



MULTNOMAH LAWYER

June 2015
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Professionalism: What Does it Mean?

by Dana Sullivan
MBA President

Throughout this year, I have tried to focus my columns on different aspects of the MBA's mission: "Lawyers associated for justice, service, professionalism, education and leadership for our members and our community." Earlier topics have included the importance of legal education reforms to address the diminishing number of lawyers available to provide affordable legal services, the barriers facing attorneys with disabilities, the important role of pro bono work, and the MBA's development of a Small Firm/Solo Practitioner Section to provide support and networking opportunities to the majority of our members who practice outside of large firms. The one aspect of our mission that I have yet to address is professionalism. I thought that my last column would be the perfect opportunity to address this important subject, because it is a concept that means a great deal to me personally. It is also a concept that has been integral to my experience working with the MBA.

...professionalism ... 'a commitment to performing one's chosen vocation with skill, tenacity, empathy, and due regard for the common good.'

"Professionalism" is a word that gets thrown around a lot these days. It is constantly mentioned as something all attorneys must strive for. At the same time, the accusation that one is being "unprofessional" is readily tossed out in response to any sharply worded correspondence. But, what does this term we use so freely really mean? The Merriam Webster dictionary defines "professionalism" as "the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well." While I don't quibble with the notion that skill and good judgment are key aspects of professionalism, I object to the phrase "polite behavior," which makes the concept seem trite, old-fashioned and two-dimensional.

So I gave some thought to whether I could come up with a more accurate definition. In my view, professionalism would be more accurately defined as "a commitment to performing one's chosen vocation with skill, tenacity, empathy, and due regard for the common good." With all due respect to Merriam Webster, I believe that my definition conveys a much more robust and three-dimensional concept.

Professionalism is much more than knowledge, skill and social graces. It is the application of acquired knowledge and skill with zeal (hence, my inclusion of the concept of tenacity). Empathy is essential to help discern not only what is in the client's best interest but also what is important to your opponent. An understanding of the hopes and fears of both sides is critical to being an effective advocate. Finally, my definition makes clear that inherent in the notion of professionalism is a mindfulness of our role within both the legal community and the community at large. We professionals should not lose sight of the needs of the community in which we practice and the way in which our work affects those communities.

My conviction that a proper definition of professionalism presupposes a certain degree of energy and interrelatedness with others was strengthened at the annual dinner while listening to the remarks of this year's recipient of the MBA Professionalism Award, Robin Selig. Robin described what professionalism meant to her and the role it had played in her career. Robin's father instilled in her the belief that you must treat those with whom you come in contact in your professional life fairly and respectfully. She also explained the valuable lessons that she had learned from her clients and colleagues throughout her career as a legal aid attorney. Robin's professional accomplishments have included not only devotedly representing low-income clients, but also implementing meaningful legislative reforms, including the expansion of the rights of victims of domestic violence. Robin has demonstrated much more than "skill, good judgment and polite behavior," which is why her award is so well-deserved.

...attorneys who are active in the MBA seem to share my perspective that professionalism is more than being passively knowledgeable and courteous.

I have always found my involvement with the MBA so satisfying in large part because those attorneys who are active in the MBA seem to share my perspective that professionalism is more than being passively knowledgeable and courteous. Those who spend their time volunteering for the MBA or the Multnomah Bar Foundation work hard to ensure that our members have the support they need to pursue their work both skillfully and tenaciously. New programs like the YLS's Entrepreneur Academy and the Solo/Small Firm Section's innovative workshop series, "How to Make Your Small Firm Successful," enable members to learn from their peers while developing a referral network. The MBA's staff, leadership and volunteers never lose sight of the fact that the MBA's mission calls upon members to focus not only on their individual practices, but also on the legal community and the larger community of Multnomah County.

For all these reasons, my year as president has been greatly rewarding both personally and professionally. It is my work with the MBA that has enabled me to refine my definition of professionalism. I have learned a great deal and look forward to continuing to volunteer with the organization for many years to come.

mba|EVENT

MBA Small Firm Workshop

"Managing Your Office: Getting It Right from the Start - Invaluable Tips on Case File Management, Avoiding Trouble and Working with Technology for Small Firms"

**Wednesday, June 24
Hotel Monaco
506 SW Washington, Portland
12-1:30 p.m.**

The MBA Small Firm Committee invites you to the third workshop in the spring series. Join speakers Jennifer Meisberger and Martha Hodgkinson for networking and questions and answers. Lunch will be provided.

Registration is free and is open to MBA members only. CLE credit will be applied for.

More details available at www.mbabar.org.
Email Shannon West at shannon@mbabar.org to register.

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.

JUNE

**6.9 Tuesday
Evidentiary Implications of Technology in the Courtroom**
Ralph Spooner
Tim Williams

**6.11 Thursday
Annual Probate Update**
Sibylle Baer
Judge Andrew Erwin
Judge Robert Herndon
Judge Katherine Tennyson



Free Online CLE for Members

The CLE webcast "Presenting Expert Witnesses at Trial" is available for free in the Members Center section of the MBA website.

Members receive free access to a rotating schedule of six different CLE webcasts each year.

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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.

Band applications are due June 5.

Thank you Miller Nash LLP for generously sponsoring the event.



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

JUNE

4 Thursday
MBA 1st Thursday Social with Specialty Bars
www.mbabar.org

9 Tuesday
MBA Riverside Golf Event
See p. 10

19 Friday
YLS Summer Social
www.mbabar.org

20 Saturday
SALC Race for Justice
www.salcgroup.org

24 Wednesday
MBA Small Firm Workshop
See p. 1

JULY

3 Friday
Independence Day Holiday

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

AUGUST

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

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



The MBA conference room may be reserved for use by MBA members for client meetings, depositions and other professional law-related business.

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Contact the MBA for details and availability at 503.222.3275.

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Evidentiary Implications of Technology in the Courtroom

Tuesday, June 9, 2015
3:00-5:00 p.m.

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

This two-hour program will cover evidentiary implications of technology in the courtroom. Attendees will hear seasoned Oregon attorneys **Ralph Spooner** and **Tim Williams** discuss a variety of issues increasingly encountered by litigators, including:

- the mechanics of marking and admitting digital exhibits
- how to electronically display exhibits
- procedure for electronic exhibits going to jury
- effectively using an electronic presentation during opening and closing

Ralph is an experienced trial attorney with Spooner & Much. He defends clients in various types of cases, including complex institutional litigation, class actions,

construction defects, liquor liability, premises liability, automobile accidents, employment, bad faith, and product liability. Tim is an established trial attorney with Dwyer Williams Potter. He specializes in representing plaintiffs and has tried many personal injury cases, including auto accident, premises liability, and semi-truck accident cases.

For more information:
Call Sim Rapoport, Attorney at Law at 503.997.6329. For registration questions, call the MBA at 503.222.3275.

Annual Probate Update

Thursday, June 11, 2015
3:00-5:00 p.m.

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

The MBA presents the 2015 Annual Probate Update, featuring **Judge Katherine Tennyson**, Multnomah County; **Judge Andrew Erwin**, Washington County; **Judge Robert Herndon**, Clackamas County; and **Sibylle Baer**, Cartwright Whitman Baer PC. Ms. Baer will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the metro area. This CLE is a must for all probate practitioners and/or their staff.

For more information:
Call Judge Kelly Skye, Multnomah County Circuit Court at 503.988.3204. For registration questions, call the MBA at 503.222.3275.

CLE BOGO

The MBA is pleased to announce its buy-one-get-one CLE policy for participants in the MBA and OSB mentor programs.

OSB and MBA mentors: When you register for an MBA CLE, you can register your mentee to attend with you for free. Contact Shannon West at 503.222.3275 or shannon@mbabar.org to add your mentee to the registration list.

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

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- 6/9 Evidentiary Implications of Technology in the Courtroom**
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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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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 and will be available until August 1, 2015.

MBA members receive access to a rotating selection of six different CLE seminars each year – a \$300 value. The free webcast content is refreshed every two months, so stay tuned!

Statement of Diversity Principles Available to Sign

The MBA Equality & Diversity Committee invites you to sign the Statement of Diversity Principles. Read the statement at www.mbabar.org/about-us/diversity.html and demonstrate your commitment to diversity by signing the statement online at www.mbabar.org/AboutUs/DiversityPledge.html.

