



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. July/August 2008 Volume 54, Number 7



Your MBA in the Age of Aquarius

By Michael Dwyer, MBA President.

My first column reaches you midsummer. I trust you have already, or will soon, leave files unopened where they lie and get as far away as you can from the yearlong stream of irascible opponents and demanding clients.

If workload permits, come July and August every year, we try to take it down a notch. Under golden skies we raft, bike, swing eight irons, skip rocks in rivers, fire up propane grills and sip cocktails. We find precious time to open the novel that's been staring at us from the shelf, or enjoy the flicker of campfire reflected in our children's eyes as they burn S'mores to a crisp. Fantasies of the un-lived life - artist? photographer? cellist? - might surface, teasing us on summer nights away from the daily grind. Male lawyers will let stubble bloom, remaining unshaven until we return to the office, defeated in our attempts to figure out how fantasies might pay a mortgage.

I am concerned, however, that this summer your vacations may be tarred with worry. In his farewell column, President Thom Brown described your incoming MBA President as "New Age." This raises the prospect that you may hesitate before going out of town, or leave in distress, wondering if you will return to an intact bar association, fretting that you may have left a kook in charge. Will policy be shaped via channeling? Are those crystals on his desk? Is he related to Shirley MacLaine?

I would hate to be the cause of canceled plans for Florence or Yellowstone, and so in my first public act since taking office, I will lay all anxieties to rest. I assure you of this: The MBA is in good hands (although my own are severely restricted by this white coat). Talented board members, our effervescent Executor Director Judy Edwards and the MBA's dedicated staff have united in an effort to prevent me from falling into a dark vortex of harmonic convergence. Consider: At our annual retreat, held this year at the Oregon coast (my suggestion, Stonehenge, was rejected), the board successfully planned and strategized for the upcoming year despite my attempt to hold all discussions in the downward dog position.

Thus, the MBA's commitment to fighting Initiative 51's insidious assault on access to justice remains as strong as ever. The MBA's goal of partnering with political and business leaders to build a courthouse before disaster strikes is intact, with the addition that the board wisely adopted my recommendation to include in our "courthouse of the future" piped-in music by Yanni to soothe juries during heated deliberations. Also, the MBA's effort to have all members of our association pledge to undertake pro bono representation will enter phase two. Not only will we seek greater participation, but also a vow to renounce consumption of unicorn meat.

We didn't stop there. The MBA will begin to work closely with the Young Lawyers Section on matters affecting the future of our profession. The YLS will probably focus on such issues as the generation gap and technology, while remaining guardedly open to my idea that the boards jointly form an energy pyramid. The MBA has considered bringing to

Portland speakers of national legal prominence for lunches in a "City Club" type format that would produce a vibrant exchange of new ideas. It remains to be seen whether we can pull this off as early as the fall if the moons over Jupiter are not aligned.

So, you see, we are hard at work, all is well at the helm and you can lounge easily this summer.

Beyond silliness, it is a deep honor to serve as this year's president. We are all aware of the compelling issues confronting us. We have much work to do. Lawyers, judges and mediators - all of us charged with the sacred obligation

Continued on page 4

congratulations, award winners

The May 21 MBA Annual Meeting, Dinner and Judges Reception recognized outstanding members. This year's Professionalism Award winner was **Jeffrey M. Batchelor**. In addition to Batchelor, nine outstanding volunteers were recognized. The MBA Award of Merit was presented to **Linda Meng** and the **MBA Young Lawyers Section**. The MBA YLS Award of Merit was given to **Denise N. Gorrell**, **Yumi O'Neil** and **Iayasha Smith**. Pro Bono Awards recognized **J. Chris Edwardsen**, **Eric M. Kearney**, **Joshua L. Ross** and **Eric J. Waxler**.

Congratulations to all the very deserving award winners!

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Photos by Dan Carter.



Thom Brown congratulates Jeff Batchelor on receiving the Professionalism Award



MBA Award of Merit recipients David Bean (accepting on behalf of the MBA YLS) and Linda Meng

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MBA CLE

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

September

Tuesday, September 23
Evidence Revisited: Understanding and Updating the Fundamental Law of Evidence
Derek Ashton
Christine Coers-Mitchell

October

Wednesday, October 8
Big Practice Tips for the Small Firm
Dee Crocker
Nicole Ciccarello
Michael Heilbronner

Wednesday, October 15
Child Abuse Reporting
Helen Hierschbiel

Thursday, October 16
Estate Planning in 2008
Nikki Hatton
Scott Howard

Tuesday, October 28
Tools of Persuasion: Using Technology to Advance Your Cause
Troy Moody
Peter Richter

Friday, October 31
Taking Care of Ourselves (while we're busy taking care of others)
Stress reduction for legal professionals
Alan Wallace
Michael Zimmerman

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NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

DRAFTING FOR CORPORATE FINANCE: What law school doesn't teach you by Carolyn E. C. Paris. Published by the Practising Law Institute, 2007. (KF 1428 P37)

PROPERTY INSURANCE LITIGATOR'S HANDBOOK, edited by Leonard E. Murphy, Andrew B. Downs and Jay M. Levin. Published by the ABA Tort Trial and Insurance Practice Section, 2007. (KF 1190 P76)

