



Finding Happiness in the Legal Profession

by Bob Steringer
MBA President

With the release this summer of *Go Set a Watchman*, our minds return to the first time we met Atticus Finch. For many of us who did not grow up around the law or our legal system, Harper Lee's depiction

of Atticus was our first introduction to what it might be like to be a lawyer. What an impact that has had. Many of our colleagues cite Atticus, almost as if he had been a living person, as a major influence in their decision to pursue a career in the law. Even though he ultimately could not secure justice for Tom Robinson, through Atticus Finch we saw dignity and noble purpose in the legal profession.

Most of the time, I believe our profession lives up to the image projected through Atticus Finch. I believe most of our colleagues would say the same thing. And yet, we hear more and more about dissatisfaction and unhappiness within the profession. A 2013 *CareerBliss* study famously identified "associate attorney" as the unhappiest job in America. Let's not overstate the problem - it is difficult to tell whether unhappiness within the profession is growing or whether the explosion of social media just shines a brighter light on something that has always been present. But regardless of whether dissatisfaction is growing, it is worthwhile to consider why it might exist and how we might reduce it.

One source of unhappiness might spring from expectations planted in our minds before we even set foot on a law school campus. Those who were drawn to the profession by the idealized dignity and nobility of an Atticus Finch or by other romanticized notions about practicing law will eventually learn that the practice does not always live up to those expectations. (Heck - we learn in *Watchman* that even Atticus Finch isn't everything we would hope he would be.) It's not that there necessarily is anything wrong with our profession, but the dissonance between expectations and reality can leave a person wondering whether he or she made a mistake in pursuing a legal career. The odds a lawyer would have such an experience almost certainly are increased if the lawyer has not had the advantage of growing up around the professional class. (For more on this topic, see Steven J. Harper's excellent article, "Unhappy Attorneys and the Expectations-Reality Gap," in the ABA's *Litigation* magazine (Winter 2015).)

The list of deficiencies in our approach to legal education is long, and to it I would add a failure to ensure that students have a realistic idea of what it means to be a lawyer. A relative of mine recently earned a doctorate degree in physical therapy. Before he could even obtain admission to the university's program, he was required to prove he had spent at least 100 hours observing the work of a licensed physical therapist. Once in the program, he spent months in internships with other physical therapists. As I have worked with freshly admitted lawyers in the OSB New Lawyer Mentor Program, I have often had two thoughts: (1) this program provides an important

introduction to the profession; and (2) why do we wait until people have invested a fortune and three years of their lives before we tell them these things?

Once we let go of romanticized expectations about what it means to be a lawyer, we find that our profession still provides all the raw materials for a happy, satisfying career. You are familiar with them - things like autonomy and self-determination, the opportunity to achieve mastery of a subject or skill, a sense of purpose in our work and, for the most part, a decent standard of living. The challenge is in figuring out how to combine and shape those materials in a way that is in harmony with our individual interests and talents.

It is beyond the ambition of this column to offer a general theory on how to achieve happiness in the legal profession. I can say with confidence, however, that the MBA plays an important role in creating an environment that promotes professional satisfaction in our community. Here are three things you can do that are virtually guaranteed to leave you happier than when you started:

- **Take the MBA Pro Bono Pledge (and fulfill it).** If you are not already in the trenches with our colleagues who seek justice every day for those of limited means, unleash your inner Atticus by taking at least one pro bono matter every year. And while you are at it, send a check to the Campaign for Equal Justice. Start by visiting the MBA website today and taking the Pro Bono Pledge to do both of those things. You will be well on your way to increasing the sense of purpose in your practice.
- **Attend an MBA CLE program.** You have virtually limitless options for satisfying your CLE requirements, but I say without hesitation that the offerings of the MBA and its Young Lawyers Section are of the highest quality. A cadre of volunteer lawyers, supported by the MBA staff, scours our community for the best lawyers to share their knowledge on a wide range of topics, from the nuts-and-bolts of law practice to cutting-edge issues in the law. With most programs scheduled for two hours or less, you can increase your mastery of knowledge and skills on topics that truly interest you, without giving up the greater part of a day.
- **Engage with your colleagues at an MBA social event.** We are privileged to live and work in a legal community where professionalism and courtesy among lawyers is the rule, rather than the exception. We must jealously protect that quality of our community, because few things would erode happiness in our profession more than a deterioration of civility. And here is a simple truth: engagement with each other in social settings promotes professionalism and courtesy with each other when we represent adversaries. So come to an MBA event, grab a beverage of your choice, and share a little time with someone you did not know. Chances are that you will be glad you did.

...the MBA plays an important role in creating an environment that promotes professional satisfaction in our community.

mba|EVENT

Multnomah Bar Association Absolutely Social

The Grape Escape
featuring Wine Tasting

Thursday, October 22
The University Club
5-7 p.m.

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

Register at mbabar.org.

mba|CLE

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

SEPTEMBER

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

9.22 Tuesday
Exceptions to the Trial Commandments
Bill Barton
David Markowitz

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

OCTOBER

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

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

10.7 Wednesday
Summary Judgment
Sarah Crooks
Andrew Schpak

10.8 Thursday
Legislative Update
Susan Grabe
John Davis
Shemia Fagan

10.27 Tuesday
Elder Abuse Reporting
Amber Hollister
Ellen Klem
Judge Katherine Tennyson

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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

Session 1

Money Matters: Planning for Your Goals and Tracking Your Financial Needs

Wednesday, September 30, 12-1:30pm
White Stag Building, 70 NW Couch St.

Staying aware of your revenue, expenses and cash flow needs are a key part of running a successful practice. But like many administrative tasks in a small firm, financial management can seem like a burden and fall by the wayside. Speakers **Adina Flynn**, Ameriprise Financial, **Shamim Zare**, Bank of the Cascades and **Rima Ghandour** and **Todd Cleek**, solo practitioners, will engage in an interactive discussion of tips and solid practices for keeping track of your green stuff.

Session 2

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, will provide invaluable tips and advice for marketing, promotion, business and client development and community involvement in an interactive workshop. She will share how small and solo practitioners can develop realistic goals for marketing and development and how to attain those goals. Attendees are encouraged to bring their questions for discussion in the workshop.

Session 3

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.



MEMBER BENEFIT

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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.

SEPTEMBER

7 Monday
Labor Day Holiday

10 Thursday
OWLS Fashion Show
www.oregonwomenlawyers.org

11 Friday
CEJ Party under the Stars
campaignforequaljustice.org

17 Thursday
YLS Wine Tasting Event
www.mbabar.org

24 Thursday
OADC Judges Reception
www.oadc.com

16 Friday
OWLS Fall CLE
www.oregonwomenlawyers.org

OGALLA Annual Dinner
www.ogalla.org

22 Thursday
MBA Absolutely Social
www.mbabar.org

24 Saturday
YRJ Wine & Chocolate Extravaganza
www.youthrightsjustice.org

29 Thursday
OSB Pro Bono Fair

30 Friday
OAPABA Annual Dinner
oapaba.org

OCTOBER

7 Wednesday
MBF Game Night
www.mbabar.org

10 Saturday
Lewis & Clark Law School Centennial Celebration
law.lclark.edu/centennial_celebration

NOVEMBER

12 Thursday
US District Court Historical Society Annual Dinner
usdchs.org

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*The Portland Clinic providers are available to all Kaiser Permanente members except those on Medicaid, receiving full financial assistance, or visiting from another Kaiser Permanente region.

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559KPA-15/2-15

Attorney-Client Privilege - Recent Developments

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

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

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

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

For more information:

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

Public Speaking for Attorneys

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

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

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

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

For more information:

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

Peer Review Privilege in Medical Malpractice Cases

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

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

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

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

For more information:

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

Exceptions to the Trial Commandments

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

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

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

For more information:

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

Advising Clients on Data Security & Data Privacy Issues

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

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

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

For more information:

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

Summary Judgment

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

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

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

For more information:

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

Legislative Update

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

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

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

For more information:

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

Elder Abuse Reporting

Tuesday, October 27, 2015
12:00-1:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland
Members \$35
Non-members \$55

Note: This class will be worth 1 hour of OSB Elder Abuse Reporting credit.

