



The Elephant in the Room

by Bob Steringer
MBA President

Humans have long understood that our minds are divided between conscious processes and automatic or implicit processes that operate well below the surface of our consciousness. As St. Augustine said, "I cannot grasp all that I am." In *The Happiness Hypothesis*,

psychologist Jonathan Haight offered the metaphor of a rider on the back of an elephant to explain this condition. The rider might have a well-reasoned plan for where she wants to go and why she wants to go there, but her ability to act on that plan might be thwarted by an elephant that sees the world quite differently. The elephant often is heading in the wrong direction before the rider even knows there is a decision to be made.

Out of necessity, much of the legal community's work to combat prejudice and to support and grow diversity in our profession has focused on the rider. Even when prejudice springs from ignorance, it often is acted upon with conscious intent. As a result, there has been much work to do to break down intentional barriers to inclusion and to censure overt expressions of exclusion. That work is unfinished and must continue.

Today, though, I'm thinking about the elephant.

As lawyers, we would be foolish not to recognize the impact of unconscious processes in our world. This is most easily seen in the courtroom, where trial lawyers need to account for the deeply engrained assumptions that will color jurors' perceptions of people and events. Undoubtedly, some of those assumptions are packed into our brains by personal experiences and cultural influences. Studies suggest that other aspects of our unconscious biases are written into our DNA through evolutionary processes.

For example, *New York Times* columnist Nicholas Kristof recently wrote about studies showing that three-month-old white infants will show a preference for white faces, with the reverse being true for three-month-old black infants born in Africa. Kristof shared Harvard Professor Mahzarin Banaji's explanation of the studies: "It's a feature of evolution." According to Prof. Banaji's hypothesis, ancient conditions selected for humans who most quickly recognized members of other groups and therefore took protective measures before it was too late.

The most widely known research tool for measuring implicit bias is the Implicit Association Test, which you can take at www.implicit.harvard.edu. There, you will find a range of online tests aimed at measuring our unconscious biases on many topics, including race, ethnicity, gender, sexuality, disability and even weight. By measuring the speed with which we match various pairs of words, the test reveals concepts and categories of people we are automatically inclined to associate with each other and those we do not. The results often are deeply troubling for those who discover tendencies toward bias that directly contradict their most closely held beliefs about equality.

...there has been much work to do to break down intentional barriers to inclusion and to censure overt expressions of exclusion.

All of this reminds us that bias does not always take the form of a calculated slur. If we are going to reach our firmly held goal to increase diversity in our profession, we will need to recognize and understand the impact of unconscious bias on every one of us.

Your Multnomah Bar Association Board of Directors took up that challenge in June. With excellent guidance from April Lewis and Carol French of Figure 8 Consulting, we began exploring this topic with the goal of understanding how the MBA can better live out its Statement of Diversity Principles. (You can find the Statement at www.mbabar.org/assets/diversitystatement.pdf.) As dispiriting as some of the psychology studies can be, the good news is that researchers are discovering myriad ways in which our implicit biases can be overcome. If we can harness those approaches in the MBA's programming, perhaps we can make greater progress in our effort to foster diversity in the legal profession. Our job is to figure out how to train this metaphorical elephant.

Where do we start?

Perhaps this goes without saying, but the first step is to commit ourselves to overcoming unconscious bias in its various forms, beginning with a willingness to explore its presence in our own minds. This sounds easier than it really is. Anyone, but particularly persons committed to diversity and inclusion, can find the internal dissonance disturbing. At the MBA Board's discussion of the topic, it did not take long before we touched on another potential obstacle for anyone thinking about venturing into the darkness of our unconscious minds - the uncertainty about what moral judgments we should attach to visceral responses we do not control. How should we feel about a person who unconsciously grasps a purse or wallet a little tighter when a young black man gets on the elevator? No words are spoken, but a message is delivered and an impact is felt. Should we condemn that person, even though the conduct was not the product of a conscious decision?

If we give ourselves and each other the space to explore these issues, we can begin to apply techniques that seem to help break through the unconscious barriers that separate us. For example, in the popular book *Blink*, Malcolm Gladwell discusses the fact that simply trying hard to exhibit less bias rarely, if ever, will make a difference in the results of the Implicit Association Test. But reviewing pictures or articles of respected people like Martin Luther King Jr. and Nelson Mandela immediately before taking the test will change results, increasing a person's positive associations with black people. As Cal Tech Professor Leonard Mlodinow explains in *Subliminal - How Your Unconscious Mind Rules Your Behavior*:

"Our personal knowledge of a specific member of a category can easily override our category bias, but more important, over time repeated contact with category members can act as an antidote to the negative traits society assigns to people in that category."

As the largest voluntary bar association in Oregon, the MBA is uniquely qualified to translate these ideas into action for the purpose of promoting diversity and inclusion in the legal profession. If our membership is prepared to participate, we can make great progress toward that shared goal.

...the first step is to commit ourselves to overcoming unconscious bias in its various forms, beginning with a willingness to explore its presence in our own minds.

mba|CLE

To register for a CLE, please see below or go to www.mbabar.org and log in as a member to register at the member rate.

SEPTEMBER

9.16 Wednesday
Attorney-Client Privilege - Recent Developments
Judge Stephen Bushong
Judge Kelly Skye

9.22 Tuesday
Exceptions to the Trial Commandments
Bill Barton
David Markowitz

9.29 Tuesday
Public Speaking for Attorneys
Laura Dominic
Steve English
Judge Janice Wilson

OCTOBER

10.1 Thursday
Advising Clients on Data Security & Data Privacy Issues
Brian Sniffen
Ngoni Murandu

10.6 Tuesday
Peer Review Privilege in Medical Malpractice Cases
Judge Jerry Hodson
Nikola Jones
Jane Paulson

10.7 Wednesday
Summary Judgment
Sarah Crooks
Andrew Schpak

10.8 Thursday
Legislative Update
Susan Grabe
John Davis
Shemia Fagan

NOVEMBER

11.3 Tuesday
Immigration Law for the Rest of Us
Sarah McClain
Brent Renison

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mba|EVENT

Battle of the Lawyer Bands

Thursday, August 13
Kennedy School
5736 NE 33rd Ave.
Portland
7-9 p.m.

Bands comprised of at least one Oregon lawyer will compete for the title of "Best Oregon Lawyer Band." Judges from the MBA legal community will decide the winner at the end of all the performances. Join us and cheer for your favorite band! Crowd applause is a part of the judging criteria. Suggested donation: \$10.

These bands will compete for the title of "Best Oregon Lawyer Band 2015":

Bunny Lebowski and the Nihilists • Four Hot Kings •
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The Painted Teeth

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Calendar

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

JULY

13 Thursday
Battle of the Lawyer Bands
www.mbabar.org

17 Friday
MBA Family & Friends Edgefield Golf Event
www.mbabar.org

AUGUST

6 Thursday
OMLA Summer Social & Fundraising Auction
www.oregonminoritylawyer.org

9 Sunday
US District Court of Oregon Historical Society Picnic
http://usdchs.org/events/annual-picnic

SEPTEMBER

7 Monday
Labor Day Holiday

10 Thursday
OWLS Fashion Show
www.oregonwomenlawyers.org

17 Monday
Lawyers & Law Students Golf Event
www.mbabar.org

31 Monday
MBA Golf Championship for VLP
www.mbabar.org

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Attorney-Client Privilege - Recent Developments

Wednesday, September 16, 2015
12:00-1:00 p.m.

Standard Insurance Building
Auditorium
900 SW 5th Ave., Portland
Members \$35
Non-members \$55

Confidential communications within the scope of the attorney-client privilege are generally protected from disclosure under Rule 503 of the Oregon Evidence Code. This CLE, presented by **Judge Stephen Bushong** and **Judge Kelly Skye**, Multnomah County Circuit Court, will discuss the scope and applicability of the privilege, including recent Oregon appellate decisions addressing the issue. Among other things, the class will explore:

- What types of communications are covered by the privilege?
- Whose communications are covered?
- What communications fall within the exceptions to the privilege?
- What is covered by the related "mediation communications" privilege?
- How do I assert the privilege?
- What is a privilege log? Is a privilege log required?
- How do I challenge a party's claim of privilege?

For more information:

Call Judge Youlee You, Multnomah County Circuit Court at 503.988.3404. For registration questions, call the MBA at 503.222.3275.

Public Speaking for Attorneys

Tuesday, September 29, 2015
3:00-5:00 p.m.

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

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

Come hear **Judge Janice Wilson**, recently retired from Multnomah County Circuit Court and now providing private arbitration/mediation services; **Steve English**, partner at Perkins Coie LLP and long-time trial attorney; and **Laura Dominic**, Senior Consultant at Tsongas Litigation Consulting, reveal how even the most confident, talented advocates can stumble in oral advocacy, and get some tips for improving your own arguments and presentations.

For more information:

Call Leslie Johnson, Kent & Johnson, LLP at 503.220.0717. For registration questions, call the MBA at 503.222.3275.

Peer Review Privilege in Medical Malpractice Cases

Tuesday, October 6, 2015
12:00-1:00 p.m.