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.

Diversity Section Race in the Rotunda CLE

The OSB Diversity Section will hold a CLE entitled "Race in the Rotunda: Promoting and Monitoring Minority Interests in the Legislature" on Wednesday, June 3 at Willamette College of Law in Salem. The CLE is 4-5 p.m. and a catered social follows from 5-6 p.m. The cost for the CLE and social is \$25, or \$15 for Diversity Section members. New members can get the discounted rate by joining the section at the time of the event. One Access to Justice CLE credit is pending. Please RSVP to Carlos Rasch at crasch@houser-law.com.

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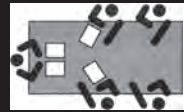
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Ethics Focus

For Sale by Owner Selling a Law Practice

by Mark J. Fucile
Fucile & Reising



In his leading treatise of the day published in 1953, *Legal Ethics*, Henry Drinker succinctly summarized (at 161) the ability sell a law practice: “A lawyer’s practice and good will may not be offered for sale.” Times have changed. In 1990, the ABA amended its influential Model Rules of Professional Conduct to permit the sale of law practices. Oregon followed in 1995. Oregon DR 2-111 was patterned closely on the corresponding ABA Model Rule, 1.17. When Oregon moved to professional rules based on the ABA Model Rules in 2005, we retained former DR 2-111 in the form of Oregon RPC 1.17. Although our rule continues to include nuances that vary from the ABA Model Rule, it remains in close overall continuity with the ABA formulation.

The legislative history from the ABA reflects an effort to put retiring solo practitioners in rough parity with law firm

partners by allowing them a way to extract the economic goodwill developed over a practice lifetime. Despite this goal, for many years the sale of law practice rule was comparatively dormant. For example, there are few appellate cases nationally - and none in Oregon - interpreting state versions of the Model Rule. With the so-called “graying of the legal profession” as the “baby boom” generation heads toward retirement, however, Model Rule 1.17 and its state equivalents have begun receiving renewed attention nationally.

In this column, we’ll survey three facets of Oregon RPC 1.17. First, we’ll look at just what can be included in the sale. Second, we’ll examine the required notice that must go to the clients affected. Finally, we’ll discuss the extent to which restrictive covenants can be included in the sales agreement.

Although we’ll approach these areas from the practical perspective of a retiring lawyer, it is important to note that the Oregon rule varies from its ABA Model Rule counterpart by not being predicated on the selling lawyer actually leaving practice.

What Can Be Included

Physical assets such as office furniture and computer systems can, of course, be included in the sale. In fact, physical assets could be sold even before the rule changed. A key component that can be valued now, however, is goodwill. In the only regional appellate case touching on a state version of RPC 1.17, the Washington Court of Appeals in *Dixon v. Crawford, McGilliard, Peterson & Yelish*, 262 P3d 108, 112 (Wash App 2011), cogently defined “goodwill” in this

context: “Essentially, goodwill is the monetary value of a reputation.” With a law practice, this facet of RPC 1.17 allows a retiring lawyer to harvest the reputational value of the practice built up over many years.

RPC 1.17 also allows a lawyer to sell either “all or part of a law practice.” The ability to sell “part” may be particularly attractive to a lawyer who would like to “downsize” an overall practice while easing into semi-retirement.

Notice to Clients

RPC 1.17(b) requires that clients receive very specific notice that a sale is contemplated, including the identity of the purchasing lawyer or firm and a description of the purchasing lawyer’s practice or firm. RPC 1.17(c) also allows the notice to include the equivalent of an endorsement of the purchaser by the seller as long as the seller “has made a reasonable effort to arrive at an informed opinion.”

Although a client cannot veto a sale, a client is under no obligation to continue with the purchasing lawyer. In this regard, RPC 1.17(b) requires that each client be told that the client can go elsewhere. RPC 1.17(b)(4), however, does allow a file to be transferred to the purchaser if the client involved does not object within 45 days after the required notice has been mailed.

In the process of evaluating a potential sale, RPC 1.6(b) (6) allows the selling lawyer to reveal the identity of the clients involved, the general nature of their work and their fee arrangements as long as doing so will not prejudice the clients.

If a file is transferred, RPC 1.17(g) prohibits fees from being raised “by reason of the sale” but does permit them to be increased “upon agreement of

Continued on page 15



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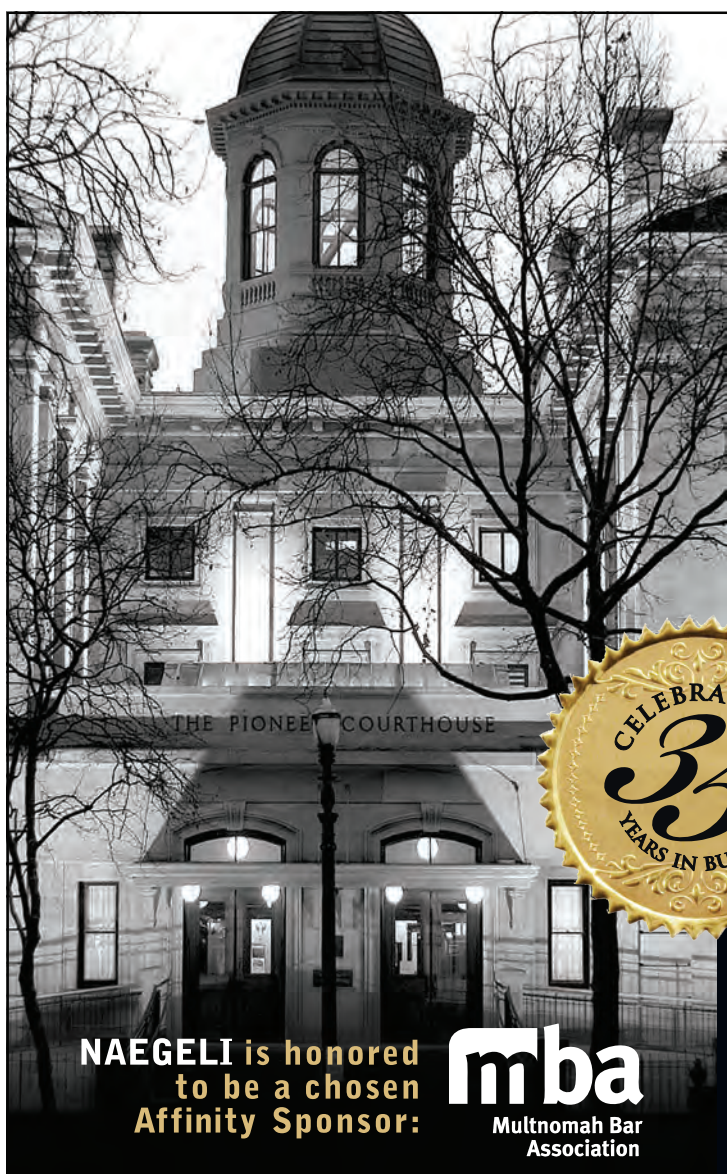
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Partner **Victoria Blachly** was recognized by the *Portland Business Journal* as a 2015 Orchid Award winner at its celebration in April. As the first female equity partner in the firm's 88-year history, Blachly's community involvement includes serving on the boards of Dress for Success, Oregon Lawyers Against Hunger and Housecall Providers; she was also on the advisory board for VoteERA.org, which was instrumental in successfully passing the Equal Rights Amendment in Oregon. In February 2014, Blachly was appointed to the Governor's Commission on Senior Services. In her work as the chair of the OSB's Virtual Assets Work Group, she led the development of a legislative proposal to clarify that a personal representative, trustee, or conservator has the legal authority to access online information. She is also an appointed observer, and on the enactment committee, for the Uniform Law Commission's Uniform Fiduciary Access to Digital Assets Act, which is moving forward in 26 states this year.



Wendy Kent



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Wendy Kent has become a partner with the firm. Her addition bolsters the firm's offerings for its employment, professional services and insurance clients. She brings more than 25 years of trial experience handling civil claims. She has successfully defended claims alleging employment discrimination, wrongful termination, professional malpractice, construction site

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Vicki Smith, a trial attorney and partner with the firm, has become a member of the Federation of Defense & Corporate Counsel. Founded in 1936, the FDCC is an invitation-only organization for U.S. and international civil defense litigators, senior corporate counsel and insurance claims executives. Its members are leaders in many of the country's top corporations and insurance companies. The group counts among its membership lawyers who are national coordinating counsel and trial counsel for nearly all national insurance carriers and Fortune 500 companies. A limit is placed upon the number of lawyers in private practice who can participate.

