



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. November 2005 Volume 51, Number 10



Urging Your Support for East County Justice Facility

By Kelly Hagan, Schwabe Williamson & Wyatt and MBA President.

RESOLUTION (Directing Funds from the Sale of the Hansen Building and Multnomah County Correctional Facility (MCCF) to Help Fund a Possible New East County Justice Facility) Adopted

*** with Commissioners Naito, Roberts, Rojo and Linn voting aye, and Commissioner Cruz voting no.

- Minutes of the Multnomah County Commission, November 4, 2004

RESOLUTION (Accepting the Preliminary Planning Proposal for the East County Justice Facility). *** Unanimously adopted (Commissioner Cruz excused).

- Minutes of the Multnomah County Commission, February 17, 2005

RESOLUTION (Approving the East County Justice Facility Project Proposal and Directing Preparation of Project Plan).

*** Adopted, with Commissioners Naito, Roberts, Rojo and Linn voting aye, and Commissioner Cruz voting no.

- Minutes of the Multnomah County Commission May 12, 2005

Looks like the East County Justice Facility is a done deal, right? Wrong. The project has just recently lost majority support on the Multnomah County Commission, which is disastrous not only for our members, their clients and communities in East County, but also for the prospects of a new courthouse downtown.

Why would the Commission reverse course? Because funding is not in place? No, construction of the center will be funded from the sale of other county properties. Because operating costs will be prohibitive? No, the project is budget-neutral, if not a net plus, due to the transfer of existing costs to the new facility, elimination of deferred maintenance on the sold properties and other efficiencies. Because there is no need for a new facility? No, the need for and benefits of the new facility are well-documented.

Then why is the County Commission turning its back on East County and, not to put too fine a point on it, the county's judicial system? You guessed it: politics.

The details of this political peccadillo are unimportant. It is not my place or purpose to condemn politicians for being political. But I am constrained to point out that the reasons for the commission's 180 on the East County Justice Facility are wholly unrelated to the merits of the project or to the welfare of the people living in east Multnomah County.

I am further informed that this political tiff threatens support on the commission for a new courthouse downtown. The political lines have been drawn: if we can't have ours, you can't have yours. Ladies and gentlemen, behold your tax dollars at work.

Unfortunately the backdrop to this political farce is human tragedy, which has become real to me only recently. You see, my daughter is a high school freshman who plays volleyball in the Mt. Hood conference. As a result, I have spent more time in East County over the last six weeks than I have in my entire life. Being a west-sider for 25-years, I fear the Banfield and so tend to travel to my daughter's matches at east side high schools on surface streets like Powell and Division. It has been an education.

The neighborhoods and storefronts along the major thoroughfares between Mt. Tabor and Gresham are in serious economic and civic decline. I know, I know: I must be the last button-downed, middle-aged white guy in the county to get the memo, but I was genuinely surprised by the evident material and social decay. While I know that East County is home to prosperous businesses and pleasant neighborhoods, it is also plain that much of it is in trouble. Commercial space is empty and boarded up, windows grin in broken glass. Residences and rentals are run down, neglected. Gang activity is out in the open. There is a desperation that is palpable even from behind the wheel of a visiting Volvo.

This is a portion of our community that would benefit greatly from a higher police profile, a local lockup and courtrooms close to the people served by them. By no means will the Justice Center single-handedly rejuvenate East County. But it will be an important contributor to economic and social reclamation.

The East County Justice Center is a project that sells itself: it is budget-neutral; it is a critical first step toward a countywide courthouse solution; it will address urgent law enforcement needs; and it will send a strong signal to businesses and tax payers in blighted areas that county government is committed to turning things around. What message does the commission send – indeed, what message will the legal community be associated with – if the county does not proceed with the project?

I urge you to express your strongest possible support for the East County Justice Facility to the county commission. Commissioners Cruz, Linn, Naito, Roberts, and Rojo may be reached at: Diane Linn, Chair, phone 503.988.3308, email mult.chair@co.multnomah.or.us; Maria Rojo de Steffey, District 1, phone 503.988.5220, email district1@co.multnomah.or.us; Serena Cruz, District 2, phone 503.988.5219, email serena@co.multnomah.or.us; Lisa Naito, District 3, phone 503.988.5217, email district3@co.multnomah.or.us; Lonnie Roberts, District 4, phone 503.988.5213, email lonnie.j.roberts@co.multnomah.or.us.

Another Successful Absolutely Social

About 200 lawyers, judges, sponsors and law school students gathered at The Benson Hotel on October 11 for the fall "Absolutely Social" Social – The Grape Escape. The event featured wine tastings from three Oregon wineries. Canned food and cash donations were collected and donated to the Oregon Food Bank – thanks to all those who contributed!

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MBA CLE

To register for a CLE, please see the inserts in this issue or go to www.mbabar.org.

November

Wednesday, November 2
MBA/LexisNexis Update:
Proposed Amendments to
Federal Rules of Civil Procedure
Aideen Gaffney
Lois Rosenbaum
Tom Hutchinson
Katherine Heekin

Thursday, November 3
Child Abuse Reporting and
Other Ethical Issues
Sylvia Stevens

Friday, November 4
Fall YLS Family Law CLE Series
ends: Dissolution

Wednesday, November 9
Mandatory Arbitration Training
Hon. Edward Jones
Bill Gibson
Lisa Almasy Miller
Eric Neiman
Kent Whitaker

December

Thursday, December 1
Summary Judgment Practice
Hon. Henry Breithaupt
Michael Zusman

Thursday, December 15
Ethics Update
Mark Fucile

January

Friday, January 13
YLS Young Litigators Forum
begins: Courtroom Nuts and Bolts
Hon. Jean Kerr Maurer
Brendan Dummigan
Greg Silver

Friday, January 20
YLS Young Litigators Forum
continues

Friday, January 27
YLS Young Litigators Forum
continues

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Advertising is accepted; advertisers(ments) are not necessarily endorsed by the MBA. The editor reserves the right to reject any advertisement.

DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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TIPS

Multnomah County SLR 12.025 allows parties to mediate cases under \$50K as a substitute for "mandatory" arbitration.

Additionally, mediation fulfills the SLR 7.075 ADR requirement if you file a certificate within 270 days of filing the lawsuit.



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For scheduling or references:
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NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

ADVOCACY WORDS: A thesaurus by William Drennan. Published by the ABA. (Ref. KF 156 D74)

FLYING SOLO: A survival guide for the solo and small firm lawyer, 4th ed. edited by K. William Gibson. Published by the ABA, Law Practice Management Section, 2005. (KF 300 F59)

REAL PROPERTY IN A NUTSHELL, 5th ed. by Roger Bernhardt and Ann M. Burkhart. Published by Thomson/West, 2005. (KF 570 B47)

2005 BANKRUPTCY REFORM LEGISLATION WITH ANALYSIS. Commentary and highlighted text of the United States Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8) by William Houston Brown and Lawrence R. Ahern. Published by Thomson/West, 2005. (KF 1511.5 B76)

CREDIT DISCRIMINATION, 4th ed. by Deanne Loonin and Chi Chi Wu. Published by the National Consumer Law Center, 2005. (KF 1040 C62)

THE COST OF CREDIT: Regulation, preemption, and industry abuses, 3d ed. by Elizabeth Renuart and Kathleen E. Keest. Contributing authors: Carolyn L. Carter, Alys I. Cohen, Chi Chi Wu. Published by the National Consumer Law Center, 2005. (KF 1040 C62)

THE FOREIGN CORRUPT PRACTICES ACT AND THE NEW INTERNATIONAL NORMS by Stuart H. Deming. Published by the ABA, Section of International Law and Practice, 2005. (KF 9351 D46)

ERISA: Survey of Federal Circuits, edited by Brooks R. Magratten. Published by the ABA, Tort Trial & Insurance Practice Section, 2005. (KF 3512 E75)

GUIDE TO NONPROFIT CORPORATE GOVERNANCE IN THE WAKE OF SARBANES-OXLEY. Published by the ABA, Section of Business Law, 2005. (KF 1388.5 G85)

THE LOBBYING MANUAL: A complete guide to federal law governing lawyers and lobbyists, 3rd ed. by William V. Luneburg and Thomas Susman. Published by the ABA, Section of Administrative and Regulatory Practice, 2005. (KF 4948 L62)

THE M & A PROCESS: A practice guide for the business lawyer. Published by the ABA, Section of Business Law, 2005. (KF 1477 M44)