Amber Hollister, Deputy General Counsel to the Oregon State Bar; **Ellen Klem**, Oregon Department of Justice; and Multnomah County Circuit Court **Judge Katherine Tennyson**, will present this CLE on the Elder Abuse reporting requirement for attorneys, which took effect on January 1, 2015. This program is intended to inform lawyers of their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients.

For more information:

Call Cynthia Newton, Swanson Thomas Coon & Newton at 503.228.5222. For registration questions, call the MBA at 503.222.3275.

"The Slants" Band - Racial Slur or Reclaiming a Stereotype?

Wednesday, October 28, 2015
12:00-1:30 p.m.

World Trade Center
Mezzanine
26 SW Salmon, Portland
Members \$45
Non-members \$65

Note: This class will be worth 1.5 hours of OSB MCLE Access to Justice credit.

In April 2015, the Court of Appeals for the Federal Circuit upheld the US Patent and Trademark Office's decision denying a trademark request by the Portland band "The Slants" on the ground that the term is disparaging to people of Asian descent. Later this year, the court will rehear the case en banc on the issue of whether the bar on registration of disparaging marks in 15 U.S.C. § 1052(a) violates the First Amendment. Join **Parna Mehrbani**, trademark attorney with Lane Powell, **Duane Bosworth**, First Amendment attorney with Davis Wright Tremaine, **Simon Tam**, band member of The Slants, **Frank Garcia**, consultant and former director of diversity and inclusion for the Governor's Office and Oregon State Bar, and **George Nakata**, Japanese-American internment camp survivor, for a panel discussion about this case and its implications.

For more information:

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

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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- MBA Member
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- Check VISA MasterCard
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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:

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

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

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

Seminar Selection:

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

9/16 Attorney-Client Privilege - Recent Developments

- Class Registration Online (\$30 Members/\$50 Non)
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9/22 Exceptions to the Trial Commandments

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

9/29 Public Speaking for Attorneys

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

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

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

10/6 Peer Review Privilege in Medical Malpractice Cases

- Class Registration Online (\$30 Members/\$50 Non)
 Class Registration (\$35 Members/\$55 Non)\$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

10/7 Summary Judgment

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

10/8 Legislative Update

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

10/27 Elder Abuse Reporting

- Class Registration Online (\$30 Members/\$50 Non)
 Class Registration (\$35 Members/\$55 Non)\$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

10/28 "The Slants" Band - Racial Slur or Reclaiming a Stereotype?

- Class Registration Online (\$40 Members/\$60 Non)
 Class Registration (\$45 Members/\$65 Non)\$ _____
 CD-ROM & Written Materials (\$55 Members/\$85 Non) ..\$ _____

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Free Event Publicity

When the MBA website launched, it included a unique feature: the ability for law-related organizations and nonprofits to add their social events to the MBA online calendar.

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.



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mba | ANNOUNCEMENTS

Free CLE Webcast to MBA Members

The video webcast of the seminar entitled "Strategies for Litigating Attorney Fee Petitions" is now available in the Members Center at www.mbabar.org. The webcast is worth 2 hours of general OSB MCLE credit.

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

MBA Professionalism Award Nominations due Friday, October 30

The MBA Professionalism Award is one of the most highly regarded honors an attorney in our area can receive. You are strongly encouraged to nominate a member who meets the criteria for the award, which can be found on the nomination form on the MBA website.

Commitment to Professionalism

The recently revised 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.

OWLS 2015 Fashion Show

The OWLS Annual Fashion Show, benefiting Dress for Success Oregon, will be held this year on September 10, 2015 from 5-6:30 pm, at the Mark O. Hatfield U.S. Courthouse. We invite you to join us as some of Portland's finest legal community members model the latest lawyer chic attire from local clothiers including, Mabel & Zora, The Lion's Den's Man's Shop, Bridge & Burn, and Physical Element. Hair and makeup will be provided by Paul Mitchell. Edie Rogoway, from Rogoway Law, will be our Master of Ceremony. Tickets can be purchased at www.oregonwomenlawyers.com for \$20 per person.

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.

2016 MBA Professionalism Award Nominations Due October 30

The MBA Professionalism Award is one of the most highly-regarded honors an attorney in our area can receive. Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, who regularly goes well beyond minimum ethical and professionalism standards, who constantly mentors others and works to improve the quality of our practice as a whole? We strongly encourage you to nominate him or her for the 2016 MBA Professionalism Award. Any MBA practicing attorney

member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Esteemed award recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O'Leary, Mark R. Wada, Sandra A. Hansberger,

Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunck, Edwin A. Harnden, Thomas W. Brown, Mark Johnson Roberts and Robin J. Selig.

Former nominees may be and often are re-nominated. To propose an outstanding attorney for this year's award selection process, please complete and return the nomination form available at www.mbabar.org or contact Kathy Modie, Professionalism Committee staff liaison, kathy@mbabar.org for more information.



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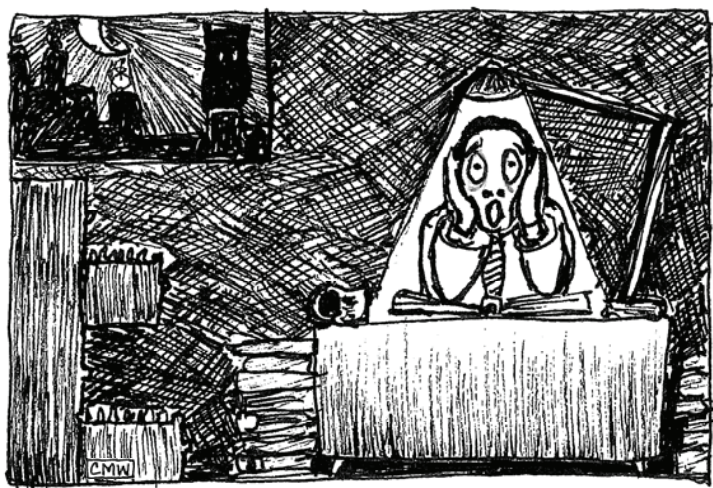
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Ethics Focus

Every Lawyer's Nightmare Theft of Client Funds

by Mark J. Fucile
Fucile & Reising



On the scale of "bad things" that can happen to a law firm, few are as uncomfortable for all concerned as the theft of client funds. Thefts involving a firm's general business account are no less pleasant, but they do not invoke the significant duty all lawyers and their firms have to safeguard client property. Historically, many such thefts were often the work of trusted staff members who had the confidence of their lawyer-supervisors. In today's "electronic" environment, it would not be hard to imagine a theft by outsiders who had penetrated the firm's computer network.

In this column, we'll look at three primary considerations that arise when a theft of client funds occurs. First, we'll examine the potential regulatory consequences. Second, we'll discuss insurance coverage issues. Finally, we'll touch on the relationship to the firm's deposit agreement with its bank on the question of who may bear

financial responsibility. With each, we'll use a trio of Washington cases as examples. In doing so, it is important to note that our neighbors to the north don't necessarily run into these problems more often. But Washington has provided telling examples on each point in the form of published appellate opinions.

We will approach all of these issues from the perspective of a lawyer-supervisor who is not complicit in the theft concerned. Needless to say, direct lawyer involvement in a theft is one of the quickest routes to a new line of work (see, e.g., *In re Renshaw*, 353 Or 411, 298 P3d 1216 (2013)).

Regulatory Consequences

RPC 1.15-1 charges us with "safekeeping" clients' property generally and RPC 1.15-2 applies that principle to the most common form of trust account - "IOLTA" accounts. Thefts of client funds from trust accounts by law firm staff can expose the lawyer-supervisor to discipline under these provisions. In most circumstances, however, regulatory discipline is only imposed on lawyers whose negligent supervision effectively allowed an errant staff member to exploit that negligence to steal. When that occurs, the lawyers involved are usually also charged with failure to supervise under RPC 5.3(a) - which imposes a duty on lawyers supervising law firm staff to "make reasonable efforts to ensure that the [staff] person's conduct is compatible with the professional obligations of the lawyer[.]"