Smith's law practice focuses on general civil litigation and insurance coverage matters in Oregon and Washington. She regularly handles cases involving insurance and surety bond coverage, construction defects, asbestos and professional liability claims. She also tries cases involving claims of personal injury, contractual indemnity, product liability and commercial breach of contract.



Jacob Zahniser

Jordan Ramis

Jacob Zahniser has joined the firm's construction and litigation practice group. His practice focuses on construction, real estate and business litigation, as well as handling insurance coverage disputes arising from construction defects. His litigation experience includes payment disputes and lien claims, insurance coverage, leases, purchase and sale agreements, development rights, adverse possession, property lines and easements and development disputes.



Seth Row

Miller Nash Graham & Dunn

Seth Row joined the firm's litigation and insurance coverage practice teams. Row brings over 16 years of experience representing commercial

policyholders, including banks, manufacturers, developers, and public entities in litigation and negotiation of insurance disputes. He is a frequent author and speaker and is the founder and editor of *The Northwest Policyholder*, a blog that covers insurance coverage legal issues in the Pacific Northwest.



Heather Decker



Shouka Rezvani

Tonkon Torp

Heather Decker is the new Director of Attorney Professional Development & Recruiting at the firm. With a focus on supporting attorney professional development and career satisfaction, she is responsible for creating education and training opportunities, mentoring and helping attorneys transition, establish and build their practices. She oversees the firm's attorney recruiting and hiring process for graduating law students and experienced attorneys making lateral moves.

Shouka Rezvani has been invited to join the Leadership Council of The Oregon Community Foundation as a Metropolitan Portland Leadership Council Member. Rezvani is chair of the firm's nonprofit & tax-exempt entities practice group. She counsels public charities as well as operating and non-operating private foundations on organizational and operational issues. She is also a member of the firm's estate planning practice group, which advises families and business owners about business and succession planning, estate administration and charitable giving.



Jeanette Schuster

Jeanette Schuster is the new chair of the firm's environmental & natural resources practice group. Schuster's practice focuses on advising clients on compliance



Haley Morrison

with complex regulatory requirements under federal, state, and local environmental statutes and regulations; buying and selling contaminated property; regulatory agency enforcement defense and contaminated site investigation and cleanup (including the Portland Harbor Superfund Site). She also conducts environmental due diligence on complex corporate transactions and advises clients on issues related to the siting and permitting of renewable energy projects.

Haley Morrison has joined the firm's labor & employment practice group. She provides counsel to employers on a wide variety of matters, including discrimination, retaliation, harassment and wage-and-hour issues, in both single plaintiff and class action contexts.



Gabriela Sanchez



Jeff Brecht

Lane Powell

Gabriela Sanchez and **Jeff Brecht** have joined the firm's long term care and seniors housing client service team.

Sanchez joined as a shareholder and represents long term care, senior housing, home health and hospice providers in business, regulatory and litigation matters. She routinely advises long term care clients on contentious resident issues. She also advises facilities in insurance payment disputes and recoupment issues. Sanchez provides risk management advice and strategies and defends against agency actions and investigations, including defense of civil monetary penalties, fraud and abuse complaints, and imposition of conditions on provider licenses as well as revocation, denial or non-renewal of provider licenses. She is a frequent presenter and

author for the Oregon Health Care Association.

Brecht joined as counsel to the firm and has more than 18 years of trial experience representing businesses and individuals in state and federal court. His trial and litigation experience includes representing assisted living providers, nursing homes and other long term care providers in a broad array of regulatory, licensure, contract, and collection lawsuits and administrative hearings. Brecht's practice also includes advising post-acute providers with respect to a wide variety of regulatory compliance and workplace issues. Brecht also has experience defending claims against employers, trade secret and trademark protection, trust and estate disputes, and contract disputes.



Aukjen Ingraham

Schwabe Williamson & Wyatt

Aukjen Ingraham has been named a firm shareholder. Ingraham serves in the general litigation group. She represents key companies in the transportation industry in state and federal court and has extensive litigation experience, including trial experience.



Joel Geelan

Gevurtz Menashe

Joel Geelan is a new family law associate with the firm, where he will continue to handle divorce, custody/parenting time, child support, contempt, and modification for clients with legal matters in Oregon.

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.

Congratulations, Award Recipients

The May MBA Annual Meeting, Dinner and Judges Reception recognized exemplary volunteers and the MBA Professionalism Award recipient **Robin Selig**. In addition to Robin, seven outstanding volunteers were recognized. The MBA Award of Merit was presented to **Sylvia Stevens**. The YLS Award of Merit was given to **Erika Huebschman** and **Paul Thompson**. **Nedu Nweze** received the YLS Rookie of the Year Award. Pro Bono Awards recognized **Owen Blank**, **Dona Hippert** and **Josh Stadler**.

Congratulations to all the very deserving award recipients!

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Photos by Dan Carter

See additional photos from the dinner at www.mbar.org/membership/annualdinner2015.html



Justice Wallace Carson with MBA Merit Award recipient Sylvia Stevens



Dana Sullivan and Chief Justice Thomas Balmer congratulate Robin Selig on receiving the Professionalism Award



Jeanne Sinnott with YLS Rookie of the Year Nedu Nweze



Jeanne Sinnott with YLS Award of Merit recipients Erika Huebschman and Paul Thompson



Dana Sullivan with honoree Doug Bray



Dana Sullivan with Pro Bono Award recipients Josh Stadler, Owen Blank, and Dona Hippert

Thank you

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Mark McCulloch with honoree Jacquie Jurkins

P

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Tips From the Bench

by Judge Katherine Tennyson
Multnomah County Circuit Court

One year into the Odyssey, well, odyssey, Multnomah County continues to work through the conversion with steady progress. Recently, I looked around my chambers and realized that there were no court files. None. Quite a change from the stacks that used to move regularly in and out daily as motions, memoranda, orders and judgments flowed through the business work path between your office and mine. When I graduated from law school 31 years ago, the biggest thing in law office technology were telecopiers and IBM Selectric II typewriters, but here is where I start to sound really, really old. A year into the process, the advice is more refined:



affecting the forms necessary to provide information to the court about your submitted documents. For example, a revised form for a certificate of service is in the works. There are new Uniform Trial Court Rules and Supplemental Local Rules applicable to eCourt. Those rules are sometimes imposed out-of-cycle in order to address problems as they arise. You should develop a habit of regularly checking the Multnomah County Court website for updates.

1. ORS 18.078(4) exempts the probate court from the obligation to send notice when judgments are signed/entered in both probate and protective proceedings. Because you are no longer allowed to send in advice cards with your documents, that puts the obligation on you to check to see when orders/judgments are signed and entered in probate cases. Once you submit a document through File & Serve and it is accepted by the court, it is routed to a "queue" (eCourt word for "inbox") for processing. In probate, that means that the document is audited and then forwarded to a judge's queue for review. Although the staff in the probate department would like me to tell you this all takes a week, our turnaround time is closer to a maximum of three days. You should set up a tracking system so that you can monitor a case in which you know you've submitted something for signature.
2. You should always open the document you submitted for signature once it is entered to confirm the date of signature and more importantly, what changes, if any, were made to the document before signature.
3. You should stay on top of any proposed rule changes

4. If your case is assigned to a specific judge, you should include "Assigned to Judge XX" in your caption. That designation will assist court staff if routing the document to the assigned judge's queue.

5. Not all things can be accomplished through File & Serve. Original wills must be filed conventionally, therefore, attach a copy of the will to your electronically filed petition and then be sure to send in the original will within seven days.

Switching topics completely, as of February, all new cases are subject to the mandatory fiduciary class rule. The rule is also applicable to fiduciaries appointed prior to the effective date of the rule, if the fiduciary is cited by the court for a show cause for a deficiency. In order to avoid that result for your client, you need to ensure that your client meets the deadlines for filing guardian reports, inventories, accountings and other fiduciary duties. As you prepare to appear at a show cause, please be aware that the days of the gentle reminder on this topic may soon be behind us!



