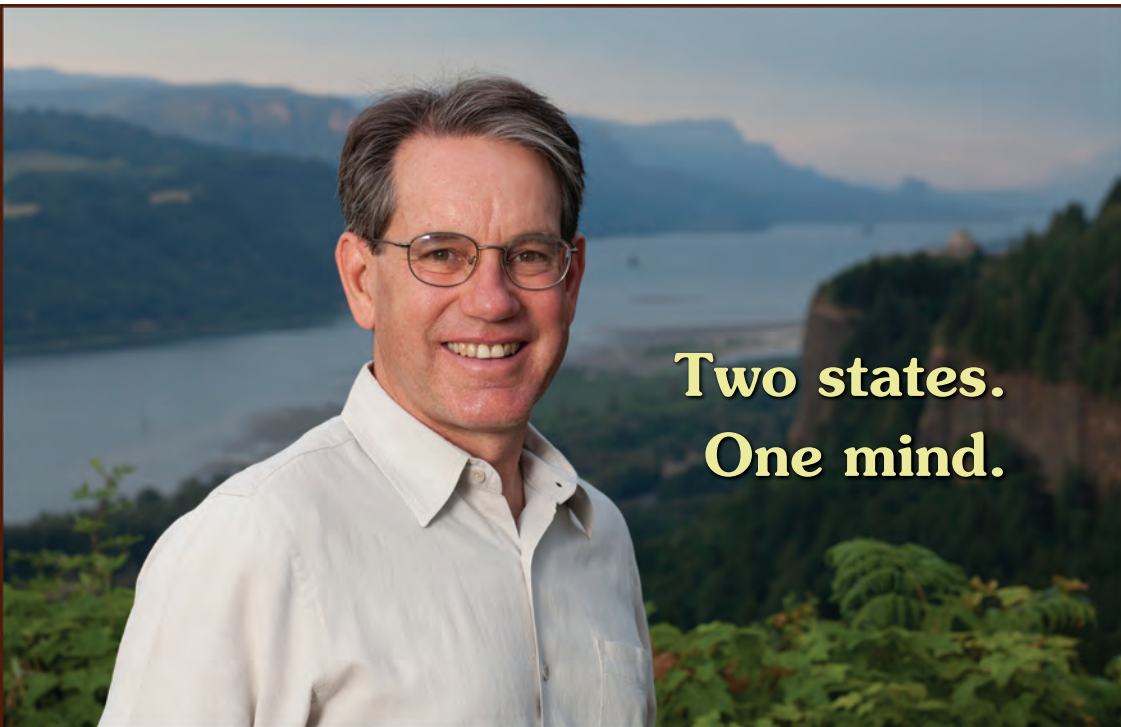
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Arbitration Pitfalls The Non-Paying Party

by Keil Mueller
Stoll Berne & Court Liaison
Committee Chair

Arbitration has long been viewed as a faster, more efficient and cheaper method of resolving disputes than state or federal court litigation. Yet recent literature suggests that the benefits of arbitration are not as great as many assume. Among other things, parties increasingly are expressing frustration with the high cost of arbitration.

This article discusses another issue unique to arbitration - one that is related to the cost of arbitration and that likely will be of increasing importance as that cost continues to rise. This issue - which has been characterized by author Richard DeWitt in his book *No Pay No Play*, as “the nonpaying party problem” - arises when one party (typically the respondent) is unable or unwilling to pay its share of arbitrator compensation and administrative fees.

Often, parties are required to deposit their share of estimated arbitration costs in advance of an arbitration hearing. If respondent does not pay its share of the required deposit, the arbitration forum administrator or the arbitrators themselves must determine what to do with the proceeding. While arbitrators will sometimes allow an arbitration proceeding to go forward, most arbitration rules permit arbitrators to suspend or terminate a proceeding if the full deposit is not paid. Thus, if respondent is unable or unwilling to pay its share of the deposit and if the arbitrators are unwilling to proceed until the full deposit is paid, claimant has two choices: (1) advance respondent's share of the required deposit itself; or (2) refuse to advance respondent's share and seek relief in court.

Option One: Advance the Fees

Claimant's first, and most straightforward, option is simply to advance the respondent's share of the arbitration fees, with the hope that claimant will recover the fees that it advances in a subsequent arbitration award. While this option allows the hearing to go forward, it entails significant up-front expense, which could be prohibitive in a large, complex case or for a claimant with limited resources.

