Multnomah Bar Association
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Multnomah Lawyer

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

November 2015
Volume 61, Number 10

Why Do You Give to the MBF?

by Bonnie Richardson
MBF President

I realized recently that a lot of people don't know the purpose of the Multnomah Bar Foundation (MBF) or how it relates to the MBA. And truth be told, I didn't have a true appreciation for it until I served on the MBA Board of Directors. The Foundation is the charitable organization for the MBA membership. Many of us give our time to the MBA, whether that is presenting at CLEs or serving on committees or working on projects. As members, we all benefit greatly from the good work of the organization - we have excellent, affordable CLEs, our bar is well known for high standards of professionalism, and we have a strong sense of community both within our groups of lawyers and in our relationships with the courts and the people we represent. While we give our time and service to the MBA, the foundation is a way in which we can give back financially to our local community.

Multnomah Bar Foundation

Through the Multnomah Bar Foundation, we raise money from local lawyers who have strong ties to Multnomah County and then we give back to our local community. We do this by reaching out to locally-based organizations to submit requests for grants. Did you notice that I said "local" quite a few times? That's what makes the MBF a little different than other fundraising initiatives. The MBF has a special Grants Committee which combs through the applications we receive and carefully vets each group. Foundation board members will visit the site of the organization, project or event funded with an MBF grant. In order to qualify for a grant from the MBF, the organization must explain in detail a project that is helping to increase the public's understanding of the legal system and it must promote civic education and public participation and respect for the law.

...the foundation is a way in which we can give back financially to our local community.

What does all of that mean? It means that we are working hard to better connect the public to lawyers and judges and the legal system. We want the public to be better engaged and educated about how our courthouses work, how the voting process works for them and how they can make an impact on local government.

Because of the MBF's hands-on approach, from finding good local organizations to careful selection and distribution of grants, we are able to identify some pretty cool stuff that is going on out there. There are lots of great local projects that might not get noticed because they don't have the funding resources that some of our higher profile causes do. For example, Elders in Action, a local nonprofit group, received a grant this year from the MBF to implement an educational series for older adults to teach our aging population how to become more involved with local government and to demystify the political process. We also awarded a grant to Northwest Family Services for their Restorative Justice Program which conducts Peer Court for low-level, first-time juvenile offenders without the involvement and clogging of the juvenile justice system. Other carefully vetted grants were awarded to the Bus Project Foundation, League of Women Voters of Oregon, League of Women Voters of Portland, the MBA YLS Service to the Public Committee, Oregon Tradeswomen, Inc. and Sponsors Organized to Assist Refugees.

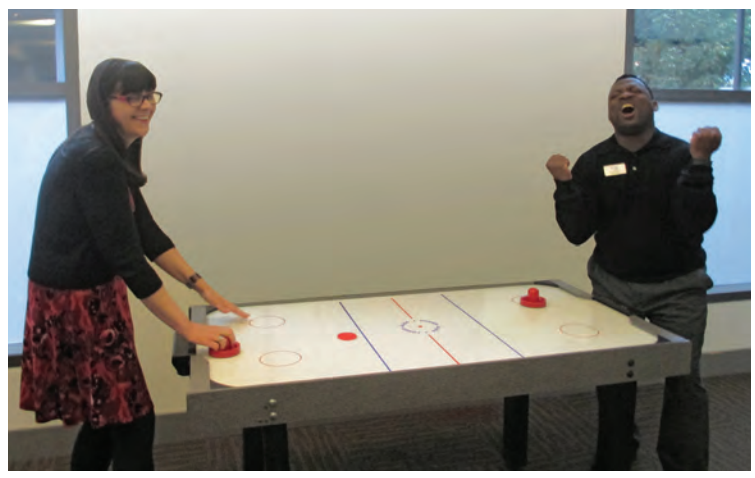
These grants help build our community and the way that people view our profession. Given the planning for the building of our new courthouse, I believe it's especially important that we step up now. We need the public to be informed about our governments and our courts. And we need the public to understand what it means to them to have a new, functional courthouse.

We want the public to be better engaged and educated about how our courthouses work, how the voting process works for them and how they can make an impact on local government.

Our goal to fund these great projects and organizations with small grants and to educate our public is actually pretty modest - only $50,000 - but it all comes from you. We need each of you, lawyers and judges and legal professionals, to help us meet our goal so we can continue to fund the good work of the MBF.

Think about it, donate what you can, and then tell us: Why do you give to the MBF?

Donations can be made at www.mbabar.org/Foundation or call 503.222.3275.



Attorney Melvin Oden-Orr overrules Judge Albrecht. Case dismissed! MBF directors play a friendly game of air hockey at the MBF Game Night fundraiser for civic education grants. Grant recipients, donors and CourtCare supporters were celebrated, and guests enjoyed a variety of games, food and drink.

mba | EVENT

Bench Bar & Bagels

Thursday, November 12
Tonkon Torp
888 SW 5th Ave., Ste. 1600, Portland
7:30-8:30 a.m.

The MBA hosts the sixth annual "Bench Bar and Bagels" on Thursday, November 12. Please join your colleagues and members of the judiciary for a light breakfast and coffee. This event is offered at no cost to MBA members and judges. Non-members: $10.

Special thanks to our sponsor and host:

Tonkon Torp LLP Attorneys

Please RSVP to Kathy Modie, kathy@mbabar.org.

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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.

NOVEMBER

11.3 Tuesday
Collateral Immigration Issues in Your Practice: What You Need to Know If You Don't Practice Immigration Law
Sarah McClain
Brent Renison

11.5 Thursday
Advising Cannabusinesses in Oregon's Newest Emerging Market
Bernard Chamberlain
Sean Clancy
Genny Kiley

11.19 Thursday
Witness Preparation: A "How to" Guide for More Effective Preparation Sessions
Jill Schmid
Joe Arellano

DECEMBER

12.2 Wednesday
Environmental Transactions 101
Cheyenne Chapman
Hong Huynh
Patrick Rowe

12.9 Wednesday
How to Effectively Present and Defend PIP and UM/UIM Claims
John Bachofner
Michael Smith

In This Issue

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www.mbabar.org

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DEADLINE for copy: The 10th of the month*
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*or the preceding Friday, if on a weekend.

NEWSLETTER STAFF CONTACTS
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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.

NOVEMBER

5 Thursday
New Admittee Social
www.mbabar.org

7 Saturday
YLS Community Service Day
See p. 13

BOWLIO
www.osbar.org/diversity

10 Tuesday
December *Multnomah Lawyer* deadline

12 Thursday
Bench Bar & Bagels
See p. 1

US District Court Historical Society Annual Dinner
usdchs.org

17 Tuesday
MBA Solo/Small Firm: Managing Clients
See p. 15

26-27 Thursday-Friday
Thanksgiving Holiday

DECEMBER

8 Tuesday
Queen's Bench Holiday Lunch
www.owlsqueensbench.org

9 Wednesday
YLS Drop-in Social & Toy Drive
See p. 13

10 Thursday
January 2016 *Multnomah Lawyer* deadline

25 Friday
Christmas Holiday

mba Multnomah Bar Association | CLE

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

Collateral Immigration Issues in Your Practice: What You Need to Know if You Don't Practice Immigration Law

Tuesday, November 3, 2015
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Note: This class will be worth two hours of OSB MCLE Access to Justice credit.

Hear from immigration lawyers about the ways immigration law impacts your practice. Consider how immigration status may affect access to the courts and access to effective representation, as well as how immigration issues create malpractice traps in criminal, family, employment and corporate law practice. **Brent Renison**, Parrilli Renison LLC, and **Sarah McClain**, Marandas & McClellan LLC, have both spent their entire careers in immigration law. They will cover collateral issues in corporate M&A, hiring practices, plea agreements, crime victims, and domestic support obligations and teach you to spot issues in a wide range of settings.

For more information:

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

Advising Cannabusinesses in Oregon's Newest Emerging Market

Thursday, November 5, 2015
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

This CLE is being presented by **Bernard Chamberlain** and **Genny Kiley** of Emerge Law Group; and **Sean Clancy** of Day and Koch, counsel who have been the pioneers providing legal advice to businesses in the new and growing Oregon cannabis marketplace. The speakers will familiarize business attorneys with some of the specific legal issues that confront Oregon businesses engaged in this new market, including business formation, taxation, licensing and compliance, copyright and trademark, and other relevant legal issues..

For more information:

Call Michael Hallas, McKinley Irvin at 503.953.1032. For registration questions, call the MBA at 503.222.3275.