STANDARDS DEVELOPMENT PATENT POLICY MANUAL, edited by Jorge L. Contreras. Published by the ABA Section of Science & Technology Law, 2007. (KF 3114.3 S73)

WASHINGTON ELEMENTS OF AN ACTION, 2007 ed. by David K. DeWolf. Published by Thomson/West, 2007. (*KF W3 W37)

OREGON EVIDENCE, 5th ed. by Laird C. Kirkpatrick. Published by LexisNexis, 2007. (KF 8935 O7 K57 2007)

EVIDENCE FROM THE JUDGES. Course materials from the November 2, 2007 Oregon Law Institute program in Portland. (*KF 8935 O7 O73ef 2007)

FEE AGREEMENT COMPENDIUM, 2007 rev. 4th ed. Published by the Oregon State Bar. Continuing Legal Education, 2007. (*KF 316 O7 O74f 2007)

SUPREME COURT PRACTICE: For practice in the Supreme Court of the United States, 9th ed. by Eugene Gressman. Published by the Bureau of National Affairs, 2007. (KF 9057 S87 2007)

JUVENILE LAW 2007 rev. 6th ed. Published by the Oregon State Bar Continuing Legal Education. (*KF 9709 O7 O74 2007)

ABA STANDARDS FOR CRIMINAL JUSTICE: Pretrial release, 3d ed. Project of the ABA Criminal Justice Standards Committee. Criminal Justice Section. Published by the ABA, 2007. (KF 9632 A92)

TRIAL TACTICS by Stephen Saltzburg. Published by the ABA Criminal Justice Section, 2007. (KF 8915 S25)

GUARDIANSHIPS AND CONSERVATORSHIPS: Updated forms and procedures. Course materials from the November 9, 2007 Oregon Law Institute program in Portland. (*553 O7 O73a)

AUTOMOBILE FRAUD: Odometer tampering, lemon laundering, and concealment of salvage or other adverse history, 3d ed. by Carolyn L. Carter, Jonathan Sheldon and John W. Van Alst. Published by the National Consumer Law Center, 2007. (KF 1040 C62 2007)

FALSE CLAIMS IN CONSTRUCTION CONTRACTS: Federal, state and local edited by Charles M. Sink and Krista L. Pages. Published by the ABA Forum on the Construction Industry, 2007. (KF 902 F35)

GETTING TO YES: Negotiating agreement without giving in by Roger Fisher and William Ury, edited by Bruce Patton. Published by Houghton Mifflin, 1981. (KF 9083 F57)

LOAN LOSS COVERAGE: Under financial institution bonds edited by Gilbert J. Schroeder and John J. Tomaine. Published by the ABA Tort Trial and Insurance Practice Section, 2008. (KF 1189.5 L63)

THINKING ABOUT TERRORISM: The threat to civil liberties in times of national emergency by Michael E. Tigar. Published by the ABA, 2007. (KF9430 T54)

CALENDAR

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

July

- 7 YLS/ONLD joint board meeting**
- 24 Thursday, MBA Golf Outing at Edgefield Pub Course**
See insert for details.
- 31 Thursday, OMLA Summer Social/Auction at World Trade Center**
Visit omla.homestead.com for details.

August

- 5 Tuesday, MBA Board meeting**
- 7 YLS Drop-in Social with Oregon Society of CPAs at Perkins Coie**
See p. 10 for details.
- 8 Friday, September Multnomah Lawyer deadline**
- 13 Wednesday, MBA Golf Outing at OGA Members' Course**
See insert for details.
- 14-16 Thursday-Saturday, OTLA Convention**
Visit www.oregontriallawyers.org for details.
- 19 Tuesday, YLS Board meeting**
- 27 Wednesday, MBF Board meeting**

September

- 1 Monday, Labor Day – MBA closed**
- 2 Tuesday, MBA Board meeting**
- 10 Wednesday, October Multnomah Lawyer deadline**

Wednesday, MBA Golf Championship at Langdon Farms
See insert for details.

12 Friday, OSB Future of the Profession Conference
Visit www.osbar.org for details.

16 Tuesday, YLS Board meeting

18 Thursday, YLS Employment Law CLE Series begins
See insert for details.

23 Tuesday, MBA CLE Evidence Revisited
See insert or register at www.mbabar.org.

October

- 6 Monday, CLP Golf Tournament at Columbia Edgewater**
Visit www.classroomlaw.org for details.
- 7 Tuesday, MBA Board meeting**
- 8 Wednesday, MBA CLE – Big Practice Tips for Small Firms**
See insert or register at www.mbabar.org.
- 10 Friday, November Multnomah Lawyer deadline**
- 15 Wednesday, MBA CLE – Child Abuse Reporting**
See insert or register at www.mbabar.org.
- 15-19 Wednesday-Sunday, NAWJ Conference in Portland**
Visit www.nawj.org for details.
- 21 Tuesday, YLS Board meeting**
- Tuesday, MBA "Absolutely Social" Social**
- 22 Wednesday, MBF Board meeting**

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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

Defensive Lawyering Revisited Part 3: Concluding the Representation



This month we complete our look at “defensive lawyering” - managing your practice in a way that tries to reduce civil and regulatory risk by documenting the key milestones in a representation. This last installment looks at concluding a representation.