CASE DISMISSED! Taking your harassment prevention training to trial, 2d ed. by Carol M. Merchasin, Mindy H. Chapman and Jeff Polisky. Published by the ABA, Section of State and Local Government Law; Tort Trial and Insurance Practice Section, 2005. (KF 4758 M47)

PATRIOT DEBATES: Experts debate the USA Patriot Act edited by Stewart A. Baker and John Kavanagh, with an introduction by ABA President Robert J. Grey. Published by the ABA, 2005. (KF 9430 P37)

LEGAL ETHICS IN CHILD WELFARE CASES by Jennifer L. Renne, with a forward by Jean K. Peters, edited by Claire Sandt. Published by the ABA Center on Children and the Law; National Child Welfare Resource Center on Legal and Judicial Issues, 2004. (KF 3735 R46)

SECONDARY MARKET TAX-EXEMPT ASSET SECURITIZATION FOR SPONSORS, INVESTORS, OTHER MARKET PARTICIPANTS AND THEIR COUNSEL edited by Darrell R. "Buzz" Larsen. Published by the ABA, Section of State and Local Government Law, 2005. (KF 1070 S43)

U.S. REGULATION OF HEDGE FUNDS by Shartsis Friess, LLP, and Douglas L. Hammer. Published by the ABA, Section of Business Law, 2005. (KF 1078 U14)

CALENDAR

For a complete MBA calendar, please visit www.mbabar.org.

November

1
Tuesday, MBA Board meeting

2
Wednesday, MBA/LexisNexis CLE & Reception – Proposed Amendments to Federal Rules of Civil Procedure on E-Discovery
See insert or register at www.mbabar.org.

2-4
Wednesday-Friday, OSB PLF Seminar, "Learning the Ropes"
For details, visit www.osbplf.org.

3
Thursday, MBA Meeting of the Membership
Regarding proposed bylaws changes, 3 p.m., World Trade Center Auditorium
For details, visit www.mbabar.org.

Thursday, MBA CLE – Child Abuse Reporting Requirements and Other Ethical Issues
See insert or register at www.mbabar.org.

Thursday, OMLA Annual Meeting and Dinner
For details, visit www.omla.homestead.com.

4
Friday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Friday, OSB Tent Show and Dinner
For details, visit www.osbar.org.

8
Tuesday, YLS Board meeting

9
Wednesday, MBA CLE Mandatory Arbitration Training
See insert or register at www.mbabar.org.

10
Thursday, Multnomah Lawyer deadline

Thursday, New Admittee Social at Red Star Club Room

17
Thursday, Legislative Open House at Multnomah County Circuit Courthouse

23
Wednesday, Multnomah Bar Foundation Board meeting

24-25
Thursday-Friday, Thanksgiving Holiday – MBA closed

December

1
Thursday, MBA CLE – Summary Judgment Practice
See insert to register or visit www.mbabar.org.

2-3
Friday-Saturday, OCDLA Winter Conference
Visit www.ocdla.org for details.

6
Tuesday, MBA Board meeting

Tuesday, Wells Fargo Planning Session
See enclosed insert or visit www.mbabar.org.

9
Friday, Multnomah Lawyer deadline

13
Tuesday, YLS Board meeting

15
Thursday, MBA CLE – Ethics Update with Mark Fucile
See insert to register or visit www.mbabar.org.

26
Monday, Holiday – MBA closed

28
Wednesday, Multnomah Bar Foundation Board meeting

January

2
Monday, Holiday – MBA closed

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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Changing Seasons: Moving from One Firm to Another

You may have noticed that my byline is different this month. After 20 years at the same professional home, I started a new firm last month with my long-time trial partner. Launching a start-up gave me first-hand experience with the issues involved in moving from one firm to another. We'll look at three in this column. *First*, when can you ask your clients to come with you? *Second*, how are file transfers handled? *Third*, what are the conflict rules involved?

When Can You Ask Your Clients to Come with You?

In leaving a firm, a lawyer's first duty is to his or her clients. See *In re Smith*, 315 Or 260, 843 P2d 449 (1992); OSB Legal Ethics Op No 2005-70. The lawyer must honor this fiduciary duty by ensuring that work for clients continues to be handled in a timely and competent way during any transition. If there is a critical time deadline a client is facing, then OSB Legal Ethics Opinion 2005-70 counsels that a lawyer may need to give a client advance notice of the lawyer's intent to leave a firm. Because a lawyer also owes fiduciary duties to the soon-to-be old firm, however, client notification should normally come after the lawyer has told the old firm (absent a critical client deadline where the lawyer's duty to the client would "trump" the duty to the old firm). *Id.* Once a lawyer has actually left a firm the lawyer may contact clients whom the lawyer represented at the former firm to solicit their business. RPC 7.3(a)(2); accord OSB Legal Ethics Op No 2005-70. That contact can be in-person, by phone or in writing (both written and electronic). *Id.* The decision to retain work at the old firm, move it to the departing lawyer or seek entirely new counsel remains the client's alone. See *In re Smith, supra*, 315 Or 260; OSB Legal Ethics Op No 2005-70.

How Are File Transfers Handled?

If a client decides to have the departing lawyer continue handling the client's work, the old firm (assuming that there is no lien for unpaid fees) must relinquish the client's file and other property to the departing lawyer on the client's direction. See OSB Legal Ethics Op No 2005-70. Whether the old firm can charge the client photocopy costs for reproducing the file materials depends largely on whether the fee agreement between the old firm and the client permits that. See generally OSB Legal Ethics Op 2005-125 (dealing with photocopy charges



for client files on termination of representation). In any event, both the old firm and the departing lawyer must take all steps reasonably necessary during the transition to protect the client's interests. See RPC 1.16(d); OSB Legal Ethics Op No 2005-70.

What Are the Conflict Rules Involved?

When a lawyer departs a firm and takes all of a client's work, that client then becomes a "former client" of the firm. RPC 1.10(b); OSB Legal Ethics Op 2005-128. At that point, the lawyer's old firm may represent clients adverse to the former client unless, under RPC 1.9, the proposed new matter is substantially related to a matter that the old firm handled for the former client or would involve the use of the former client's confidential information adversely to the former client. See OSB Legal Ethics Op No 2005-128. As with all former client conflicts, however, this prohibition can be waived if the former and current clients give their consent. RPC 1.9. If the lawyer joining a new firm had been working opposite the new firm on a current matter, the lawyer joining the new firm should be screened under RPC 1.10(c)(1)-(3). Although the lawyer would not be able to continue on that matter at the new firm, screening would allow the new firm to stay in the case.

ANNOUNCEMENTS

Commitment to Professionalism

The Professionalism Statement developed by the MBA Professionalism Committee is ready for MBA members to purchase and display in their offices. The statement is printed on quality 11" x 14" parchment paper and suitable for framing. A smaller version of the statement is displayed in the Multnomah County courtrooms.

Reconfirm your commitment to professionalism; purchase your professionalism statement today! Visit www.mbar.org for more information and to place your order.

MBA Noon Time Bicycle Rides

Multnomah Bar Association noon time bike rides - short fast rides with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m., Mondays and Thursdays. Contact **Ray Thomas** 503.228.5222 with questions, or meet at the start.

MBA Member Benefits

Members may now purchase tickets for the Portland Opera and Broadway series and the Oregon Ballet Theatre, pre-public sales and at a 10% discount. Please go to www.mbar.org and then Membership Benefits for details. Tickets for Portland Opera and Broadway shows may be purchased online through the MBA Web site. For Oregon Ballet Theatre tickets, you may receive custom purchase assistance by using the phone number on the MBA Web site. There is no service fee for the ballet tickets and a reduced service fee for opera and Broadway tickets. Show listings will vary throughout the year.

Multnomah County Family Law Group Meetings

The Multnomah County Family Law Group (MCFLG) meets monthly at noon-1:30 p.m. at Jake's Grill at the Governor Hotel for lunch, networking and discussion.

On November 21, bankruptcy lawyer **Ann Chapman** will address recent changes to bankruptcy law and their effect on family law. On December 19, Sharon James, Director of Multnomah County Family Court Services, will speak to how to prepare clients for mediation and custody evaluations.

Reservations and pre-ordered lunches are required. Please provide **David Bean** with your fax number if you wish to be placed on the list: dib@meyerwyse.com.