This option also is risky. First, the claimant could lose. Second, the arbitrators could refuse to include fees in any award. Finally, even if claimant is awarded fees, there always remains the risk that claimant will not be able to recover, perhaps because the respondent is insolvent (which is all the more likely when respondent already has been unable to pay its share of the deposit).

Option Two: Seek Relief in Court

If claimant decides not to advance respondent's share of arbitration fees, or is unable to



advance such fees, claimant's only other option is to seek relief in court. The question then becomes what, if any, relief is available to claimant?

If claimant prefers to pursue its claims in arbitration, or already has expended resources conducting discovery and preparing for hearing and does not wish to begin anew in court, claimant might wish to seek a court order enforcing the parties' arbitration agreement and requiring respondent to pay its share of arbitration fees. Unfortunately for the claimant, 9th Circuit U.S. Court of Appeals precedent presents a serious obstacle to obtaining such an order.

In *Lifescan, Inc. v. Premier Diabetic Services, Inc.*, 363 F.3d 1010 (9th Cir. 2004), the 9th Circuit held that a district court had exceeded its authority under the Federal Arbitration Act (FAA) by ordering respondent to pay arbitration fees. While Section 4 of the FAA (9 U.S.C. § 4) permits courts to compel arbitration if a party “fail[s], neglect[s], or refuse[s] to perform” pursuant to a valid and binding arbitration agreement, the 9th Circuit concluded that a respondent's nonpayment of arbitration fees does not necessarily constitute failure, neglect, or refusal to arbitrate. Like many arbitration agreements, the agreement at issue in *Lifescan* did not mention payment of fees. Instead, it provided only that the parties would arbitrate their disputes “in accordance with the then-current rules of the American Arbitration Association. (AAA.)” While AAA Rules provide that, unless the parties agree otherwise, arbitration fees “shall be borne equally by the parties,” (AAA Rule 50), AAA Rules also grant arbitrators broad authority to interpret the rules, as well as to apportion fees. Thus, according to the 9th Circuit, when the respondent in *Lifescan* failed to pay its portion of the deposit, “[t]he arbitrators exercised their discretion in this case by allowing the arbitration to proceed on the condition that [claimant] advance the remaining fees.” Because this ruling was “well within the discretion of the arbitrators,” there was no basis for finding that respondent had failed, neglected or refused to arbitrate. Instead, “the arbitration ... proceeded pursuant to the parties' agreement and the rules they incorporated.”

The Corner Office PROFESSIONALISM

Sometimes even the most mundane aspects of our profession can make an impact on those around us. Not only can these insignificant moments advance our professional agendas, they can end up being opportunities to showcase ourselves as professionals to our colleagues, to the courts, and even to the general public.

Appearing at trial assignment is one such moment. All you have to do is stand up, say “ready” or “not ready,” maybe give a reason if you're not ready, and get a ruling, right? That is the minimum, the floor, but with a little effort, we can accomplish much more.

First, arrive early. Take your overcoat off. Then look for your opposing counsel, and greet him or her before the judge walks in. This may be the first time you have met in person. Tell him or her what you are going to report. See if you both can agree on the amount of court time needed. Allow a moment or two for rapport building, because it is good in itself, and with rapport established, professional courtesies come easier when you need them.

While this holding is in keeping with a long and well-established line of federal case law that limits courts' ability to intervene in an arbitration proceeding, it limits a claimant's ability to force a non-paying respondent to return to arbitration. If the courts will not intervene by ordering respondent to pay its share of arbitration fees, claimant's only other avenue for pursuing its claims is to attempt to litigate those claims in court.

Here, too, claimant faces a serious obstacle. Namely, if claimant attempts to pursue its claims in court, respondent may seek a stay pending arbitration under section 3 of the FAA.

At first blush, one might assume that a non-paying respondent should not be allowed to invoke section 3. And, indeed, the 9th Circuit's decision in *Sink v. Aden Enterprises*, 352 F.3d 1197 (9th Cir. 2003), affirming the district court's conclusion that a nonpaying respondent was in default and was not entitled to a stay provides support for this line of thinking.

Importantly, however, the arbitrator in *Sink* previously had entered an order finding respondent in default of the arbitration proceeding by reason of its nonpayment. Thus, the 9th Circuit's decision left open the question of whether a court independently could determine that a nonpaying respondent was in default.