In re Trejo, 185 P3d 1160 (Wash 2008), for example, involved a solo practitioner who effectively ceded control over his trust account to his secretary. Unfortunately, she used the trust

account in a check-kiting scheme to pay her personal debts. The lawyer was disciplined under Washington's analogous rules governing trust accounts and lawyer supervision of firm staff. In doing so, the Washington Supreme Court emphasized (at 1173) the lawyer's knowing failure to supervise: "[A]lthough he did not know about or participate in ... [the secretary's] ... check floating and misappropriation, he knew that he had completely abdicated all responsibility for complying with the ethical requirements of trust accounting to a nonlawyer assistant."

Coverage Issues

Many lawyers assume that because we are required to deposit client funds into a trust account that a theft from that account will be covered by malpractice insurance. They should look carefully at their policy. The OSB Professional Liability Fund Plan, for example, makes plain in the comments to Section III ("What is a Covered Activity") that it does not cover "conduct in carrying out the commercial or administrative aspects of law practice" and uses as an illustration of that exclusion "depositing or withdrawing monies or instruments into or from trust accounts[.]"

Continued on page 19



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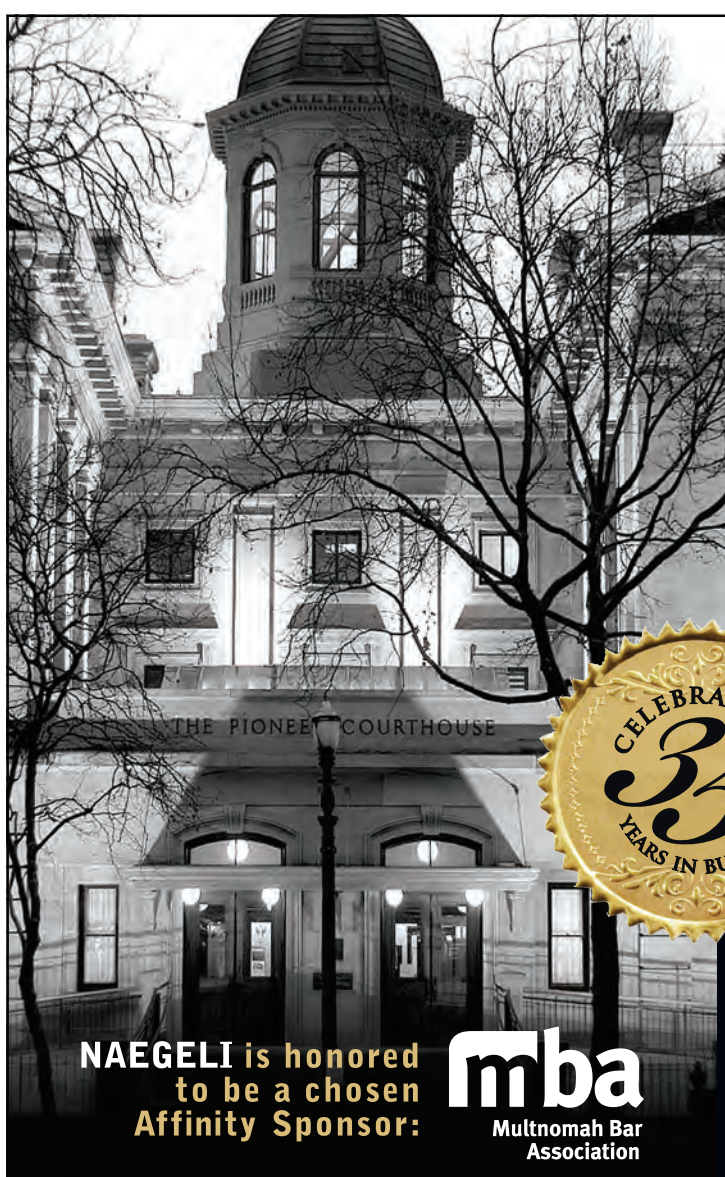
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Around the Bar



Shanelle Honda



Steven Powers

Parsons Farnell & Grein

Shanelle Honda joined the firm's litigation practice group. Her practice focuses on commercial and business litigation as well as employment law issues.

Steven Powers joined the firm as of counsel and is part of the insurance recovery, appellate and litigation practice groups. His practice focuses on representing individuals and businesses in disputes against insurance companies.



Darcy Norville



Melina LaMorticella



Anna Sortun

Tonkon Torp

Darcy Norville was elected managing partner at the firm. She served on the firm's managing board from 2005-14.

Norville's practice includes general business and corporate law, with particular emphasis on executive compensation, ERISA and employee benefits.

Melina LaMorticella is the new chair-elect of the Oregon Chapter of the American Immigration Lawyers Association (AILA).

A member of the firm's business immigration practice group, LaMorticella represents regional and international companies in a variety of matters related to employment-based immigration and naturalization. She has served as a volunteer liaison for the Oregon AILA chapter, working with state agencies on immigration issues, as well as community outreach efforts.

Anna Sortun has been named to the Emerge Oregon Board of Directors, which offers training programs for Democratic women in Oregon who aspire to elected office.

Sortun is a partner in the firm's litigation department, where her practice focuses on business litigation in federal and state courts, as well as alternative dispute venues.



Jonathan Singer

Miller Nash Graham & Dunn

Jonathan Singer was elected to the Oregon Jewish Community Foundation Board of Trustees.

Singer counsels clients on real estate transactions and litigation, as well as general business matters and litigation.

Lewis Brisbois

The firm has opened a Portland office. Attorneys there include partners **Eric Neiman, George Pitcher, Marc Carlton, David Ryan** and **Ellen Voss**, and associates **David Artman, Michael Belisle, David Campbell, Emma Pelkey** and **Rachel Robinson**.

These attorneys are skilled litigators specializing in the areas of health law, medical liability, behavioral health, professional liability, products liability, toxic torts, transportation, insurance, business litigation, employment, and general liability.

McGaughey Erickson

Bob McGaughey and **Aurelia Erickson** announce the formation of McGaughey Erickson. The firm will focus on securities litigation, employment claims and shareholder, partner and LLC member disputes.



Nelson Atkin



Sam Hernandez

Barran Liebman

Partner **Nelson Atkin** has been elected to the Syracuse University Law Alumni Association Board of Directors, where he will serve a three-year term. He is the only board member on the west coast.


Sam Hernandez has been re-elected to the Oregon Hispanic Bar Association's (OHBA) Board of Directors. The OHBA represents the voice of Latinos in Oregon's legal community, and works to encourage Latinos to become attorneys, retain Latino legal professionals, raise the awareness of Latino legal issues, and support Latino law students and legal professionals. Hernandez returns to the board after completing a nine-month deployment in Afghanistan.



Kelley Washburn

Farleigh Wada Witt


Kelley Washburn has joined the firm. In addition to estate planning and corporate law, her practice will emphasize financial services.



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Tonya Alexander

Alexander Law

Tonya Alexander is the first attorney in Beaverton to be certified with Wevorce, a company dedicated to amicable divorce through supportive technology, a network of diverse divorce experts, and a five-step holistic method for helping families find peaceful resolution.



Robert Banks

Samuels Yoelin Kantor

Robert Banks has been reappointed by the Financial Industry Regulatory Authority (FINRA) Board of Directors to serve as an investor representative on the National Arbitration and Mediation Committee (NAMC), which drafts rules, training materials and guidance for securities arbitration and mediation process.



Deanna Franco

Buckley Law

Buckley Law's Board of Directors elected **Deanna Franco** a shareholder. Her practice focuses on estate planning, estate tax and gift tax planning, family business planning, probate/trust administration, and guardianships and conservatorships.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to Carol Hawkins, carol@mbabar.org.