OCDLA Winter Conference

The 2005 winter conference, entitled "Disorders in the Court: Mental Health Issues in Criminal, Juvenile and Civil Cases," is December 2-3 at The Benson Hotel in Portland. The conference is only open to those professionals, law students and lawyers directly related to the defense function. For more details, visit www.ocdla.org.

Queens Bench Luncheons

On November 8, Queens Bench presents "Doing it All and Having it All: Practicing Law and Staying Active While Raising Children." Portland attorneys and single moms **Nancie Potter** of Foster Pepper Tooze and **Cathy Tappel** of Gevurtz Menashe will share their insights about balancing their careers and their personal lives.

Queens Bench luncheons take place on the 2nd Tuesday of each month from 11:45 a.m. - 1 p.m. at Jax Restaurant. The cost is \$12.

Queens Bench accepts cash or checks, and you may pay at the door. Reservations are not required. Everyone is welcome.

For more information, please contact **Shari Gregory** at 503.226.1057, ext. 14, sharig@oaap.org or Barbara Smythe, 503.595.5300, barbara.smythe@klarquist.com.

Attorney Basketball League Forming

What: Attorney Basketball League (all members of the bar and law students are eligible). Teams and individuals are welcome. The cost is to be determined. When: Informational meeting is December 6 at noon. The league will start in January and games will be on Sunday evenings, continuing into March. Where: The informational meeting will take place at Schwabe Williamson & Wyatt. The games will likely take place at the Tualatin Hills Park and Recreation District Gym on SW 158th Ave. Who: The contact person and league organizer is Nathan Wilson, who may be reached at 503.710.1720 or nbwilson@qwest.net. Why: Good fun and an opportunity to compete with your fellow lawyers.

Oregon Law Foundation Grant

The Oregon Law Foundation has \$200,000 available for a one time only special project grant. The special project funds will be granted only to those programs that provide direct civil legal services to persons of lesser means. The grant applications must be received by the OLF not later than 5 p.m., Friday December 16. For more information please go to www.oregonlawfoundation.org or contact Judith Baker at 503.431.6323 or Dawn Nelson at 503.431.6373.

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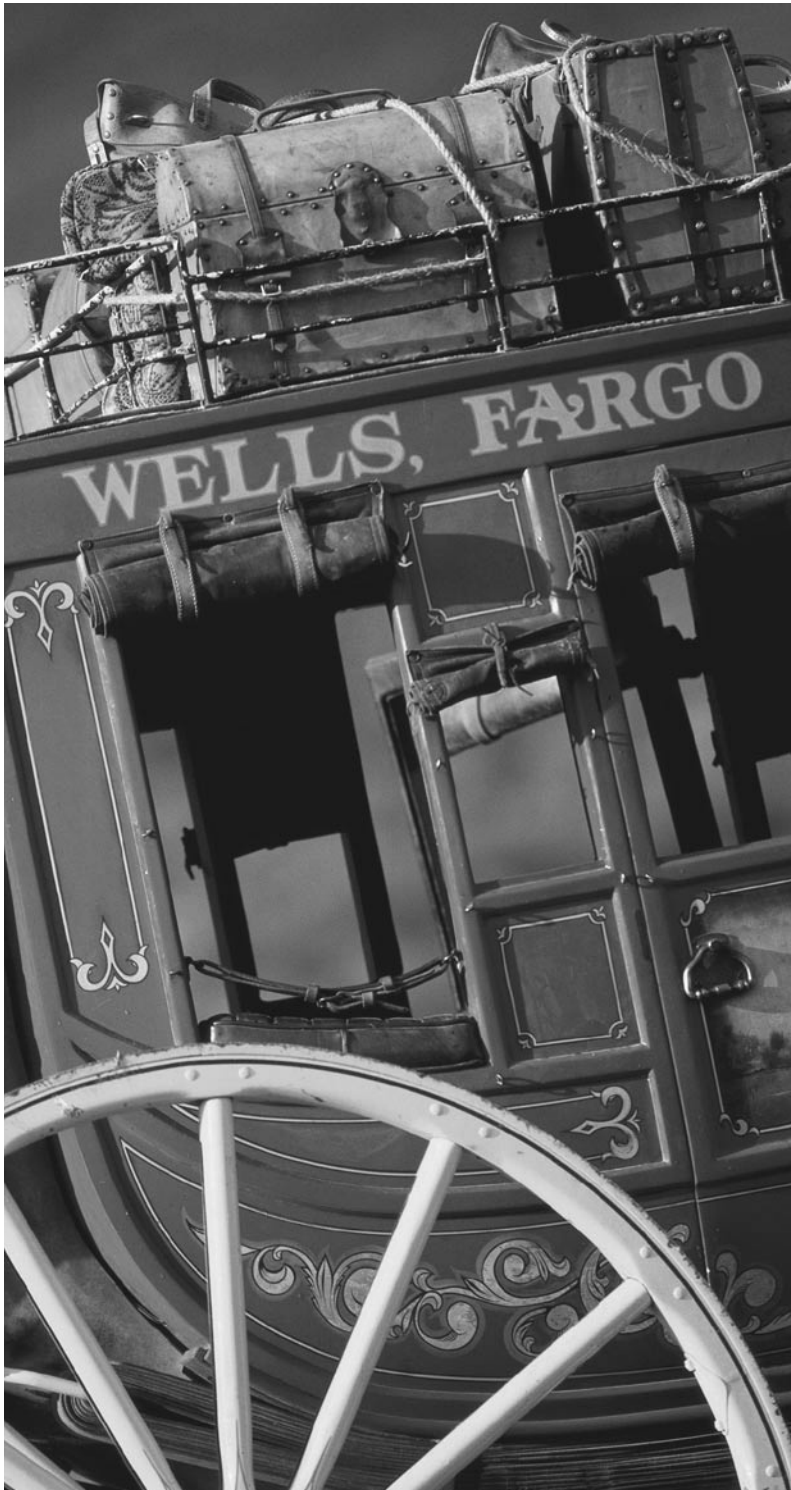
Artwork on Display at MBA

The next time you attend a meeting at the MBA or stop by the office, check out the artwork in the board room. The year-long displays of beautiful oil, water and pastel paintings as well as fiber art are due to the generosity of Jean-Luc Laminette, Director of Galerie d'Art Sylvie Platini on Broadway. We thank the gallery, which is French, located on the Lake of Annecy near the Alps and in the US, in Portland at 507 SW Broadway, opposite the Marriott Hotel. European artists represented by the gallery are internationally known. The most recent exhibits at the MBA have been by Pacific NW artists.

Currently, the featured work is by Becca Bernstein, a young and talented artist who lives in Portland. Ms. Bernstein is a 2000 graduate, cum laude, of Lewis & Clark College in Studio Art and Drawing, who was awarded the Kimberly Gales Emerging Artist Scholarship this year. "In Piece: the Women at Pinewood Gardens" is made up of nine dignifying portraits, in acrylic on patchwork, of elders the artist has worked with for several years in a

residential care home. The fabric used for the patchwork belonged to them in some cases. Becca Bernstein is a painter and a humanist who re-defines the art of portrait, expressing the intimate personality of her models, beyond their physical appearance.

The artist's statement about the project follows, "For five years, I have worked daily with the elderly residents of a senior care home in Portland. My paintings reflect the faces of many of my dearest friends. This newest series is a continuation of my interest in women, family and aging. Nine women are painted in acrylic on the textural surface of stretched, patchwork quilts. The fragmentation of the varied fabrics, together with the expressiveness of every subject, help to illuminate who these women are today. Their lives are a mysterious patchwork, hand-stitched unevenly and imperfectly. I know them as they are now - survivors, individuals, inspirations. These women are both strong and fragile. They are full of life and also leaving it."



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MBA Golf Championship Raises Money for Volunteer Lawyers Project

Twenty teams battled for top honors at the 8th Annual MBA Members Golf Championship on September 16 at Pumpkin Ridge Golf Club. Thanks to our sponsors, tournament participants and the hard work of the MBA Golf Committee Chair Paul Havel and his committee, the event raised approximately \$3,500 for the MBA Volunteer Lawyers Project, managed by Legal Aid Services of Oregon.

The firm low gross winner was Wallace Klor & Mann, and the firm low net winner was Fred Millard and Al Karpinski. In the open category, the low gross winner was the team of Tom Melville, Jeff Nielson, Mark Twedt and Eric Young. The low net winner was the team of Michael Dwyer, Chip Gazzola, Peter Michalski and Zeta Rennie. The open and firm low net teams and firm low gross team each received a traveling trophy that they will keep until next year's tournament. Congratulations to all!