At first blush, concluding a representation may seem like an odd topic for defensive lawyering. With most matters, we know when we have come to the end of a specific project - the advice sought has been given, the transaction has been closed or the final judgment has been entered. The next work for a client often flows seamlessly from one project to another. At least in some situations, however, we may not necessarily see the client again even if we got a very good result. For example, we might have done a great job in a case for an out-of-state company, but that firm might have only very occasional operations here. Alternatively, we may have handled a discrete matter for a company against which many of our other clients are often adverse. In those situations, defensive lawyering becomes important in documenting the completion of the representation so that if circumstances change over time and another client asks us to take on a matter against, in my examples, the out-of-state company or the company for whom we handled a discrete matter, we aren't left wondering whether the company is a current or a former client.

The distinction between classifying someone as a current or a former client is significant when it comes to the need for conflict waivers. Current clients have the right to object to any representation a lawyer proposes to take on adverse to them. This right flows from the broad duty of loyalty lawyers owe their current clients. Former clients, by contrast, have a much narrower right to object. Under RPC 1.9, former clients can only block an adverse representation by denying a conflict waiver when the new work is the same or substantially related to the work the lawyer handled earlier for the former client or would involve using the former client's confidential information adverse to the former client. Absent one of those two triggers, a lawyer is permitted to oppose a former client without seeking a waiver.

Although former client conflicts are waivable in theory, in practice, most former clients will not grant

waivers as, by definition, a conflict arises when the lawyer either “switches sides” in the same matter or wishes to use the former client's confidential information which may be adverse. That's where defensive lawyering comes in. If you have completed a project for a client and you think it is relatively unlikely that you may see the client again, a polite “end of engagement” letter thanking the client for the opportunity to handle the completed matter and acknowledging that you are closing your file may play a key role later in classifying the client “former.” In Oregon, whether a current attorney-client relationship exists is a two-part test: (1) Does the client subjectively believe that you're his or her lawyer? and (2) Is that subjective belief objectively reasonable under the circumstances? See *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990); OSB Formal Ethics Op. 2005-146 (applying Weidner). In the face of an end of engagement letter (and conduct consistent with that letter), it will be difficult for a former client to argue later in the context of, most likely, a disqualification motion or a bar complaint, that the former client reasonably believed that the lawyer was still representing him or her.

As with all elements of defensive lawyering, an end of engagement letter, like an initial engagement agreement, is designed with the twin objectives of clearly communicating with the client and documenting those communications in a way that the lawyer can rely on later. Again, as with all of the tools that we've discussed over the past three installments, lawyers shouldn't be defensive about defensive lawyering. We practice in an era in which we are expected to make decisions more quickly than in the past, and those decisions are being second-guessed more often and by a wider spectrum of onlookers. In that context, clear contemporaneous documentation of the key decisions made will benefit both clients and their lawyers both during the representation and later.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and mark@frllp.com.

ANNOUNCEMENTS

Special MBA CLE Opportunity

This fall (Friday, October 31) the MBA will present a special program devoted to enhancing our mental capacities and reducing stress. Entitled “Taking Care of Ourselves, While We're Busy Taking Care of Others,” the program is designed for judges, lawyers, mediators and forensic mental health professionals with busy schedules who would like to combat stress and enhance productivity by learning relaxation techniques.

Two extraordinary instructors will teach participants about the physiological effects of stress and provide the basic skills to combat stress and achieve greater mental clarity, concentration and awareness. Alan Wallace is a lecturer, teacher and founder of the Institute for Consciousness Studies, which focuses on integrating mindfulness techniques with modern neuroscience. Michael Zimmerman is a former Chief Justice of the Utah Supreme Court who is a practicing lawyer and Zen teacher.

Ours is a demanding profession. We can learn skills and techniques to keep ourselves healthy while serving our clients at maximum efficiency. I hope you will consider putting your workload on pause for a day and join us.

Space is limited, and the early response has been enthusiastic, so if this program would be helpful to you, please do not delay when registration opens.

Michael Dwyer
President, MBA

MBA Members are Asked to Help Contact Elected Officials

The MBA is creating a comprehensive advocacy plan for discrete issues related to its mission. Those issues will include 1) courthouse facilities, 2) statewide ballot measures affecting the independence of the judiciary and access to justice, and 3) adequate funding of the Oregon Judicial Department. If you are willing to participate, please complete the form found at www.mbabar.org/docs/Contact_Inquiry_Form.pdf, and send it to Judy Edwards at the MBA, email judy@mbabar.org, or by fax to 503.243.1881.

Portland Art Museum Rental Sales Gallery

The Art Museum's Rental and Sales Gallery is a great source for art from our region. It represents over 250 artists from Oregon, with an inventory of over 1500 works in a variety of media. Search their collection at www.portlandartmuseum.org or visit the gallery at 1237 SW 10th Ave. in the Eliot tower. The MBA Board Room displays art from the gallery on a rotating basis.