Witness Preparation: A "How to" Guide for More Effective Preparation Sessions

Thursday, November 19, 2015
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Covering deposition and trial preparation, this CLE highlights the shortcomings of traditional approaches used and advice given in the preparation of key witnesses and provides a detailed "how to" guide for more effective preparation sessions. Panelists **Jill Schmid, Ph.D.**, Partner and Senior Litigation Consultant, Sound Jury Consulting, and **Joe Arellano**, Partner, Kennedy Watts Arellano LLP, will address:

- the use of role-playing and video feedback
- overcoming barriers to effective communication (centering on the "problem" or "difficult" witness)
- the importance of and how to instill confidence and control in your witness
- how jurors assess witness credibility, and
- the impact of verbal and nonverbal behavior on the overall credibility of the witness's testimony.

A mock preparation session will demonstrate some of the "do's" and "don'ts."

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.

To register for these classes, see page 4.

Environmental Transactions 101

Wednesday, December 2, 2015
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Selling and buying real properties and other business assets with potential environmental problems can present some significant liability issues. As with any challenge, being knowledgeable and having the right information will help parties through the transaction. This CLE will focus on identifying key liability issues and methods to mitigate potential liability that may arise in a business transaction from both the seller's and buyer's perspectives. Please join **Hong Huynh** of Miller Nash Graham & Dunn, **Patrick Rowe** of Sussman Shank, and **Cheyenne Chapman** of the Oregon Department Environmental Quality for a thoughtful discussion, including:

- Liability concerns
- Defenses and mitigation tools
- Seller vs. buyer contracting perspectives
  - As-is
  - Representations and warranties
  - Indemnification
  - Insurance
- Prospective Purchaser Agreement

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.

How to Effectively Present and Defend PIP and UM/UIM Claims

Wednesday, December 9, 2015
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

This seminar is designed to assist the practitioner in assessing claims relating to Personal Injury Protection (PIP) benefits and Uninsured Motorist/ Underinsured Motorist (UM/UIM) coverage. The presenters, **John Bachofner** of Jordan Ramis PC and **Michael Smith** of Gatti, Gatti, Maier, Sayer, Thayer, Smith & Associates will address presenting, pleading, proving and defending such claims.

The presenters will guide you through the process and address these types of claims from both the plaintiff and defense perspectives. The presenters will also address the effect of various ORS provisions relating to both PIP and UM/UIM coverage and claims, including minimum coverage, time limitations, order of benefits, application of coverage and proof of loss. The speakers will also address changes to Oregon's PIP and UIM statutes that take effect in 2016.

If you handle motor vehicle cases, regardless of your level of experience, do not miss this seminar.

For more information:

Call Alex Williamson, Prange Law Group LLC at 503.595.8199. For registration questions, call the MBA at 503.222.3275.

Member Resource Center

Welcome to the member resource center, where you will find information of importance to MBA members and the legal community at large.

Pro Bono Oregon Listserv
Receive a weekly summary of available pro bono volunteer opportunities in your email inbox every Thursday. Listings include the type of case and a brief description of the issue and do not include highly identifying facts or party names. Sign up by sending an email to probonooregon-subscribe@mail.lawhelp.org.

Update Your Directory Listing on the MBA Website
The MBA website includes an expanded online Membership Directory and members may now update their photos, include a bio, add links to social networking sites and update practice area information online. To update your listing, login to the Members Center where you may use the email address currently on file in the MBA Directory as your user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

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www.legalnw.com

LexisNexis
Special packages and pricing exclusively for MBA members.
Megan Tower-Humphrey
503.309.5294
www.lexisnexis.com

and now is the time to renew your MBA membership for 2016

*Renew by December 31 to receive a **FREE $50 credit** towards MBA CLE programming. Attend a CLE in person, watch a video webcast online or listen to a seminar on your computer or smartphone.*

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MBA office 503.222.3275

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Douglas Thrush, 1.855.337.6811 x16095

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1.866.611.7829
www.callruby.com/mba

UPS
MBA members can save up to 26% on their express shipping courtesy of UPS.
www.savewithups.com/multnomahbar

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.

CLE Registration Form

Receive a $5 discount when registering online at mbabar.org.

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☐ Non–Member

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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.

Photocopy registration and mail or fax with payment to:

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

Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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

11/3 Collateral Immigration Issues in Your Practice
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

11/5 Advising Cannabusinesses in Oregon's Newest Emerging Market
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

11/19 Witness Preparation: A "How To" Guide
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

12/2 Environmental Transactions 101
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

12/9 How to Effectively Present and Defend PIP and UM/UIM Claims
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

Total due . . . . . $_____

mba|ANNOUNCEMENTS

Free CLE Webcast to MBA Members
The video webcast of the seminar entitled "Buying, Selling or Transitioning In or Out of Law Practice" is now available in the Members Center at www.mbabar.org. The webcast is worth 1.5 hours of Practice Skills and .5 hour of Ethics OSB MCLE credit.

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

Commitment to Professionalism
The MBA professionalism statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order at www.mbabar.org/assets/documents/resources/freq-requested/profcertorder.pdf.

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

Ethics Focus

Common Problems with Common Representation

by Mark J. Fucile
Fucile & Reising

Common or "joint" representation is a frequent occurrence for many lawyers in a wide variety of practice areas. On the plaintiffs' side in litigation, for example, a single lawyer or firm may take on several clients who have been injured in the same automobile accident. On the defense side, a single lawyer or firm may represent both a national manufacturer and a local seller in a product liability case. Common representation is generally permitted as long as the respective positions of the jointly represented clients are - and remain - aligned. At the same time, if a multiple client conflict between jointly represented clients develops - under RPC 1.7, the multiple client conflict rule - the result can be significant because, as Comment 29 to the corresponding ABA Model Rule notes, the lawyer or firm may be required to withdraw altogether. Over the past two years, the Oregon Supreme Court has addressed common representation conflicts twice - with one case focusing on the early stages and the other addressing the later stages. In this column, we'll look at both.

Before we do, however, three qualifiers are in order. **First**, Oregon lawyers have long had a duty of reasonable care to evaluate potential conflicts throughout the course of a representation (see, e.g., *In re Johnson*, 300 Or 52, 61, 707 P2d 573 (1985)). Therefore, even if there are no conflicts at the outset of a joint representation, the lawyer needs to continue to monitor for potential conflicts as the case proceeds. **Second**, if a conflict develops between jointly represented clients during the course of a case, it is ordinarily not waivable because it is occurring in the same matter (see, e.g., *In re Barber*, 322 Or 194, 199-200, 904 P2d 620 (1995)). As noted, therefore, the lawyer may need to withdraw altogether. Third, although potential conflicts are a key facet when evaluating the viability of common representation, the implications of joint privilege should also be explained to the clients concerned (see, e.g., *U.S. v. Gonzalez*, 669 F3d 974, 982 (9th Cir 2012)). Jointly represented clients, for example, should understand that the lawyer generally cannot keep their individual confidences on matters of common application.

Early Stages

In re Ellis/Rosenbaum, 356 Or 691, 344 P3d 425 (2015), involved two very experienced business litigators who represented multiple officers and employees of a local high-tech company during the early phases of an SEC investigation. At that point, the SEC was conducting individual interviews, the positions of the interviewees were aligned and it was in their shared interest to learn what direction the SEC was taking in the interviews. Later, when the SEC (and a separate criminal investigation) began focusing on specific individuals, the lawyers transitioned out of the joint representation. The bar, however, charged the lawyers with having multiple client conflicts among their jointly represented clients. The Supreme Court disagreed.

In doing so, the Supreme Court underscored two important points. First, it reaffirmed long-standing Oregon law (principally *In re Samuels/Weiner*, 296 Or 224, 674 P2d 1166 (1983)) emphasizing that whether a conflict exists is evaluated at the time of the representation involved - not whether there is a theoretical possibility that a conflict may develop later depending on speculative future events (356 Or at 713). Second, the Supreme Court defined what it means for interests to be "adverse." The Supreme Court looked to the ordinary dictionary meaning of the term, noting it means "opposing," "hostile," "antagonistic" or "inconsistent" (*Id.*). By taking that practical approach, the Supreme Court provided a common sense test for lawyers to gauge whether or not commonly represented clients' positions are aligned.

Later Stages

In re Gatti, 356 Or 32, 333 P3d 994 (2014), involved a very experienced personal injury lawyer who had represented 15 clients in clergy abuse claims that resolved against the principal defendant at a court-supervised mediation. Although the evidence was uniform that the lawyer had done a stellar job for his clients, one later complained that he hadn't gotten a good enough deal and filed a bar complaint against the lawyer. The bar argued that the lawyer had developed a conflict when the mediator had been able to extract substantially more from the settling defendant than the sum total of the clients' individual settlement authority and the lawyer divided the surplus among the clients using an agreed formula. The Supreme Court concluded that suggesting a formula might benefit one client over another and, therefore, constituted a conflict.