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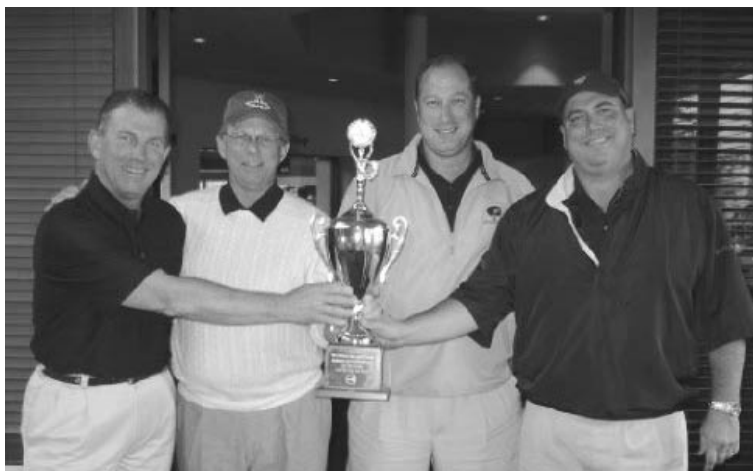
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We look forward to seeing you next year!



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GARRY SCHNELL

formerly of Sidley, Austin, Brown & Wood, L.L.P. and, most recently, founder of a Portland technology company, has joined our firm.

His practice will focus on taxation, corporate matters, securities and estate planning.

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AROUND THE BAR

FUCILE & REISING

Mark J. Fucile and **Daniel K. Reising** have formed Fucile & Reising, a boutique litigation firm with offices in the historic Old Town district of Portland. Adapting to the needs of local and national clients, the firm aims to create a personalized environment combining the expertise and breadth of a large firm with the agile staffing and flexible fee structure of a small firm. In addition to his work in products and professional liability defense, Fucile is recognized regionally and nationally for his work as an advocate and counselor in legal ethics, lawyer regulatory defense and other lawyer-related litigation.

Reising represents international, national and local clients in all aspects of trials and arbitrations. He has been a trial lawyer his entire 15 year career and has trial experience as a municipal prosecutor, criminal defense attorney and civil trial lawyer.

The new firm will focus on litigation throughout the Northwest (Oregon, Washington, Idaho and Alaska) including products liability and professional liability defense, real estate condemnation, commercial disputes and legal ethics. They are located at 115 NW First Ave, Portland OR 97209 and on the web at www.frllp.com.



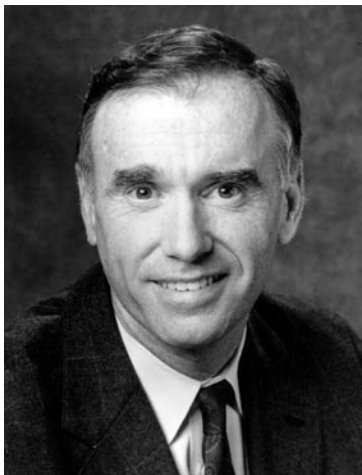
Sarah Ryan

BALL JANIK

Sarah Ryan, a partner with Ball Janik has been selected by the editorial board of *Inside the Minds* (www.Aspatore.com) as a leader in labor law and an author in the recently released book, *Inside the Minds: Dealing with Employee Lawsuits* published by Aspatore Books.

ANGEL LOMBARD

Christopher Lombard announces the formation of a new practice, which focuses on civil litigation, particularly in the areas of employment discrimination and civil rights violations, medical negligence and personal injury. The firm's new location is 333 SW 5th Ave Ste 410, Portland OR 97205. The phone number is 503.228.2377 and web address is www.angellombard.com.



Robert E. Maloney Jr.



Parna Mehrbani

LANE POWELL

Robert E. Maloney Jr., shareholder at Lane Powell, has been elected Chair of the Oregon Independent College Foundation (OICF) Board. The Oregon Independent College Foundation, founded in 1950, is a consortium of Oregon's ten leading private colleges and universities.

Parna Mehrbani has joined Lane Powell as an associate in the firm's intellectual property practice group.



Jane Paulson

JANE PAULSON Portland attorney **Jane Paulson** is a new member of the American Board of Trial Advocates (ABOTA). She was elected to the prestigious national lawyers association by the group's national board. The organization's president cited Paulson for her high personal character, honorable reputation and proficiency as a trial lawyer.

Paulson and her father, **Chuck Paulson**, are partners in Paulson Law Firm, Trial Lawyers PC of Portland. She is the immediate past president of the Oregon Trial Lawyers Association. The Paulsons represent individuals in catastrophic personal injury cases.

Paulson is only the third woman attorney from Oregon elected to ABOTA. Founded in 1958, ABOTA is a national association of experienced trial lawyers and judges. ABOTA and its members are dedicated to the preservation and promotion of the civil jury trial.



Milton R. Stewart

DAVIS WRIGHT TREMAINE **Milton R. Stewart**, a partner in the firm with 34 years of structuring merger and acquisition transactions, reorganizations and management buyouts, was recently selected as a co-author for *Inside the Minds: Winning Legal Strategies for Mergers & Acquisitions*.

Stewart is the Business Development and Client Relations Partner for DWT and a member of the firm's Strategic Growth Committee. He also has an active role in several civic and professional organizations, including board memberships with the National Multiple Sclerosis Society (emeritus) and the Indiana University Foundation.



Tom Tongue



Gil Parker

DUNN CARNEY Dunn Carney is pleased to announce that **Tom Tongue**, **Gil Parker** and **Ken Antell** have been selected by their peers for inclusion in the 2006 edition of *The Best Lawyers in America*. Tongue is in the Commercial



Ken Antell

Litigation list. Parker and Antell are included in the Real Estate Law list.

GARVEY SCHUBERT BARER **Edward J. Sullivan** an owner in the firm's Portland office, was elected Fellow of the American Bar Foundation. In his role as Fellow, Sullivan will participate in authorizing and reviewing



Edward J. Sullivan

studies on the role of law in American society.

Established in 1952, the American Bar Foundation is an independent, nonprofit national research institute committed to objective empirical research on law and legal institutions. Sullivan has more than 35 years of experience in matters involving planning, administrative and municipal law.



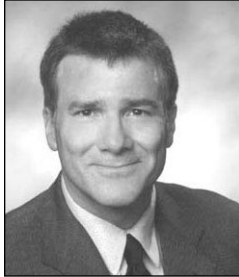
SERVICE. Best wishes to our friend and former partner, **Michael Walton**, who is now Corporate Counsel for Freightliner LLC.

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is pleased to announce that



Charles J. Pruitt has joined the firm. His practice emphasizes business, real estate and construction law.

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Tips from the Bench

By Judge John A. Wittmayer, Multnomah County Circuit Court.



Welcome to our new judges

Governor Kulongoski has appointed two new judges to replace two judges who have left our Court. Jerry B. Hodson, of the Miller Nash firm, was appointed to replace Judge Kimberly Frankel, who retired after 27 years of service as a judge. Eric J. Bergstrom, of the Multnomah County District Attorney's Office, was appointed to fill the vacancy resulting from the appointment of Judge Ellen Rosenblum to the Oregon Court of Appeals. Judge Rosenblum served 16 years as a trial judge.

While both Judges Frankel and Rosenblum will be missed, please join the judges of this court in welcoming new Judges Hodson and Bergstrom. Judge Hodson brings to the court 18 years of experience in civil litigation. Judge Bergstrom brings to the court 15 years experience as a criminal prosecutor.

There are 38 circuit court judge positions in Multnomah County. For the past 40 years or so, we have averaged two new judges a year. That trend is expected to continue into the future.

No jury trials on Fridays

Since the spring of 2003, in Multnomah County, we have not generally tried jury trials on Fridays. We do not set jury trials to begin on Fridays and we do not have groups of jurors available on Fridays. The judges try as much as possible to use Fridays to set for hearing those short matters that would otherwise interfere with jury trials Monday through Thursday.

Our policy leaves to the individual trial judge the

discretion to continue a jury trial on a Friday. However, lawyers should understand that the "default position" is that your multi-day trial will not be in session on Fridays. The question is *not* "does Judge "X" try jury trials on Fridays?" The question is "can I convince Judge "X" to make an exception to the general rule in this case?"