Update Your Practice Areas Online

MBA members may now select as many areas of practice as they would like to include in their online directory listing. If you have not already selected your practice areas, please update your listing now by visiting www.mbabar.org. The old practice areas will be removed soon.

Noon Time Rides

MBA noon 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.

Friends of OLIO Seeks Donations

Opportunities for Law in Oregon (OLIO) assists in the recruitment and retention of ethnic minority law students in Oregon by presenting a year-long series of events. OLIO relies on donations and grants to fund the activities, and this year, is hoping to raise \$40,000.

You may send your contribution to Friends of OLIO, a registered 501(c)(3) organization, which will issue a tax receipt for the donation.

Oregon Minority Lawyers Association (OMLA) 9th Annual Auction and Raffle

The event is Thursday, July 31, in the courtyard of the World Trade Center, 121 SW Salmon in Portland at 5:30 p.m.

This year's auction continues the tradition of fine items to bid on, delicious refreshments to eat and drink and good friends to visit. Proceeds fund scholarships to Oregon bar exam review courses that help increase the passage rate of ethnic and racial minorities and also help fund the annual OLIO retreat, a nationally recognized program providing incoming minority law students with the opportunity to meet each other, upper division students, judges, bar leaders and other lawyers who can serve these students as mentors and role models. Admission is \$10 for lawyers and judges, \$5 for law students. RSVP to Anastasia Yu Meisner at aym@guyermesiner.com or 503.697.1035.

OHS Exhibits Watkins Photos

A unique series of photos will be displayed at the Oregon Historical Society (OHS). Please see details of the exhibit on p. 9 or visit www.ohs.org.

President's Column

Continued from page 1

of resolving conflict on this interconnected planet - must play our part with greater consciousness than ever. I welcome a yearlong dialogue with you.

I arrived in Portland 19 years ago after practicing law for the previous 12 in California and Hawaii. I knew but two people in Portland then (neither of them lawyers), but came to raise my children among snow-covered mountains, forest-green firs and a highly conscious community. Today, I am grateful to have a multitude of friends and colleagues, a law partner whom I count among my closest friends and a cheerful hardworking office staff. I belong to a first-rate bar association and now walk in the steps of distinguished predecessors and superb attorneys, including our outgoing president. Since I have grown too old to provide answers, in the year

Oregon Minority Lawyers Association
Ninth Annual Summer Social and Fundraiser

July 31, 5:30 – 7:30 p.m.
World Trade Center Outdoor Plaza
121 SW Salmon

Please put the date in your calendar now so you can attend. If you would like to donate or have questions, please contact OMLA co-chair Akira Heshiki, akira@oregonminoritylawyer.org. RSVP to Anastasia Yu Meisner, aym@guyermesiner.com, 503.697.1035.

Cost of admission is \$10 for lawyers, judges and other professionals. \$5 for students. Children under the age of 18 are free.

ahead I will try merely to serve a plate of good questions, trusting that you and my fellow board members and our Executive Director will together provide more wisdom than this greybeard can produce.

But that's then. For now, enjoy your summer. I, however, have work to do. It's not easy in the middle of summer to restore a lawn, but that last UFO left horrible brown crop circles.

Lynn Nakamoto: Litigator, Civil Libertarian, Managing Shareholder

By Stacy R. Owen, Markowitz Herbold et al.

The MBA Equality Committee provides articles that highlight activities and programs which promote and provide better understanding of the diversity in our legal profession and in our community. If you would like to recognize an individual, group or firm for their commitment to equality, please contact Kathy Maloney, staff to the MBA Equality Committee. The following is the sixth article in this series.

Lynn Nakamoto serves as managing shareholder of the commercial litigation firm Markowitz, Herbold, Glade & Mehlhaf, a post she has held since November 2006. Since arriving in Oregon in the 1980s, Lynn has been actively involved in the legal community through groups such as Oregon Women Lawyers, Oregon Minority Lawyers Association (OMLA), the Oregon Gay and Lesbian Law Association and the OSB Affirmative Action Committee.

Of her many contributions to advance diversity, Lynn is most passionate about her pro bono efforts on behalf of the ACLU in *Tanner v. OHSU*, which helped to secure equal benefits for same sex domestic partners and their families in Oregon. Sharing that it takes a lot of effort to be a highly stigmatized minority, to be gay or lesbian in America, Lynn believes the *Tanner* decision will help members of Oregon's gay and lesbian community to finally be recognized as part of society. She further emphasized that no level of professional accomplishment could substitute for being denied the fundamental right to marry.

Lynn's efforts to promote equality have been widely recognized. She received the Judge Mercedes Deiz Award, which recognizes outstanding contributions in promoting minorities in the legal profession and the community. She was presented the John Grigsby-Jim Vegher Investments in Dignity Award for her contributions to build communities that embrace the dignity and worth of all people.

Her efforts are ongoing. Lynn acknowledged that she can quietly use her post as managing shareholder to advance equality issues by serving as an example. During her 21 years in Portland, she cannot recall another woman of color serving as a firm's managing shareholder. She is pleased that younger members of OMLA contemplating their careers have remarked about how they, too, can take on similar roles.