News from the Courthouse

by John Casalino
Court Liaison Committee

Report from Judge Waller and Barbara Marcille

eCourt Filing

This process is going well but feedback and suggestions for improvement are welcome. A "cheat sheet" for lawyers is being created regarding notices, including what case actions generate notices and how those notices are delivered (email vs. mailed hard copy). The court system is going back and refining business processes to take advantage of eCourt's functionality.

New Courthouse

With the selection of the Hawthorne bridgehead as the site for the new central courthouse, the focus has now turned to securing legislative approval for additional state-match funding for the next phase of the project. Jefferson, Lane and Tillamook counties are also seeking state-match funding for their courthouse projects.

MBA input and assistance on the courthouse project has been very helpful and greatly appreciated. Requests for Proposals for both an architectural firm and general contractor for the project have been released. More than a dozen architectural firms from around the country participated in an initial orientation meeting. An architect and a general contractor will be picked by the summer with design work beginning early fall, 2015.

Budget

The May economic forecast will impact all funding decisions by the legislature including the budget of the Oregon Judicial Department. The forecast is used as the base for setting the 2015-17 biennium budget for the state, and will also dictate whether the personal income tax kicker will be triggered. These, combined with the impact of any new laws passed this session, will be taken into consideration in determining the OJD budget.

Courthouse Operations

Multnomah County continues to have judicial availability to get

trials because of the use of the court's hybrid calendaring system - a master calendar is used for most cases, with complex cases or longer cases being assigned to individual judges. While the staff losses from previous budget cuts have not been fully restored, court operations managers are continuing to look at how to streamline business processes. Court staff has been steadily working through back logs with a goal of timely processing cases and judgments. Work has begun to create a legal resource center to help the increasing number of self-represented litigants in navigating the court system. The vision for a legal resource center is to have electronic tutorials, interactive forms and navigators to assist self-represented litigants. Discussions have begun with the Multnomah County Law Library Board on the role of the law library in this project.

Judicial Vacancies

Judge Kurshner retired at the end of May. The posting was made specifically for a family law judge. This will assist in getting appropriate candidates. Terry Hannon, a pro tem judge/referee is also retiring and the posting is out for a new referee.



Free Conference Room Space in Downtown Portland

The Professional Liability Fund is offering Oregon lawyers free use of a conference room located at 520 SW Yamhill Street, Suite 1025, Portland, Oregon. To reserve this space and learn more details about this free conference room space, go to the PLF website, www.osbplf.org, and click on Practice Management, then Oregon Lawyers' Conference Room.

Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.

mba|EVENT

MBA Golf Event

Tuesday, June 9
Riverside Golf & Country Club

An MBA golf favorite, Riverside is one of the premier private clubs in Oregon. Enjoy a round of golf at this classic course and stay for hosted appetizers. 1 p.m. shotgun.



Register at www.mbar.org.

Robin J. Selig 2015 MBA Professionalism Award Recipient



The following is Robin Selig's acceptance speech at the MBA 2015 Annual Meeting

I am honored, flattered and very happy to receive the MBA Professionalism Award. Thank you to the MBA Board, Professionalism Committee and membership. Over the years, I've had the good fortune to work with the wonderful MBA staff and want to thank them for their consistent support.

I am grateful to my wonderful colleagues who nominated me for the award. It was exceptionally generous of them.

I want to start with some introductions. This evening is special to me on many levels but having lots of family, friend, and colleagues join me tonight puts me over the moon.

Many of you may not know that I grew up in a small town in south Texas. Those of you, who do know, have been disbelieving at times. To prove my Texas roots for once and for all, my Dad, Clyde Selig, his partner, Paige, and my sister and best friend, Leslie Selig Byrd, also a lawyer, are here from San Antonio. If you have a chance, you may want to check out my dad's cowboy boots.

My wonderful children are here: my daughter, Lauren Latto, is a public charter school teacher in Brooklyn New York - Portland's sister city. My son, Josh Latto, moved to Portland from Washington DC this past Sunday for a new job with benefits (every mother's dream) - and did so just in time for this event. I am very proud of both my children but I have no idea what Josh does exactly - something about politics and data that is completely beyond me.

A number of my friends from the Grant High neighborhood in Northeast Portland (and beyond) are attending. Most amazingly, some of them are actually not lawyers, and they came anyway. These are the folks with whom I raised my children and with whom I now enjoy empty nest-hood. They are my Oregon family.

I have been a legal aid lawyer for virtually my entire career, first at the Portland Legal Aid Services of Oregon office and now at the Oregon Law Center: 31 years and three months to be exact. It has been a gift to do the work and to have brilliant, caring colleagues who are committed to access to justice for low-income Oregonians. If you all will indulge me, I'd like

to ask the legal aid lawyers, staff, and clerks, past and present, to raise their hands. I think you'll be surprised by how many folks here have a legal aid connection somewhere in their past.

I want to mention some of the individuals who have shaped me as a person and a lawyer. If I deserve this award, they are responsible. I have to start with my Dad - and not just because he's in the room tonight. He has led an extraordinarily interesting, and active life both in the military and as a businessman. Only a week or so ago, I spoke with someone who described him as a "consummate gentleman." He took my sister and me to work with him every Saturday morning from the time I was in third grade, and I worked in his office every summer through high school - pecan sticky buns and Cokes were involved. From observing him interact with employees, salespeople, and community members, I learned that everyone you encounter must be treated the same - with respect and dignity and a human connection. Perhaps a cliché, but truly the best lesson ever. Relatedly, and not surprisingly, he was a big believer in the "Golden Rule." He instilled the value of hard work and doing your best. The motto on the letterhead at his business was "It's Got To Be Right" - absolutely no pressure at all for a young person, yet later something I took to heart. He also taught me about social justice - he integrated the local Rotary Club in the mid-1960s and started my town's Boys Club. And both my parents taught me that women could do anything they set their minds to. Back in the day when women lawyers were much less common, my dad liked to say he really supported women in the law, having financed the legal education of both his daughters. Thanks, Dad.

My legal aid family also instilled many lessons related to professionalism. A huge influence has been Judge Maureen McKnight. We worked together in my first years at the Portland legal aid office and job shared when we had our children. Judge McKnight was only two years ahead of me in law school but light years ahead in good

judgment and professionalism. She taught me many things from small courtesies to fundamental truths such as:

- responding to phone messages from clients and opposing counsel within 24 hours - in those days messages left on "old school" little pink slips of paper;
- the importance of reading statutes and rules (and by the way be sure to bring them with you to court);
- thorough preparation;
- valuing your credibility with the bench and bar - hard to earn and easy to lose; and
- practicing our craft at its highest level. She believed our legal aid clients, no less than the paying clients of Portland's largest private firms, deserved our utmost respect and our very, best lawyering.

In my days as a baby lawyer, Judge Michael Marcus was legal aid's litigation director and ethics guru. He rescued me many times. He urged me to draw the brightest line I could and stay far to the ethical side of that line.

Doug Bray, who is also being honored tonight, taught me the power of "yes." I asked Doug for many things over the years for low-income folks - standards and forms for fee waivers and money in his tight budget along with space in his cramped courthouse for CourtCare. He always came through.

From the private bar, I've learned about generosity whether funding legal aid through the Campaign for Equal Justice or supporting children via CourtCare or representing victims pro bono at restraining order hearings.

My clients over the years taught me about courage. My work has focused on representing and advocating on behalf of victims of domestic violence. Our clients face overwhelming challenges - violence, lack of food, shelter, and income, and the education, resources, and skills that might allow them to escape their circumstances. Yet despite the odds against them, they show up - to ask for help and to fight for their children and a better, safer life.

I'd like to share two additional thoughts related to the topic of professionalism. First, in the early years of my career, I encountered a few lawyers who pursued tactics that involved a lot of yelling and intimidation. I realized over time that the best response was a restrained response. It takes inordinate patience at times, but I saw that when I responded in kind, I lost a little bit of my humanity and self-respect each time, and I gained nothing for my clients. Second, lawyers don't talk to each other enough these days. The give and take, the nuance involved in litigating cases, doesn't occur via email. It

happens on the phone and in the hallways of the courthouse. The most difficult family law case can be satisfying to negotiate or try in court, if you've built cordial, trusting relationships with opposing counsel.