Under the particular facts, the Supreme Court did not reach the issue of whether the clients on their own might agree on an allocation method. OSB Formal Ethics Opinion 2005-158 (at 434), however, suggests that approach, and that a lawyer can assist the clients with the logistics and information after they have independently chosen a process among themselves.

Summing Up

Common representation can provide real benefits to clients ranging from cost savings to leveraging the knowledge a single lawyer or firm can bring to a case. At the same time, lawyers need to be sensitive to potential conflicts both when undertaking a common representation and along the way.

Around the Bar

Schwabe, Williamson & Wyatt

The firm has brought onboard Stolowitz Ford Cowger LLP (StoFoCo), a seven-attorney Portland-based intellectual property/patent boutique law firm. One of the new Schwabe attorneys is **Bryan Kirkpatrick**.

The merger means Schwabe's IP practice now includes 32 leading IP attorneys, making it one of the largest IP groups in a full-service law firm in the Pacific Northwest. StoFoCo brings extensive experience in the tech industry, specifically in electronics, software, e-commerce, nuclear, and wireless. Prior to becoming patent attorneys, StoFoCo's founders worked as engineers at technology companies, including Hewlett-Packard, Texas Instruments and Xerox.

Traci Ray

Josephine Ko

Barran Liebman

Traci Ray, the firm's executive director, has been honored with the University of Oregon School of Law's Outstanding Young Alumnus Award for 2015. The award was created to recognize graduates who have made significant career, leadership and/or service contributions to the community, the law school or the legal profession within the first 10 years following graduation.

Josephine Ko is a new associate attorney. She advises and represents business owners and employers in all areas of employment law. She also volunteers her time as a mediator with Resolutions Northwest, a nonprofit community mediation and facilitation service, and as a legal advisor for API Forward, a foundation that works to support educational advancement for children in Asian and Pacific Islander communities.

Blerina Kotori

Haley Morrison

Lindsay Reynolds

Tonkon Torp

Attorney **Blerina Kotori** has been appointed to the board of directors of Raphael House of Portland, a multi-faceted domestic violence agency dedicated to ending intimate partner violence.

Kotori is a member of the firm's labor & employment and information privacy & security practice groups. She advises and represents employers in various matters, including discrimination, retaliation, leave laws, wage and hour, sexual harassment, disability, and employment benefits. In her data privacy and security practice, she assists employers with privacy issues and data security breaches.

Haley Morrison has been named to the board of directors of Playworks Pacific Northwest, which uses play to help create positive environments for building leadership and fostering teamwork at area elementary schools.

A member of the firm's labor & employment practice group, Morrison 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 litigation.

Lindsay Reynolds has been appointed to the newly formed Komen Oregon and SW Washington Ambassador Board. Reynolds is a member of the firm's labor & employment practice group. She represents employers on a variety of matters including discrimination, ADA, FMLA/OFLA and other leave laws, employment benefits, and labor issues.

John Henry Hingson III

Oregon City attorney **John Henry Hingson III** delivered a presentation at the 2015 summer session of the National College for DUI Defense, Inc. held at Harvard Law School, entitled "Keeping the Faith: How to Use Good Faith (*United States v. Leon*) to Prove Bad Faith (*Arizona v. Youngblood*)." Hingson, a founding member of the National College for DUI Defense, Inc., was recognized for his contributions and instructional support by the National College since its founding 20 years ago, at the conclusion of his presentation.

Josh Stadtler

Dunn Carney

Litigation attorney **Josh Stadtler** has been elected to a two-year term as secretary of the board of directors for Portland Homeless Family Solutions, a Portland nonprofit organization that assists homeless families with children to move back into housing and stay there long-term.

Practicing with Dunn Carney since 2013, Josh is quickly gaining recognition for his active community involvement and earlier this year was awarded the Michael E. Haglund Pro Bono Award by the MBA for his pro bono service through Legal Aid Services of Oregon's Domestic Violence Project and Night Clinic. He currently serves on the MBA Young Lawyers Section Pro Bono Committee.

Chelsea Lewandowski

John Weil

Tomasi Salyer Baroway

Chelsea Lewandowski has joined the firm as a shareholder and continues her practice representing creditors in the enforcement and protection of their rights in Oregon and in Washington. She focuses on working with her clients to develop and execute practical and efficient strategies to enforce and/or protect her clients' rights both in and out of the courtroom. Lewandowski has more than 15 years' experience in securing, protecting, and enforcing security interests and liens; judgment enforcement; consumer and commercial collections; complex defense litigation; and foreclosure actions.

John Weil has joined the firm as of counsel and continues his practice representing both commercial and consumer lenders in the enforcement of their loan documents and protection of their collateral in negotiation, litigation, bankruptcy and statutory lien enforcement proceedings. He has more than 30 years' experience representing individuals, banks, commercial and consumer lenders, and equipment lessors in negotiations, documentation of transactions, bankruptcy, and litigation in the state and federal courts of Oregon and Washington.

Brenda Meltebeke

Ater Wynne

Partner and Firm Chair **Brenda Meltebeke** has been elected to the Marylhurst University Board of Trustees, a private, co-educational, liberal arts university just south of Portland, dedicated to excellence in adult education.

Tom Stilley

Cliff Davidson

Sussman Shank

The firm's partners elected **Tom Stilley** as managing partner for a three-year term, effective October 1.

Stilley joined Sussman Shank in 1988. He has held several management positions and is the co-chair of the firm's nonprofit and religious organizations group, and past chair of the business restructuring and bankruptcy group. He focuses his practice on debtor/creditor rights, bankruptcy, business litigation, loan workouts, and asset recovery.

Attorney **Cliff Davidson** has become a partner of the firm. Davidson is a commercial trial lawyer with nine years of experience. His practice focuses on commercial disputes, complex litigation including class action defense, entertainment and intellectual property litigation (including TTAB and WIPO proceedings), First Amendment litigation, counseling in the areas of privacy and data security and insurance coverage.

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.

Tips From the Bench

Working It Out

by Judge Shephen K. Bushong
Multnomah County Circuit Court

"Try to see it my way
Only time will tell if I am
right or I am wrong"

The Beatles' hit song "We Can Work It Out" offers some good advice for lawyers on effective dispute resolution practices. Here are some tips for judicial settlement conferences (JSCs).

Before the settlement conference

- **Schedule a JSC.** Talk to opposing counsel; try to determine when the case will be "ripe" for settlement and agree on a list of acceptable judges. Then start making calls. There is no central number to call; you'll have to call each judge's assistant to find out if the judge might be available. Don't wait until the last minute; most judges will need at least a month's advance notice.
- **Prepare your client.** Explain the JSC process. Make sure the client understands that the judge may want to talk directly to the client. Explain the strengths and weaknesses of your case, and the costs and inherent uncertainties in going to trial. Urge your client to listen to the judge, keep an open mind, and prepare to compromise if appropriate.
- **Get sufficient authority.** Make sure that the person attending the settlement conference has sufficient authority to settle the case. If there are limits to that person's authority, make sure that someone with additional authority is available by telephone if not in person.
- **Educate the judge.** Most judges will send a letter before the JSC asking for information about the case and any prior settlement discussions. If you don't receive such a letter, call the settlement judge and ask for one. Be realistic and frank when educating the judge about your case; don't posture or just attach the latest pleadings/demand letters/ summary judgment briefs.
- **Talk to opposing counsel about settlement.** A JSC is often more productive if counsel have talked about the case ahead of time. That can help set more realistic expectations. You might even find a way to work it out yourselves. No judge will be upset if you settle on your own and cancel the JSC.

At the settlement conference

- **Listen to the judge.** Don't argue your case or explain why you think you should win. Your client will benefit from hearing what the judge has to say.
- **Re-evaluate your position.** Don't be afraid to re-assess the settlement value of the case based on information provided by the judge. Try to see the other side's perspective. As the song says, "While you see it your way, there's a chance that we might fall apart before too long."
- **Don't negotiate as if you are buying or selling a used car.** Don't start out artificially high or low to "leave room to negotiate." Be reasonable from the start.
- **Authorize the judge to disclose important facts that might help the other side re-evaluate their case.** Most settlement judges will keep your secrets. But holding onto all your cards often makes it more difficult to settle the case.
- **Don't posture.** Don't tell the judge that this is your "final offer" or the "limits of your authority" unless that is truly the case. Lawyers lose credibility with the court when they draw a line in the sand, only to re-draw it later.
- **Make a record.** If you reach an agreement, write it down and have the parties sign it. Or ask the judge to put the terms of settlement "on the record." Parties are less likely to back out of an agreement if it is in writing or formally solemnized by someone wearing a black robe.