Despite her accomplishments and the recognition she has received, Lynn suggested that others' work should be highlighted. As an example, she praised the efforts of younger members of OMLA, who have organized networking and social events for law students, provided bar examination preparation scholarships to minority bar applicants, held quarterly luncheons and created an electronic mailing list (a listserv) for OMLA members. You can learn more and get involved with OMLA at <http://omla.homestead.com>.



Lynn Nakamoto

When asked the rather generic question of naming her proudest accomplishment, she paused and finally replied that she doesn't think on those terms. Her view is broader. She explained that she strives to be able to live her life the way she wants to live it. In doing so, Lynn's efforts continue to advance equality in the legal profession and beyond.

Stacy R. Owen is an associate with Markowitz, Herbold, Glade & Mehlhaf, PC. She can be reached at StacyOwen@MHGM.com.

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AROUND THE BAR



Brad Stanford

to the ABA House of Delegates in 1988, when she was still an assistant US Attorney. She has continuously served the ABA House of Delegates since then and will mark 20 years of service this year. She has twice served on the ABA Board of Governors, from 1995 to 1998 as a representative from four western states and from 2001 to 2005 as secretary. Her service as secretary marks the first time that an active judge has served as an ABA officer and the second time that a woman has held that position. Judge Rosenblum has also served on several ABA committees and coalitions. Throughout her ABA service, she has been a role model, especially for women and minority lawyers.



Michelle Kerin

FARLEIGH WADA WITT The Pacific Northwest Ski Areas Association awarded **Brad Stanford** with its coveted Industrial Strength Award for making a significant contribution to the Pacific Northwest ski industry. Stanford's practice focuses on general litigation, business litigation, products liability and insurance defense, with significant experience in ski area risk management. He speaks frequently on litigation and risk management issues related to resort and ski area facilities and is the immediate past president of the Association of Ski Defense Attorneys.

Michelle Kerin has been elected president of the Board of Trustees for The International School, a Portland school dedicated to providing children with a comprehensive and challenging education in which fluency in more than one language is central to development. In addition to serving as president, she chairs its Human Resources Committee. Kerin's practice focuses on litigation, employment and labor law.

JUDGE ELLEN ROSENBLUM The ABA Government and Public Sector Lawyer's Division announced that Oregon Court of Appeals **Judge Ellen F. Rosenblum** is the recipient of its annual Nelson Award for her exceptional service to the ABA. The award will be presented at the annual meeting in New York City at the Government and Public Sector Lawyer Division Award's Reception on Friday, August 8.

The Nelson Award recognizes superior contributions to the ABA by a public lawyer. Judge Rosenblum was elected



Jonathan Mishkin

GARVEY SCHUBERT BARER **Jonathan Mishkin** has joined the tax and benefits Group as a new associate. Mishkin's practice focuses on tax, transactions, mergers and acquisitions, estate planning, charitable organizations and tax controversy.



Diane Schwartz Sykes

OREGON LAW CENTER **Diane Schwartz Sykes** was hired as the first managing attorney for Oregon Law Center located in Portland. Sykes will manage a staff of seven attorneys and a paralegal on cases and projects that serve low-income populations in the 10 northwest counties of Oregon. She started her legal career representing Spanish speaking clients at the law firm of Squires & Lopez in Portland, moved to the Oregon City office of Legal Aid Services of Oregon and came to the Oregon Law Center in 2004. As managing attorney, she will continue to work with Spanish speaking communities and focus her practice on complex litigation related to employment, housing issues and some consumer law matters.



John A. Riherd

HARRANG LONG GARY RUDNICK P.C. **John A. Riherd** joined the firm as of counsel in the business

department. Riherd specializes in matters involving health law, insurance law, regulatory affairs and general business law.



Yoona Park

STOLL BERNE **Yoona Park** has joined Stoll Berne as associate, expanding the firm's expertise in complex business litigation related to government investigations and major business litigation.

Park joins the firm litigation group with a focus on complex business litigation. Park is proficient in Korean.



Jill E. Brittle



L. Zoe Wild



D. Althea Rodgers

STAHANCYK, KENT, JOHNSON & HOOK P.C. **Jill E. Brittle, L. Zoe Wild** and **D. Althea Rodgers** have joined the Portland office of the firm.



Clint L. Narver

MARKOWITZ, HERBOLD ET AL **Clint L. Narver** has become an associate with the firm. His practice will focus on complex commercial litigation, with an emphasis on professional liability defense, securities law and white collar criminal defense.

Narver brings substantial experience in complex civil litigation and white collar criminal defense.

LEHNER & RODRIGUES **Barry Goehler** is now a partner and shareholder in the firm and **Iaysha Smith** has become an associate.

Goehler brings his environmental and other complex litigation background to the firm, and Iaysha brings experience in employment and civil rights and will assist the firm in defense of public entities and corporate clients.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The deadline is the 10th of the month preceding publication or the previous Friday if that date falls on a weekend. All items 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@mbabar.org.