You are free to ask your trial judge to be in session on a Friday if you have a special reason to do so, but your trial judge may have already filled the Friday with short matters that cannot easily be moved.

Case assignment in Multnomah County

Do you sometimes wonder why the presiding judge cannot assign very many cases out for trial each morning at daily call? There are 38 judges in Multnomah County, and it seems that more than a few should be available, right?

Here is the reality of what the presiding judge has to deal with in terms of judge availability: We average two judge vacancies a year in this county, and it takes about 180 days for the Governor to fill a vacancy by appointment. We are down one judge most of the time due to vacancies. Allowing for vacations, conferences, and CLEs only, on an annual basis we are down about six additional judges, on average. Three judges have full-time assignments that keep them from trial work: the presiding judge, the chief criminal judge and the settlement judge. Six judges handle misdemeanors and drug/property felonies full-time and eight judges are assigned to family court. Frequently, at least one judge is sitting in the Justice Center doing arraignments, etc. This leaves 13 judges. But they are not all available each day to start a new trial assigned from daily call, because they are continuing multi-day trials previously assigned, or have other matters set on their dockets. Criminal cases have constitutional and statutory priority, so even fewer judges are available each day to start civil cases.



By Leslie Kay, Legal Aid Services of Oregon and Court Liaison Committee member.

Court Update

Doug Bray reported that Chief Justice Carson has announced his retirement effective with the end of his current term as a judge of that court, January 1, 2007. The vacancy on the Supreme Court will be filled by election in the 2006 General Election. The position of Chief Justice is filled independently of any judicial position on the Supreme Court; the Chief Justice is elected by the members of the Supreme Court for a six-year term. Chief Justice Carson has indicated that he may step down from this role of Chief Justice prior to the end of his term of office as a judge of the Supreme Court. If he resigns the position of Chief Justice, then the members of the Supreme Court will select another of their members to be the new Chief Justice.

Judge Koch's term as presiding judge ends on December 31. At a recent meeting of the court's judges, he was requested unanimously, by those in attendance, to continue for a second term in that office. The position of presiding judge is appointed by the Chief Justice, after conferring and seeking the advice of the judges of the court. The advice of the Multnomah County judges appears to be to stay the course.

There will be a legislative open house sponsored jointly by the

MBA and the circuit court on November 17. The focus will be on the treatment courts: the drug court, community court, DUI court and the new domestic violence court that will be established in January, 2006. The civil commitment court will also be highlighted.

Since the late 1980's, the Multnomah County Criminal Justice Advisory Committee and the later established Local Public Safety Coordinating Council have been instrumental in creating a collaborative environment for various public and private partners to establish these specialized courts. In creating cross jurisdictional and public private partnerships to problem solve these issues, Multnomah County has become a model for other Oregon counties and local jurisdictions in other states.

It is expected that Oregon judicial salaries fall in 49th out of 50 places in the nation after the current national round of state legislative sessions; prior to this, Oregon ranked 46th. The issue will continue to be raised in the legislature. Courthouse staff salaries are now rising after being frozen for several years. In the last issue of the *Multnomah Lawyer*, the salary rate for judges was incorrectly reported. The circuit court judges in Oregon presently earn \$95,800 per year,

plus a six percent contribution to their retirement. The MBA regrets the error.

MBA 100th Anniversary

Judy Edwards reported that many activities are underway to commemorate the 100th anniversary of the MBA. A party on May 13, a video, increased newsletter pages and a commemorative booklet are being produced.

Bar/Bench Brown-bag

Doug Bray will be contacted about scheduling a bar/bench brown bag session on judicial practices for some time in the fall, patterned after the successful event last spring.

Jury Verdict Reports

Doug Bray and the jury verdict committee hope to have a new report format completed for collecting jury verdict information for the bar and bench next month.

Electronic Docketing Notices

The committee that is looking into utilizing OJIN to generate email notification of court docketing information continues to look into the feasibility of such a system. Limitations in the software currently make paper notification still necessary.

Judicial Speakers' Bureau Celebrates 100th Talk

By Julia Philbrook, Multnomah County Circuit Court Referee.

The Judicial Outreach Committee (JORC) from the Multnomah County Circuit Court bench completed its one hundredth public speaking engagement this summer with a presentation to the community group, Elders in Action, an agency which provides a variety of services to seniors and persons with long term disabilities. About 30 people attended the presentation which focused on evictions, restraining orders and traffic infractions. Since then, JORC has engaged in many more

presentations to community groups and organizations.

The Judicial Outreach Committee, currently chaired by Judge Nan Waller, was formed to create a closer link between the public and the judiciary. Judge Jerome LaBarre was the first chair of the committee, followed by Judge Ed Jones. In addition to the public speaking engagements coordinated through the MBA, the Multnomah County bench has hosted four Community Forums and other community

events related to the functioning and history of the courts. The next forum, where judges and community leaders will meet to address issues facing the local community, will take place in January, 2006 at the Matt Dishman Community Center. One hundred people are expected to discuss the impact of drugs, mental illness and unemployment in the community and how best to address these issues.

JORC will be holding its fourth annual Legislative Open House

sponsored by Multnomah County Circuit Court, in cooperation with the MBA. This event, coordinated by Judge Eric Bloch, will be attended by legislators representing districts within Multnomah County. Treatment courts will be the focus of the presentation and discussion. Legislators who attend will have the opportunity to visit the specialty courts which focus on crimes related to drugs, alcohol and domestic violence.

Organizations may request a judge attend and speak at a community meeting. If you know of a venue interested in scheduling a speaking engagement for a judge from our speaker's bureau, contact Carol Hawkins at the MBA, carol@mbabar.org or 503.222.3275.

Profile: Judge Darleen Ortega, Oregon Court of Appeals

By Julia Hagan, Gevurtz Menashe et al and MBA Court Liaison Committee Chair.

Over breakfast at Lorn and Dotties in Portland, Judge Darleen Ortega shared personal experiences not easily seen from her accomplished resume. She had just returned from a trip to Thailand, a first for her in that country, though she makes an annual trip overseas. Hearing about those annual trips, one is impressed with her love of being immersed in foreign cultures and her openness to new experiences.

Oregon voters know of her dedication and intelligence, graduating summa cum laude from George Fox University in 1984 and magna cum laude from the University of Michigan Law School in 1989. Attorneys and judges recognized her as a talented, hardworking litigator, first in Michigan, and then in Oregon where she specialized in complex civil cases and appeals. While an associate, then partner, at Davis Wright Tremaine, Ortega served on, state and county bar committees and demonstrated a commitment to

diversity education, mentoring and professionalism. When Governor Kulongoski appointed her to the Court of Appeals in August 2003, he selected a woman whose passions have become her integral asset.

Ortega's family moved from Los Angeles, California to Banks, Oregon, when she was ten years old. As a child, she recalls being obsessed with reading novels, then while at Banks High School, becoming passionate about writing. She envisioned a life telling other people's stories.

Early on, she grasped the power of language. Growing up in a mixed race household, having a cultural background different than any of her classmates, Ortega recalls often struggling to make herself understood and to make sense of situations in which she felt alien. Judge Ortega's parents had not been to college and while they did not oppose her going, they had neither the funds nor the cultural experience to support her.

In college, Ortega excelled. She majored in writing and literature while working as teacher assistant to Professor Karen Larsen, later known as columnist "Ms. Grammar" for the *OSB Bulletin*. Summers, Ortega worked in daycare, then in an arthropod exhibit at the Washington Park Zoo.

With no prior exposure to attorneys and only a rudimentary understanding of what the practice of law entailed, Ortega enrolled in law school. Her parents were not supportive of her decision, but she carried within her the belief that the legal education would provide her the tools to help others. Law school opened up her world and at the same time cemented a strong connection to Oregon being "home" that she appreciated in new ways.

Financial considerations dictated Ortega's choice to enter private practice. After three years litigating in Detroit, she returned

to Oregon. Ortega discovered that appellate practice perfectly matched her approach to detail, her writing skills and her interest in telling the stories of her clients. In private practice she also had the opportunity to mentor law students and young lawyers and to be of service in the community.

Entering her third year on one of the busiest appellate courts in the nation, Judge Ortega has not lost sight of the importance of "hearing" the experience of others while efficiently managing a large volume of cases. Matters involving families and children hold a special interest for her; however Ortega recognizes that the court is a blunt instrument for resolving family issues. She has not lost sight of the real impact of appellate decisions on an Oregonian's family life.