Standard Insurance Building
Auditorium
900 SW 5th Ave., Portland
Members \$35
Non-members \$55

A peer review body is a committee of medical staff at a healthcare facility that credentials, supervises, engages in quality review, or disciplines physicians or other healthcare professionals. Data provided for purposes of peer review to a peer review body or created by or at the direction of a peer review body is statutorily privileged and is not admissible in any judicial proceeding. This CLE will be presented by **Judge Jerry Hodson**, Multnomah County Circuit Court; **Nikola Jones**, Lindsay Hart and **Jane Paulson**, Paulson Coletti. The class will explore:

- What is "peer review,"
- What is a "peer review body,"
- What does it mean to provide data "for the purposes of peer review,"
- What have parties claimed is privileged,
- What do lawyers argue and
- How have courts ruled?

For more information:

Call Judge Youlee You, Multnomah County Circuit Court at 503.988.3404. For registration questions, call the MBA at 503.222.3275.

Exceptions to the Trial Commandments

Tuesday, September 22, 2015
3:00-5:00 p.m.

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

When should you consider rejecting mainstream trial advocacy rules? Legendary Oregon trial lawyers **Bill Barton** and **David Markowitz** will discuss how and when to break traditional rules in trial preparation and execution. From selecting exhibits to closing argument, learn how to take your trial strategy to the next level by implementing unconventional tactics.

For more information:

Call Shannon Armstrong, Markowitz Herbold at 503.295.3085. Call the MBA at 503.222.3275.

Advising Clients on Data Security & Data Privacy Issues

Thursday, October 1, 2015
3:00-5:00 p.m.

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

With data breaches in the news every day, more businesses are looking to their lawyers for advice on what data security obligations apply to them, and whether they are complying with those obligations. How do you advise those clients? And what practical concerns do clients face in learning about - and complying with - the myriad of regulations that apply? At this CLE, you will hear from **Brian Sniffen**, a lawyer at Miller Nash Graham & Dunn LLP who counsels clients in this area and **Ngoni Murandu**, Chief Information Officer, NW Natural, both of whom will give you tips on how to better serve your clients.

For more information:

Call Seth Row, Miller Nash Graham & Dunn LLP at 503.205.2318. For registration questions, call the MBA at 503.222.3275.

Summary Judgment

Wednesday, October 7, 2015
3:00-5:00 p.m.

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

Sarah Crooks, Perkins Coie and **Andrew Schpak**, Barran Liebman will discuss the effective preparation of summary judgment motions and presentation of oral argument, including what to cover in the motions and arguments, how to organize the arguments for maximum persuasive impact, how and when to use exhibits, best practices for presenting oral argument, responding to questions from the judge, and other useful information for preparing for and arguing summary judgment in state and federal court.

For more information:

Call Sean Ray, Barran Liebman at 503.276.2135. For registration questions, call the MBA at 503.222.3275.

Legislative Update

Thursday, October 8, 2015
3:00-5:00 p.m.

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

Hear about key developments during the 2015 session of Oregon State Legislature, focusing on changes to laws that may affect your business/property rights/litigation practice or your clients' interests. Join panelists **Susan Grabe**, Director of OSB Public Affairs, State Representative **John Davis**, a business and real estate attorney at McEwen Gisvold, and State Representative **Shemia Fagan**, a litigation attorney at Ater Wynne, for an inside look at legislative activity in 2015 and a preview for the 2016 short session.

For more information:

Call Leslie Johnson, Kent & Johnson, LLP at 503.220.0717. For registration questions, call the MBA at 503.222.3275.

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.

THE LAWYERS' CAMPAIGN for EQUAL JUSTICE

The Campaign and Oregon's legal aid programs thank all of our supporters who contributed over \$1.2 million in our annual fund drive that ended March 31, 2015. We extend a special thank you to our Guardians of Justice, Defenders of Justice, and Justice Council law firms in the Portland area.

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Registration forms with payment must be received in the MBA office by 3 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.

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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.

9/16 Attorney-Client Privilege - Recent Developments

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10/1 Advising Clients on Data Security & Data Privacy Issues

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10/6 Peer Review Privilege in Medical Malpractice Cases

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10/8 Legislative Update

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Celebrating Diversity & Connection at the Second Annual “Tillicum Gathering”

by Nicole Nowlin
 Equality & Diversity Committee

On April 30, diversity/specialty bar leaders together with the MBA and representatives of the OSB gathered together at the second annual Tillicum Gathering, a social event to exchange ideas and learn about the ways in which groups can support each other and work together to promote diversity in the bar. The event was generously and graciously hosted by Markowitz Herbold PC. Officers and board members of the following groups attended: Oregon Asian Pacific American Bar Association; OGALLA -The LGBT Bar Association of Oregon; Oregon Hispanic Bar Association; Oregon Minority Lawyers Association; National

Bar Association-Oregon Chapter; Oregon Women Lawyers; Queen’s Bench; MBA and MBA YLS; and the Diversity Section and Diversity & Inclusion Office of the OSB. Several recipients of the MBA Equality & Diversity Committee LSAT prep-course scholarship also attended the event.

The leaders of the MBA and other bar organizations look forward to celebrating diversity in the legal community each year at the Tillicum Gathering, as we continue to work together to promote and strengthen each group’s mission and the legal community’s greater commitment to diversity.




PHOTO BY JEEANN GAUTHIER

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LSAT Scholars Honored

This year, the MBA Equality & Diversity Committee was proud to expand its LSAT preparation course scholarship program. The program, initiated last year through a generous grant from the MBA, awards scholarships for LSAT preparation courses to law school applicants who come from backgrounds traditionally underrepresented in the Multnomah County legal community, who have financial need, and who plan to go to law school and practice in Multnomah County. Twelve outstanding future lawyers benefited from the scholarship last year. This year, the committee was able to offer scholarships to 16 future lawyers, chosen from over 40 applications.

On Thursday, April 30, Markowitz Herbold PC honored the 2015 LSAT preparation course scholars at the second annual Tillicum Gathering for leaders of Oregon’s diversity and specialty bar organizations, along with representatives of the MBA and OSB. Attorney General Ellen Rosenblum presented the awards. The committee looks forward to seeing these individuals flourish in law school and beyond.

Many thanks to the ad hoc committee administering the 2015 scholarship program: Emily Teplin Fox, Jessica Osborne, Judge Angel Lopez, Sheeba Suhaskumar, Lisa Pex Shevlin, Alejandra Torres, Susan Cournoyer, and Rima Ghandour.



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Attorney General Ellen Rosenblum with scholarship recipients at the Tillicum Gathering

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mba | ANNOUNCEMENTS

Free CLE Webcast to MBA Members

The video webcast of the seminar entitled "Presenting Expert Witnesses at Trial" is now available in the Members Center at www.mbabar.org. The webcast is worth two hours of general OSB MCLE credit.

MBA members receive access to a rotating selection of six different CLE seminars each year - a \$300 value.

Take a Matter that Matters

Sign the MBA Pro Bono pledge at www.mbabar.org/about-us/pro-bono.html and commit to taking at least one pro bono case this year.

OWLS Announces Officers & Board Members

Elizabeth Tedesco Milesnick was elected as president, and previously served as president elect, secretary and historian. Laura Craska Cooper was elected as president elect. Angela Franco Lucero was elected treasurer. Amber Hollister was reelected as historian. Joining the executive committee is Hon. Allison Boomer, who was elected as OWLS' secretary.

In addition, OWLS announces its newly elected and reelected board members: Jacqueline Alarcon (Portland), Hon. Valerie Love (Eugene), Jennifer Nicholls (Medford), Susan Pitchford (Portland), Amanda Thorpe (Grants Pass), and Jim Yocom (Beaverton).

Board members continuing their service are: Megan Burgess (Bend), Maya Crawford (Portland), Kristina Holm (Portland), Susan Bradley Krant (Ashland), Katharine Lozano (Portland/Salem), Aruna Masih (Portland), Banafsheh Violet Nazari (Portland), Kristin Sterling (Portland), Val Tomasi (Portland), Gloria Trainor (Portland).

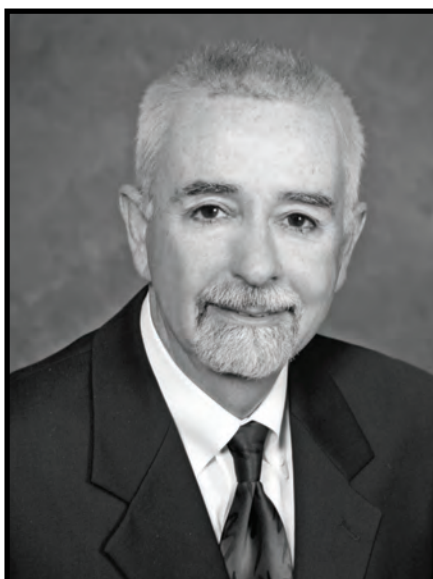
OWLS Foundation Announces New Board Members

Janice Wilson is a senior judge, retired from the Multnomah County Circuit Court. She currently has a private arbitration and mediation practice, in addition to her service as a Plan B judge in courts around the state.

Nicole DeFever is a Senior Assistant Attorney General with the Oregon Department of Justice in the Trial Division, Civil Litigation Section. In addition to representing state agencies in condemnation and inverse condemnation actions, she represents Oregon in a broad range of civil litigation, including administrative, land use, section 1983, and tort matters.