Tips from the Bench

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

Settlement conferences in civil cases

In addition to the many fine mediators, lawyers and retired judges, the following judges are available to conduct settlement conferences in your civil cases: Marshall Amiton, Frank Bearden, Eric Bloch, Stephen Bushong, Kathleen Dailey, Jerry Hodson, Dale Koch, Jerome LaBarre, Kristena LaMar, Marilyn Litzenberger, Michael Marcus, Christopher Marshall, Judith Matarazzo, Adrienne Nelson, Leslie Roberts and Youle You. To schedule a settlement conference, contact the judge's office directly. Except for Judge LaMar's full-time work with settlement conferences, most of these are scheduled for Fridays, when the court generally does not conduct jury trials.

Review of expert witness file before cross-examination

Too often after direct examination of an expert witness we endure much delay while opposing counsel reviews the expert witness file before cross examination. Our judges have recently discussed how to make this part of the jury trial move along more efficiently. Judge Henry Kantor shared with us that it is his procedure to instruct the lawyers to have the expert's file available for review by opposing counsel during the break before the expert's direct examination. In other words, if you expect to call your expert at 11 a.m., the expert's file needs to be available to review by the other lawyer by mid-morning, and the court is likely to take a mid-morning break. Likewise, if



you expect to call your witness first thing after lunch, the file needs to be available for review by noon. This may mean your expert witness must get her/his file to you in advance of arriving at the courthouse to testify. Judge Kantor acknowledges that sometimes there may be a need for relief from this requirement, which can be discussed on a case-by-case basis in advance. Judge Kantor's procedure seems like a good idea to me. It strikes a balance between the competing interests involved.

Signing off

This is my last "Tips from the Bench" column. No, I am not retiring from the bench, just from submitting a monthly column for this publication. I have written this column since 2004. It is time for the bar to benefit from ideas and tips from others.

The MBA thanks Judge Wittmayer for his long-term commitment to writing this column. We will miss his insights and hope he will consider occasionally contributing in the future.

Golf News

Golf for Legal Aid

On September 10, the MBA holds its 11th Annual Members Golf Championship and Awards Lunch at Langdon Farms Golf Course. This year, the Golf Committee will be limiting net scores of participants without a formal GHIN handicap to promote fairness.

The proceeds from this tournament directly **benefit the Volunteer Lawyers Project** at Legal Aid Services of Oregon. MBA members and sponsors are encouraged to participate. As in the past, there will be Law Firm and Open Divisions. Law Firm Division teams must be comprised of attorneys from the same firm and their employees and clients. The Open Division is for all others, including judges, attorneys, clients, MBA sponsors and their respective employees.

Winning teams receive prizes and the first-place teams will have their names engraved on the tournament trophies.

The entry fee of \$150 per person includes green fees, carts, golf balls, door prizes and lunch. An entry form is enclosed in this issue of the *Multnomah Lawyer*. Please complete the form and return it with your entry fee as soon as possible to ensure that your team has a space in the tournament.

The MBA is actively seeking sponsors for this tournament. For more information on sponsorship opportunities, please call Brenda Baumgart, MBA Golf Committee Chair, at 503.276.2132.

June 10 Golf Tournament Results

Eleven groups of golfers played in a tournament at Riverside Golf Club on June 10. The first-place team was Stephen Werts, John Davenport, Bill Replogle and Dan Vidas, with a score of 131.



2008 Civil Jury Practices Report Available

The Multnomah County Presiding Court Task Force on Civil Jury Trial Practices has released a report that identifies practices for civil jury trials likely to increase juror comprehension and satisfaction and improve trial efficiencies. You may download a .pdf version of the report from: www.mbabar.org/docs/CivilJuryTrialReportBW.pdf.

Update on Initiative Petitions (IP) 51 and 53

The following three sections were reported in the June Capitol Insider.

IP 51 would limit contingent attorney fees to 25 percent of the first \$25,000 recovered and 10 percent of any additional recovery. IP 53 would sanction attorneys for filing "frivolous" claims or defenses. In early January, the petitioners submitted over 116,000 unverified signatures on each initiative petition to the Elections Division of the Secretary of State's office. Each initiative petition needs 82,769 valid signatures to qualify for the ballot.

Later in January, the Secretary of State suspended the petitioners from collecting further signatures until they produced accounts showing that they were paying signature gatherers by the hour and not by the signature, as required under Article IV, §1b of the Oregon Constitution. This suspension was lifted in March when the petitioners produced records in response to this suspension. But on May 9, the Elections Division re-imposed the ban after determining that the payroll records submitted were insufficient. Signature gatherers, defying the suspension, are still circulating petitions. The proponents assert that the suspension is an unconstitutional infringement of the free speech rights of the initiative sponsors.

The group Our Oregon has filed a formal complaint with the Elections Division, and an investigation is underway. The Elections Division has stated that they will not count any signatures dated during the time of the ban.

Russ Walker, Oregon director of FreedomWorks and vice chair of the Oregon Republican Party, filed suit in federal district court in Eugene challenging the State's authority to ban gathering signatures. Another suit was filed by Michael Reeder on June 13 in Marion County Circuit Court challenging the Secretary of State's decision to suspend circulation of Initiative Petitions 51 and 53. The deadline for proponents to submit all signatures for the November 2008 ballot is July 3, so time is running short. Despite the suspension, opponents believe the initiatives will still qualify for the 2008 ballot.