Besides writing on cases before her, Judge Ortega, a longtime movie buff, regularly renders opinions through semi-annual film reviews for family and



Judge Darleen Ortega

friends. A recent film favorite, "Crash," dealt with race issues and the dilemmas ethnic minorities face in the dominant culture. An all-time favorite for her is the original "Matrix." Film, like travel, allows her to spend time in another person's experience and to come to understand that experience better.

Judge Ortega is grateful to be serving on the Oregon Court of Appeals, which suits her legal strengths and allows her to serve in the public interest. Oregonians are fortunate to have Ortega on the bench, a judge with a deep appreciation for the diverse experiences of others and an awareness of the richness that diversity brings to us all.

In Memoriam: Judge Mercedes Deiz

By Diane Rynerson, First Executive Director, Oregon Women Lawyers.

Mercedes Frances Deiz died October 5 at the age of 87. Born into a family of 10 children in New York City, she worked her way through three years at Hunter College in a variety of jobs, including theater usher, switchboard operator and ticket clerk at a WPA federal theater project in Harlem operated by two talented but relative unknowns: Orson Welles and John Houseman.

In 1948, she moved to Portland and she found secretarial work at the IRS, later at the Bonneville Power Administration, married Carl Deiz and juggled work with parenting three children. It was clear that opportunities for advancement at the BPA would be limited, so she quit. It was then that she was introduced to attorney Graham Walker, who hired her as a legal secretary and ultimately encouraged her to attend night law school. Four years later, Mercedes Deiz graduated fourth in her class from Lewis & Clark Law School, the only woman in the graduating class of 1959.

She put out her own shingle at the Loyalty Building, primarily doing bankruptcies, marital dissolutions, child custody work and juvenile law. Subsequently, she joined Nels Peterson's firm where Don Londer (later to become Multnomah County Presiding Judge) also worked. All the while, she took an active role in numerous community and legal associations, becoming the MBA secretary/



Mercedes Deiz and her husband Carl enjoying an MBA event.

treasurer in 1962 - the highest office a woman could achieve in the association at the time.

In November 1969, after more time in solo practice and two years as a workers' compensation administrative law judge, she got a phone call from Governor Tom McCall, offering to appoint her to the Multnomah County District Court but cautioning her that she would have to stand for election in the spring of 1970. Fortunately, attorney Don Willner stepped forward to manage her campaign. She won that election and those which followed, including her first election to the Multnomah County Circuit Court bench in 1972, in which she defeated seven male challengers. She took senior judge status with great reluctance in 1992, only because of the mandatory retirement age for judges.

She became of counsel to the firm Tooze Duden Creamer Frank &

Hutchison, handled arbitrations and continued her life's work of activism, serving on numerous boards and commissions. She was a director of the National Center for State Courts and was a founding member of the National Association of Women Judges. She served on the MBA's Status of Women Committee and was a founder of Oregon Women Lawyers.

In later years, Mercedes Deiz received numerous honors, including, in 2000, the OSB's Award of Merit. She was Oregon's second black woman attorney, Oregon's first woman judge of color and, with her election to the circuit court bench, became the first black Oregonian to be elected to remunerative office. She will be remembered as a legal pioneer, but what will be most cherished by those who were honored to know her will be her humor, insatiable curiosity, compassion and generous mentoring.

Save the Date! MBA's 100-Year Celebration: An Unforgettable Evening

By Lori Foleen, Client Relations Manager, Lane Powell.

On May 13, 2006, the Multnomah Bar Association will hold its 100-year anniversary celebration at the newly renovated Portland Art Museum. This evening not only acknowledges 100-years in numerical terms, but in the eyes of the MBA and its members, it's a celebration of *A Century of Service* to the community.

In the beginning...

On February 3, 1906, a group of 40 local attorneys met to discuss the feasibility of organizing a Multnomah County bar association. Spirited speeches were made by those who emphatically declared that such an association should be strictly non-partisan and non-political. Minutes of the subsequent meeting on February 10, 1906, tell us that a committee of seven was appointed to draft a constitution and bylaws. "Suggestions were then made to the committee by a number of gentlemen present, among who were Mr. Miller, who

suggested that the regulation of fees should not be overlooked. Mr. Davis suggested that the lawyers who are a nuisance in the county should be done away with. Mr. M. G. Cohen desired that the Bar Association be elevated to the standard that it deserves. He further urged that the Association take up the matter of having a State Board of Law Examiners. He also said that a new law should be passed by which no one who is not an attorney shall be eligible to appointment as a notary public. Mr. Cohen further stated that a committee on entertainment should be provided for in the by-laws, and also one which should have charge of legislative matters."

On February 17, 1906, the bylaws were adopted and stated, "This association shall be known as the 'Multnomah Bar Association.'" The charter membership was closed with 57 names.

Cont. on p. 11



MULTNOMAH BAR ASSOCIATION
100TH ANNIVERSARY

1906 - 2006

MBA Mentor Program Provides Opportunity for Young Lawyers

By Doug Palmer, Wallace, Klor & Mann and YLS Board member.

Have you ever felt like you needed some legal advice, but feel silly asking because you're a lawyer? Then you should sign up for the MBA's Mentor Program. With the assistance of the YLS, the Mentor Program partners new attorneys with established mentors. These partnerships create lines of communication between attorneys to learn skills not taught in law school.

Are you a new solo practitioner, but do not know how to account for your client's trust funds? The Mentor Program will connect you with established solo practitioners or managing partners. While discussing good business practices, you can also discuss marketing strategies and growing your client list.

Are you a junior litigator and afraid you'll never see the inside

of a courtroom? The Mentor Program will partner you with senior litigators who will discuss efficient preparation for examining or deposing a witness. In the past, mentors have even invited the new lawyers to depositions to see these strategies in practice.

Are you curious about the inner machinations of Oregon's workers' compensation law or probate courts? The Mentor Program will find another attorney specializing in your area of law. These mentors can pass along the tips and tricks of practice so you'll act like a veteran before your managing attorney, clients, and opposing counsel.

The Mentor Program isn't just for new attorneys. We need established attorneys to pass along their experiences, strategies and knowledge. As a mentor you will not only pass along

your knowledge, but create an atmosphere of collegiality, professionalism and respect within the local bar.

The Mentor Program is available to all members looking to start a network with established attorneys, not just first-year lawyers. Applications for the MBA Mentor Program may be found at www.mbabar.org and must be returned by December 2. Mentoring matches will be made in December. Soon thereafter, the MBA YLS will sponsor a mentor "kick off" reception where the newer attorneys will meet their mentors for the first time. Additional social and educational programs will be scheduled throughout the year.

If you have any questions, please contact Doug Palmer at 503.224.8949 or dpalmer@wallaceklor.com.



The Imprint Program Returns

By Klarice Kolbe, Abbott & Prange and YLS Service to the Public Committee member.

The Imprint Program was a huge success last year! The YLS Service to the Public Committee is gearing up to offer the program once again in 2006. The Imprint Program brings together volunteer attorneys and middle school/high school-age students in the Portland community. The volunteer attorneys and students read the same novel over a two-to-three month period. Each volunteer attorney is paired with a student and the two are given the opportunity to develop a mentoring relationship while conversing through a series of letters about the novel and their own interests. At the end of the program, the students and volunteer attorneys are given the opportunity to meet at an informal luncheon hosted by the MBA.

The Imprint Program gives the students the opportunity to not only develop a trusting relationship with an adult in their community, but also gives them the opportunity to develop their writing and analytical skills. It gives the attorneys the opportunity to connect with the youth in their community and a chance to enjoy reading a novel they otherwise would not have taken the time to read.



Stacey Kottke's eighth-grade class at Parkrose Middle School participated in the program last year. The students and attorneys who participated enjoyed the program and said that they would jump at the opportunity to participate in it again. This year, in addition to Stacey Kottke's eighth grade class, we are expanding the program to a second classroom. A 10th grade class from Parkrose High School will also be participating in the program.

The program will likely begin in early February and run through the end of March. We are looking for 60 energetic and committed volunteers to participate in the program. If you are interested in participating, please contact Klarice Kolbe at kkolbe@abbottprange.com. We look forward to another great year with the students in our community.

The New Admittee Survival Guide Easing the Adjustment into Practice

By Andrew Schpak, Barran Liebman and YLS Membership Committee Chair.