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.



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2015 Sustainable Law Office Leadership Award Compost Challenge

The OSB Sustainable Future Section is pleased to announce that it will recognize the Oregon law office that has made the most meaningful efforts to implement food scrap composting.

This award has recognized offices that have exhibited leadership in the profession for firm sustainability initiatives, and offices that have implemented innovative practices to increase sustainability, including broad-based practices, and

in the past few years, more specifically through innovation, and through implementing a paperless law firm. The award recognizes leadership which does not necessarily require success but rather striving to implement sustainability.

This year's award focuses on composting. Why compost? Food scraps take up space in landfills and release methane gas. In the commercial compost system, food scraps that are composted can become biogas, which provides electricity for local homes and businesses.

Food scraps that are composted can also become fertilizer, adding nutrients to soil at local farms and gardens. According to the Portland Sustainability at Work Program, approximately 20% of commercial waste is organics, and compostable foods and fibers account for approximately 33% of the weight for commercial waste.

An application of no more than two pages is due by August 28 at 5 p.m.

For more information, please contact OSBSustainableFuture@gmail.com.



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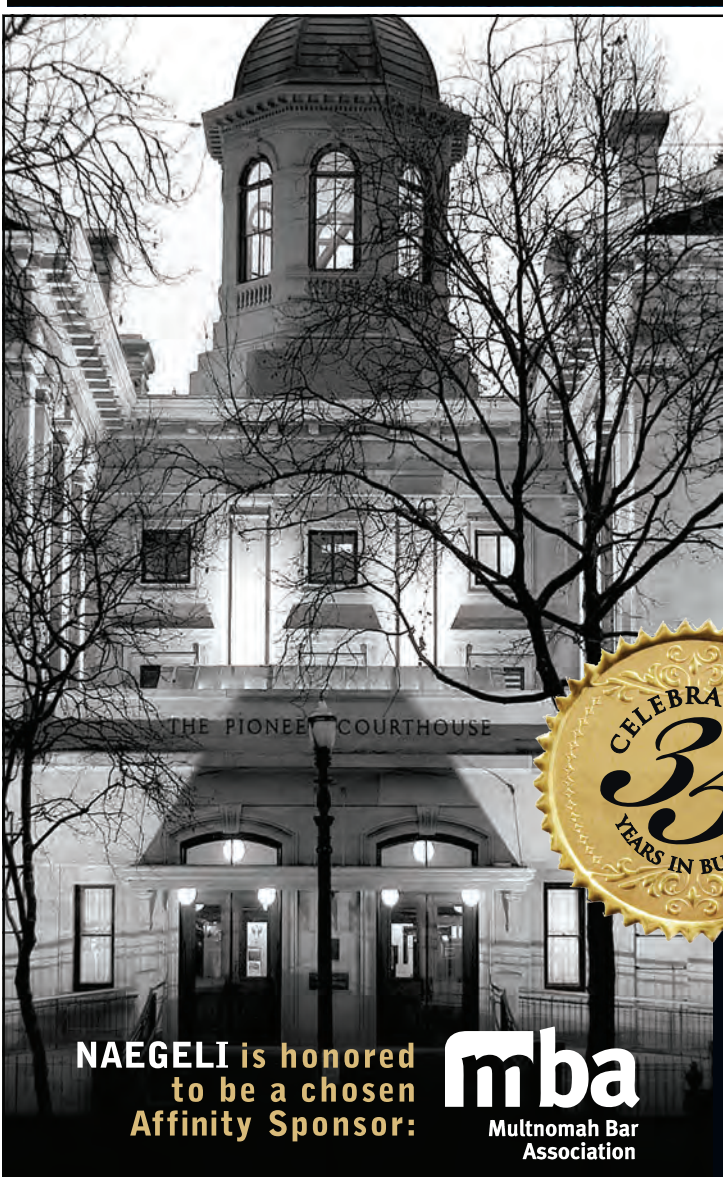


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Around the Bar



John Witherspoon and Randy Duncan

Buckley Law

Newest shareholders are **John Witherspoon, Randy Duncan, Joshua Stump** and **Tiffany Minus**.

As part of the business group, they will continue to emphasize business, real estate, corporate, LLC, and estate planning matters for closely held businesses, including how best to structure and internally operate limited liability companies, partnerships, and corporations.

Witherspoon serves as a confidant to privately-held businesses and their owners who want to focus on running their companies while having a trusted advisor just a call or an email away. He does this work for business sector clients in real estate development and investment, medical and accounting professional practices, and manufacturing and distribution. Most recently, this has also included advice on doing business within Native American communities.

Duncan provides “outside general counsel” services to companies and entrepreneurs in a wide range of industries including manufacturing, health care, retail, real estate, and professional services. He assists clients in understanding and prioritizing the business and legal issues facing their companies, so they can make well-informed and sound decisions.



Joshua Stump



Tiffany Minus

As part of the firm’s litigation group, Stump focuses his practice on matters involving business and commercial litigation, real estate litigation, employment litigation,

intellectual property, shareholder disputes, product liability, mass-tort and sports law.

Minus’ practice focuses on child custody, adoption, divorce, paternity matters, guardianships and modifications of judgments.



Angela Otto

Bullard Law

Angela Otto has joined the firm as a partner. Otto, whose practice is focused on representing clients in construction and design, construction defect, and litigation matters, will continue to represent general contractors, subcontractors, suppliers, owners, developers and design professionals in construction disputes.

Damien Hall was appointed to the Board of Commissioners for Home Forward, the housing authority for Multnomah County, including Portland and Gresham. The organization provides affordable housing throughout the county, serving 15,000 households and more than 33,000 residents.

Hall is a land use and real estate attorney at the firm, who has represented both property owners and local governments.



Mathew W. Lauritsen

Kell Alterman & Runstein

Mathew W. Lauritsen has joined the firm’s litigation group as an associate, where he focuses his practice on creditors’ rights, bankruptcy, and commercial litigation. He has successfully represented bankruptcy trustees, receivers and Chapter 11 debtors-in-possession. He also

represents banks, commercial lenders, and other clients in state and federal court.



Liani Reeves



Randi Ensley

Bullard Law

Liani Reeves, chief legal advisor to former Governor Kitzhaber, has become of counsel to the firm. Her practice focuses on litigation defense, employee management and training. Her specialties include defending against race, gender, age, and disability claims, as well as OFLA, FMLA, and whistleblowing and retaliation claims.

Randi Ensley is a new associate in the firm’s employment practice group.

Jordan Ramis

Christopher Reive has been named managing shareholder of the firm. He focuses his practice on the many issues that arise from environmental concerns. He will continue his environmental law practice while serving in his new role.



Dan Drazan

Dunn Carney

Partner **Dan Drazan** has been elected to the board of directors of the Commercial Association of Brokers – Oregon/SW Washington.

Drazan, who was recently selected to lead the firm’s real estate & land use team, advises clients on real estate transactions and general business matters, representing both landlords and tenants in commercial lease disputes. His practice focuses on acquiring, selling, developing, financing and leasing all types of real property.



Carolyn Walker

Stoel Rives

Partner **Carolyn Walker** has been elected to the Oregon Community Foundation Board of Directors.

Walker practices in the firm’s labor and employment group.

Wyse Kadish

Michele Buck Romero has joined the firm’s estate planning and administration group. She practices in the areas of estate planning and administration, estate and gift tax, and business succession planning.



Iris Tilley



Nelson Atkin



Anthony Kuchulis

Barran Liebman

Partner **Iris Tilley** has joined the Portland Children Museum’s Board. She also serves on the board of Oregon Women Lawyers.

Partner **Nelson Atkin** was elected to the Portland Opera’s Board of Directors. Atkin has represented the opera on a pro bono basis for 30 years, advising them on employment law issues and providing representation in labor negotiations.

Anthony Kuchulis joined the firm, where his practice focuses on representing employers and managers in employment litigation. He serves on the OSB New Lawyers Division Executive Committee.

Kramer & Associates

Mark Kramer, principal attorney at the firm, has joined the Portland Jazz Composers Ensemble Board, a group which commissions and performs original works by its members and other jazz composers in the music community. More info is available at <https://pjce.wordpress.com/>.



Jeff Merrick

Merrick Mediation

Jeff Merrick has been accepted by the American Arbitration Association (AAA) to its roster of mediators. The organization is an international leader in alternative dispute resolution. Merrick serves as a mediator by individual arrangement in addition to his associations with the AAA, the Oregon Patient Safety Commission, the U.S. District Court for Oregon and the Oregon State Courts. For more information: <http://merrickmediation.com/>.

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](mailto:carol@mbabar.org).



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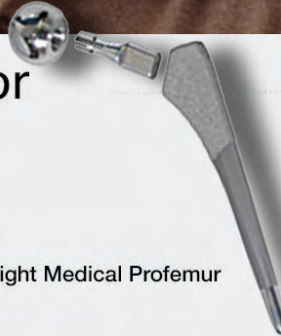
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Tips From the Bench

Summary Judgment or Trial?

by Judge Marilyn Litzenberger
Multnomah County Circuit Court

Lawyers practicing in state court sometimes wonder why our trial judges seem reluctant to grant motions for summary judgment. Is it because they fear being reversed on appeal? No. Is it because they didn't have time to read and consider the parties' written submissions? No.