Oregon Tort Claims Act Task Force Update

At the close of the February 2008 legislative session, a task force was created to make recommendations to the 2009 legislature on changes to the Oregon Tort Claims Act. The task force membership includes 10 legislators, and four public members representing stakeholder groups including OHSU, Oregon Trial Lawyers Association, local governments and consumers.

At the first meeting on May 29, the task force heard presentations from representatives of the Office of Legislative Counsel and Department of Justice. The task force provided no indication of future recommendations.

The task force will continue to meet throughout the interim on September 25, October 9 and 30, and December 30. The group must work quickly as it will make its final recommendations to the legislature by mid-December.

Oregon eCourt Task Force Is Underway

In May, the OSB Board of Governors approved formation of the OSB / OJD Task Force on Oregon eCourt Implementation. The task force was formed to assist in the implementation of the Oregon eCourt initiative over the next five years, to provide input and feedback from bar members, and to develop a strategy to communicate with and educate bar members about the program. Members of the task force represent a number of practice areas including appellate, civil litigation, computer law, criminal and juvenile, judicial administration, and litigation.

At the first meeting Chief Justice De Muniz and OSB President Rick Yugler provided opening remarks, and OJD staff gave an overview of the program, and the current schedule for training and implementation. The Chief Justice explained that Oregon's program is the largest in the nation, and will have the fastest implementation – five years. The total cost is estimated at \$120 million.

The appellate courts will go online first, and will be followed by pilot groups of trial courts. The goal is to have Oregon Supreme Court documents in criminal cases online by the end of the summer. The trial courts project will not be ready until 2009 at the earliest. The first trial court "group" will be Crook, Yamhill, Jackson and Multnomah Counties. These counties were selected because they represent a good cross-section of trial courts. Within each trial court, different types of cases will be implemented in phases.

The task force will meet again in August.

Profile - Washington County Presiding Court Judge Thomas Kohl

By Dawn LaGrone, MBA Court Liaison Committee member.

I enjoyed my meeting with the Washington County Presiding Court Judge on an oddly sunny afternoon. He had just finished a probation violation case in which the defendant is not fully complying but is still trying. Judge Kohl gave him another chance but made it clear that it was his last chance.

The judge first attended college on a football scholarship. His undergraduate career was interrupted in 1968 for a couple of years when he left school and worked with the Peace Corps in India on water irrigation and open wells. Judge Kohl later graduated from University of Kentucky in 1972 with a degree in English Literature. Then he was off to the University of Toledo for law school, where he graduated in 1975. The judge practiced as a private attorney and a district attorney in Ohio before moving to Oregon.

Judge Kohl came to Oregon in 1982, drawn by the state's beauty and its people. He predominantly

practiced civil law, partnering with David Frost in Hillsboro; was city attorney for Vernonia for 14 years and assistant city attorney for Forest Grove for about six years. Judge Kohl practiced employment law before taking the bench.

Judge Kohl was appointed to the bench by Governor Kitzhaber in 1997 and has been the presiding court judge since 2005. He has been a very active presiding court judge. He refers to himself as the "IRS" judge, the (Inventory Reduction Specialist judge). His weekly dockets include criminal pleas and sentencing so that the other judges have time for their heavy dockets. Washington County has the honor to boast of the highest percentage of cleared criminal cases in the State of Oregon.

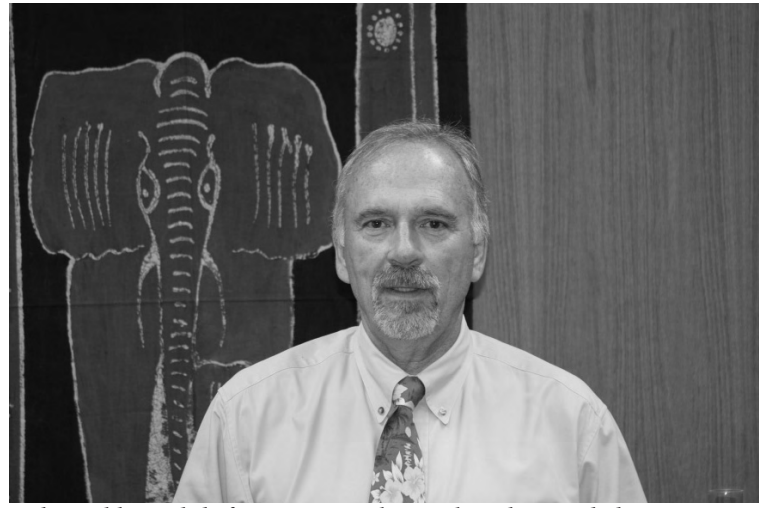
During his tenure as presiding court judge, the mental health and drug courts have taken off and grown. The drug court has expanded to 55 defendants and is at maximum capacity most of

the time. The mental health court has helped the mentally ill in Washington County to stay out of the criminal justice system.

Also, the early case resolution program was created and has welcomed visitors from California and Florida sister courts to review its structure for application in their own states. According to Judge Kohl, the program has been working well due to the high level of cooperation between the district attorney's office and the defense bar and could not work without that level of professional cooperation.

On the civil side, cases are moving through the court system in a juridical manner, with, among other improvements, the addition of Judge Garner's Friday settlement docket. There were 100 civil cases resolved in the last two years and 90% of all civil cases are completed within 8 to 9 months of the filing date.