Judge Anna Brown addressed this open question in *Juiceme, LLC, et al. v. Booster Juice Limited Partnership, et al.*, 3:09-CV-01506-BR (D. Or. July 30, 2010). There, the arbitrators had not entered a default order against the nonpaying

When your case is called, stand up, walk forward a couple of steps so you are seen clearly, and do what my fourth grade daughter was taught at school: assume the “dignity stance.”

The dignity stance is standing up straight, shoulders squared back, hands out front, perhaps holding a notebook. You are demonstrating through non-verbal communication that you have something important to say, and that you should command respect.

When you speak, be clear but natural, and give the court only the information it really needs. Address the court as “Your Honor,” not “Judge” or “Sir” or “Ma'am.” Speak in a formal manner. Do not utilize the “Matlock” approach of addressing the court. That time has passed. Having met previously with opposing counsel, your reports should hopefully coincide. The last thing you want to do is publicly disagree on small things like how much time you need, whether a morning or afternoon setting is more desirable, etc. After your brief and formal report, return to your seat, and try not to fully

turn your back to the judge. The presiding judge may not know you very well. Making a good impression at trial assignment can establish credibility at future interactions with the judge.

The next time you are at trial assignment, look around the room. Whether you are in a civil trial setting, a family law court, an FED court, or a criminal proceeding, one thing should be very noticeable: how many people in the room are not lawyers or court staff, but members of the public, many representing themselves. At trial assignment, a member of the public often sees lawyers in action for the first time. Let's remember that in such times, we represent our entire profession. The brief moment that is trial assignment is also an opportunity to showcase yourself to the public; to demonstrate that your work is important, and that it is respectable and dignified. Make the most of your moment at trial assignment for yourself, but more importantly, as an officer of the court and a representative of a great and noble institution.

respondents, nor had they even been asked to consider the issue. Judge Brown therefore had to determine whether, absent an order of default by the arbitrators, she had jurisdiction to determine that respondents' nonpayment of arbitration fees constituted failure, neglect or refusal to arbitrate such that respondents were in default and not entitled to a stay pending arbitration.

As a starting point for this analysis, Judge Brown turned to the line of cases on which the 9th Circuit relied to support its decision in *Lifescan*. These cases hold that, where there is a valid and binding arbitration agreement, federal courts' jurisdiction is limited to issues involving a question of arbitrability, such as whether a party is bound by the arbitration agreement or whether a specific claim is subject to arbitration. Issues that do not involve a question of arbitrability must be decided by the arbitrator. These include whether prerequisites to arbitration have been completed, whether certain defenses - such as waiver and delay - are defenses to arbitrability, and whether claims subject to arbitration are barred by the statute of limitations.

Judge Brown concluded that “whether [the nonpaying respondents'] inability to continue to pay arbitration costs ... constitutes a failure, neglect, or refusal to arbitrate ... is similar to ‘allegation[s] of waiver, delay, or a like defense to arbitrability’ and to questions as to ‘whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been

met.” As such, she held that the issue was “a gateway dispute that [was] not ... for the Court to decide,” and accordingly granted the nonpaying respondents' motion to stay claimants' lawsuit “until [claimants] and [the nonpaying respondents] arbitrate [claimants'] claims or until an arbitrator decides whether [the nonpaying respondents'] inability to continue to pay its share of arbitration costs constitutes failure, neglect, or refusal to arbitrate...”

For any claimant in an arbitration proceeding where the respondent is unable or unwilling to pay its share of arbitration fees, the message is clear. If the arbitrators are unwilling to proceed without full payment of fees and claimant is not willing to advance respondent's share of arbitration fees, claimant must make a motion requesting that the arbitrator find the respondent to be in default. Absent such a default order, claimant may find itself in a legal limbo - unable to pursue its claims in arbitration due to suspension or termination of the proceeding, and unable to pursue its claims in court unless and until an arbitrator finds that respondent is in default in the arbitration.

Keil Mueller is an attorney with Stoll Berne. He can be reached at kmueller@stollberne.com or 503.227.1600.

Pro Bono Volunteers

Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, Children's Representation Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, go to www.mbar.org and click on "About Us" and "Pro Bono."

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Suzana Malek

Continued from page 11

for being a great role model, giving her the opportunity to be the first in her family to go to college, and teaching her that "it's important to give back to the community."

Suzana said, "The first month of doing this work was terrifying. But, the wonderful family law mentors at legal aid helped me through it and now I look forward to my appointments each week at legal aid." Suzana credits the legal aid staff for providing excellent training, mentors, interpreters, and "for bringing people together to solve problems for clients." Suzana also now trains new Facilitation Clinic volunteers.