I got so lucky when I was hired to work at the Multnomah County legal aid office to practice family law and pursue my dream of making a difference for families and children. Representing victims of domestic violence and helping them move towards safety and stability has been an honor. I have valued tremendously the relationships I've maintained with community partners in addressing domestic violence from a systemic perspective. I've had the good fortune the last 10 years to collaborate with my friend, Sybil Hebb, the Oregon Law Center's legislative director, on fascinating policy issues that have led to cutting edge laws protecting victims in myriad ways. I've also worked with scores of incredibly gifted and passionate lawyers in our programs. And, for the last decade or so, I've mentored and trained legal aid lawyers around the state. It's been a pleasure to see them develop into fine lawyers, and I'm sure they've taught me as much, if not more, than I've taught them. Legal aid is a great gig!

Thank you again for this wonderful recognition and for a lovely evening.

Barbara Marcille Multnomah County's Interim Trial Court Administrator

by Bill Larkins
Court Liaison Committee

Multnomah County Circuit Court's Interim Trial Court Administrator (TCA), Barbara Marcille, is a distance runner. She has completed one marathon and 14 half marathons. But since taking the reins as TCA on January 1 of this year, Barb has been in a sprint. From her office on the second floor of the courthouse, she has begun a rapid reorganization of the 357 court staff whom she manages. The scope of the TCA's responsibilities would make most practicing attorneys quiver. In addition to the human resources management involved in the recruiting, training, evaluating, and compensating of such a large staff, the job encompasses such diverse areas as supervision of five physical locations; working with the presiding judge, chief judges, and general bench judges to set policy for the court; collaboration with the Multnomah County Sheriff's Office to oversee courthouse security and ensure that inmates are transported; establishing business processes for eCourt and File & Serve; the drafting and revision of court forms; administration of a \$48 million biennial budget; planning to accommodate the court's many dockets; and the host of issues that attorneys will bring to the court's attention that end

up on the TCA's desk. Oh, not to mention the TCA's involvement in planning for the new Multnomah County Courthouse.

Doug Bray, the highly regarded and long-serving TCA, retired at the end of 2014. From him Barb inherited a staff in the process of rebuilding after the severe budget cuts imposed during the big recession, including 88 direct reports, and many areas still in flux due to the recent transition to the new eCourt system. The first order of business for Ms. Marcille has been a restructuring of the court staff. At the time of our interview, she had reduced the TCA's direct reports to 21, including seven managers, who in turn oversee 33 supervisors, analysts, and program coordinators. One of Barb's goals in the restructuring is, in her words, to make the TCA's job functional. To that end she wants to delegate as much decision-making authority as is appropriate, and provide support for her managers and supervisors to do their new jobs effectively.

Critical to making progress toward those goals is training. Many of the people on Barb's supervisory staff have many years, or even decades, of courthouse experience, but have not had management and leadership training. The Oregon Judicial Department used to provide

statewide supervisor training for the circuit courts, but funds for that training were lost years ago to budget cuts. Barb has now instituted mandatory in-house training, once a month for all managers and supervisors. She developed a curriculum that she labels "The Four E's to a Happy, Healthy and Productive Workforce: Expectations, Evaluations, Encouragement and Enforcement." Barb believes that all four of these principles are necessary for the court to function efficiently. In addition to training for supervisors, she is requiring supervisors and managers to work with their departmental teams to identify where more instruction or coaching is needed and to set aside time for it.

Saying that "Lack of communication is the root of many evils," Barb has created the position of Public Information Officer for the court. That person acts as a sort of ombudsman, handling media inquiries, other information requests, and grievances about the functioning of the court, and also helps the court to be more proactive through use of the court's website, signage, social mediums, and other types of communication.

With emphases on training, accountability and communication, Barb wants to empower court staff members to make decisions based on their experience, judgment, and documented procedures without having to "reinvent the wheel" in day-to-day operations. Ultimately, these reforms are intended to result in better customer service

Continued on page 15

YLS Young Lawyers Section

YLS Community Law Week was a Hit!

The YLS Service to the Public Committee hosted another successful Community Law Week April 25-29. The week of events included a free legal information booth, an opportunity to “Tell it to the Judge,” and a public screening of the 9th Annual YOUthFILM Project. The events offered a chance for the general public to engage with members of our legal community in a casual and fun way.

The YOUthFILM Project is always a highlight of the week as it offers an exciting forum for elementary through high school students from local schools to show off their creativity, knowledge, and skills by producing short films. This year was no exception, and featured the theme *Magna Carta: Symbol of Freedom Under Law*. The theme marked the 800th anniversary of the Magna Carta and was a way for students to explore the history of the rule of law in our society. The young filmmakers added their own flair to the theme by including zombies, jury trials, and time travel just to name a few. The committee was honored to have Oregon Supreme Court Justice Jack L. Landau present opening remarks and assist in presenting the awards to the top filmmakers. If you’re interested in getting involved with this fun event next year, please visit www.theyouthfilmproject.org.



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Ask the Partner

Dear Partner,

I have been at my firm for a few years now, and have had a few annual evaluations. I am considering asking for a raise at the next annual evaluation. Any tips on going about this the right way?

Sincerely,
Associate

Dear Associate,

Asking for a raise can be tricky, but can also demonstrate to the partners that you know your own value (or that you are at least in the ballpark). First of all you will need to take stock of what you bring to the table. Have you worked for a variety of partners over the last few years or only one or two? If you have worked for only a small number of partners, you will need them to be your biggest cheerleaders in the partnership meeting where they consider your raise request. Have you consistently performed good work for those partners, including incorporating their feedback (whether provided daily or during previous annual reviews)? Be prepared to point to a few cases or projects where you

performed well, especially those where you developed your mid-level associate skills (e.g., being the main point of contact for a tricky client or taking the lead on developing and implementing a discovery plan). Even if you only worked for some of the other partners on rare occasions, be able to cite those instances as well to given them a way to gauge your request. Have you done any other non-billable projects for the firm that provided value? Have you been actively involved in bar or community organizations? Be sure to note that too (especially if your firm values those activities).

It is also very valuable information to know what you cost the firm annually, and how much revenue you have generated over the past few years (either working on your own matters or working on matters for the partners). Bar and PLF dues, marketing costs, parking, and even keeping a roof over your head and the lights on can add up quick. Knowing what you bring in, and what gets paid out on your account, will help you properly gauge just how much of a raise you might ask for. Noting your

costs to the partner will show that you have given this some serious thought and asking for this information in the months leading up to the request may also prepare the partners for a more meaningful conversation.

After you have completed your internal audit, look around at the local market. Find comparable data from firms of your size and ask yourself whether your pay is truly lagging behind for someone of your vintage and skillset? If your pay is fairly comparable for the current market, consider whether now is the right time to ask for that raise. If you decide to proceed, you will need extra ammunition from your internal audit and should be prepared to defend your request against market forces.

Finally, practice the ask. Get up in front of the mirror and go through your pitch. Put yourself in their shoes and ask whether you think you have made a convincing case. Be prepared in case they say no, remaining cordial and gracious. A thorough internal audit and doing your homework on the current market will put you in a position to make a confident ask. After all, you’re worth every penny!

Nigel Vanderford YLS Member Spotlight

by Mary Tollefson
YLS Board Director

Nigel Vanderford (Wake Forest '12) grew up right here in Portland. After graduating from Lincoln High School, he attended the University of Oregon. During his time in Eugene, Nigel began working on some campaigns, which he then followed up with a job in public relations after graduation. Nigel eventually took a position in the copy room at Gevurtz Menashe and became inspired by the day-to-day impact that family law attorneys had on their clients’ lives. Having been interested in the legal field for some time, and now inspired with a specific focus, Nigel decided to attend law school and went to North Carolina to attend Wake Forest.

After Nigel’s 1L year, he studied abroad in England over the summer, studying British and European Administrative Law, focusing on antitrust issues. (He also took the time to enjoy a number of Britain’s pubs.) After classes, Nigel moved to Vienna, Austria, to work for the Austrian Competition Authority, the investigative arm of its antitrust legal department. There, Nigel assisted in performing analyses for potential mergers and helped on some of Austria’s larger antitrust investigations.