Having attended the YLS Membership Committee's drop-in socials for a little over a year now, I can safely say that the three most common questions I hear are:

- (1) How much does it cost to belong to the MBA?
- (2) What sort of opportunities for involvement are there?
- (3) Where can I get more information?

Well, the answers are:

- (1) It is free for your first year of practice, \$60 for your second year, and then \$100 a year;
- (2) There are too many to list, everything from pro bono opportunities to CLE planning to organizing networking and social events for your lawyers;
- (3) The MBA Web site (www.mbabar.org) and *The New Admittee Survival Guide*.

Last year, Kristin Sterling, then chair of the YLS Membership Committee, took the lead in creating the Survival Guide, thanks in part to the help of her committee members and the MBA staff. The Survival Guide is distributed to all newly admitted lawyers in Oregon and is also available at many of the MBA YLS events. In an effort to seek funding for the continuation of the Survival Guide, I applied for an ABA YLD grant from the Fund for Justice and Education. The ABA YLD appreciated the fact that the Survival Guide

is an important resource that brings together a large amount of pertinent information in one place to help new lawyers transition into practice in the Portland legal community, and generously agreed to pay the costs for printing the Guide this year. Notably, the ABA YLD grant program is ongoing, so if you have ideas about possible grants, please feel free to contact me for more information about the program.

The New Admittee Survival Guide contains a ton of useful information; it describes the benefits of MBA membership, the opportunities for involvement through MBA YLS committees,

information about OSB membership, as well as reciprocity with the Washington, Idaho and Utah state bars, volunteer opportunities, and links to all kinds of relevant Web sites.

If you would like more information about the Membership Committee, the next drop-in social, the ABA YLD grant program, or where you can find *The New Admittee Survival Guide*, please don't hesitate to give me a call or send me an email.

Andrew can be reached at 503.276.2156 or aschpak@barran.com.

Renewing Your Membership? Don't Forget VLP...

The MBA thanks the following members, who gave more than the \$20 "check off" suggested donation to the Volunteer Lawyers Project (VLP).

Kenneth Lee Baker
Leland Berger
Barbara Garland
William Gibson
Donald Green III
Joel Greenberg

Beau Harlan
Judith Hudson
Kathryn Elise Jackson
Allen Johnson
William Kirtley
Jeffrey Kleinman

Jeff Matthews
Patrick O'Malley
Charles Paulson
Jane Paulson
Randolphg Pickett
Scott Pratt

Robert Sepp
Thomas Sherwood
Richard Sly
Pamela Yee
Charles Wiseman

Please remember to look for the check off box on your membership renewal form, and be as generous as possible when donating to VLP.

ABA Federal Rules of Civil Procedure Publication

We are featuring the *Federal Rules of Civil Procedure with Practice Commentaries: CFC, MDL, and Admiralty Rules* ABA publication this month. As an **MBA member you will receive 20%** off the price of this or any other books available on the ABA publications Web site. If you would like to take advantage of this opportunity simply visit the ABA Web store www.ababooks.org, select your publication and enter the MBA member source code (PAB5EMUL) when you check out.

Published by the National Institute for Trial Advocacy (NITA) and distributed by the ABA Section of Litigation,

Federal Rules of Civil Procedure with Practice Commentaries: CFC, MDL, and Admiralty Rules combines the knowledge of 25 practitioners on the practical uses of the Federal Rules of Civil Procedure (FRCP). All authors are partners, professors, or senior government attorneys and all are practicing litigators. The MBA member discount price for this book is \$47.96.

To purchase this book or to see what others have said about it, log into www.ababooks.org. Remember to enter your member discount source code, PAB5EMUL.

Lawyers' Annual Drive Raises Over \$90,000 for Oregon Food Bank

By Chris Garrett, Perkins Coie.

Oregon Lawyers Against Hunger (OLAH) concluded its ninth annual fundraiser to benefit the Oregon Food Bank (OFB) on October 7. By the end of the two-week drive, OLAH had raised \$90,857. Since its inception in 1997, OLAH, a nonprofit organization comprised of legal professionals in Oregon, has raised over \$710,800 for OFB, enabling the food bank to collect and distribute millions of pounds of food.

Competition among metro area firms is a highlight of OLAH's annual fundraiser. Again this year, firms competed for the "Golden Can" award (highest contribution per capita) and "Silver Barrel" award (highest total contribution). Yates Matthews & Associates won the Golden Can with a per capita contribution of \$240.83, ending Heller Ehrman White & McAuliffe's two-year streak. Lane Powell continued its nine-year dominance of the Silver Barrel award, raising \$18,000 through activities ranging from a bake sale, to a Pictionary contest, to a raffle entitling the winner to hurl water balloons at a partner. OLAH and Oregon Food Bank will also give special recognition to the dozens of individual donors who joined the "Give a Ton" club by donating \$350 or more (\$350 enables OFB to distribute 2000 pounds of food) or the "Thousand Pound Club" (\$175 or more).

Each dollar contributed allows the OFB to collect and distribute approximately six pounds of food worth \$8 and fund programs that address the root causes of hunger. Oregon remains among the top states in the nation in hunger. Last year, an estimated 850,000 people ate meals from emergency food boxes distributed by the OFB Network throughout Oregon and Clark County, Washington. About 38 percent of those receiving emergency food are children.

OFB is a nonprofit, charitable organization. It is the hub of a statewide network of more than 870 hunger-relief agencies serving Oregon and Clark County, Washington. Oregon Food Bank recovers food from farmers, manufacturers, wholesalers, retailers, individuals and government sources. It then distributes that food to 20 regional food banks across Oregon. For the fifth consecutive year, OFB received a rating of four stars (out of four possible) from Charity Navigator, America's largest independent evaluator of charities, for excellence in fiscal management.

For more information about OLAH, contact Kathy Dent at 503.778.5338. Information about the OFB is available at www.oregonfoodbank.org.

MBA 100-Year Celebration (cont. from p. 9)

Over time...

The MBA continued to grow and identify opportunities to add value to the community. As the times changed, so did the law. A mission was identified - to promote justice, service, professionalism, education and leadership to its members and to the community. The MBA focused its efforts of this mission in three key areas - service to the public through stewardship of the justice system, service to MBA members and service to the profession.

Through hard work...

A public outreach program was developed to increase awareness and understanding of the importance of a fair and impartial judicial system and its impact on our daily lives.

- The importance of the rule of law and a fair and impartial judicial system.
- The need for adequate resources.
- The need for safe and efficient facilities.

A Century of Service...

That small group's informal gathering created an association comprised of 4,000 attorneys today. *A Century of Service* is an honor for the Multnomah Bar Association.

We plan to celebrate in style, so save the date - May 13, 2006.

PRO BONO VOLUNTEERS

Thanks to the following lawyers, who recently donated their pro bono services via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, check out the *Pro Bono Opportunities Handbook* available at www.mbabar.org/docs/ProBonoGuide.pdf.

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Leveraging Sarbanes-Oxley for Long-Term Gain

By Michael Giavanti, Wells Fargo.

The Sarbanes-Oxley (SOX) law, passed in 2002 as a response to corporate accounting scandals, should be viewed as more than just about compliance - it should be recognized as a catalyst for transforming internal operations. The law requires rigorous reporting and internal controls over corporate financial transactions. It is designed to bring transparency to financial reporting and prevent future Enrons and Worldcoms. One of the central provisions of the law is Section 404, which requires an annual assessment of a company's internal controls. Many companies are responding with reams of paper documentation. According to a recent study by AMR Research, annual costs to comply with Sarbanes-Oxley reach \$1 million for every \$1 billion generated in revenue. And a Pricewaterhouse-Coopers study found that the majority

of executives surveyed expect their compliance expenditures to increase by an average of 23 percent over the next 1-2 years. Yet companies can significantly streamline their documentation process and cut their compliance costs by leveraging technology. Technology can automate internal control systems as well as create greater transparency across global accounts. Automation reduces human intervention, which is more prone to error and potentially fraud.

Following is an example of how one company is leveraging technology - in this case the Internet - to enhance their compliance with SOX, and in the process vastly improve their internal controls.