After the settlement conference

- **Follow-up immediately.** If you reached an agreement at the JSC, prepare the settlement agreement, get it signed, send the check, and dismiss the lawsuit as soon as possible. Don't leave time for "buyer's remorse." If you didn't reach an agreement, contact opposing counsel and try to find out what went wrong.
- **Consider supplemental procedures.** Your judge might schedule a second JSC if it will be productive. Your judge might help you settle the case by following up via email or conference call after the JSC. Don't give up if you think the case should settle.
- **Prepare for trial.** Not every case should settle. There is nothing wrong with resolving a case through trial.

As the song says, "Life is very short, and there's no time for fussing and fighting, my friend." Keeping that in mind will make for a successful JSC. And perhaps make your law practice more satisfying. Often, there's no need to fuss and fight about discovery, motion practice, or other matters that can make the litigation process unpleasant. "We can work it out."

Endnote: John Lennon and Paul McCartney wrote "We Can Work It Out" during The Beatles' Rubber Soul *recording session. It was released as a "double A side" single (with "Day Tripper") in 1965. The song has been covered by many bands and artists, including notably Deep Purple (appearing on the band's 1968 album,* The Book of Taliesyn*); and Stevie Wonder (appearing on his 1970 album,* Signed, Sealed and Delivered*).*

News from the Courthouse

by Bill Larkins
Court Liaison Committee

Chief Civil Judge's Report & Courthouse Update

Judge Stephen Bushong and Barbara Marcille

Streamlined Civil Jury Trials: Judge Bushong reported the withdrawal of proposed SLRs for a pilot project for a streamlined civil jury trial process. After input from OTLA and OADC, it was decided that further exploration is needed to develop a structure for this project that will be functional and efficient.

New Courthouse: The court and other courthouse occupants have been meeting with the project design team on a regular basis. The architects have been gathering input to solidify the square footage and adjacency requirements for the new building. The next phase will be the actual design of the building and the development of floor plans. The building will likely be 14 or 15 stories tall, with 40 courtrooms; courtrooms and judges' chambers will be on the upper floors. Groundbreaking should take place in late 2016, and move-in is targeted for approximately April 2020.

New Judge and Pro Tem Referees in Multnomah County: Judge Bushong announced that Governor Brown has appointed Multnomah County Senior Attorney Patrick Henry to the Multnomah County Circuit Court. Judge Henry will fill the vacancy created by Judge Paula Kurshner's retirement.

A new referee, Monica Herranz, began working in the court in October. The court hopes to fill an additional referee position by the end of this year.

Procedural Justice and Equity: Barbara Marcille reported on multiple projects furthering procedural fairness and access to justice in the Multnomah County Circuit Court. She described a U.S. Department of Justice grant to the court to enhance access to justice in Family Law court matters, and particularly to address the needs of women who have been subjected to domestic violence. As part of that project, a courthouse-wide survey of courthouse users was recently completed to gather data about why people were at the courthouse and to seek evaluation of their experiences in the courthouse. This grant has also allowed the court to conduct staff and judicial trainings regarding trauma-informed best practices. The court has received a Center for Court Innovation grant to study the use of high-volume courtrooms and to improve access to justice for the many citizens that appear. The Center for Court Innovation is planning a site visit to the court in early 2016 to begin this work. Barbara also made note of a project in which Portland State University, Multnomah County's Office of Equity and Diversity, and Multnomah County Behavioral Health have a grant to improve social justice, equity and empowerment for individuals involved with the justice system. They will be planning and conducting training for court staff and judges regarding best practices for working with individuals with mental illness, chemical dependency, and/or that have experienced adverse childhood experiences, recognizing that to improve social justice and racial equity, it is necessary to use a trauma-informed approach. All of these initiatives will further the court's commitment to procedural justice and equity.

Procedural Justice

by Lissa Kaufman
Board Liaison, Court Liaison Committee

I recently appeared in a child custody case in another county. At the conclusion of the hearing, the opposing party thanked the judge profusely and walked out of the courtroom with a look of relief and acceptance on her face. The judge had just ruled against her and granted custody to my client. Before issuing her ruling, the judge addressed the opposing party directly and told her how impressed she was with her commitment to the child. She cited specific examples of this commitment from the testimony given by the opposing party and praised her intentions. Finally, the judge took several minutes to explain that her ruling was based on maintaining the child in a stable placement with my client.

Most attorneys know that when litigants feel they have received a fair shake in court, they are more likely to walk away from a courtroom experience as satisfied, notwithstanding an adverse ruling. Conversely, when a party perceives a lack of respect or validation, they will have a much more difficult time accepting a court decision as just. Procedural justice embodies the idea that judges have an obligation to ensure fair process *and* a just outcome. The American Judges Association has been studying the effect of procedural justice on public satisfaction with the courts. Not surprisingly, studies have consistently demonstrated that when judges establish themselves as legitimate and fair by transparently applying certain tenets of justice into their processes, there is increased compliance with court orders. This includes decreased recidivism among criminal offenders.

According to a 2007 *Court Review* white paper by Kevin Burke and Steve Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction" (Court Review Volume 44, p.4), people view fair process as the means to a just outcome. The key features of procedural fairness are voice, neutrality, respectful treatment and trustworthy authorities. When these principles are visible to litigants, it promotes legitimacy and respect for the legal system. This, in turn, encourages compliance.

Judges are focused on ensuring just outcomes while managing increasingly busy dockets and complex cases. Despite a judge's best efforts, ensuring the perception of fairness may take a back seat to the competing goal of promoting efficiency. People have a profound need to be heard in the context of litigation. They need to understand the reasons behind court action and, most importantly, they need to perceive respect from the judge and court employees.

Multnomah County Circuit Court is in the process of evaluating ways to improve public perceptions of procedural fairness. According to Judge Edward Jones, "ensuring procedural fairness is relevant all of the time. The court is interested in thinking about the impression judges make on the people they serve." Judge Jones and other Multnomah County judges note that in a typically demanding and hectic day, judges (and court staff) may not have an accurate idea of how they come across to the people they serve. He stresses a need for objective feedback.

High-volume dockets are particularly problematic as they are perceived as "cattle calls" with little time or effort expended to promote the expectations of procedural fairness discussed above. It is not surprising that, according to Burke and Leben, observations of judges' non-verbal behaviors in one study revealed a substantial need for improvement. Behaviors observed included a lack of eye contact and sarcastic or dismissive tones. These gestures or tones may be imperceptible to the judges, but they speak volumes to the people appearing before them.

One of the initiatives underway is a project undertaken by the Multnomah County Circuit Court's Family Law Department. A two-year federal grant is funding assessment of current perceptions through targeted focus groups and a survey. The survey was courthouse-wide and sought feedback on the experience of people visiting the courthouse, whether or not participation in a hearing occurred. Almost 400 litigants, lawyers, jurors, and members of the public obtaining copies of documents filled out the survey. The responses will serve as a baseline for comparison following education events for judges and court staff.

Chief Family Law Court Judge Maureen McKnight explains, "Family Court dockets are frequently high volume and, for litigants, the experience is emotionally charged. Ensuring that litigants perceive that they had a chance to make their points, were respected in the process, and understood what the ruling was - and why - is a true challenge. The first step in addressing that challenge is examining how the Family Courts are currently viewed." Studies have shown that a litigant's experience of fairness in the courtroom can make all of the difference in family law related cases where personal stakes are high and dissatisfaction can result in a revolving door of court hearings or non-compliance with rulings.

A separate plan for evaluating the public's courthouse experience is also in progress. Multnomah County Court is one of four county courts selected for a site assessment by the Center for Court Innovation, a nonprofit organization charged, in part, with promoting systemic reforms to enhance more effective justice systems. Emily Gold LaGratta, the Deputy Director of the Center for Court Intervention, explained that the goal of the site visits is to harness the research correlating procedural justice to better outcomes to make tangible improvements in the courthouse experience.

Gold LaGratta described some of the improvements implemented in other jurisdictions. These included developing opening scripts for certain dockets with attention to tone and answers to questions that many litigants have. There were also suggestions for procedural changes such as ensuring that judges were on time, or, if necessary, creating protocols employed by court staff to keeping litigants updated about when they could expect their cases to be called. According to Gold LaGratta, procedural justice is not one-size-fits-all and respect can be conveyed regardless of the personality of the individual judge. This can be achieved by utilizing court staff or even signage in the courtroom. Some jurisdictions have implemented ongoing professional training which includes videotaping and feedback from peers.