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Tips From the Bench

Last Minute Settlements on the Courthouse Steps Ways to Overcome Barriers to Settlement

by Judge Jerome LaBarre
Multnomah County Circuit Court

We've all seen it many times. A case is fiercely litigated on both sides. ADR and direct settlement talks are unavailing. Both sides wave their swords aggressively at one another. Yet shortly before or on the day of trial, the case settles. Again and again, the lawyers say to themselves and sometimes out loud, "the case should have settled earlier."

How can this expensive and exhausting last-minute timing be avoided? How can a more business-like and lower stress settlement process start earlier? These are longstanding questions to which there are no easy answers, but having watched the game play out from both sides and from the bench I have some ideas which may be helpful.

Sometimes the explanation for the delay in meaningful settlement discussion is simply procrastination, overwork or a sense of denial. Sometimes final case evaluation and establishing communication between counsel takes more time. Suffice it to say that no real progress can be made until the negotiators and decision makers become focused and motivated. When a case just coolly drifts along, then settlement usually cannot be achieved until things get hot. To start things up, steps must be taken to get everyone's attention and to get them to be realistic.

Creating a Sense of Urgency

Dispute resolution obviously takes time. The plaintiff starts the case and must be the driving force to keep up the pressure to move the case to conclusion. Claims get made but often are not taken seriously. Cases then get filed and even with the automatic trial date settings they do not receive focus. Ultimately when the "date certain" trial date gets really close, that is when serious settlement offers finally start to be exchanged. But this causes way too much trial preparation expense and emotional stress for everyone.

Some steps that can be taken to impose a sense of immediacy in the litigation are:

- 1. Imposing a "Drop Dead Date" (i.e., getting a "real" trial date)** - Among judges it is generally agreed that getting a firm and fixed trial date and sticking to it is one of the best ways to bring about settlements. Sometimes the automatic trial dates are not credible enough, so early assignment imposes the needed firmness.



- 2. Early Assignment to a Trial Judge** - In Multnomah County for complex cases, they can be assigned to a trial judge for all purposes once they are designated as complex. Upon request to the presiding judge other cases in need of case management can be assigned to a judge for all other pretrial purposes. Cases which will last over five days or extend into a Friday or the following week are also special. They can also be assigned out much earlier than daily call. Again and again, I see that firm trial dates lead to settlements.

- 3. Schedule Important Deposition Dates** - Sometimes key decision makers do not become focused and motivated on the case until they get involved in a concrete way. If they are fact witnesses, consider deposing these people early and time your settlement overtures accordingly.

In Praise of "Noisy" Trial Preparation

Oregon honors its beloved "trial by ambush." But making it clear to the other side that you are ready and are busily pursuing trial preparation can lead into a settlement. The more you look to the other side like you are ready for trial the more interested the other side probably will be in settlement.

Some examples of "noisy" trial preparation are:

- 1. Ask opponent for stipulations about trial exhibits** - Let them know you are dealing with the nitty gritty and will be ready for trial.
 - Get agreements to admissibility of exhibits into evidence, or if that is not forthcoming, get agreements of no objection to foundation and authenticity.
 - Discuss calling witnesses out of order based on scheduling problems.
- 2. Propose a trial readiness conference and/or case management order**
- 3. Call opponent and discuss matters which may be needed for the pretrial conference with the judge, such as:**
 - Jury questionnaire
 - Exhibit lists and trial exhibits to exchange

Juror Complaints Mirror Judge Complaints

by Jill D. Schmid, Ph.D.
Sound Jury Consulting



In July/August's *Multnomah Lawyer*, Tyler Bellis provided a list of Multnomah County judges' pet peeves. As I read the list, I was struck by the similarities to what jurors say are their top pet peeves. As a litigation consultant, I've interviewed jurors for post-trial debriefings, shadow jurors, mock jurors, and participated in countless jury selections. With this background, below is a list of complaints I've consistently heard from jurors; not surprisingly, what irks judges also irks jurors.

- 1. Bad Behavior:** Bellis referred to this as "incivility" and "casualness and unprofessionalism." He said that "lawyers' effectiveness to the judge and jury" is undermined when the lawyers "snipe at one another." He also says that "it does not impress the judge or jury when lawyers bicker with or interrupt each other." 100% yes! I can recall a trial where the lawyers' animosity toward each other was so palpable, jurors asked to be moved further away from counsel. You've had a long relationship with opposing counsel, but the jurors have just met you. They have no knowledge of the months or years of battle; they have no context for the private arguments that you bring

- Motions in limine
- Summary joint statement of the case to be read to the jury at the outset.

The practice of law is part science and part art. There will always be procrastinations and last minute decisions. However, as a judge I have seen that there are often ways to get past the barriers. Creating a sense of urgency and using "noisy" trial preparation are some ways to do this. Find approaches to start productive settlement discussions sooner, rather than later. When this happens, everyone benefits.

to trial. Rudeness, belittling, bickering, and disrespectful behaviors can all feed the preexisting attitudes that many jurors have about attorneys. Best to not fan the flames.

- 2. Wasted time:** Bellis referred to this as "tardiness." The slow pace and delays might not be your fault, but jurors will still blame the attorneys. You can help by always responding, "Ready to go" (when asked), reducing side bars and objections, and having a clear, efficient game plan. You should also consider that there are situations where jurors think you're wasting time simply because they do not understand the process. For example, jurors often don't understand why attorneys have to lay foundation. Instead, they think the attorney is taking a long, painful road to get to the interesting testimony. Look for opportunities to be efficient with laying foundation.

- 3. Lack of clarity:** Bellis referred to this as "accuracy." In particular, the statement, "Advocacy should be looked at more surgically; often, less is more," hit a nerve. He said too often judges need to "hunt for relevant support." While a slightly different context, jurors' complaints are similar. Often, they have to do the work of the attorney - they have to figure out where, why, and how the arguments and evidence prove a particular point or are relevant. Jurors grow weary if they have to exert too much mental energy figuring out what's really going on. One simple solution is to sign-post more: provide verbal outlines, number points as you move along, and use summary graphics. You can also use clarifying transition statements. For example, in a witness examination, the following example tells jurors why the questions being asked are important and relevant: "One of the elements of a negligence claim has to do with whether or not the action or inaction was reasonable, so I want to ask you a few questions about what one might consider reasonable..."

- 4. Lack of brevity:** Bellis mentioned this related to motion briefings. In trial, it's the opening, closing, or even a witness examination that goes on, and on, and on. Recall point 3, and remember

your opening and closing need to efficiently and clearly get to the point. Jurors' attention spans are the same as everyone else's on the planet; according to 2015 research, that is only 8.25 seconds!¹ While repetition is vital for making an important point stick, too much repetition only bores (and angers) jurors. Many writers assert that nothing is good until the sixth or seventh draft and the hardest work is cutting, not the actual writing.

- 5. Disorganized presentations:** Long-winded openings, closings, or witness examinations stem from disorganization; and disorganization often comes from what Bellis called "insufficient preparation." Disorganization leads to the rambling speech where one says things like, "...but, I'll talk about that later." Or "...oh yeah, let me come back to what I talked about earlier." Or, "I forgot to mention..." A disorganized presentation means that little to nothing will be retained by your audience, since they are spending so much mental effort trying to figure out what's going on. The best way to improve organization is to figure out the three to five central things that you must prove to the jury and make those the main points of opening and closing. This requires tough choices about what to include and what not to include. If everything is important, nothing is important. The more you say, the more jurors will forget. The less you say, the more they will remember.

One final comment about Bellis' "know your audience" complaint. He remarked that you need to know your judge, but you also need to know your jurors. Doing so in *voir dire* is critical. It's the only time you learn about the experiences and attitudes that shape the way they view the world. Not only is the information invaluable for informing your strikes and cause challenges, but you also learn things that you can incorporate into your overall trial strategy.

Jill D. Schmid, Ph.D., is a partner and Senior Litigation Consultant at Sound Jury Consulting, a full service trial consulting firm. She can be reached at 503.702.7716 or jschmid@soundjuryconsulting.com

¹ National Center for Biotechnology Information, U.S. National Library of Medicine.