Several years ago, the results of an informal analysis of summary judgment rulings concluded roughly 20% of summary judgment motions are granted and 80% are denied. Motions were granted when they presented questions of law framed by agreed upon facts. Most summary judgment motions are denied because there is a genuine disagreement concerning significant (material) facts giving rise to the claims or defenses alleged in the pleadings. An informal survey of my colleagues on the bench affirms the correctness of that conclusion.

Judges who have presided over many trials know that the facts set forth in the declarations drafted by lawyers for summary judgment motions are rarely as cut-and-dry as they are designed to appear. When a witness testifies "in person" as opposed to "on paper" the testimony is intertwined with the witness's personality characteristics. When that testimony is juxtaposed against other evidence before the trier of fact, the statements set forth in the declaration are just one version of the facts. Those facts may take on a different meaning and give rise to more than one reasonable inference when considered in the context of other relevant evidence; the statements are not so believable after all because the declaration omitted key facts. Trial provides a forum to evaluate the declarant's credentials, to assess how the witness gained knowledge of facts related during his/her testimony and allows a jury of objective listeners to evaluate how believable the witness is, and whether the testimony given was sufficiently reliable to prove the facts offered initially by declaration were more likely truth than not true. Cases that look, at first blush, to be a slam-dunk for one side or the other can take on a different



flavor when the witnesses appear "live" in a courtroom or by perpetuation deposition.

A recent study conducted of federal cases that were remanded for trial after a ruling granting summary judgment was reversed, concluded that the non-moving party prevailed at trial more often than the party that originally succeeded in having the case summarily resolved in its favor pretrial. The author's analysis was presented in a Note titled, "What Would a Reasonable Jury Do? Jury Verdicts Following Summary Judgment Reversals" published in the *Columbia Law Review*. The Note is particularly interesting due to the implication of its conclusions on the issue of vanishing civil jury trials by comparing decisions made by judges at the summary judgment stage to those made by juries after a full presentation of the evidence. *Pfautz, Michael, What Would a Reasonable Jury Do? Jury Verdicts Following Summary Judgment, 115 Colum. L. Rev. No. 5:1001, 1008, 1028-29 (June 2015)*.

Summary judgment motions are appropriate when the parties do not have a genuine dispute over the material facts, and a court is asked to interpret the law as applied to a set of agreed upon facts. Under those circumstances, one side or the other will be entitled to summary judgment in its favor as a matter of law. But, where the facts are subject to more than one reasonable inference or depend on the credibility of a witness, the court is not permitted to step into the jury box and resolve the questions of fact itself; those are left to the collective wisdom of the jurors sworn to consider all the evidence fairly and objectively.

Oregon's Constitution guarantees litigants the right to a jury's determination of the facts in most civil cases. The wisdom of those who wrote and adopted those words as part of our state's constitution is confirmed in courtrooms across our state every day.

10 eCourt Tips

by Rachel McCarthy
Public Information Officer
Multnomah County Circuit Court



On May 12, the Multnomah County Circuit Court reached the milestone of one year of operating within the new Odyssey system. In addition, eFiling has been mandatory for six months. The following list of eCourt tips was developed to address some of the issues of confusion that have arisen since the switch to eCourt.

1. Update and Check Your Email

Notices sent through Odyssey go to the attorney of record on the case, by email. The email addresses that are in Odyssey are imported from the OSB. It is imperative that attorneys have an up-to-date email address with the bar and to check that email inbox.

2. Who Else Needs to See Your Email?

Currently, Odyssey can only send email to one email address per attorney on file with the case. Make sure you have an email forwarding plan in place if you go on vacation or need another person in your office to receive notices from the court.

3. Postcards are a Thing of the Past

Before eCourt, civil and family law attorneys often sent in postcards which OJD staff returned to them, as a courtesy, when orders were entered. In Odyssey, there is no longer a notification of entry of order. In order to determine if an order has been entered, individuals need to check Oregon eCourt Case Information system (OECI). Odyssey will generate a notice of entry of judgment, which will be sent by email to the address that the attorney of

record has entered with the bar. Some family law notices may still be mailed, but we are working to transition all notices to a format that can be emailed.

4. Dates

The OECI system displays two or three dates for each event that is entered into the register of actions:

- a. **Date Column:** The Date Column is found on the left side of the event. It is the date that you filed your document. This is the equivalent to getting a "filed" date stamp.
- b. **Signed Date:** The Signed Date of an event is the date that the court signed the order or judgment described in the entry.
- c. **Created Date:** The Created Date of an event is the date court staff added the event to the register. This date is the date of entry for purposes of appeal in ORS 7.020(2).

5. What Happens After You eFile?

eFiling a document is equivalent to a staff person bringing a document to a counter in the courthouse and having the document receive a "filed date" stamp. The document is not automatically attached to the case or register of actions. Once the document is eFiled, court staff reviews the document images, "accepts" the document, links it to a case and then routes the document to the appropriate judicial office. In civil court, it may take up to a full day for a document to be linked to a case, depending on the volume of eFilings on a particular day and the level of staffing in the department. Other departments may have different timeframes. These time estimates are based on an assumption that the document was filed during business hours. One more thing to remember is that once a document is "accepted" and linked to the case, it will retain the date that it was actually eFiled.

6. No Notices for Unsigned Documents

If a proposed order or judgment is not ready for signature, i.e., it is missing a necessary item, presiding court will sign it as "unsigned." The court will not

send out a notice. Make sure that you are monitoring your case.

7. Integrity of the Case History

If an order or judgment has been unsigned, you must make the corrections and an updated form must be resubmitted. The previous unsigned item will remain unsigned in the record, in order to preserve the integrity of the case history.

8. Proposed UTCR 5.100 Amendment

This amendment will require parties to submit a "certificate of readiness" with a proposed judgment. It will assist the court in managing electronic "submitted for signature" documents while awaiting assurances from parties that those documents are ready for judge signature. The amendment has not been adopted yet, however; submitting a "certificate of readiness" is a preferred practice at this time.

9. How do You Get Relation Back?

Review UTCR 21.080 (5), which reads in part: If the court rejects a document submitted electronically for filing, the electronic filing system will send an email to the filer that explains why the court rejected the document, unless the filer has elected through system settings not to receive the email. The email will include a hyperlink to the document. (a) A filer who resubmits a document within three days of the date of rejection under this section may request, as part of the resubmission, that the date of filing of the resubmitted document relate back to the date of submission of the original document to meet filing requirements. This request must be in written form and not just a note on the filing.

10. Include the Judge's Name

If a case has been specifically assigned, please include the judge's name on the signature line so the court can route the document to the judge already working on the case.

Having successfully transitioned to the eCourt system, we feel that things are running smoothly at the Multnomah County Circuit Court. We hope to continuously improve user experience with eCourt and are open to suggestions.

eCourt Problems? Questions? Who Should You Contact?

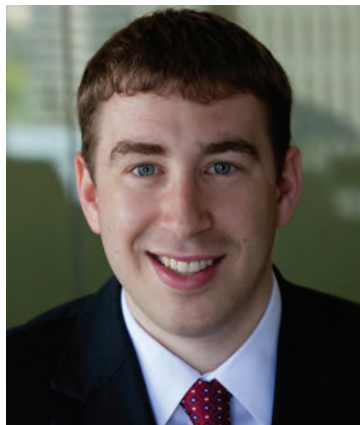
Tyler - File & Serve - Technical Issues: 1.800.297.5377 or efiling.support@tylertech.com

Salem OJD - OJCIN Access Technical Support 503.986.5582 or 1.877.826.5010 or ETSDHelp@ojd.state.or.us

Multnomah County Circuit Court - eFile rejections, general questions - contact the specific department that rejected your eFiling. General questions can be directed to Rachel McCarthy, Public Information Officer, at 503.988.4794 or mul.public.information@ojd.state.or.us

Multnomah County Judges' 10 Pet Peeves

by Tyler Bellis
Court Liaison Committee



This spring, the MBA Court Liaison Committee had the opportunity to poll Multnomah County judges to ascertain their biggest pet peeves about the attorneys who appear in their courtrooms. Below is a list of the judges' 10 most frequently cited complaints.

- 1. Incivility.** A pet peeve that nearly every judge reported is hearing that an attorney is disrespectful to court staff. Similarly, it does not impress the judge or jury when lawyers bicker with or interrupt each other in court. Not only is such conduct unbecoming, but it can sully a lawyer's reputation and even hinder one's case. One judge recommends that lawyers should always strive to be the voice of reason when dealing with opposing counsel or court staff, as it will leave a good impression on the court.
- 2. Lack of Communication with Opposing Counsel.** Nowadays, particularly with the increased reliance on email, it seems that opposing counsel rarely talk with one another outside of the courtroom. Judges have observed that the lack of dialogue during a case fosters animosity and disrespect when lawyers finally interact for the first time in a formal setting, which reflects poorly on everyone involved.
- 3. Tardiness.** Perhaps it should go without saying, but another pet peeve frequently cited by judges is waiting for lawyers who are not on time,

and who do not bother to call ahead to notify the court that they will be late. While most judges understand that sometimes things can happen that are out of a lawyer's control, if you are going to be late, call the judge's chambers and let them know.