The site visit will begin with a self-assessment and will be followed by a two-day visit from Center for Court Innovation staff. The visit will include courtroom observations, an evaluation of the physical space and court procedures, and meetings with various stakeholders. The self-assessment process is underway and the site visit will occur in the next six to nine months. Judge Jones explained that the site assessment comes at a particularly important time for the court. With the plans for a new courthouse underway, feedback about how to create a "user-friendly" courthouse and to improve procedural fairness overall is appropriate and timely.

According to Judges Jones and McKnight, lawyers can assist the goal of promoting a transparency and fairness in process by participating in the existing initiatives. Judge Jones also suggests that lawyers do their part to ensure that the courthouse and courtroom staff are treated respectfully by modeling professionalism when conducting their business at the courthouse and in other client interactions. Other judges recommend that lawyers appearing with their clients in court look to the judge for subtle cues about their own behavior. Judges frequently seek to send lawyers verbal and nonverbal messages that are respectful and avoid embarrassment. Lawyers should be sure to reflect on their own actions when in court to avoid judicial interactions which may appear to be less respectful.

A Common Approach to Avoiding Malpractice Claims

by Michael A. Greene
Rosenthal, Greene & Devlin

The practice of law is a profession. As professionals, our stock-in-trade is making decisions and giving advice. For a variety of reasons, we may make decisions and give advice that is incomplete or incorrect, especially with hindsight.

Although no single factor will prevent mistakes, a number of guidelines can enhance your performance as a professional and also help you handle the consequences of almost any mistake. Making mistakes goes with the territory of being a lawyer. Often, your handling of those mistakes determines the severity of the consequences.

The purpose of this article is to share a workable approach to avoid or minimize malpractice claims. This approach is the product of my 35 years' experience representing plaintiffs in legal malpractice cases.

The client relationship can be divided into two stages - before you are hired and after you are hired. The guidelines for avoiding or minimizing malpractice are different for each stage.

Before Being Hired

Before you agree to represent a client, the focus is on whether you, the case, and the client are a good match for each other and if you are creating a clear relationship that will endure. At this stage there are five guidelines:

1. **Look before you leap.** Carefully and thoroughly evaluate a matter before you agree to accept the representation. If in doubt, don't take on the case. Usually the most important time you spend is the time you invest to evaluate the clients and the matter. Case selection is a crucial key to a successful practice, and careful evaluation is the indispensable component. Your professional intuition and experience will be your best guide in case selection. Saying "no" can be as important as saying "yes." Check out both the client and the matter before you say "yes."
2. **Know your limits and resources.** Handle matters within your experience and expertise, or get appropriate help. It can be dangerous to venture into a new area of law without help from someone who is knowledgeable in that particular area. Professional growth should not be at the expense of a client. The key to professional growth and success is often being willing to ask for help from a colleague who has more experience than you in the relevant area of law. If you don't know a lawyer who can help you, call the OSB Lawyer to Lawyer program at 503.620.0222, ext. 408, or call an active member of the applicable OSB section.
3. **Connect with your client.** It is important to understand your potential client before you agree to representation. If you do not feel comfortable with the person, you should not represent that person. Your gut reaction is usually a good indicator of how other people will react and the case. It is difficult to convince someone to accept your client's version of the facts if you don't believe your client or if you don't share your client's perspective on the case. In turn, clients who feel their lawyer is connecting with them and is "on their side" will be far less likely to make a malpractice claim.
4. **Manage client expectations.** Managing expectations is essential, but often difficult. In your effort to get the business, be careful not to promise too much, too soon, with too little information. This creates unrealistic expectations that you will then be stuck with. Resist giving a quick opinion. Concentrate on the process of developing and evaluating the case, not on specific results. Provide a general overview of estimated costs and fees. Make sure the client understands that circumstances often change, and that changed circumstances require a case reevaluation.
5. **Document your representation - or lack thereof.** If you have gained confidential information from a potential client but you are not going to represent that person, send a non-engagement letter documenting that you are not representing the person. If you are going to represent the person, document the scope of the engagement with an engagement letter. Explain what representation includes and, if important, what it excludes. If you represent the client, send the client a disengagement letter when your representation is finished - whether that is in the middle of a case because you withdrew or at the conclusion of the legal matter.

Continued on page 15

mba Young Lawyers Section

Ask the Expert

Working a Room

Dear Experienced Attorney:
My mentor has invited me to an organization's annual dinner, but she will be arriving late. She encouraged me to arrive early and attend the cocktail hour, but I am afraid I will not know anyone there. Any advice?

Sincerely,
Young Wallflower

Dear Young Wallflower:
Working a room, especially when you do not know many people, can be intimidating, even for the more extroverted attorney. Lucky for you, the Multnomah Bar is a welcoming and cooperative group that likes to help younger attorneys, like yourself, find their place in the local bar. This should make the experience a little less intimidating, but here are some things to keep in mind.

When you arrive, scan the other nametags to see if there are others in attendance who you know. While you do not want to spend the entire time joined at their hip (a common trap even for the more experienced networker), a friendly face may help you relax and ease into your evening. You can also do some reconnaissance ahead of time and learn about the organization as well as some of its board members. If you spot a board member (who sometimes have a special nametag to indicate their role within the organization), you can be pretty sure that they will be willing to talk to you about the organization, their practice, or anything else, and they may also be willing to introduce you to other board members, attorneys, or business partners.

Still got nothing? Then it may be up to you to introduce yourself around. Approach a person or group with confidence, introduce yourself with a firm handshake, make good eye contact, and please, please, please, remember to smile. You may be nervous, but you should not let on. The more confident you are in yourself, the more willing other attendees will be to engage you in conversation. Conversely, if you are in a candid conversation with another person, you can consider letting them know that you are a little nervous about the situation and that you do not know many people. Ask them if they have any advice that works for them, or see if they have anyone that they can introduce you to.

If you are waiting to introduce yourself, be cognizant of your body language. Folding your arms, staring at the ground, or avoiding eye contact can create the impression that you are not interested in conversation. Make eye contact and smile as people walk past, even if you are hesitant to stick out your hand and introduce yourself. A warm, welcoming smile will get you a long way in starting a meaningful conversation. And if you do strike up a conversation, you do not need to feel like you need to say something profound right out of the gate. Commenting on the event, the venue, the organization, and yes, even the weather, may help you start a conversation that will lead to deeper discussions. Better yet, read up on an interesting current event and be prepared to have that as a fallback topic of discussion.

You should have business cards with you, but you do not want to be dispensing them like leaflets. Make them count. Have your elevator speech prepared, so you can succinctly tell people about yourself and what you do, and consider including a recreational pursuit or recent travel experience. Asking open-ended questions will help you learn more about people and also demonstrate your listening skills. If you get to a comfortable place with a person, asking what you can do to help him or her, their organization, their practice, or their business will go a long way to establishing meaningful relationships built on generosity and cooperation.

Following up after the event is important too. Be sure to send a thank you email or card to anyone who introduced you around. Invite new colleagues out to coffee or lunch and send them a LinkedIn invitation. Make sure that you do not end your networking at the end of the night. After all, the local bar organization is a tight-knit group, and you are likely to see many of the same people at future events, and next time maybe you can avoid leading with a discussion of the weather

Good luck.

Crime Shouldn't Pay

Reflections on Clerking in the U.S. Attorney's Office

Five common myths about federal civil asset forfeiture we should stop believing...

by Brandon Kline

Before I began clerking at the U.S. Attorney's Office last summer, I viewed forfeiture primarily as a (constitutionally questionable) law enforcement tool to take stuff from innocent people during traffic stops - or "road-kill" cases, in the vernacular. After spending the last year helping my supervising attorney administer these laws, I have learned that Congress carefully crafted these provisions to protect the rights of property owners (see generally Civil Asset Forfeiture Reform Act of 2000 (CAFRA), 18 U.S.C. § 983). As a result, the adversarial process provides strong protections for property owners against wrongful forfeitures.

This year I served as Lewis & Clark Law School's 3L liaison to the Young Lawyers Section Board of the Multnomah Bar Association. A recent *Daily Show* sketch encouraged me to reflect on the most common myths - and the real facts - about forfeiture.

Myth 1: The government can seize your stuff whether or not it is the proceeds of a crime

Fact: This is a canard. Before seizing a property owner's assets, federal authorities always have the burden of demonstrating that the property has a nexus to a crime (i.e., proceeds from a criminal act or used to facilitate those activities). Beyond the administrative seizure, a federal judge must issue a warrant upon finding probable cause to believe the property is substantially connected to a crime.