Despite being intrigued by living abroad and working on large antitrust matters, Nigel had stayed in touch with co-workers at Gevurtz and began clerking there in his 2L year. Deciding that a return to Portland to begin his career as an attorney was the right choice, Nigel accepted their

offer of an associate attorney position and moved back to Portland. For the past three years he has been representing clients in various family law and domestic relations matters.

One of the most rewarding aspects of Nigel’s career thus far has been his representation of children in custody and parenting time cases, something he’s built upon since attending school. He had previously been involved with Wake Forest’s Child Advocacy Clinic and served as a guardian ad litem, meeting with parents, children, teachers, and friends to come up with a recommendation to the court concerning the children’s best interests.

In one case, Nigel brought some serious issues regarding one of the parties to the District Attorney. The party ended up being arrested and put in jail, ensuring that the child would be safe. At that moment, Nigel realized the vast impact that lawyers can have - a responsibility Nigel continues to employ with careful regard and conscientious effect.

The children that Nigel has represented - all on a pro bono basis - are almost entirely elementary school age. He finds that representing such young children can be challenging, as the rules are not entirely clear and the court sometimes gives mixed directions as to the process moving forward. Usually, the age and maturity of the children dictate the direction of the representation - something that can be complicated and particularly challenging when



Nigel Vanderford

his clients are not only young children, but occasionally live with developmental or other disabilities. However, Nigel remains motivated and finds representing children to be an extremely rewarding experience. Most of the children are grateful and excited to have someone who, *literally*, works for them, and he often gets a kick out of the kids’ reaction when he says that, yes, in fact “they’re the boss”. While living with and working through often difficult situations, and having been told by everyone - parents, teachers, etc. - what, when, and how to do anything and everything, it’s no wonder that his clients are excited and delighted to be in control, to have someone working for *them*, on *their* behalf; for a lawyer, it doesn’t get much more rewarding than that.

Nigel encourages any young attorneys who want to gain experience in domestic relations matters to represent children, as it is a great way to gain useful experience and get directly involved in complicated custody and parenting time cases on behalf of clients who both need representation and cherish the opportunity to have their perspective heard. (Additionally, judges are often very appreciative of children’s attorneys, so it’s no small matter in gaining credibility in the local legal community.)

Michael G. Taylor Pro Bono Spotlight

by Corrinne Mosser
YLS Pro Bono Committee

Michael G. Taylor is a partner in the Portland office of Holland & Knight. His transactional practice focuses on securities transactions, mergers and acquisitions, and other corporate law services. Utilizing his extensive experience, Michael has been an active volunteer with the Lewis & Clark Law School Small Business Legal Clinic (SBLC). He provides assistance to pro bono clients for their corporate law matters. The SBLC, located in downtown Portland, matches volunteer attorneys with clients who are low-income small and emerging businesses. At the SBLC, Michael has worked with aspiring entrepreneurs seeking legal advice regarding their businesses, and has assisted with the formation of business entities as well as the drafting of contracts and other agreements for use in the development and operation of their small businesses. An SBLC client said, "It was wonderful to have access to a lawyer to answer and direct me in my small business matters. Michael was really personable and immediately put me at ease. He answered all my questions, clearly and simply. His follow-up was great too. I felt well taken care of. Thanks."

In 2011, 2012 and 2013, Michael received a "Pro Bono

Champion" award from the SBLC for his services, in recognition of his efforts on behalf of SBLC clients. Michael explains that he is a member of a law firm that encourages and facilitates participation in pro bono matters. Attorneys at Holland & Knight receive billable hour and collection credit for their pro bono legal services and have resources at both the firm-wide and local office levels to assist in finding and undertaking pro bono work. But this is only part of the equation, Michael notes. An attorney must be committed to pro bono services on an individual level, and this means prioritizing pro bono work - even when it is hard to find the time to do so.

For Michael, being a lawyer has provided him with tremendous opportunities, and by doing pro bono work, giving back to the Portland community where he lives and works is personally rewarding. Through his volunteering at the SBLC, Michael has helped new and existing small businesses obtain necessary legal services they otherwise could not afford. He encourages young transactional attorneys to volunteer with an organization such as the SBLC, because it is a way to demonstrate commitment to your community while also refining your skills in advising clients.



Michael G. Taylor

Michael is an excellent example not only to young attorneys but also to experienced attorneys because he applies his legal knowledge and experience outside the firm in the Portland community through his pro bono work. Moreover, Michael has done so on a consistent basis as evidenced by his recognition as a "Pro Bono Champion" for the SBLC three years in a row.

Attorneys interested in volunteering with the SBLC may contact Julieanna Elegant at 503.768.6847, jelegant@clark.edu.

Spotlight on an Inspirational MBF Grantee Sponsors Organized to Assist Refugees

by Allyson S. Krueger
Dunn Carney Allen Higgins & Tongue LLP



Each year the Multnomah Bar Foundation (MBF) awards grants to organizations involved in the advancement of civic education and engagement and increasing public understanding of the justice system. In 2015, the MBF awarded Sponsors Organized to Assist Refugees (SOAR) \$7,500 for its Voter Education Project which promotes full immigrant integration, civic participation and voter engagement through monthly classes to newly naturalized citizens. Participants learn about the voting system and receive help registering to vote. MBF funding will also be used to expand and update the curriculum.

SOAR is an affiliate of Church World Service and resettles hundreds of refugees a year from

countries that include Cuba, Burma, Bhutan, Iraq, and some African countries. SOAR also provides culturally competent, immigration-related legal representation and education to low-income refugees and immigrants in and around the Portland metro area through its Immigration Legal Services program. Recognized by the Board of Immigration Appeals (BIA) as an authorized provider of immigration legal services, SOAR maintains a staff of two attorneys, two BIA-accredited representatives and one legal assistant.



Representatives of SOAR attended the May 2014 MBF Board meeting, providing an inspiring overview of their organization's work. SOAR works with the refugees they are assisting even before they leave their home country, providing basic information

Continued on page 18

mba yls | EVENT



YLS Summer Social at Thorns FC Match

Widmer Brothers
Southern Front Deck
Providence Park
1844 SW Morrison St., Portland

Friday, June 19
6 p.m. (match start 7 p.m.)

It is that time of year again, and the YLS will be having its end of the year event on June 19. This year we decided to hold our event in conjunction with a Portland Thorns game! So join us before the game as we recognize our superstar volunteers and leaders who have completed their terms of service with the YLS. As always, this will be a great opportunity to socialize and network with others involved with the YLS. Afterwards, we will watch the Thorns face off against Kansas City!

The event is free for MBA/YLS members and \$10 for non-members. All attendees receive a complimentary drink ticket.

RSVP to Ryan Mosier, ryan@mbabar.org.
Guests and non-members may register to attend at www.mbabar.org.



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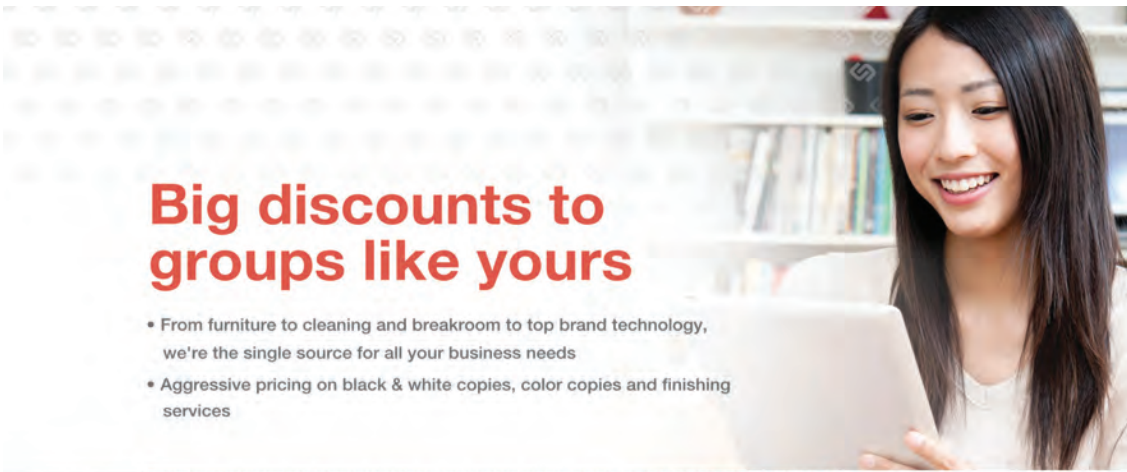
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The Corner Office PROFESSIONALISM

Officers of the Court

“We will promote integrity and independent judgment. As officers of the court, we will work to support the effectiveness and efficiency of the legal system.”