MBA Committees

Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and the committee chair follows. If you have ideas or concerns about a particular area, please contact the chair, MBA President Bob Steringer, bob.steringer@harrang.com, or the MBA staff at mbabar.org.



Continuing Legal Education

Chair: **Seth Row**, Miller Nash Graham & Dunn LLP, 503.205.2318
Plans, conducts and evaluates approximately 40 CLE seminars a year geared toward attorneys in practice 10 years or more.



Court Liaison

Chair: **Jennifer Wagner**, Stoll Berne, 503.227.1600
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.



Courthouse/Court Funding

Chair: **Eric Dahlin**, Davis Wright Tremaine, 503.778.5293
This committee works to increase public and legislative awareness about the importance of a fully funded court system, including court facilities.



Equality & Diversity

Chair: **Emily Teplin Fox**, Markowitz Herbold, 503.295.3085
Promotes equality in the profession and identifies ways in which the MBA can promote a diverse bar.



Events

Chair: **Sarah Petersen**, Lewis & Clark Law School, 503.768.6607
Conducts member-outreach activities and drop-in socials. Plans Bench Bar & Bagels, Battle of the Lawyer Bands and WinterSmash, which benefits Multnomah CourtCare.



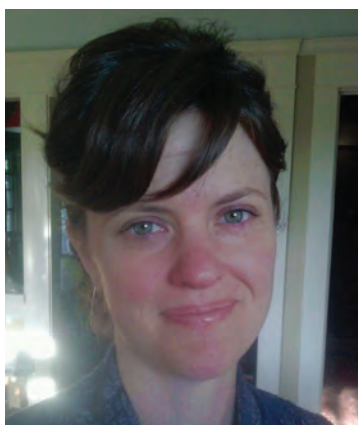
Judicial Screening

Chair: **Krista Shipsey**, Law Office of Krista Shipsey, 503.265.8119
Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.



Membership

Chair: **W. Todd Cleek**, Cleek Law Office LLC, 503.706.3730
This new committee will work on member recruitment and retention efforts and evaluate current and potential member benefit programs.



Professionalism

Chair: **Sarah Radcliffe**, Disability Rights Oregon, 503.243.2081
Implements activities that promote professionalism and carries out the professionalism award process.



Solo/Small Firm

Chair: **Julie Vacura**, Larkins Vacura LLP, 503.542.3103
Plans workshops tailored specifically for solo and small firm attorneys.



VLP Golf

Chair: **David Noland**, DCNoland Law LLC, 503.967.2944
Organizes golf outings, including the MBA VLP Golf Championship, which raises approximately \$20,000 annually for the Volunteer Lawyers Project at LASO.

Judge Katherine Tennyson Named President-Elect of NCJFCJ

The Honorable Katherine Tennyson, a Multnomah County Circuit Court Judge, has been named president-elect of the National Council of Juvenile and Family Court Judges (NCJFCJ) Board of Directors.

Since 2002, Judge Tennyson has served in the unified Family Law Department, hearing cases involving trust, probate and protective proceedings, dissolution, custody, parenting time, support enforcement, domestic violence, juvenile delinquency and dependency and termination of parental rights. Judge Tennyson became the Chief Probate Judge for the county in January 2007. She is a 1981 graduate of Duke University and a 1984 graduate of Lewis and Clark Law School and was admitted to practice law in both Oregon and Washington in 1984.



Judge Katherine Tennyson

Along with her duties as president-elect, Judge Tennyson also serves as faculty for the NCJFCJ's Child Abuse and Neglect Institute, which has educated more than 950 judicial officers since 1996.

Judge Tennyson will be installed as president of the NCJFCJ at the 79th Annual Conference in Monterey, California, July 2016.

The Unwritten Rule Mentoring as a Professional Responsibility

by *Akira Heshiki*
MBA Treasurer

With fall upon us, the work of the MBA Professionalism Committee is in full swing as it executes two of its most important projects: the MBA Mentor Program and the screening of the professionalism award nominees.

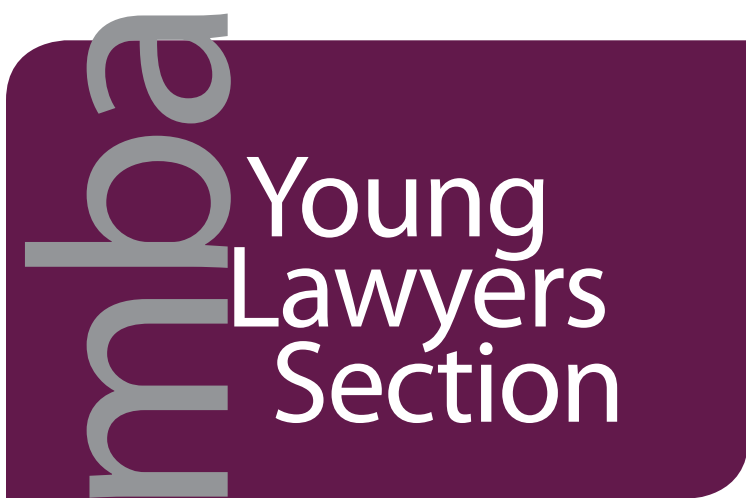
While conducted as separate activities, recognizing a member of our community and pairing two individuals together as a mentoring match is very much part of the same continuum.

The MBA Mentor Program provides both the mentor and mentee an opportunity to demonstrate their commitment to the MBA Professionalism Statement. The statement (which can be found at www.mbabar.org), begins with the principle that we will promote integrity and independent judgment, and support the efficiency of the legal system. These principles, and the remaining that follow, are all part of the backbone of a great mentoring relationship where both the mentor and mentee learn and teach these principles from and to each other.

Each year, we see the outcome of successful mentoring relationships when we recognize the honoree of the MBA Professionalism Award. Without fail, the names of the past recipients are those who can be described as "great mentors," who gave their time and energy generously to the people around them. Often, the honorees also humbly acknowledge their success as attributed, in part, to the guidance of thoughtful mentors who helped them during their career.

While there is no rule of professional conduct or ethics rule that requires a lawyer to participate as a mentor, it is of course the "secret sauce" that keeps the legal profession an enjoyable practice. It is the unwritten rule that we should all follow.

Great mentors are always in demand. If you are interested in participating or getting more information about the MBA Mentor Program, please contact Kathy Modie at the MBA at kathy@mbabar.org.



Young Lawyers Section

Upcoming YLS Events

YLS CLE: Advanced Litigation Skills CLE Seminar Series
 Standard Insurance Auditorium, 900 SW 5th Ave
 Nine consecutive Thursdays beginning September 17, 12:00-1:00 p.m.

A series of nine weekly seminars on general litigation skills. Worth nine hours of practice skills OSB MCLE credit in total. Register online at www.mbabar.org or see flyer insert for further details.

Wine Tasting Social

Blackbird Wine Shop, NE Fremont & 44th
 Thursday, September 17, 5:30-7:30 p.m.

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

The registration fee of \$15 includes wine tasting and hors d'oeuvres.

Space is limited – register online at www.mbabar.org by September 14 to reserve a spot or contact Ryan Mosier at 503.222.3275.

Pro Bono Pour Fundraiser to Benefit Legal Aid Services of Oregon

Ex Novo Brewing, 2326 N Flint Ave
 Thursday, October 1, 6-8 p.m.

The YLS Pro Bono Committee invites you to join them for an evening of pints and socializing to support the Volunteer Lawyer Project at the Portland Regional Office of Legal Aid Services of Oregon. Tickets are \$30 each and include beverages and appetizers. \$10 of each ticket goes to support our cause.

Register online at www.mbabar.org or see flyer insert for further details.

YLS CLE: Working Up a Personal Injury Case
 Standard Insurance Auditorium, 900 SW 5th Ave
 Monday, October 12, 12:00-1:00 p.m.