Myth 2: Equitable sharing incentivizes state law enforcement to police for profit

Fact: First, there are substantial differences between state and federal forfeiture programs - and between programs from state to state. For example, under *state forfeiture* provisions, just because police in Texas might engage in a systematic practice of seizing cash from drivers doesn't necessarily mean the same is true in Oregon. Forfeiture statutes and law enforcement goals differ dramatically from state to state. It is important to understand the jurisdiction's laws before forming an opinion.

In contrast, *federal law* is more uniform. In January 2015, then-Attorney General Eric Holder issued an order strictly limiting situations in which federal agencies can get involved in cases where assets are seized by state or local law enforcement and forfeited under federal law. Agencies are now only permitted to adopt assets seized by state and local law enforcement agencies that directly implicate public safety concerns, including firearms, ammunition, explosives and property associated with child pornography. The federal seizure of all other property, such as cars, valuables and cash, is prohibited, unless a federal judge finds probable cause to issue a warrant.

Consequently, federal investigations usually implicate crimes motivated by financial greed, such as white-collar crimes, money-laundering, and trafficking. Taken together, forfeiture and money laundering laws help ensure that these sorts of crime don't pay. Katie Lorenz, chief of the Asset Recovery and Money Laundering unit, adds, "The proceeds are not shared with law enforcement unless and until the property owner is provided with due process and the government has carried its burden of proof to show the asset was substantially connected to a crime."

Myth 3: Civil asset forfeiture is used to generate revenue for the government by targeting innocent citizens

Fact: While there are examples of past abuses at the state level, forfeiture critics are largely silent on a workable alternative. Without forfeiture provisions, the government is not able to restore property to victims. Moreover, for criminals motivated by greed, prison terms would be a mere cost of doing business without stiff forfeiture provisions. Significantly, it is a waste of the government's time to pursue property from innocent owners. Forfeiture proceeds are not only shared with state governments, but they are just as often returned to victims. A psychic's $15 million con of an Oregon man illustrates how effective forfeiture can be at returning assets to victims.

Myth 4: Police can seize your car, home, money or valuables without ever charging you with a crime

Fact: There are "innocent owner" provisions in place to prevent unfair taking of property. In Oregon, the U.S. Attorney's Office strives to pursue cases that lead to justice being served. "The focus is on removing the profit from criminal activities," says Lorenz. A lot of this plays out through the discovery process. Through interrogatories, requests for admission and depositions, property owners are given a broad array of tools to make the government prove its case. In managing discovery, I learned firsthand that prosecutors aren't just sitting back and counting forfeited cash.

The U.S. Attorney's Office will not pursue cases that don't pass the sniff test or that waste staff time. Oftentimes, before a case even gets to court, we press the agency on whether there is a plausible "innocent owner" defense. These provisions prevent unfair taking of property. Absent an affirmative defense, forfeiture is the best alternative for removing the profit from criminal activities. Lorenz adds, "rather than allowing criminals to profit from victimizing innocent people, we dismantle criminal organizations by attacking the financial components."

Myth 5: Your property is presumed to be guilty until you prove that you are innocent

Fact: The burden of proof always remains with the government. Under both administrative and judicial forfeiture provisions, the government must establish it has probable cause to believe that the property is the proceeds of a crime or was used to facilitate a crime before it can seize the asset. In each instance (just as in criminal law), the government must act in good faith, drop the charges and return the assets if prosecutors believe they cannot meet their burden of a preponderance of the evidence at trial.

Under judicial forfeiture, after a federal judge has found probable cause to seize illegal proceeds, the government still has the burden to prove by a preponderance of the evidence that the property is proceeds of a crime. Again, property owners are afforded protections against wrongful civil forfeiture, because they are given the opportunity to plead an affirmative defense that the government has the burden to overcome. Unless and until the government rebuts the affirmative defense, the property owner prevails.

Bottom line? While there have been a few federal incidents of overreach, federal forfeiture laws are most effectively used to target money laundering. Centering the debate on road-kill cases misses the larger point about forfeiture. Organized crime, drug traffickers and white-collar criminals face a dilemma when they make money from their deeds - how to make it appear to come from legitimate sources. Money-laundering laws tackle crimes motivated by financial greed. Taken together, forfeiture and money laundering laws help ensure that these sorts of crime don't pay.

Brandon A. Kline served as the 2014-15 Lewis & Clark Law School 3L Liaison to the Young Lawyers Section Board. He is also a law clerk in the U.S. Attorney's Office in Portland. These views are his own and do not reflect those of the U.S. Attorney's Office, District of Oregon or the U.S. Department of Justice.

YLS Pro Bono Pour Recap

The YLS Pro Bono Committee held the First Annual Pro Bono Pour on October 1. Held at nonprofit venue Ex Novo Brewing, the event raised more than $1,300. Funds were donated to the Campaign for Equal Justice to benefit the Volunteer Lawyers Project at the Portland Regional Office of Legal Aid Services of Oregon. Thank you to everyone who attended, and thanks to our sponsors:

Dunn Carney Allen Higgins & Tongue LLP ATTORNEYS AT LAW

MILLER NASH | GRAHAM & DUNN LLP ATTORNEYS AT LAW

GEVURTZ MENASHE Attorneys at Law
FAMILY LAW • ESTATE PLANNING • JUVENILE LAW

Kevin Kress

Pro Bono Spotlight

Gaining Experience & Respect through Pro Bono Opportunities

by Jason Pierson
YLS Pro Bono Committee

Kevin Kress

Kevin Kress has traveled the world, but taking on pro bono cases with Legal Aid Services of Oregon has provided him with the courtroom experience, networking opportunities, and respect from the local legal community that he needed when he returned to Oregon.

Kevin is a native of Louisiana and obtained his bachelor's degree in English from Louisiana State University. Shortly thereafter, he moved to Oregon and earned a master's degree in English from Portland State University. Although he enjoyed his time in Portland, when Kevin decided to go to law school, he took advantage of the opportunity to attend the University of Notre Dame, and spent his second year of law school at Notre Dame's London campus studying international and comparative law. After graduating from Notre Dame Law School, Kevin went back to Louisiana to practice law. While in Louisiana, Kevin clerked for a state court judge and practiced at a litigation firm in New Orleans where he gained experience in a variety of areas, including claims related to the aftermath of Hurricane Katrina, commercial litigation, insurance defense and coverage, municipal law, and tort claims.

A persistent desire to return to Oregon led to action, and Kevin moved back to Portland late last year. Following his admission to the Oregon State Bar in December of 2014, he has been volunteering much of his time to Legal Aid Services of Oregon (LASO), working with their Domestic Violence Project (DVP). Kevin was determined to get himself into Oregon courtrooms, and find his way around the Oregon court system after spending seven years practicing in Louisiana courts. He reached out to a friend of his from his first stay in Portland who is now the administrator at LASO and put him in contact with the Volunteer Lawyers Project. LASO is always in need of attorneys to take on cases pro bono in a number of areas, and Kevin focused his efforts on the DVP.

Attorneys working with LASO's DVP represent low-income individuals seeking to maintain restraining orders in a contested hearing. Kevin had no experience working in this type of law prior to his experience with LASO, but fortunately the program provides a volunteer orientation as well as ongoing training, advice, and consultation opportunities. Once an attorney is ready to take on a case, LASO starts new volunteers with cases that are less complicated, allowing them to ease into the program.

Kevin found that many clients in search of domestic violence representation do not have any experience in the legal system. On top of this, it is an incredibly emotional time for these clients. He is often the first attorney that his clients have ever met. Kevin takes pride in providing a positive experience for his clients for both their benefit and the benefit of our profession. He has found that his clients are very appreciative of his work regardless of the outcome, and that judges and opposing counsel also respect the work he has been doing.

Kevin recommends the LASO program and any other type of pro bono activity for all attorneys, especially younger lawyers seeking an opportunity to get courtroom experience and get acquainted with the legal community. Since Kevin had no exposure to family court in the past, this experience has been eye-opening for him, and has introduced him to a different area of the law. He believes it could be a powerful experience for young lawyers to not only gain practical experience with opening statements, presenting evidence, and examination of witnesses, but also to explore their different interests. Most of all, Kevin believes his pro bono practice is very rewarding and thinks it would be a valuable experience for any attorney.

Interested in volunteering with LASO's Domestic Violence Project? Contact Sheri Osher at 503.224.4086 or sheri.osher@lasoregon.org.

UPCOMING YLS EVENTS

New Admittee Social

Thursday, November 5
Altabira City Tavern
1021 NE Grand, 6th Floor
4-6 p.m.