- 4. Insufficient Preparation.** Judges want lawyers to know their case and the rules. Sometimes lawyers seem ill-prepared for motion questions - they are not as well versed on their own materials as would be expected. Even if a lawyer did not draft a motion himself, the lawyer should still learn the materials and know the facts better than the judge.

Also, judges reported that many lawyers don't seem to have thought through how to get evidence admitted at trial. Lawyers should evaluate in advance of trial how to submit exhibits and other evidence (e.g., foundation, overcoming objections, etc.).

- 5. Accuracy.** While admittedly a party may need certain materials in the record for an appeal, judges have noticed that lawyers tend to provide more evidence than necessary to support their motions. Advocacy should be looked at more surgically; often, less is more.
- 6. Casualness and Unprofessionalism.** In court, talk to the judge, not opposing counsel. One judge suggests that it undermines lawyers' effectiveness to the judge and jury when they start a discussion among themselves or snipe at

one another. In addition, judges have observed that some lawyers do not treat emails like professional communications - they are often too informal (e.g., no salutation or not all parties are copied). Emails to the court should be approached like a short letter, and the email should demonstrate on the "cc" line that all parties have been copied.

- 7. Lack of Meaningful Conferral.** Multiple judges noted that too often, lawyers do not have a substantive conferral before bringing discovery disputes to court. The lawyers may say they had a phone call, but don't actually go item by item through the disputed discovery. At least one judge who was polled will send lawyers to the jury room to confer on disputed items when it is clear that a substantive discussion did not occur.
- 8. Lack of Brevity.** In motion briefing, it often takes lawyers too long to get to the bottom line of what his or her client is asking the court to do. The first page of a motion should contain a succinct summary of what the party is requesting. If a party clearly presents what decision he or she wants, that decision is more likely to be granted.
- 9. Courtesy Copies.** Even with eCourt, parties should still provide a hard copy to the judge *at the same time* as the filing. Too often lawyers do not provide a hard copy at all, or do not send it to chambers (if it is sent to the file room, the document likely will not make it to the judge). In those cases, the day of the hearing comes and the judge realizes he or she does not have all the materials. Some judges ask their judicial assistants to confirm that the judge has all materials ahead of time; but not all do that, and they shouldn't have to do so.
- 10. Knowing the Audience.** Judges' backgrounds and experiences differ. What a particular judge prefers by way of oral argument may not be the same for every judge. Investigate the background of a judge, and approach the argument differently if you appear before a new judge with a background in criminal law as opposed to a more seasoned judge who practiced in civil litigation.

Procedural Justice in Court-Mandated Arbitration

by Leslie Bottomly
Partner, Ater Wynne



I have served as an arbitrator in court-annexed programs for many years and have become interested in an emerging area of research into procedural justice.

Tom R. Tyler, a professor at Yale Law School, describes procedural justice as incorporating four key principles: voice, neutrality, respect, and trust. Tyler argues that, when a process has these elements, the parties are more likely to accept and comply with decisions and to have a positive feeling about the legal system. Perhaps court-mandated arbitration can benefit from these concepts.

Procedural Justice

The four elements of procedural justice are:

- 1. Voice.** Parties have an opportunity to tell their side of the story.
- 2. Neutrality.** The decision-maker reaches a conclusion based upon rules and not personal bias, applying rules across cases and across parties consistently.
- 3. Respect.** The decision-maker views the dispute as important.
- 4. Trust.** The decision-maker exhibits attributes of sincerity, caring, honesty, and conscientiousness.

Benefits of Procedural Justice

In a study of the willingness of individuals to accept decisions of police officers and judges, Tyler concluded that perceived fairness was the factor that best predicted the willingness of a diverse sample of participants to accept the decisions. This was true irrespective of the participants' social or economic background, education, gender or race/ethnicity.

Tyler's work suggests that incorporating procedural justice concepts into mandatory arbitration may decrease trials de novo and increase compliance with the awards.

Incorporating Procedural Justice in Mandatory Arbitration

How can these concepts be incorporated into the arbitration proceeding?

Voice. Allowing parties to have a voice is incorporated into arbitration through opening and closing statements and witness testimony.

Particularly in pro se cases, it may be helpful for the arbitrator to announce (prior to opening/closing or prior to the party testifying) "this is your opportunity to be heard - to tell your side of the story" and to assure each party that "I want to understand your perspective before I make a decision." In addition, it may be helpful to allow some leeway in testimony to allow parties to get things off his or her chest, as long as it does not unduly derail the proceedings.

Neutrality. Because hearings are sometimes held at private offices, parties may be confused as to the status of the arbitrator. Reminding the parties that the arbitration proceeding falls under the court's jurisdiction, and that the arbitrator must follow the Code of Judicial Conduct, can be helpful in establishing the arbitrator's authority and independence. It may be helpful for the arbitrator to announce what is obvious to the arbitrator and the lawyers, but perhaps not obvious to the parties: "I am a neutral decision-maker. I am required to screen all cases to ensure I can be fair and impartial before agreeing to serve as arbitrator. I have no preconceived notion as to how this should turn out."

To promote this understanding of neutrality, arbitrators may want to avoid chit-chatting with one party or their counsel, as it may be misunderstood as bias in favor of one party over another.

Neutrality is demonstrated by consistent application of the rules. If one party's hearsay testimony is excluded, the other party's hearsay generally should be excluded as well. Tyler suggests that neutrality is reinforced when a decision-maker explains the basis for the decision, including how the law applies to the evidence. Instead of just mailing the court's form of arbitration award, an arbitrator can also either hold a telephone hearing, or write a brief letter, explaining the basis for the award in a bit more detail than the award form allows.

Respect. This entails treating parties with courtesy and giving information about the process. For the benefit of pro se parties, this can be promoted in the arbitrator's initial letter, by explaining the schedule and the process. Some arbitrators include in their opening letters a link to the court's arbitration rules as a way of leveling the playing field for pro se litigants.

The arbitrator also promotes respect by being on time and actively listening to the proceedings (as opposed to checking one's smart phone or doodling on a pad) and by taking into consideration the parties' work and childcare obligations in scheduling hearings.

Continued on page 15

Oregon Minority Lawyers Association
OMLA
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16th Annual Summer Social and Fundraising Auction

Thursday, August 6, 2015 @ 5:30 pm
World Trade Center
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Admission is \$10 for lawyers, judges, and professionals, \$5 for law students
Please RSVP at <https://goo.gl/mk3lfc>

We are a 501(c)(3) organization committed to making the legal community a welcoming environment where people of all colors, races, and ethnic backgrounds can excel academically, professionally, and personally.

Young Lawyers Section

YLS Event Recap Summer Social at Thorns Match

On June 19, the YLS celebrated the conclusion of another successful YLS committee year by gathering during a Portland Thorns FC match. The 50+ in attendance socialized on the party deck while watching the home team draw 1-1 with FC Kansas City.

Thank you to sponsors Miller Nash Graham & Dunn LLP, Barran Liebman LLP, and Micah Steinhilb and the attorneys of Berkshire Ginsberg LLC for supporting the event.



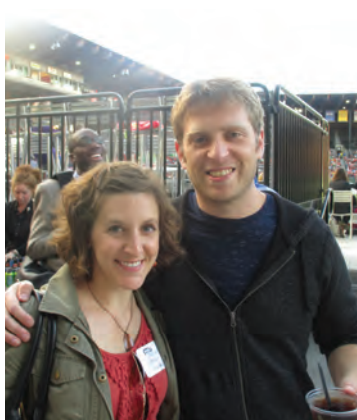
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Spencer Aldrich, Heather Lee, Carrie Pearson, Abby Pfeiffer and Taylor Engers



Michael Perham and Mary Tollefson



Ashley Vaughn and Tom Adams



Audrey Graham and Nigel Vanderford

Christopher Ling YLS Member Spotlight

by Jovita T. Wang
YLS Board Director

Oregon's new and prospective lawyers are lucky to have a champion such as Christopher Ling. Although he would never admit it, Chris has been a tireless supporter of various programs implemented by bar organizations to help improve the diversity and inclusion of Oregon's legal profession and to help new diverse and underrepresented candidates pass the bar. In addition to being a member of the MBA, Chris is a member of the Oregon Asian Pacific American Bar Association (OAPABA), Oregon Gay and Lesbian Law Association (OGALLA), and is the co-chair of the Oregon Minority Lawyers Association (OMLA).