Presenter Ben Cox provides the basics (including forms) for setting up a streamlined injury case workflow that reliably puts you in the strongest position to settle for the top dollar possible and when necessary, litigate successfully.

Register online at www.mbabar.org or see flyer insert for further details.

YLS Committees

A synopsis of each committee charge for the year and contact information for the current committee chair follows. If you have any ideas or concerns to share about a particular area, please contact the chair, YLS President Mackenzie Hogan at mhogan@harrisbowker.com, or the MBA staff at mba@mbabar.org.

practice management. Organizes the Entrepreneur Academy, a series of trainings on starting and running a legal practice as a new lawyer.



YLS CLE Committee

Chair: **Paul Thompson**, Attorney at Law, 971.258.0562
 Organizes CLE seminars and career development presentations specifically intended for newer attorneys.



YLS Membership Committee

Chair: **Chris Fender**, Thenell Law Group, 503.372.6450
 Assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. It also publishes the *New Admittee Survival Guide*.



YLS Service to the Public Committee

Chair: **Kirsten Rush**, Busse & Hunt, 503.248.0504
 Provides lawyers with opportunities to become involved in the community, such as Community Law Week, Community Service Days and the Imprint Program. Organizes the YOUthFILM Project video contest for students on various democracy-related topics.



YLS Entrepreneur Committee

Chair: **Erika Huebschman**, Yanchar Huebschman LLC, 541.223.7470
 Supports new lawyers with professional development and



YLS Pro Bono Committee

Chair: **Brad Krupicka**, Preg O'Donnell & Gillett, 503.224.3650
 Coordinates the Nonprofit Legal Assistance Project, publishes the domestic violence and

YLS members serve on committees designed to address member needs and general issues affecting the profession.

If you are interested in getting involved in a YLS committee, call the MBA at 503.222.3275.

Ask the Partner

Dear Partner,

This is my first full year working at my firm. As we transition into fall, I am beginning to worry about my billable hours. I asked around for some additional work and a partner just assigned a task that I have never handled before, and have no idea how to proceed. HELP,

Worried Associate

Dear Worried,
 You are currently facing one of the biggest challenges that new associates encounter when they first start practicing. Not only are you worried about the task itself, you want to prove to your partner you can handle the task and don't want to ask the question of how to proceed. You are not the first associate to be in this position and you certainly won't be the last.

It is possible that your firm has a form bank and has the exact form you are looking for. Chances are, the project you were assigned is not the first of its kind your firm has tackled. If you spend a few moments searching the forms your firm has on file you will likely find a good starting place.

If you are still stuck, consider asking another associate for help. An associate who has been with your firm for a few years will likely have a few tricks for locating the right form or maybe, if you are really lucky, that associate worked on a similar project when they were in your shoes and can tell you exactly where you need to start. An older associate can also give you a few helpful hints of what certain partners are looking for when they assign certain tasks. When

asking older associates, keep in mind that they are also trying to meet their billables so you must do your best to respect their time.

Finally, it is important to remember that it is ok to ask a partner for guidance. Partners are not as scary as they may seem; in fact I think I'm downright lovable. Even the most senior partners were once first-year associates. I can guarantee you that the partner who assigned the task to you would rather take five minutes to point you in the right direction than take hours trying to fix an error.

Every associate is going to run into a situation that stumps them but that doesn't mean you should worry. Ask the question, get some guidance and show your partner you can deliver.

Sincerely yours,
 Partner

Game Changer A Profile of Erika Huebschman

by Aurelia Erickson
YLS Pro Bono Committee

Erika Huebschman is always looking for ways to change the game when it comes to pro bono work. The volleyball-star-turned-lawyer recognizes that diversified experience is key. Erika has created opportunities to learn and serve through a number of pro bono activities. Here are a few of her latest endeavors:

Spiking the Ball on Expungement

Erika, now adept at criminal expungement, first learned about the process as a volunteer with Metropolitan Public Defender's expungement clinic in downtown Portland. Most Mondays Erika would attend the clinic to advise clients through the process of record review, fingerprinting and form-filling. Erika also taught other volunteer attorneys about the process.

One such volunteer was Tom Noble. Tom – someone Erika first met as an aspiring lawyer in Clackamas County when she waited tables during her summer studying for the bar – asked for Erika's help in figuring out how to bring an expungement clinic to Clackamas County. The Clackamas Expungement Clinic is now held once every three months. Attorneys are encouraged to volunteer – Erika teaches a CLE class on the subject before each clinic to prepare new volunteer attorneys. "If you want to learn an area of law, the best way is to teach it. Presenting a CLE forces you to learn all the little details and lawyers are an interesting audience – they have lots of questions and demand answers" laughs Erika.

The clinic helps fill a need in Clackamas County and has been

"bigger and better each time." Erika attributes the clinic's success to Tom Noble, the Clackamas Bar Association and Legal Aid. For Erika, the reward comes in being able to teach new lawyers about an area of law that can be really meaningful to their clients' lives and working with great mentors like Tom. For more information about the clinic and how to participate, please contact: Tom Noble, 503.863.0536, tomnoble@oregonlegalcenter.com

Acing it on Access at the Gateway Center

The Gateway Center on East Burnside provides a "one stop shop" for survivors of domestic violence and their children. Yet there has always been a need for greater access to legal services. It was this need that led Erika to start volunteering at the Center and try to pick up where Legal Aid and other services left off. "It is not about replacing Legal Aid in any way – they do amazing work, often without the resources they need. But I wanted to provide another option for legal services that didn't require filling out an application," says Erika, referring to Legal Aid's statutory mandate to serve qualifying low-income clients.

People coming to The Gateway Center can now sign up for an appointment with Erika to discuss a variety of legal matters. Because she takes whatever legal issues come her way it has been a great learning experience. Erika would like to thank Martha Strawn Morris and Karina Rutova for their tireless work at The Gateway Center and for being open to Erika's volunteer efforts. For more information



Erika Huebschman

on The Gateway Center, please visit www.portlandoregon.gov/gatewaycenter.

Serving Up Entrepreneurial Skills

Erika chairs the MBA YLS Entrepreneur Committee on the heels of an outstanding committee chair in Shayda Zaerpoor Le. Erika credits Shayda's leadership with inspiring Erika's plans for the future of the committee and her clear dedication to the committee. Erika was a 2015 YLS Award of Merit Recipient for her work in the Entrepreneur Committee.

As an entrepreneur herself, Erika understands how difficult it can be to make the business of a law office work while also balancing the demands of being a practitioner. She has a lot of ideas for programs that will focus on the practical considerations that make this process easier, and hopes to get back to basics with a training program for new lawyers that will provide feedback on basic presentation skills and how to put your best foot forward when appearing in court. Erika also hopes to run a program about client management, including tackling the "hard ask" of getting your clients to pay their bills.

Erika is excited about the direction the committee is headed and hopes to live up to Shayda's legacy.

2015 Battle of the Lawyer Bands a Great Success

The McMenamens Kennedy School gymnasium was rockin' on August 13 when six bands competed for the title of "Best Oregon Lawyer Band 2015."

- Hollowdog** - Jon Martz, Rich Norkunas, Scott Sobel and John McMeekan
- The Painted Teeth** - Christopher Fanning
- The Four Hot Kings** - Jack Dekovich, Josh Gilchrist, Greg Pothier, Nate Watson, Curtis Stiebel and Toby Bergman
- Montavilla Jug Ensemble** - Zack Mazer, Sean Martin, Max Wall, Jason Baker, Jennifer Ballute and Erik Eklund
- Habeas Corpse** - Tim DeJong, Tony Kullen, Houston Bolles and Larry Reichman

- Bunny Lebowski and the Nihilists** - Bradley Dixon, P.K. Runkles-Pearson, Steve Galloway and Dennis Westlind

The judges and crowd enjoyed all the bands, and in the end the Montavilla Jug Ensemble was named Best Oregon Lawyer Band 2015. Jack Dekovich of The Four Hot Kings received



Montavilla Jug Ensemble band members pictured with Battle of the Lawyer Bands M.C. Kellie Johnson and MBA Events Committee chair, Sarah Petersen

the James Britt Award for Best Individual Performer.