These words form one of the opening lines of the Multnomah Bar Association’s *Commitment to Professionalism*. But what does it mean for lawyers to be “officers of the court”?

The Rules of Professional Conduct help answer this question, but only at a basic level.

RPC 3.1 through RPC 3.9 govern lawyers’ behavior before courts and other tribunals. These rules tell us, for example, that as lawyers we will not “knowingly bring or defend a proceeding” unless there is “a basis in law and fact” for doing so and that the claim or defense is not “frivolous.” The RPCs also prohibit lawyers from making false statements of fact, from failing to correct previously made false statements, and from failing to disclose “authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.”

But to be an “officer of the court” - as a matter of professionalism - requires more than mere compliance with the ethics rules. Being an officer of the court requires, among other

things, that lawyers recognize that judges are busy. Extremely busy. They do not always enjoy the same luxury of time that many lawyers have to research and grapple with their cases and the legal questions presented. To be an officer of the court requires lawyers to recognize this workload and, when possible, assist the court beyond the bare minimum of the rules of ethics.

For example, your client may have five potential claims for relief. The first three are strong. Claims four and five are questionable. Assume you have a basis in law and fact to bring all five claims. They are not “frivolous,” so bringing all five claims would not violate the RPCs. As an officer of the court, what should you do?

If you want to support the “effectiveness and efficiency of the legal system” then your client’s complaint should assert only the three strongest claims. Don’t burden the court and opposing counsel with weak claims that add little or nothing to your client’s end result.

Similarly, assume your opposing counsel has failed to cite an important appellate decision in opposing your Rule 21 motion. Assume further, that the decision bears on an important issue, but technically the decision is not “directly adverse” to your position. RPC 3.3 does not require you to bring this decision to the trial court’s attention. But should you? As a matter of professionalism, being an officer of the court may mean that the answer is “yes.”

Lawyers face tough questions like these on a regular basis. The answers are not always clear or easy. And lawyers must never lose sight of their duty to zealously represent their clients. But judges need to be able to rely on the accuracy and completeness of a lawyer’s arguments. Being an officer of the court means, among other things, being open and honest about the strengths and weaknesses of your client’s case.

You might lose your Rule 21 motion. But you will increase your credibility and your client’s credibility. And you will strengthen the legal process. Both will help your client later on, on summary judgment or at trial.



The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer our question. Questions may be submitted anonymously.

Ethic Focus

Continued from page 7

the client.” Comment 10 to the corresponding ABA Model Rule explains that this limitation is intended to prevent the sale from being financed by increasing the fees to the clients affected.

Restrictive Covenants

Restrictive covenants when a lawyer departs a law firm are ordinarily prohibited under RPC 5.6(a) and associated case law (see, e.g., *Gray v. Martin*,

63 Or App 173, 181-82, 663 P2d 1285 (1983)). RPC 1.17(h), however, makes an exception in the context of selling a law practice. Under that provision, a sale may be conditioned on the selling lawyer “ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.” The ABA recently concluded in Formal Ethics Opinion 468 (2014), however, that the selling lawyer can still assist in orderly transition of active matters.

Barbara Marcille

Continued from page 11

by the courthouse staff to judges, the citizens who find themselves in court proceedings, attorneys, law enforcement, and other community partners and members of the public. But they will also enable the TCA to focus less on the small details of operational issues, and more on bigger picture process and efficiency issues and on major initiatives such as the new courthouse.

Given Barb Marcille’s passion for running, it should come

as no surprise that, in attempt to maintain some balance in her life upon taking over the daunting position of TCA, she was making a conscious effort to get in some miles for her sanity and her physical health. So it was somewhat ironic that, when we interviewed Barb, one of her feet was in a cast - she had suffered a stress fracture. But that had not dimmed her positive outlook, nor had it slowed her down in her sprint to accomplish the goals of building a stronger workforce, improving the court’s customer service, and making the TCA position more manageable.

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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.mbabar.org/Calendar/SubmitAnEvent.html. Or, you may contact the MBA by emailing us at mba@mbabar.org to add your item to our online calendar.



Classifieds

Positions

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Family Law Attorney

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estate planning community. We have a great mentor program and because of our size, attorneys have ample support and resources to better focus on practicing law and providing excellent client service.

The successful candidate would have 2-5 years' experience in handling family law cases, is self-motivated, have excellent credentials and a good reputation in the legal community. Candidates must also have a desire to market and develop their practice. Oregon Bar membership is required, Washington membership is a plus.

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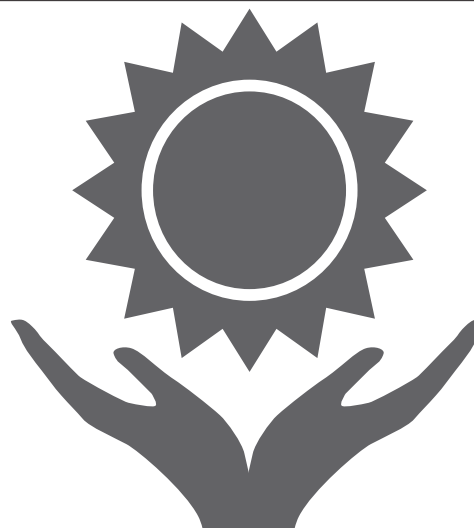


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The Unfortunate Rise of Elder Financial Abuse

by Keith S. Dubanevich
Stoll Berne



Elder financial abuse is the theft or conversion of money or other property by caregivers, relatives or other people. The number and complexity of elder financial abuse reports has grown significantly over the past decade. Indeed, recent research by the National Center on Elder Abuse and The MetLife Mature Market Institute® shows elder financial exploitation is widespread, costly and sometimes deadly.

- One in nine seniors reported being abused, neglected or exploited in the past year and the rate of financial exploitation is extremely high, with one in 20 older adults indicating some form of perceived financial mistreatment.
- Only one in 44 cases of financial abuse is ever reported.
- Annual financial loss is estimated to be at least \$2.9 billion.
- Abused seniors are three times more likely to die prematurely, and elder abuse victims are four times more likely to go into a nursing home.

Lawyers, who are now mandatory reporters, ORS 124.055, need to be aware of potential abuse and what to do about it.

Common perpetrators

Financial exploitation commonly involves trusted persons such as caretakers, family members, neighbors, friends and acquaintances, attorneys, bank employees, pastors, doctors or nurses. Often these people:

- Have substance abuse, gambling, or financial problems,
- Stand to inherit and feel justified in taking what they believe is “almost” or “rightfully” theirs,
- Fear their older family member will get sick and use up their savings, depriving the abuser of an inheritance, or
- Want to prevent siblings or other family members from acquiring or inheriting the older person’s assets.

Predators sometimes identify vulnerable persons by driving through neighborhoods (to find persons who are alone and isolated) or contact recently widowed persons they find through obituaries.

Common scams

Common scams by strangers include lottery and sweepstakes scams (“You’ve already won! Just send \$2,500 to cover your taxes”); home repair/traveling con-men (“We’re in your area and can coat your driveway really cheaply”); grandparent scams (the elderly person is called and told their grandson

is in jail and needs them to send money immediately); and charity scams (soliciting funds for good sounding causes but which provide little real benefit to the charity).

Scams perpetrated by “professionals” include predatory lending (seniors pressured into taking out inappropriate reverse mortgages or other loans); annuity sales (seniors pressured into using the equity realized from a reverse mortgage (or other liquid assets) to buy an expensive annuity which may not mature until the person is well into their 90s or over 100); investment/securities schemes such as pyramid schemes or promises of unrealistic returns; internet phishing (false emails about bank accounts); and identity theft.

Family members and trusted friends exploit vulnerable adults by using a power of attorney to steal money; taking advantage of joint bank accounts; using ATM cards and stealing checks to withdraw money; threatening to abandon, hit or otherwise harm the victim; refusing to obtain needed care and medical services for the victim; in-home care providers charging for services not provided, keeping change from errands, paying bills which don’t belong to the vulnerable adult and asking the vulnerable adult to sign falsified time sheets.