Wind River Systems - A Case In Point
Wind River Systems, a global software company headquartered in Alameda, California, was

already in compliance with SOX; yet in getting to that point, the company saw the opportunity to further strengthen its internal controls. With subsidiaries in over 15 countries trading in 11 different currencies, Wind River needed a clear picture of its global accounts as well as streamlined payment, collections and reporting systems. A team of Wind River's corporate treasury specialists and their financial services representatives was established to delve into Wind River's financial operations and better understand where they could enhance their controls. As a result, a series of steps have been implemented that provide the company much more control over their global financial operations. *Segregated Accounts.* The company established a series of collections and payment accounts across their international

Cont. on p. 12

Leveraging Sarbanes-Oxley

(cont. from p. 11)

locations. Payments are collected through the in-country local currency accounts to accommodate local customers. Funds can be transferred from these collection accounts to a disbursement account for making payments, thus clearly segregating money collected and money paid out.

Centralized Monitoring. All accounts are monitored centrally online, in real-time, through the financial services' portal information reporting service. Wind River can view their foreign cash positions worldwide, sorted by currency, regardless of the financial institution housing the account(s).

Automate. To reduce the number of people handling transactions, the company set up a central automated electronic payment system. International subsidiaries simply send a single file of foreign payments in any format to their financial services company, and the payments are automatically parsed to a pre-established payment channel – whether for wires, ACH or check payments. The company receives automatic confirmation of all payments going out, and both payment and collections data is automatically uploaded into their ERP system for reconciliation. This allows Wind River to keep a close rein on what their subsidiaries are paying out, as well as ensure that excess cash is invested timely and wisely.

Beyond SOX – Combatting Fraud
Beyond complying with SOX,

automating and tightening internal and external controls just makes sense. The American Bankers Association reports that in 2003, the total amount of attempted check fraud against commercial banks' deposit accounts amounted to \$5.5 billion – and 88 percent of those attempts were caught by banks' risk reduction systems before any losses were incurred. Companies are using an expanding artillery of tools to combat fraud, including positive pay, stop payments and real-time online access to check images and financial reporting. No doubt one of the most effective means for fighting fraud is reducing, if not eliminating, paper-based payments. A recent study found over 68% of sensitive information obtained by fraudsters was secured through offline channels, versus only 11.6% obtained online (*Javelin Strategy and Research, 2005 Identity Fraud Survey Report*).


Companies can also gain greater control by establishing clear authorization levels for their account users. Ask your financial services provider for products that can set limits on the accounts their employees can access online as well as on the type of transactions they perform and dollars they handle. These dual-authorization features strengthen internal controls by requiring approval from two authorized individuals before funds can be sent out the door. While instituting the controls envisioned by SOX will no doubt

require some upfront sweat equity, over time the transparency and control gained should fully pay for itself. A bumper sticker sums it up: "Education is expensive unless you consider the cost of ignorance."

Michael Giavanti is a business relationship manager for Wells Fargo's Oregon Specialty Markets Business Banking Office. He can be reached at 503.886.1446 or email michael.j.giavanti@wellsfargo.com.

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The Corner Office

Have you ever observed the conduct of an opposing lawyer whether in trial or in any other context and found yourself wondering, what in the world motivated him or her to take that action? You just shake your head in disbelief but say nothing.

The first occurred in 1973 or 1974 and it is a reminder that lawyers have long memories when it comes to dirty tricks or sharp practices by opposing lawyers. One of the lawyers representing the plaintiffs in an aviation products liability wrongful death case was a relatively new and inexperienced associate in a medium size law firm who had been assigned to sit in on numerous depositions around the country. He had never tried a lawsuit but it was good experience.

At some point, after days and days of depositions, he got to attend a settlement conference knowing that he was only there to report back to the partner in charge of the case on what the various defendants proposed. Like any good lawyer, he took copious notes. As the defendants' lawyers started to leave, one very experienced lead defense lawyer asked to sit around and talk about the case. After everyone else was gone and after a little light-hearted conversation, the senior partner suggested that his client, a manufacturer of a component part, clearly had no liability in the matter and passed a general release to the young lawyer and said why don't you just sign this and let my client out to save a lot of money and clean up the suit a bit.

The young lawyer knew his assignment was to be an observer and declined, reporting that he would take the offer back to the partner in charge of the case. When the young lawyer explained that particular offer, the partner turned somewhat white and asked the young lawyer, "Did you sign this?" When the young lawyer said he had not, the color began to return to the partner's face. When the young lawyer asked why the concern, the partner simply said, "Did you know that in this state

(at that time) a release of one joint tort-feasor is release of all tort-feasors?" Over time, that young lawyer became a senior lawyer himself and never forgot the trick that the senior defense lawyer had tried to play on him.

The second example involved the negotiation of a tolling agreement that limited the tolling period to apply only to claims that had been raised at the time of the agreement. After some extended negotiations and drafts being circulated back and forth, the defense lawyer was reviewing what was to be the final draft of the document presented to him by the attorney for the plaintiff. Instead of just assuming that the negotiated changes had been kept in, the defense lawyer reread the document and noticed that the tolling period now applied to all claims that could have been made, not just those that had been made. When defense counsel called the change to opposing counsel's attention, there was no claim of inadvertent mistake. Instead, he said it was only a minor change. Defense counsel replied that the change would have negated the entire purpose of the agreement and insisted that the former language be included. To say the least, defense counsel never trusted that lawyer again. What a ridiculous tactic to take to ruin your reputation with even one other lawyer.

Finally, there is the reported case of *4F2C et al v Pacific Health Facilities et al*, 90 Or App 288, 752 P2d 1221 (1988). The case involved both a damage action and an arbitration proceeding as separate matters but involving the same parties. The damage action was filed in July 1985. On February 12, 1986 defendant's counsel filed a document in circuit court entitled "Arbitrators' Awards and Agreements" with more than 50 pages of attachments. On that same day defense counsel mailed to plaintiff's counsel a single envelopment with an answer to the second amended complaint

in the damage case, the documents filed in the arbitration matter and a single certificate of service. The documents were arranged with the 15-page answer in the damage case on top of the documents relating to the arbitration case underneath. Counsel for the defendants created a "cover" sheet for the arbitration award that closely resembled the caption for the damage case. When plaintiff's counsel received the documents he did not notice the buried documents and did not file exceptions to the award within 20 days as required by statute. Counsel subsequently took a judgment *ex parte* in the arbitration case. Although the trial court denied the motion for relief from the judgment on the basis of excusable neglect, the Supreme Court made short work of reversing the trial court finding the delay excusable and had

been "unfairly provoked." Think of the unnecessary costs that were incurred by everyone, including the justice system. Think too of the cost to the reputation of the lawyer who unnecessarily engaged in a clearly "sharp" act.

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. 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 your question. Questions may be submitted anonymously.

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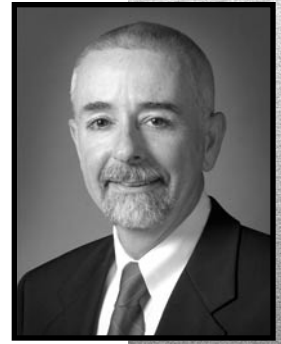
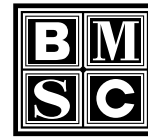
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Cosgrave Vergeer Kester LLP is pleased to announce that **Aukjen Ingraham** has joined the firm, as an associate, where she will focus on commercial litigation and business transactions. Ms. Ingraham, who speaks Spanish and holds a Master's degree in Latin American Studies, will continue to represent Spanish-speaking clients and their interests. Aukjen comes to CVK from the firm of Ransom, Gilbertson, Martin & Ratliff, LLP.

CVK is also pleased to announce that **Allison Bizzano** has joined the firm as an associate. Ms. Bizzano's practice will focus on civil litigation with an emphasis on the defense of contractual and general tort claims in the insurance, automobile, and trucking industries, as well as professional liability claims. Prior to her recent graduation from Northwestern School of Law, Allison worked in executive recruiting and human resources.



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On February 3, 2006 the MBA will be 100 years old. Since its inception, the MBA has been committed to serving its members and the community. In keeping with its mission and to commemorate the association's past century of service, the MBA has created the 100th Anniversary Gift Fund. The fund will be administered by the newly created Multnomah Bar Foundation and will promote civic education and participation.

All MBA members are encouraged to support the community gift fund with an outright gift or commitment of future support. Multiple levels of sponsorship are available, and complete details are described on the enclosed insert. Additional information can be found on the MBA's Web site, www.mbabar.org. With questions about the foundation, the community gift or how you can become involved, please call Guy Walden at 503.222.3275.

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