Join us at this YLS social to welcome lawyers who have recently been admitted to the OSB.

Appetizers and refreshments will be provided. Please bring your colleagues and join us to meet and welcome the newly-admitted attorneys. Attendance is free. To register, contact Ryan Mosier 503.222.3275 or ryan@mbabar.org.

Event generously sponsored by:

LexisNexis®

YLS Community Service Day

Saturday, November 7
Animal Aid
5335 SW 42nd Ave
11 a.m.-1 p.m.

ANIMAL AID

Join the YLS for the November Community Service Day on Saturday, November 7 from 11a.m.-1p.m. Volunteers will be performing cleaning tasks at the shelter. The shelter is a no-kill, free-roam facility that houses adoptable cats and kittens.

Please reserve your volunteer spot by contacting Brett Applegate at 503.242.0000 or Brett.Applegate@harrang.com.

YLS Drop-in Social and Toy Drive

Wednesday, December 9
Portland Prime
121 SW Alder St
6-8 p.m.

TOYS FOR TOTS

Celebrate the season and mingle with your fellow Young Lawyers. Please bring a new unwrapped toy for Toys for Tots and help bring holiday cheer to children in our area. No RSVP necessary.

OSB Professional Liability Fund

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.

The Corner Office PROFESSIONALISM

We will explain the fee arrangement to our client at the beginning of the representation.

(From the Commitment to Professionalism Statement of the Multnomah Bar Association)

One issue for which lawyers in general earn a reputation for being unprofessional is in the area of fees. The public thinks we charge too much, that lawyers "hide the ball" when it comes to client fees, or we do not give clients value for the money they pay us. We can start to help the public get beyond that by following the above credo of the MBA Statement of Professionalism.

As lawyers, probably most of us have a difficult time discussing our fees. It is a skill that law schools do not teach us. There are few CLEs that focus on this type of discussion. Nevertheless, discussing money may be one of the most important skills lawyers should cultivate early in their careers. Clients should know what their money buys, and the more clear we can be with clients, the better relationship we can maintain with them.

Lawyers should always have a signed fee agreement with their clients. Unlike some state bars that require that all fee agreements be in writing, Oregon does not. Volunteer arbitrators through the OSB's Fee Arbitration Program tell us that most fee disputes arise due to the lawyer and client having not entered into a written fee agreement. Having a written agreement in every case saves difficulty in the future, and keeps clients happy. The fee agreement should be clear as to the responsibilities of each party. If you change the billing rate later in the representation, the client should sign another agreement. Even a lawyer representing a client on a pro bono basis should have the client sign a fee agreement. After all, there are still agreements that the lawyer and client should have as to each party's responsibilities, and identifying what work the lawyer will do, and when the lawyer can withdraw from representation.

Despite the comments above, the Oregon Rules of Professional Conduct (ORPC) require written fee agreements in certain relationships, and lawyers should routinely review the ORPCs to insure that their fee arrangements comply with the rules. One fee arrangement sorely misunderstood by lawyers, and therefore clients, is cases in which the lawyer earns fees upon receipt. In this limited case, lawyers are not required to place fees in their lawyer trust accounts, as the fee is earned at the time the client pays it. Note that a detailed fee agreement is required, spelling out what this concept means, and a lawyer still may have to return some or all of the fee if keeping the fee would mean the lawyer charges an excessive fee. Many lawyers charging a fee earned on receipt do not understand their obligations under the ORPCs, and this misunderstanding often leads to client dissatisfaction as well.

Lawyers understand certain legal terms that clients may not. For example, if you agree to represent a client in an "uncontested dissolution of marriage" case for a flat or maximum fee, define "uncontested." While lawyers understand that "uncontested" means that virtually all terms are agreed to between the parties, clients often believe that "uncontested" means that the case settles before going to trial, although the lawyer may have put in many hours negotiating that settlement.

In the right case, lawyers might want to consider a payment structure other than an hourly fee. Many clients appreciate a flat fee arrangement, in which they pay a set fee for clearly defined services. Under this arrangement, both the lawyer and client take certain risks in that the lawyer may end up doing more work than anticipated, or the client could have gotten a better deal were she to pay an hourly rate; however, both walk into the deal knowing this, and are comfortable that this risk is worth taking. More and more lawyers are also offering discrete task representation, also referred to unbundled services, in which the lawyer only provides limited services. This could be form review, pleading drafting, or representation through a first hearing but not further. This allows the client to decide what she is able to do on her own, where she can represent herself with coaching, or where she needs full services. Often, costs are easier to define and determine, thereby leaving both the lawyer and the client relatively satisfied with fees paid.

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The MBA Solo/Small Firm Committee invites you to attend their Free Fall Workshop Series

HOW TO MAKE YOUR SMALL FIRM SUCCESSFUL

Tips and Advice for Marketing and Promotion for Solo/Small Law Firms
Tuesday, November 3, 12-1:30pm
World Trade Center, Mezzanine Room, 26 SW Salmon St.

In this workshop, **Traci Ray**, the marketing and client development coordinator for Barran Liebman, and **Marjory Morford**, a legal marketing consultant with Inbound Insurance Marketing, will provide invaluable tips and advice for marketing, promotion, business and client development and community involvement in an interactive workshop. They will share how small and solo practitioners can develop realistic goals for marketing and development and how to attain those goals. **Martha Hodgkinson**, Hodgkinson Street Mepham, will moderate. Attendees are encouraged to bring their questions for discussion in the workshop.

Managing Clients: How to Minimize Malpractice and Ethics Problems
Tuesday, November 17, 12-1:30pm
World Trade Center, Mezzanine Room, 26 SW Salmon St.

One of the most significant challenges that all lawyers face is how to effectively manage their client relationships. Poor client relationship management leads to malpractice claims and/or ethics complaints. Obviously, these are consequences that all lawyers want to avoid. The purpose of this workshop is to discuss various strategies for minimizing the breakdown of an attorney-client relationship. Both speakers have considerable experience in this area. **Helen Hierschbiel** is general counsel for the Oregon State Bar and managed the OSB's ethics hotline. **Mike Greene**, Rosenthal Greene & Devlin, has had a lengthy career involving legal malpractice claims and ethics issues. This workshop is intended to provide attendees with useful and practical information about how to create and maintain sound attorney-client relationships. The information will be helpful to all lawyers regardless of their level of experience.

Registration is **free** and open to MBA members only. The MBA will apply for CLE credit as applicable. The sessions are set up to allow time for networking and questions and answers. Lunch is provided. Please let us know if you have any special needs (vegetarian, vegan, etc.).

Email Shannon West at **shannon@mbabar.org** to register.

Avoiding Malpractice Claims

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After Being Hired

After you agree to representation, the focus shifts to communication during representation and managing the case you are handling. In this stage, there are six guidelines to help avoid or minimize malpractice:

1. **Be clear and direct.** Create an atmosphere in which you can speak frankly with your client. Anticipate and address problems so no one is surprised. If possible, give the client options along with your recommendation, but only after the due diligence of adequate factual investigation and legal research. If you and the client repeatedly disagree on significant issues, you should consider ending the representation, as long as you can do so without any prejudice to the client. Don't ignore problems either in your working relationship or with the matter you are handling. Deal with problems sooner rather than later. The client has the right and responsibility to make the big decisions. The lawyer has the right and responsibility to determine strategy and tactics. The client should set the goal for representation; the lawyer should determine how to achieve it.
2. **Document your advice.** Document all advice and every decision, using letters to the client or notes in the file. Letters to the client are best for critical decisions, particularly those involving case evaluation and settlement. Notes are helpful to flesh out the circumstances of the advice or decisions. Documentation helps the client make a better, informed decision and signals to the client that what is going on in the case is important. It also helps with the defense of your representation.
3. **Docket everything.** Many malpractice claims are filed because of missed deadlines. This type of malpractice is entirely preventable, especially with use of an effective computer system. Calendar case dates, deadlines and file reviews, using multiple, staggered follow-up reminders for each. If you have staff, arrange for someone in addition to you to check the docket. Using systems that bring deadlines to your attention in multiple ways decreases your chances of missing one. You cannot look at a file too often, only too little. Utilize the free and confidential help of the PLF's practice management advisors by calling 503.639.6911 or 800.452.1639.
4. **Provide customer service.** The client is a customer. The lawyer is a service provider. Follow the "golden rule:" treat a client as you would like to be treated. In general, the more time you spend with the client, usually the better your relationship will be. Certain key practices will enhance that relationship: return phone calls as soon as possible, keep clients informed about developments with copies of work, and don't keep clients waiting. The cumulative effect of such treatment always pays dividends when the going gets tough.
5. **Don't sue your clients for fees.** Suing a client for unpaid fees causes that client to look for a reason not to pay. Use the OSB fee arbitration service or a similar alternative to suing for fees, or avoid a problem altogether by getting your money up front.
6. **Disclose mistakes.** The ethics rules require that you disclose material mistakes to the client. If you think you may have made a mistake or someone is accusing you of having made one, call the PLF for advice on how to proceed and how to inform your client. Ignoring a problem doesn't make it get better or go away. Cover-up efforts exacerbate the problem, get you into ethics trouble, and anger the client. This conduct makes it more likely the client will file a malpractice claim or ethics complaint. We all make mistakes. Often, it is the way we handle those mistakes that determines how the client will respond.