Over the past years, Chris has devoted his time in helping the Oregon legal community recruit and retain diverse attorneys. Through OMLA, he has ensured that funds are raised to help diverse students pass the Oregon bar exam through bar exam scholarships. He's also mentored students at OLIO, the OSB's recruitment and retention program for law students who are a part of the bar's historically or currently underrepresented membership. But Chris's involvement is not limited to simply helping new attorneys get through law school and pass the bar. Through his involvement in specialty bar organizations, Chris has also supported the nomination and endorsement of multiple diverse candidates for professional awards and positions on the state and federal bench. This year, he helped secure a joint endorsement letter from OMLA and OAPABA in support of Minoru Yasui's nomination for a Presidential Medal of Freedom. Mr. Yasui was the first Japanese-American to graduate from the University of Oregon Law School and gain admission to the Oregon State Bar, but is most recognized as the first Japanese-American to challenge the constitutionality of the military curfew imposed against Japanese-Americans during World War II under Executive Order 9066. *Yasui v. United States*, 320 U.S. 115 (1943).¹

¹ (For those interested in learning more about Mr. Yasui's legacy, *Theater Diaspora* is holding a reading of "Citizen Min," a play by Holly Yasui, Mr. Yasui's daughter, on Wednesday, July 29, at 6 p.m. at APANO's Jade Community Center, 8114 SE Division St., Portland OR 97206. Please contact event organizer Chisao Hata for more information at chatamoves@gmail.com. To learn more about Minoru Yasui, please visit www.minoruyasuitribute.org).

Chris also strives to find ways to help lawyers become integrated and successful in Oregon's legal community. This year, through his leadership, OMLA has instituted a pilot program allowing members to use OMLA's Oregon Legal Institute (OLI) group pass to attend one CLE class for free. The purpose is to allow lawyers to attend CLE programs that might have otherwise been cost prohibitive for them. The pass is first-come-first-served with respect to each CLE program sponsored by OLI.

Given the numerous hours Chris devotes to improving the diversity and inclusion of the legal profession, one might forget that Chris is also a full-time attorney. Chris is currently with the law firm of Cartwright Baer Johansson PC (previously known as Cartwright Whitman Baer PC), where he specializes in estate and trust litigation, elder financial abuse, and contested protective proceedings under Oregon law. However, before joining Cartwright in 2012, Chris held a diverse array of positions. After graduating in one of the worst economic downturns encountered by the legal community, Chris at one point juggled four different jobs to stay afloat and support his son, who at the time was only two years old. Utilizing his web development skills, Chris did web design for lawyers' websites while also clerking for two attorneys part-time and grading student essays as a staff member of the BarBRI of Oregon. He then worked as a paralegal for a major insurance company.

Despite these challenges and the daily demands of his job, Chris makes sure to devote time to Oregon's legal community. We can thank Chris's Hawai'iian roots for his view on civic engagement. Growing up in Hawai'i, he was infused with multiculturalism and instilled with a strong sense of community. Chris left Hawai'i after high school to attend the Massachusetts Institute of Technology, where he obtained a Bachelors in Science in Environmental Science. He then moved to Oregon to attend Lewis & Clark Law School, where he was initially surprised by the differences in Oregon's demographics. However, Chris quickly realized that while the population of minority lawyers in Oregon may be small, like Hawai'i, it has a strong community committed to fostering diversity and inclusion.



Christopher Ling

At Lewis & Clark, Chris was a charter member of the Korean Law Students Association (now known as the Asian Pacific American Law Students Association), and served on the board of the Minority Law Students Association. Chris was also a member of the Student Bar Association as a member of the Academic Enhancement Program Committee, which "employs holistic and data-driven techniques to help students from all backgrounds, particularly those from underrepresented ethnic, socioeconomic, or cultural groups" to, in part, increase diversity in Lewis & Clark's student admissions. It therefore is no surprise that during all three years of law school, Chris was annually awarded Lewis & Clark's Community Service Honors Award - a fact that Chris, being the humble person that he is, omitted to tell me during our interview. Instead, Chris shares that he himself was a recipient of the OSB Bar Grant that helped offset his bar exam costs and attended OLIO's programs as a law student and therefore wants others to experience the same benefits, if not more.

If you have not had the pleasure of meeting Chris yet, I highly recommend that you attend OMLA's upcoming 16th Annual Summer Social and Fundraising Auction - one of OMLA's flagship events. Sharing the OSB's goals of recruiting and retaining historically or currently underrepresented membership, the Summer Auction raises funds for OMLA Bar Exam Grants that cover the cost of sitting for the bar exam and a bar exam preparatory course for minority bar applicants. This year's summer auction will be held on August 6 at the Portland World Trade Center, beginning at 5:30 p.m. There will be live music and a raffle where a part of the proceeds will also help fund OLIO (which will occur the next day in Hood River, from August 7-9). Besides getting to meet Chris, the summer auction is a great opportunity to learn more about OMLA's programs, catch up with old friends, connect with new friends, and contribute to a worthy and important cause.

New YLS Officers Elected One year terms began July 1



Mackenzie Hogan

Mackenzie Hogan, YLS President for 2015-16, graduated from the University of Oregon School of Law and was admitted to the OSB in 2010. He works at Harris & Bowker LLP and practices in the areas of business, probate, estate planning and real estate. Mackenzie joined the YLS Membership Committee in 2010 and served as the chair of that committee in 2012-13. He was the recipient of the 2012 YLS Award of Merit and was formerly a student representative for Pro Bono for the ABA 12th District.



Tyler Volm

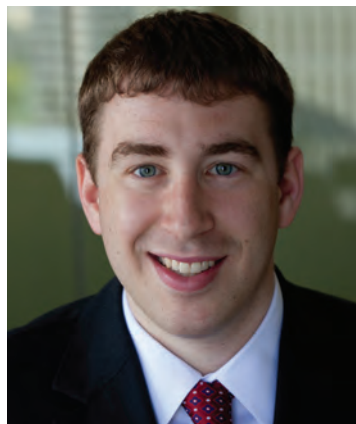
Tyler Volm, YLS President-Elect, graduated from Lewis & Clark Law School and was admitted to the OSB in 2008

and Washington Bar in 2009. He works at Barran Liebman LLP where his practice focuses on employment litigation and advice. Tyler joined the YLS CLE Committee in 2011 and served as chair in 2012-13. He also served on the MBA VLP Golf committee for four years, chairing the committee in 2013-14. Tyler is the past president and current member of the Lewis & Clark Recent Graduate Council and serves on the Executive Committee for the Gus J. Solomon Inns of Court.



Mary Tollefson

Mary Tollefson, Secretary, graduated from Willamette University College of Law and was admitted to the OSB in 2007. She is a family law attorney at Kramer & Associates. Mary joined the YOUthFILM Project Committee in 2011, was a member of the YLS Service to the Public Committee from 2012-14 and served as co-chair of that committee in 2013-14. She is an OSB mentor, has volunteered with the MBA Imprint Program and served as a volunteer judge for College Mock Trial Competition. She presently is a member of the MBF CourtCare Campaign Committee.



Tyler Bellis

Tyler Bellis, Treasurer, graduated from the University of Oregon School of Law and was admitted to the OSB in 2008. He practices in the areas of real estate and commercial law at McEwen Gisvold LLP. Prior to joining the YLS Board, Tyler participated on the YLS Membership Committee before serving as committee chair 2013-14. In 2014-15, he served on the MBA Court Liaison Committee. Tyler is also a member of the CEJ Board of Directors, a Big Brothers Big Sisters Youth Mentor and a member of City Club of Portland.



Jeanne Sinnott

Jeanne Sinnott, Miller Nash Graham & Dunn LLP, will continue on the YLS Board as Past President.

We are delighted to announce that Norman Sepenuk has joined our firm as of counsel.



Kristen Tranetzi Norm Sepenuk David Angeli Steven Ungar Colin Hunter

Norman Sepenuk, during his criminal justice career, has served as a trial and appellate attorney for the United States Department of Justice, an Assistant United States Attorney, and a Special Assistant to the Attorney General of the United States. Following his years of service as a federal prosecutor, Norm entered private law practice in Portland where he has specialized in defending corporations and individuals accused of fraud and white collar crime, including many complex and high profile cases. He has also defended several high-ranking Serbian army officers in war crimes cases in The Hague at the International Criminal Tribunal for the former Yugoslavia.

Norm will continue to focus his practice on defending economic crimes and other complex federal criminal cases. He will also be available to consult with defense attorneys on methods of achieving the best results for their clients, including persuading the government not to bring charges, deciding whether to plead guilty or go to trial and evaluating submissions to be made during the sentencing process.

In addition, Norm will be available to advise and assist attorneys and parties in resolving disputes in federal criminal cases.



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Red Lodge Transition Services' Reentry & the Law Speaker Series An Inspirational MBF Grantee

by Dana Scheele
Cambia Health Solutions

- I will vote now and maybe go to the Capitol.
- Thank you for giving us your time and sharing encouragement to make change. It's moving to have people like yourself to show you care.
- I will vote as soon as I get out.
- I liked all the important information on voting. I never really gave it a second thought, now I'm going to start voting.
- Very inspiring to vote.
- I liked the encouragement to make a difference. I found it empowering to hear I matter.
- That you care to come at all.



and prisons who are working on creating a better life for themselves, their children, and communities. To supply transition information, guidance and support, to Native American individuals, families and communities. To prevent and reduce incarceration by breaking the cycle of chemical addiction, violence, abuse, hatred, hopelessness and neglect.”

Red Lodge's *Reentry & the Law Speaker Series* furthers this mission by facilitating relevant, educational sessions at Coffee Creek Correctional Facility including the January 8 session sponsored by the MBF with Judge Darleen Ortega from the Oregon Court of Appeals and Bobbin Singh, Executive Director of the Oregon Justice Resource Center and a board member of the ACLU of Oregon.