Thank you to Miller Nash Graham & Dunn LLP, Harrang Long Gary Rudnick PC, Chernoff Vilhauer LLP and Farleigh Wada Witt for sponsoring the event. Thank you to our judges: Judge Cheryl Albrecht, Akira Heshiki, Mackenzie Hogan, Kevin Parks and Trish Walsh. And thank you to everyone who attended and helped raise approximately \$1,100 for Multnomah CourtCare.

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The Multnomah Bar Foundation Past, Present and Future

by Chuck Tauman
Charles S. Tauman PC



Past

The Multnomah Bar Foundation's past is brief – especially compared to the hundred-plus year history of the Multnomah Bar Association, its parent. In fact, the foundation was born out of the celebration of the MBA's centennial in 2006. As a part of that celebration, MBA leaders wanted to make a meaningful commitment to the improvement of civic life – in Multnomah County and in Oregon, in particular - to educate our citizens about the rule of law, the need for an independent judiciary and the importance

...MBA leaders wanted to make a meaningful commitment to the improvement of civic life....

of juries. MBA members responded heartily to the initial fundraising effort to establish the MBF in 2005 with the mission "to increase the public's understanding of the legal system, to promote civic education, public participation and respect for the law, to improve the quality and administration of the legal



MBF grants promote civic education and engagement

system." Initially, the MBF funded two separate programs – the signature project and the MBA 100th Anniversary Community Gift Fund. Since that time, the signature project has been completed and the community gift fund has morphed into the Civic Education Fund. In 2013, the MBF took responsibility for the funding and administration of Multnomah CourtCare, which had been established by the MBA in 2001. Each of these programs is described briefly below.

Signature Project

The foundation's signature project, funded by the MBA's "centennial fund," involved the development and production of six short videos promoting the values of civic engagement including voting, jury service, and judicial independence. The videos are available for streaming from the MBF website (www.mbar.org/foundation/civic-education.html) and on request, on DVD for showing in classrooms (with accompanying lesson plans) and by civic groups in Multnomah County and throughout the state. *The Courthouse* and *The Court System* videos took top honors at the 2012 National Association of Telecommunications Officers and Advisors (NATOA) Government Programming Awards. *The Court System* was awarded first place in the "Public Education" category and *The Courthouse* was awarded second place in the "Community Awareness" category. *Voting 101*, a combination short video and

PSA, was awarded first place in the "Democracy in Action" category at the 2013 Hometown Media Awards, a national competition that recognizes the best in community media

programming. The videos are being shared statewide with social studies, government and civics teachers for showing

...the foundation raises approximately \$50,000 per year....

in middle and high schools, offered for use by civic and social groups and also reaching wide, general audiences via cable access TV, YouTube and various educational, news media and civic groups' websites.

Civic Engagement

The Civic Education Fund is devoted to making yearly grants to organizations that apply on a competitive basis. The grant applications are carefully screened by the foundation's Grants Committee and the use of the grants is carefully monitored by MBF Board members assigned to each group. The list of past grant recipients from 2006 through 2015 is long and illustrious (see www.mbar.org/Foundation/Grants.html). We are proud to have awarded \$37,750 in grants this year. (See sidebar.)

CourtCare

CourtCare contributes to the improvement of access to justice by making free, drop-in childcare available for families who have business at the downtown Multnomah County Courthouse and the new East County Courthouse. CourtCare is operated by Volunteers of America Oregon and serves 80 to 100 children and their families each month (over 12,700 since opening in December 2001). In addition to being a safe, convenient location for parents to leave their children, this program reduces the number of rescheduled court appointments and removes the potential that children might witness conflicts or disrupt court business. Originally a project of the MBA, the foundation assumed responsibility for CourtCare in 2013.

Present

Presently, the foundation raises approximately \$50,000 per year through the generous contributions of lawyers like you to

award grants for civic engagement projects. The foundation has been very successful in providing this funding for deserving nonprofit programs. However, because the need for more funding for these high quality programs is apparent, and because the MBF has developed the ability to screen, select and monitor the grant recipients, the MBF Board has come to the realization that the foundation can do so much more. And for that, we need your help.

Future

2015 marks the 10th Anniversary of the MBF Civic Education Fund. When we think about all the good we have done in the first 10 years, we can't help but think about how we can multiply that good by increasing our fundraising efforts. And because the benefit of our work extends



Children participating in a CourtCare program

well beyond MBA members, we've decided to do two things.

First, we've set new goals. We've committed ourselves to double our fundraising within the next five years – from \$50,000 per year to \$100,000 per year. This will not and cannot be done in one fell swoop but our commitment is to achieve this goal by the year 2020. Yes, it means you will be asked to dig deeper and to talk to your firm members, colleagues and friends about doing the same. You'll be asked to look at the grants we have funded for the last 10 years and ask yourself: Isn't this something that I want to be a part of? Wouldn't it make me proud to be a contributor to these important and worthy projects?

Second, we've expanded our universe to include more potential contributors. ALL lawyers statewide – not just MBA members – will be educated about the work we do. After all, we all benefit by achieving the goals of the foundation – educating our citizens (students and adults) about the rule of law, the need for an independent

judiciary and the importance of juries. It makes the legal environment in which we toil a better place, increasing access to justice, promoting respect for the legal system, enhancing appreciation for what we do as lawyers and judges and encouraging participation in our democracy.

Lawyers who have benefitted most from the legal system in terms of material wealth will be asked to give back more – both by increasing current contributions and through planned giving. And some of you who specialize in this area of law may be asked to lend a hand.

We will extend our reach to those whose sales market includes legal professionals; in other words, those who profit from the legal system will be asked to contribute to its vitality and well-being. And we'd ask those of you who are responsible for making decisions on purchasing goods and services in connection with your professional lives to help us identify and persuade those vendors to help us give back.

Finally, we will approach both Oregon and national foundations that include within their missions values that support and are coincident with those of the MBF to consider making a one-time or ongoing contribution. The value we

We've committed ourselves to double our fundraising within the next five years....

add through our thorough and long-established screening and selection process and monitoring the use of the grants justifies such contributions.

In summary, your MBF can make a justifiable claim to being an innovator in the area of civic engagement in Oregon. And I think we can all agree that, at this point in time in our legal and political history, civic engagement by the broadest community possible is a laudable (and maybe a critical) goal. So why not join in and help the MBF double its efforts to accomplish its fundraising goal? I've listed above several ways you can help. Join us and together we can turn a good thing into a great thing.

For more information, visit www.mbar.org/foundation or call 503.222.3275.

mbf
Multnomah Bar
Foundation

\$37,750 Awarded in Civic
Education Grants in 2015

Bus Project Foundation
received \$3,500 to expand
their PolitiCorps program
to a year-long leadership
development program.

Elders in Action was awarded \$3,750 for Action, Passion, Talent = Civic Engagement, to teach older adults how to be engaged in their communities and work with their local city and county elected officials.

League of Women Voters of Oregon was granted \$3,500 to increase participation statewide in the Oregon Student Mock Elections program in anticipation of the 2016 presidential election, and to expand their Voter Services outreach.

League of Women Voters of Portland received \$3,500 for their 2015-16 Outreach Campaign of civic education panel discussions focused on current issues and the rights of citizens to influence government decisions.

MBA YLS Service to the Public Committee was awarded \$2,000 for the YOUTHFILM Project, a film contest for grades K-12 that uses the theme determined annually by the ABA as the theme for their short film submissions.

Northwest Family Services was awarded \$10,000 to support the educative function and expand the volunteer pool of Four Cities Peer Court, a restorative justice program that holds low-level, first-time juvenile offenders accountable without the involvement of the juvenile justice system. Students serve as peer lawyers and jury; judges and lawyers volunteer to serve as judges.