Why are the elderly attractive targets?


People over 50 control over 70% of the nation’s wealth. Often the elderly have disabilities that make them dependent on others for help, and these “helpers” may exercise significant influence over the older person. Elders may also have predictable patterns that make them vulnerable (e.g., because older people are likely to receive monthly checks, abusers can predict when money arrives

and the recipient needs to go to the bank).

The elderly are also less likely to take action against their abusers as a result of illness or

embarrassment. And sadly, some abusers assume that frail victims will not survive long enough

Continued on page 19



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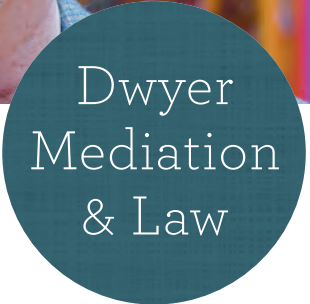
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SOAR and MBF

Continued from page 13

about resettlement in the U.S., a plane ticket (which must be reimbursed after arrival), cultural orientation, needs assessment and collaboration with other agencies for service such as employment placement, medical assistance, and other government services.

The program also links sponsors, such as religious congregations, friends or community organizations, with refugees before they arrive in the United States, and helps sponsors welcome and assist the refugees in their adjustment to a new life in the Portland area. SOAR also provides critical legal services such as naturalization, adjustment of status, family reunification, temporary protected status, employment authorization, asylum counseling, and refugee travel documents.

For those of us who were born and raised here, we may take for granted the relative ease of life in the U.S. Lala Bucan left war-torn Bosnia nearly 20 years ago and settled in Portland with the assistance of SOAR. She followed her sister who had left Sarajevo at the beginning of the war and settled in Lake Oswego, also with the help of SOAR. Lala had a law degree from the University of Sarajevo and had worked in government, but when she arrived in the U.S. she spoke little English and had to start her life over. Determined to succeed, Lala dedicated herself to learning the language and quickly found employment in a grocery store. After a few months she secured an office job with a large freight handling company. Eventually she enrolled in a paralegal program and earned her degree (receiving all A's in the process!). She interned at Lane Powell and was later hired on as a full-time employee. In 2002 Lala became a U.S. citizen. For the past few years, she has worked at Folawn Alterman & Richardson LLP.

Lala attributes her success in the United States to the many people who supported and encouraged her every step of the way, and also to the invaluable resettlement assistance she received from SOAR. Lala summed up her experience like this: "You've left your country, your parents and your friends. SOAR becomes your parent at that critical moment when you don't know anything about life in the U.S., you don't know English, directions, how to ride a bus, etc. But with SOAR's help you are on your way to a new life in the U.S." For more information about SOAR, or to learn how you can volunteer, visit www.emoregon.org/soar.php#volunteer.

To learn more about the MBF or make a tax-deductible contribution, visit www.mbar.org/foundation or call 503.222.3275.

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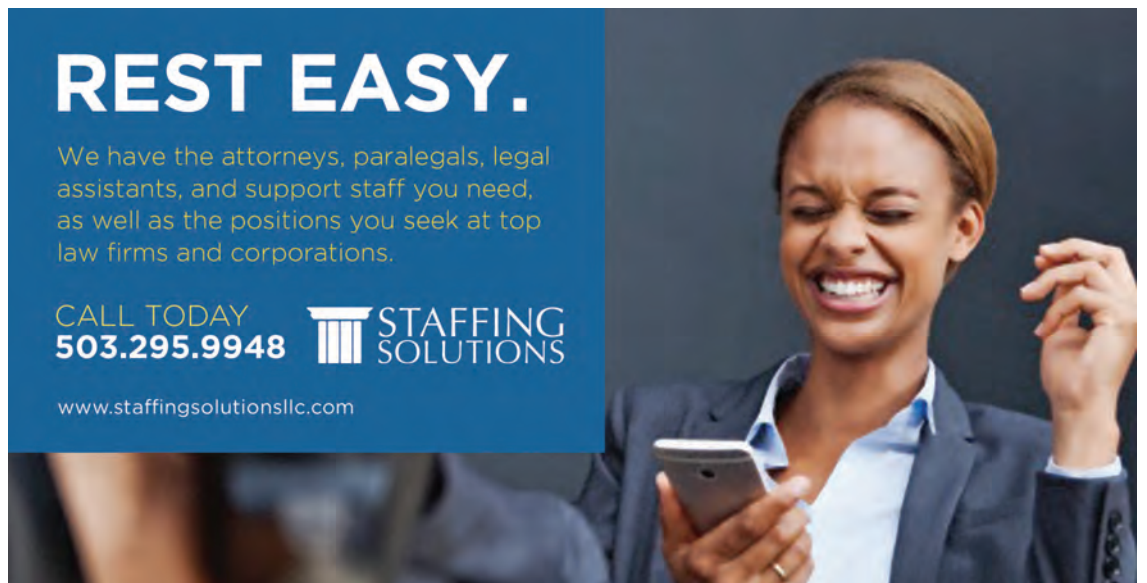
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Elder Financial Abuse

Continued from page 17

to follow through on legal interventions.

What to look for

Knowing what to look for is critically important to prevent elder financial abuse. The National Institute on Financial Issues and Services for Elders recommends looking for these signs of potential abuse:

- Living conditions are well below financial resources.
- Unusual or inappropriate bank account activity.
- Frequent checks for cash are written to a caregiver or financial professional.
- Bills go unpaid or are overdue when someone is supposed to be paying them.
- Titles to home or other assets are transferred for no apparent reason.
- Large, frequent gifts or unexplained loans are made to a caregiver.
- A reluctance to talk about once-routine topics.
- Personal belongings are missing.
- Attempts are made by a caregiver, friend, or relative to isolate the person.
- Changes are made in a will.
- A live-in caregiver refuses to leave or is evasive about financial arrangements.
- The elder has new "best friends."

What to do

The following steps can be taken to reduce the likelihood of financial abuse:

- Limit the power of attorney.
- Require the agent to provide a periodic accounting of income and expenses to an outside party such as an attorney or financial planner.
- Involve several people in all major financial decisions.
- Have checks directly deposited.
- Use automatic bill paying.
- Hire a geriatric care manager.
- Check references on anyone hired to provide care.
- Reduce isolation.

If you suspect elder financial abuse, you must report it. ORS 124.055. Finally, you can bring a lawsuit against the perpetrator under ORS 124.110.

Keith Dubanevich is an attorney with Stoll Berne. You can reach him at kdubanevich@stollberne.com or 503.227.1600.

Paragraph (b)(6) amended to substitute "information relating to the representation of client" for "confidences and secrets."

amended 1/20/09:
Paragraph (b)(7) added.

Rule 1.7 Conflict of Interest: Current or Potential

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest unless the lawyer determines that:

conflict of interest exists if:

(1) the representation of one or more clients is directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a potential client.

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MBA & OWLS Joint Event

On April 16, the Oregon Women Lawyers Leadership Committee and the MBA Membership Committee jointly sponsored a

networking event and workshop, "What's Your Elevator Speech?" The event was hosted by Pacific Continental Bank. After kicking



Caitlin Wong, Catriona McCracken, Tracy Sullivan, Mark Fenske, Sarah Petersen and Diane Rynerson

off the evening with a game of "Ice Breaker Bingo," speaker Tracy A. Sullivan, Director of Career and Professional Development at Lewis & Clark Law School offered helpful tips for making professional contacts. She encouraged participants to think of networking in terms of building community, and offered two approaches for introducing who you are and what you do. The first approach is what might be typically thought of as an elevator speech: a 20-30 second "pitch" geared towards building rapport and inviting conversation. The second approach, "the haiku of what I do," forces the individual to truly focus on what she or he believes is critical for new contacts to know in those initial moments. Tracy closed by challenging participants to help each other make connections. Finally,



Andrea Meyer, Kyra Hazilla, Violet Nazari, Mark Fenske and Harshi Waters

participants had the opportunity to practice the techniques. OWLS and MBA members working in various areas of law enjoyed the opportunity to

test their speeches and receive feedback in a fun and relaxed environment, while making new connections in the process.

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