Suzana graduated cum laude from the University of San Francisco School of Law in 2009. After a brief visit to Portland in 2011, she decided it was a good place to settle down. She started networking in the legal community when she moved here and founded her own family law practice.

Suzana has also found time in her busy schedule to work with OGALLA's Safe Schools Subcommittee and has recently started working with the Portia project, which provides pro bono

legal services to incarcerated women at Coffee Creek Correctional Facility.



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Multnomah Bar Foundation

MBF Voting Video Awarded First Place in National Competition

by Pamela B. Hubbs
Office and Foundation Administrator

The MBF and MetroEast Community Media have produced a six-part video series on democracy issues and it is getting noticed! This signature project focuses on the themes of voter registration, the importance of being an informed voter, civic engagement, responsible civil discourse, what goes on in the courthouse, impartial courts, the rule of law, the balance of powers and the various kinds of courts and how they fit into public safety.

Voting 101 was awarded first place in the Democracy in Action category at the 2013 Hometown Media Awards, a national competition that recognized the best community media programming of 2012. *Voting 101* is both a short video with the message "Register, Engage, Vote" and an "I vote because" PSA. The target audience for this video is students, young voters and new citizens. One of 800 entries received in seven categories,

the award-winning video was produced with the participation of The Bus Project and League of Women Voters of Portland. Hometown Media Awards is sponsored by the Alliance for Community Media, a public, education and government channel advocate that promotes civic engagement through community media.

The Court System and *The Courthouse* videos took top honors at the 2012 National Association of Telecommunications Officers and Advisors Government Programming Awards. *The Court System* was awarded first place in the Public Education category and *The Courthouse* was awarded second place in the Community Awareness category. These videos are just under 30 minutes in length and include MBA volunteers in interviews and as actors. A discussion guide for

classroom use was created by the Classroom Law Project.

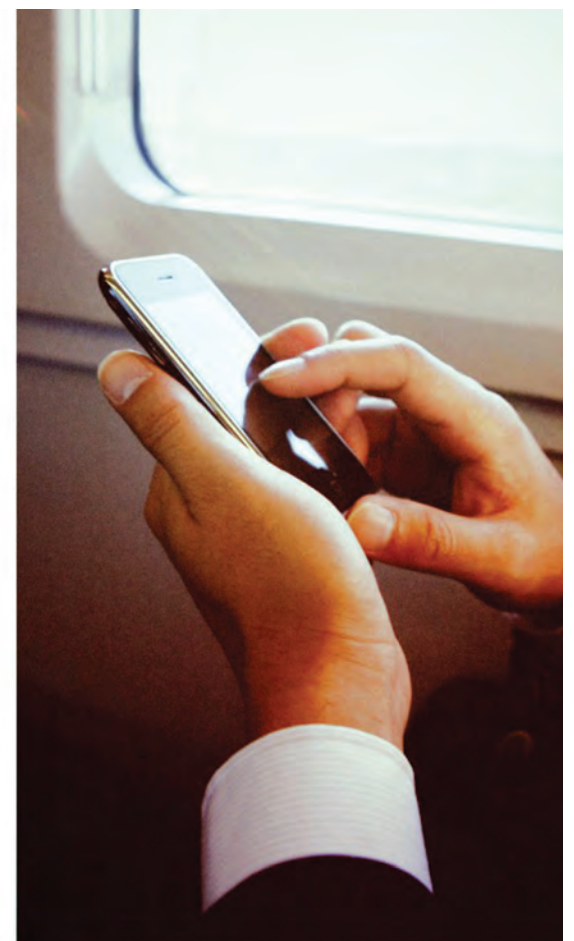
Newly released *Civic Engagement 101* teaches the importance of an informed, engaged citizenry. It was developed with the participation of City Club of Portland and The Bus Project and features former MBF Director and Signature Project Chair Jim Westwood. *Civic Discourse 101* completes the series and uses the example of neighbors upset by a barking dog to illustrate the value of respectful listening and cooperative problem-solving over hostile or antagonistic dialogue.

Generously funded by MBA members through the MBF Civic Education Fund, the video series



will be shared statewide with middle and high school teachers and is currently reaching a wide, general audience via cable access TV, YouTube and various educational, news media and civic websites.

To view the civic education videos, visit www.mbabar.org/foundation and scroll to Civic Education.



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