I had the opportunity to attend the session on a cold January evening and found it to be moving and inspiring. Moreover, the women who attended the session were visibly engaged, paying rapt attention as Judge Ortega introduced the topic of engagement in government, Bobbin Singh explained the three branches of government, the importance of voting and voting patterns among minority populations as compared to their representation in Federal, State and local

government. Judge Ortega followed, explaining why minority voices matter, discussing the importance of getting decision makers and those in power to learn and understand the stories of women and minorities, and sharing her own efforts to make minority voices heard. At the end of the session, Judge Ortega gave the women attendees an opportunity to practice making their voices heard by asking them to share with her what they think someone in her position should know about their experiences. Several women spoke up, sharing personal stories about their experience with the justice system as well as DHS and the civil system. Judge Ortega emphasized that by sharing their experiences with those in power and taking the opportunity to vote and make their voices heard, they would create a better experience overall for women and minorities. Bobbin Singh gave examples of activities the women could undertake upon release to be engaged such as interacting with their state legislator, attending a city council meeting or simply taking the time to vote in local elections where turn-out is low but the issues are particularly relevant. He also touched on the tribal system and engagement with that system and its relationship to the judicial system and local government.

During the question and answer portion of the presentation, Judge Ortega encouraged the women to start speaking up and to practice making their voices heard to build up their self-confidence. Every attendee expressed gratitude that we took the time to attend and listen to their concerns. Each shook our hands as they departed and expressed the sentiment that they would be very interested in attending additional sessions on civic engagement and learning more about the political process. As we left Coffee Creek, it was clear that the speakers gained as much inspiration from the session as had the attendees.

www.mbar.org/foundation

Procedural Justice

Continued from page 11

Trust. According to Tyler, trust grows when participants believe that the decision-maker is trying to do what is right. Because trust is an inference, it is shaped by how the arbitrator acts. Trust is encouraged when the arbitrator indicates he or she has heard and considered the views of the parties, and tried to take them into account in reaching a conclusion.

Summarizing a party's position is one way to accomplish this: "I understand that you admit that you owe the money, but you cannot afford to pay it because you lost your job." Presumably by behaving in a trustworthy manner over time, arbitrators will garner the trust of the attorneys

who appear before them, which will ideally be conveyed to the attorneys' clients.

Conclusion

Distributive justice deals with who wins and who loses. Procedural justice deals with how a party perceives the process. Certain aspects of the arbitration process cannot be changed: the arbitrator applies the law and the facts as he or she finds them, resulting in a winner and a loser. A trial de novo should be sought in some cases no matter if the process that produced it was pristine. However, the parties' perceptions of fairness and their willingness to comply with a just arbitration award may be improved by incorporating concepts of procedural justice in the arbitration process.

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The idea behind the MBA offering other organizations the ability to access our online calendar was to create **one** site where all law-related events could be listed to help prevent conflicts.

Please consider adding your social events to the MBA online calendar at the following link: www.mbar.org/Calendar/SubmitAnEvent.html. Or, you may contact the MBA by emailing us at mbar@mbar.org to add your item to our online calendar.

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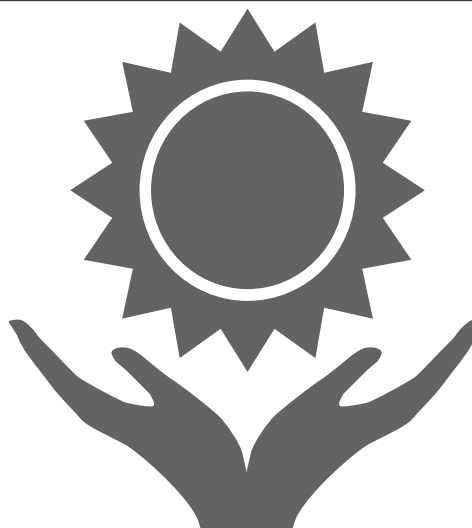
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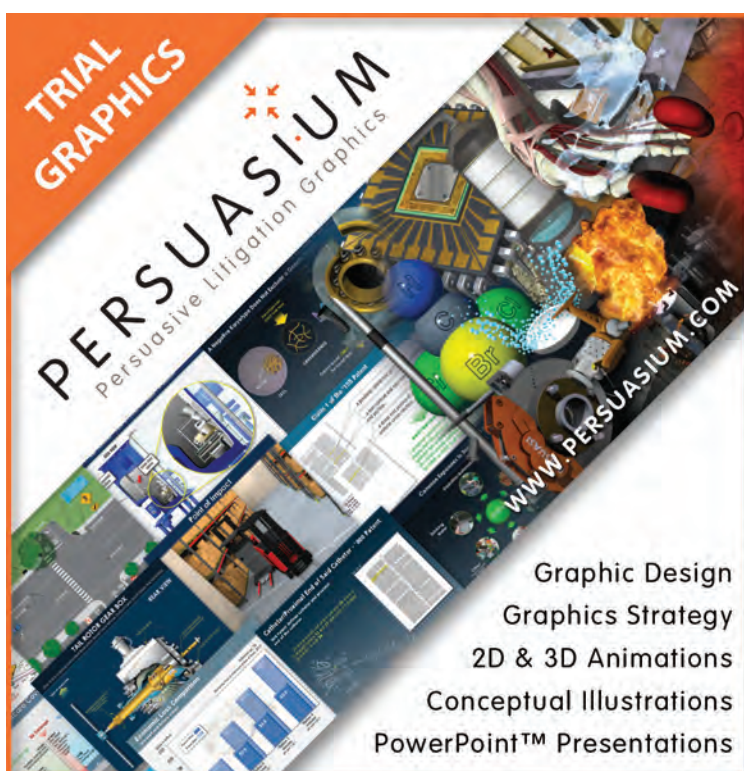


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MBA Golf Events

For info on all golf events, contact Pamela Hubbs, pamela@mbabar.org or 503.222.3275.



VLP Golf Events Support Access to Justice

Proceeds from MBA VLP golf events support the Volunteer Lawyers Project (VLP) at the Portland Regional Office of Legal Aid Services of Oregon. The VLP provides pro bono legal services to low-income Oregonians who could not otherwise afford legal representation. Last year, VLP lawyers took on nearly 2,000 new cases and reported thousands of volunteer hours. Such a large pro bono project requires not only staffing, but also court costs, interpreter fees, supplies, and other expenses. With the demand for legal aid at such a high level, VLP resources have been stretched thin. When you sponsor a golf event, put together a team, or contribute a raffle item, you move the MBA closer to its goal of raising \$20,000 for the VLP.

MBA Family & Friends Golf Event

Friday, July 17
McMenamins Edgefield
Troutdale

Bring your kids, your colleagues, your clients and play nine, short par-3 holes at Edgefield. Fun Judges will judge your most creative swing and reward your most colorful attire. (Costumes optional.) This fun, casual event is ideal for new golfers, non-golfers and children. Putting contest, raffle and mulligans benefit the VLP. A putter and pitching wedge are the only clubs needed and may be rented at the course for \$2 each. Stay after golf for the raffle and awards.

This event is co-sponsored by OWLS. Prizes sponsored by Aufdermauer Pearce Court Reporting. Space is limited. Register by July 10. Adults \$25, children \$10. Tee times begin at 2 p.m.

MBA Lawyers & Law Students Golf Event

Monday, August 17
Langdon Farms Golf Club
Aurora

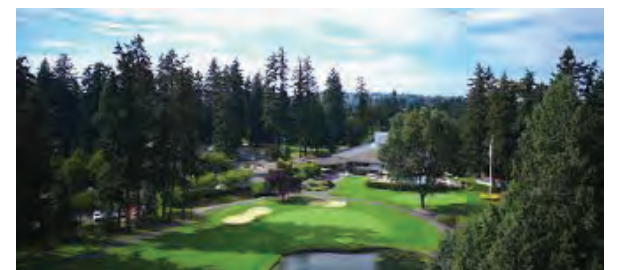
Excellent opportunity to foster professional relationships as law students, lawyers and judges meet and network over lunch, dinner and golf. The MBA will create teams, matching practice areas with students' interests when possible. Raffle and mulligans benefit the VLP. Exclusive law firm sponsorship opportunities are available. To sponsor this event or to sponsor a law student who might not otherwise be able to play, contact Pamela Hubbs. Register by August 7. Lawyers \$100, law students \$40 (students, please register through your Career Services Office); includes lunch and dinner. 1:45 p.m. shotgun.



18th Annual MBA Golf Championship to Benefit Legal Aid

Monday, August 31
Tualatin Country Club
Tualatin

Your participation or sponsorship will help the MBA reach its 2015 goal to raise \$20,000 for the VLP through golf events. Registration includes golf, cart, range, lunch, dinner, contests and door prizes. To sponsor or to play in this event, see the insert in this issue. 1 p.m. shotgun. MBA members and non-lawyers register by August 21 for discounted rate of \$225; after August 21, \$250. Non-MBA lawyers \$275.