Learn more: Michael Greene and incoming OSB CEO Helen Hierschbiel will be presenting a Small Firm Workshop, Managing Clients: How to Minimize Malpractice and Ethics Problems, on Tuesday, November 17 from noon-1:30 p.m. at the World Trade Center. The workshop is free to MBA members. Email Shannon West at shannon@mbabar.org to register.

Classifieds

Positions

Rondone Kemp has been exclusively engaged by Jordan Ramis PC
To recruit partner-level attorneys with portable practices for outstanding opportunities in the firm's Portland and Bend offices. With 32 attorneys, many joining from larger firms, Jordan Ramis offers a client-centered, collaborative and state-of-the-art environment for your practice. Please call us at 503.778.7600 for a confidential consultation to help you determine whether this platform matches your career goals. www.RondoneKemp.com.

Space

Office Space Available for Lease on the 8th Floor of the Crown Plaza Building Downtown
Two window offices and three inside offices available for lease individually or as a whole, facing the river and SW Hills with unlimited use of three large beautiful conference rooms facing the river, receptionist, kitchen, internet, copier/scanner, LexisNexis, exercise room and more. Short-term or long term leases up to five years available with plenty of covered parking spaces! Call 503.936.6127 or email lawoffices800@gmail.com if you would like more information or a tour of the premises.

Share Office Space
On the third floor of the River Park Plaza Building with other sole practitioners and a small law firm. Current tenants include Estate Planners, Real Estate Law, Family Law, Elder Law, Tax Preparers and Investment Advisors. We have two offices available. Rent is $500 and $600. This is Class A space in a building that was built in 2003. Rent includes high speed Internet, phones, reception, voicemail, meeting rooms, kitchen and parking! Please contact Bob Cronk at 503.245.0894 or bob@naylaw.com.

Downtown Portland - 2 Offices Class A Space - River & Mountain View
$1,500 & $1,300/Monthly: Class A office space, 18th floor of Umpqua Bank Building, at One SW Columbia. Both exterior offices with panoramic view of mountains, riverfront and downtown. AV family law practice will share two conference rooms, receptionist services, and kitchen. Copier, fax, telephones and email provided at cost. Building amenities include conference rooms, private gym and bank in building. Approximate room sizes 17 x 14 and 10 x 15. Call Cecelia Connolly 503.224.7077.

Pearl District Office for Rent
Class B office described by realtors as "creative space." Share with three other attys. $750/mo includes the usual amenities. Available mid-October. Email brianne.j.beazley@gmail.com.

The Corner Office

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In sum, lawyers routinely set fees for their clients. This is a necessary part of our practices, and we could not continue to practice without clients paying our fees. We as lawyers believe our clients understand the fee arrangement, but then discover they seem confused. In many, if not most, cases, this could be because we don't follow the above credo, thinking that because WE understand our fee arrangement, our client does as well. Often this is not the case, and this article is an attempt to summarize, briefly, some actions we can take to make sure our clients are better informed. If all lawyers practicing in Oregon followed these suggestions, maybe clients would have to find something new to complain about!

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.

The following firms have signed the Pro Bono Pledge for law firms.

Sign the individual and firm pledges at http://mbabar.org/about-us/pro-bono.html.

Anne E Denecke PC
Ater Wynne LLP
Ball Janik LLP
Barrack Law Firm PC
Barran Liebman LLP
Bodyfelt Mount LLP
Brindle McCaslin PC
Brittle & Brittle PC
Bullivant Houser Bailey PC
Clarke Balcom PC
Corrigan ADR
Cosgrave Vergeer Kester LLP
Davis Wright Tremaine LLP
Day & Koch LLP
Dotten ADR and Marten Law, PLLC
Dunn Carney Allen Higgins & Tongue LLP
Dwyer Mediation Center
Elkins Zipse & Mitchell
Farleigh Wada Witt
Folawn Alterman & Richardson
Garvey Schubert Barer
Gearing Rackner Engel & McGrath
Gevurtz Menashe et al
Greene & Markley PC
Haglund Kelley, LLP
Harrang Long Gary Rudnick PC
Jurva Martin PC
K & L Gates LLP
Kent & Johnson LLP
Kivel & Howard LLP
Kramer & Associates
Lane Powell PC
Law Office of Alicia Hercher
Law Office of Gary Underwood Scharff
Law Office of Nancy J Meserow
Law Offices of Sydney Brewster
Law Works LLC
Leonard Law Group
Lindsay Hart LLP
Littler Mendelson
Maloney Lauersdorf Reiner PC
Markowitz Herbold PC
McGuire Thompson LLC
McKelvey Kozuma PC
Mersenne Law LLP
Michael H. Bloom PC
Miller Nash Graham & Dunn LLP
Parker Butte & Lane PC
Patricia Ferrell-French, Attorney at Law
Pearl Law LLC
Perkins Coie LLP
Piucci Law Firm
Professional Liability Fund
PSU Student Legal Services
Rizzo Mattingly Bosworth PC
Schwabe Williamson & Wyatt PC
Stoel Rives LLP
Stoll Berne
Swider Haver LLP
The Law Firm of Peter Bunch
Todd Trierweiler & Associates
Tonkon Torp LLP
Vangelisti Law Firm LLC
Waxler Immigration Law LLC
Wyse Kadish LLP
Yates Matthews Family Law PC
Yunus Muhammad Paisner Attorney at Law

Pro Bono Volunteers

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

Alexander Baldino • Emily Busse • Thomas Chow • Micah Davis • Lisa Day • Michael Edgel • Chris Edwardsen • Jon Fritzler • Edward Fu • David Gray • Ryan Hackett • Dona Hippert • Theressa Hollis • David Johnson • Robert Johnson • Samuel Justice • Joshua Kadish • Kevin Kress • April Kusters • William Kwitman • Elizabeth Lemoine • Kirk Maag • Tamara Maher • Riley Makin • Suzana Malek • Tim McNeil • Matthew Mertens • Suzannah Newman • Thomas Noble • Michael O'Brien • Gregory Oliveros • Theodore Piteo • Greg Roberson • Craig Russell • Philip Schuster II • Margot Seitz • George Senft • Mark Sherman • Ian Simpson • Sara Staggs • Anne Steiner • Todd Trierweiler • Alan Unkeles • Evans Van Buren • Michael Yates

MBA Mentor Program
Frequently Asked Questions

Is the MBA Mentor Program compatible with the OSB New Lawyer Mentoring Program (NLMP)?
Yes, it is possible to participate in both programs either with the same mentor or a different mentor.

Who can participate as a mentee in the MBA Mentor Program?
Any MBA YLS member, whether or not he or she is signed up for the NLMP, may participate as a mentee.

Who can participate as a mentor in the MBA Mentor Program?
Oregon bar members in good standing, with reputations for competence and for conducting themselves ethically and professionally, and with at least seven years of practice, may participate as mentors.

Is there a fee to participate?
The MBA Mentor Program is free for all participants.

If I am participating in the NLMP, will I be assigned the same mentor for the MBA Mentor Programs?
That's up to you. Let us know your wishes on the MBA sign-up form and we'll match you appropriately.

If I am participating in the NLMP why would I also sign up for the MBA Mentor Program?
The MBA program offers additional opportunities for mentoring outside the OSB structure, networking, and obtaining free CLE credit available exclusively to people participating in the MBA program.

How are mentors and mentees matched?
Mentors are matched with mentees by MBA Professionalism Committee members based on the responses given on the sign-up form. Let us know if you would like the same mentor you have in the NLMP. If you're not signed up for the NLMP, let us know what's important to you in a mentor - practice area, firm size, gender, etc. We'll do our best to match you appropriately.

How do I sign up?
Complete and return the sign-up form available at mbabar.org/Resources/News/122/Details/. Forms are due to the MBA by December 4.

Learn more about the OSB NLMP at www.osbar.org/nlmp.

If you have questions about the MBA Mentor Program, please contact Kathy Modie at the MBA at 503.222.3275.