Oregon Tradeswomen, Inc., a new recipient, was granted \$4,000 for their TOOLS Program (Tradeswomen Organized for

Outreach, Leadership & Support), which focuses on civic education and engagement for women in the trades.

Sponsors Organized to Assist Refugees received \$7,500 for the Voter Education Program, educating refugees and immigrants, particularly low income and disabled refugees and asylees, about what it means to vote, how to read a voter pamphlet and where to vote.

Classifieds

Positions

Legal Secretary – August 2015

Jackson Lewis is looking to fill a Legal Secretary position in the Portland, Oregon office. As a Legal Secretary, you will provide general administrative support to attorneys including preparation of client intake information, conflict and engagement forms and engagement letters, prepare and revise correspondence, maintain calendars and assist in client communications. In addition, you will assist the attorneys with time entry and other administrative tasks, and provide general back-up support to the office. Qualified candidates will have a High School diploma (Bachelor's preferred) with a minimum of 5 years of experience in a law firm, litigation background preferred. We offer a competitive salary and comprehensive benefits package, along with opportunity for growth. Qualified candidates should send a resume to Mjamison@creativeworkforce.com for consideration.

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To apply, please submit a cover letter, resume, and law school transcript (unofficial is acceptable) by e-mail to MNRecruiting@millernash.com, Attn: Michelle Baird-Johnson, Director of Recruiting and Professional Development. Deadline: September 4, 2015

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Relevant experience, a strong academic background and Oregon bar required. Please send a cover letter, resume, transcript and references to Laurie Suran at lsuran@mershanlaw.com.

Miscellaneous

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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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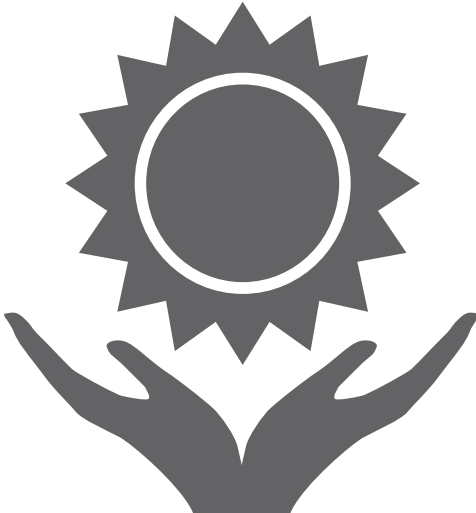
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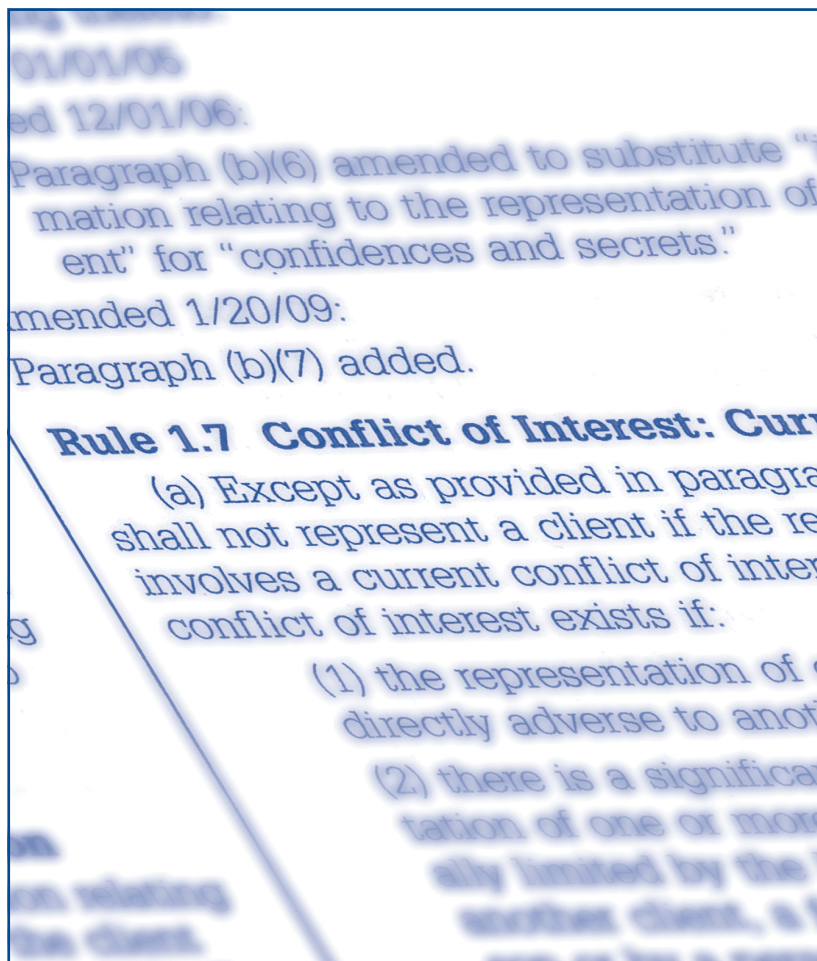
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Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic 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."

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Ethics Focus

Continued from page 7

The Oregon PLF is not unique. In *Stouffer & Knight v. Continental Cas. Co.*, 982 P2d 105 (Wash App 1999), for example, the Washington Court of Appeals agreed that a “dishonest act” exclusion in a malpractice policy precluded coverage when a law firm secretary stole money from the firm’s trust account - even when the firm admitted that its supervision of the secretary was negligent. For firms that typically have substantial balances in trust, this suggests purchasing an employee theft rider on a general commercial policy. The clients affected are going to want their money back. In the absence of insurance, the firm will be forced to rely on its own resources to make the clients whole.

Banking Agreement

The agreement with the bank that the law firm signed when it opened its trust account may also allocate financial responsibility for any loss relating to the account to the law firm when the loss is the result of a dishonest act by a law firm employee. In *Bank of America v. Hubert*, 101 P3d 409 (Wash 2004), for example, the Washington Supreme Court found that the bank hosting a law firm’s trust account was not liable for losses stemming from a paralegal’s use of the trust account in a check-kiting scheme because the deposit agreement expressly excluded liability on the bank’s part for dishonest acts by authorized signers or where the firm’s negligence had contributed to those acts. This again suggests adding an employee theft rider to the firm’s general commercial policy.

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MBA Mentor Program

In 2015, 33 mentor-mentee pairs participated in the MBA Mentor Program, which matches MBA Young Lawyers Section members with select, experienced MBA members for mentoring and support over a six-month period. The program provides career development and professionalism guidance to newer lawyers who may have already completed the mandatory OSB New Lawyer Mentoring Program.

The 2015 program year officially wrapped up with a year-end party on July 9. One of this year's mentors, Thomas Smith from Davis Wright Tremaine, had this to say about

his experience with the program: "I truly have enjoyed my time mentoring younger lawyers in the MBA. As a senior lawyer, I am very interested in the future of this wonderful profession. I think many younger lawyers hear very negative comments about practicing law and need a bit of cheerleading to help them deal with the fact that this work is not easy, but is often VERY rewarding. I am very enthusiastic about the practice of law and the enrichment it brings to those involved. I also believe that when younger lawyers see what the practice looks like as an older lawyer, they realize that they really have more control

over their own employment destiny than most others. Finally, I enjoy the challenge of engaging younger lawyers in dialogue about the profession. I always learn something from my interaction with my younger colleagues and am almost always impressed and optimistic about the world's future after my meetings with my mentees."

We are now seeking volunteer mentors for the 2016 program. Both mentor and mentee application forms can be found at <http://mbabar.org/Resources/News/122/Details/>. If you would like to be added to the mentor pool, please complete and return the form or contact Kathy Modie (503.222.3275 or kathy@mbabar.org).

Thank you to all 2015 mentors

Amy Alpern
Courtney Angeli
Catherine Barker
David Bean
John Belknap
Paul Bovarnick
W. Todd Cleek
Charles Corrigan
James Damis
Robert Demary
Paul Duden
Saville Easley
Patrick Ehlers
Jill Gelineau
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