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Ethics Focus

“Law Firm Hygiene” Small Steps Can Have Big Returns

by Mark J. Fucile
Fucile & Reising



Earlier in my career when I worked as an in-house ethics counsel at a large firm, one of our managing partners referred to the routine tasks of risk management as “law firm hygiene.” By that colorful phrase, he meant that systematically following simple steps could help avoid expensive bar complaints and civil claims. My old managing partner didn’t cite statistics to prove his point, but reports from both the ABA and the OSB bear him out. In this column, we’ll first look at those statistics and then survey some simple steps lawyers and their firms can take to avoid becoming a “statistic.”

The Numbers

Every few years, the ABA publishes a “Profile” of legal malpractice claims in cooperation with several large national malpractice insurance carriers. The ABA Profile contains a wealth of data, including claims by type of error alleged. The ABA began publishing its profile series in 1985 so a relatively good historical comparison is now available. In the latest profile reflecting data from 2008 through 2011, administrative errors such as “procrastination” and “failure to calendar properly” made up 30% of all claims nationally. The administrative error category was actually up from 26% in the corresponding 1985 study.

Similarly revealing data is available from the OSB on regulatory complaints. Each year

the OSB publishes a detailed report from the Disciplinary Counsel’s Office that includes a statistical breakdown of the kinds of conduct that led to regulatory discipline. The 2014 report reflects that 39% involved “neglect of a legal matter” and another 58% included “inadequate client communication.” The first year that the OSB began tracking “inadequate client communication” as a separate category was in its 2010 report, because prior to Oregon’s transition from the old “DRs” to the RPCs in 2005 there was no separate “communication” rule here. The current numbers are up from 2010, when that year’s report reflected 36% of cases imposing discipline included “neglect” and 49% involved “inadequate client communication.”

The ABA statistics are divided so that they total 100%. The OSB statistics, by contrast, simply note if a particular kind of conduct was included and, therefore, total more than 100%. Methodology aside, they are eye-opening both for the high percentages occupied by failures at mundane tasks and the stubborn persistence of those failures over time.

Simple Steps

Although there are many steps that can be taken to reduce common risks, calendaring and communication are two of the simplest that can pay the largest dividends.

Put broadly, “calendaring” comes in two principal flavors.

The first is the mundane but critical risk management protocol of docketing key dates on an internal “reminder” system. Dates such as when a notice of appeal is due or when a limitation period will run can be harshly unforgiving. They need to be calculated and entered into an internal system with care. Particular systems vary with the size of the firm involved and the sophistication of the practice area. Importantly, however,

simply entering the data into an internal system is not the end. To be truly effective, the system used must be actively monitored - preferably by more than one person - so that the “reminders” will actually be heeded in time to be meaningful.

The second is more subtle but addresses an equally nagging issue: procrastination. Comment 3 to ABA Model Rule 1.3 on diligence puts it this way: “Perhaps no professional shortcoming is more widely resented than procrastination.” The sources are many and varied. In some instances, lawyers have simply taken on too much work to give individual files the attention they deserve. In others, the client who sounded great during an initial conference turned out to be so “difficult” that the lawyer simply ignores the matter concerned. Whatever the reason, firms need to use systems to ensure that work is done in a timely manner. Although particular systems will again vary by firm size and practice sophistication, these are more often human rather than software - such as a practice group leader in a larger firm or peers in smaller firms. The solutions are also more often human rather than software - with some variant of “do you need help with that?” often opening a welcome door.

With communication, the shortcoming that most often leads to problems is not the content but speed and frequency of the return. A wonderfully written 10-page letter that arrives - in the client’s view - three months too late will do little to salve the all-too-human feeling of being ignored. Lawyers also need to acknowledge that in an age of “instant communication,” client expectations of responsiveness have changed accordingly. That doesn’t necessarily mean that every client question needs to be answered instantaneously. But, if it will take some time to get back to the client (because, for example, you are heading off to court or it will require some research), a quick reply back to the client acknowledging his or her email and giving a timeline for a substantive response will often head off a “communication failure.”

Thank you

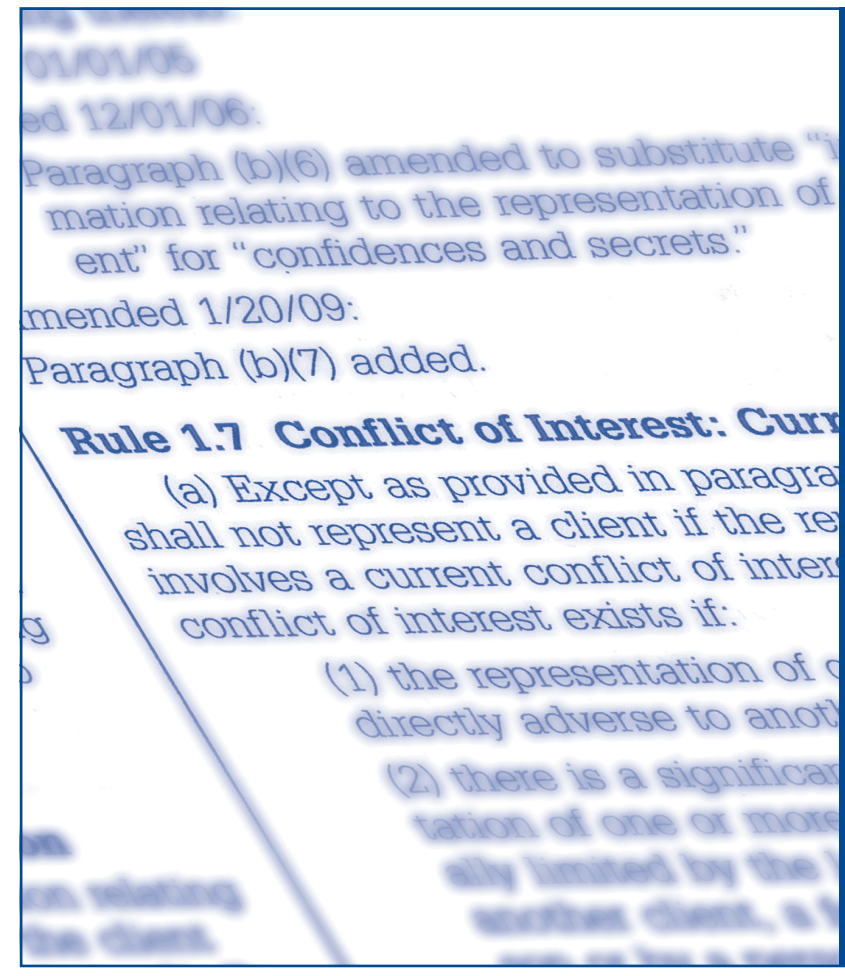
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Trial Attorney Chad Colton & the People of the Peruvian Highlands

by *Karie Trujillo*
Markowitz Herbold

Chad Colton, a shareholder at Markowitz Herbold, spent two years living in the slums of Lima, Peru while serving on a mission for his church in the late 1990s. Although he says it was a rewarding experience, he admits it was also a harrowing adventure. Among other perils, he lost 35 pounds due to parasites, was unintentionally caught in the middle of a violent gang brawl, and was robbed twice at knife-point. Undaunted, Colton fell in love with the culture and people of Peru. "Peruvians are some of the poorest people in South America, but they are willing to share whatever they have with you,"

he says. "They are friendly and hospitable despite their extremely meager circumstances."

Fast forward 18 years. Colton has developed a cross-border dispute practice specializing in Latin America. Fluent in Spanish, he litigates and arbitrates disputes between U.S. parties and parties in Mexico and Latin America. In 2014, Colton rekindled his love of Peru when he was retained by a Portland entrepreneur/philanthropist with a business dispute in the country. Traveling to Peru for the case, he realized little had changed since his mission - the people were warm, the culture was vibrant, but there was still



extreme poverty, particularly in the highlands region in the Andes.

"It's no mystery to most of us in the United States that there is a huge amount of poverty and suffering outside our borders, and most of us want to help," says Colton. "But it becomes easy to be complacent when we think of the issue in the abstract."

Colton's client was one of the founding board members of

Quechua (Ketch-u-a) Benefit, a nonprofit dedicated to helping the people in the highlands of Peru. Founded by alpaca breeders, the organization delivers medical, dental, and optical care; distributes warm clothing; and provides shelter, food, and sociological services with an emphasis on children. After the successful resolution of his client's case, Colton was invited to join the Quechua Benefit board and wasted no time in saying "yes" and getting involved.

In December of last year, Colton and other Quechua Benefit volunteers traveled to Peru to bring medical supplies, clothing, and other essential items to the people of the highlands. While in Arequipa, he met a 9-year-old boy named Juan Pablo who was being treated for leukemia. Colton says that cancer treatment is not a luxury available to the average

Peruvian. But because of Quechua Benefit, Juan Pablo was receiving chemotherapy, and his family was full of hope for the future.

"Visiting Juan Pablo reinforces my love for the Peruvian people," says Colton. "What touched me most about him was that he seemed to barely notice his own suffering throughout his whole ordeal. He was more worried about his mother and sister." Colton recently got word that Juan Pablo completed his chemotherapy treatments and the family hopes that the cancer has finally been defeated.

Colton says, "I am proud to be a part of Quechua Benefit and to witness first-hand the difference the organization makes in the lives of the Peruvian people."

Chad may be contacted at chadcolton@markowitzherbold.com, or 503.295.3085

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