There are other changes to look forward to as Judge Kohl is



Judge Kohl stands before a tapestry he purchased in Zimbabwe.

seeking to start a turn-in docket. If a defendant had a warrant issued for a failure to appear, the defendant could schedule a time to turn him or herself in and resolve the case at the same time with use of counsel, eliminating the use of police and jail resources. Therefore, from beginning the case to a conclusion, the defendant's rights would remain intact.

On a more personal note, the judge was recently in Zimbabwe with his family's church, Solid Rock Church, where they helped build houses for orphans with the Hands of Hope organization. He was advised not to go due to political turmoil in region, but

they went anyway, and had a safe trip and wonderful time meeting the people of the region while building a lifetime of memories.

Judge Kohl became a grandfather for the first time in May and is looking forward to another child's wedding in March of 2009.

Finally, Judge Kohl informs me that Judge Keith Rogers will stay with the Washington County Court until December of 2008 and the newly elected judge, Andy Erwin, will be joining the bench in January of 2009. Judge Erwin will join the family law team (this is, of course, subject to change).

OHS Features Watkins Photos

The Oregon Historical Society (OHS) has completed work on one of its prized collections: over 500 photographs taken by the great 19th-century photographer, Carleton E. Watkins (1829-1926). Watkins is considered one of the finest landscape photographers of the early American West. During a series of trips from 1867-1885, he photographed Portland and the Columbia River Gorge, capturing some of the first photographs of iconic landmarks such as Castle Rock, Cape Horn and Multnomah Falls, as well as the early days along the river.

The OHS collection contains the most comprehensive set of

Watkins' images of Oregon ever to be assembled by an institution. Among other items, it includes a unique album of photographs of the Gorge taken during the blizzard of 1884-1885, signed mammoth prints from his first trip to the Columbia in 1867, and rare stereo-views of native and white settlements along the river.

In the fall of 2008, the OHS will hold an exhibition of Watkins' stereo-views of the river, in partnership with the Portland Art Museum's upcoming exhibit, "Wild Beauty: Photographs of the Columbia River Gorge, 1867-1957."



Congratulations, Award Winners and Boards

Continued from page 1



Pro Bono Award of Merit winners Eric M. Kearney, Joshua L. Ross and Eric J. Waxler (Chris Edwardsen not pictured)



YLS Award of Merit recipients Iayasha Smith, Yumi O'Neil and Denise N. Gorrell



MBA Board: (back row) Susan Marmaduke, Keith Garza; (second row) Michelle Druce, Christine Meadows, Steve Blackhurst; (third row) Sarah Crooks, Leslie Kay; (front row) Thom Brown, Michael Dwyer, Jeff Crawford. Not pictured: Dave Ernst, Scott Howard, Andrew Schpak, Lisa Umscheid

YLS Board: (back row) Jennifer Durham, Nick Kampars, John McVea; (middle row) Justin Leonard, Andrew Schpak, Kim Griffith, Klarice Benn; (front row) Katie Lane, David Bean, Christiane Fife. Not pictured: Lainie Dillon



Fourth Successful Year of Service to the Public's Imprint Program

By Joshua Ross and Cashauna Hill, Imprint Program Co-Chairs.

This spring, nearly 125 local attorneys and students helped foster a love for reading and writing by becoming "pen pals" through the Imprint program, which has been coordinated by the Service to the Public Committee for four years. Over several months, each student-attorney pair discussed and shared thoughts about a book through letters. The participants then met face-to-face, for the first time at a school party.



Judge Jill A. Tanner, Oregon Tax Court, with her pen pal Shacohya Crain

Each year, the number of Imprint volunteers has increased and this year's program paired nearly 125 volunteers with students in three 10th grade classes and two 6th grade classes in the Parkrose School District. For the students, Imprint provides a fun and exciting opportunity. Sixth grade teacher Ann Stinson says, "The students clapped when I brought out the manila envelope stuffed with letters addressed to each student." Among other

things, Stinson notes, the program offers students an opportunity to exercise independence. "So much of school is focused on the group; everyone does the same thing. Writing letters was great because every student could choose what to write and the correspondence became theirs alone."

Tenth grade teacher Nerissa Ediza has participated in Imprint for three consecutive years. "The impact that the volunteers make on our students lasts beyond just the few months of letter writing. This is an experience that kids talk about for years afterwards." Ediza points out that, for some students, the program provides the only adult relationship they will have outside of school and family. Stinson agrees. "Through Imprint, the kids have the opportunity to make a connection with an adult who is interested in them and their education."

The volunteers, too, find Imprint a valuable mentoring opportunity as well as a way to connect with members of our community. Bernadette Nunley, an attorney at the County Attorney's office, volunteered because "I love to read and write letters, and I thought I might be able to share that love with a student." Her experience reminded her of the "realities of being 15. I now remember how



Vicki Smith, Bodyfelt Mount LLP, with her pen pal Augustine Cabrera

many changes and choices belong to that part of life. I'd forgotten how big the world is at 15, and how much possibility is in everything."

For Nunley, Imprint also served as a reminder of "how critical this time of life is for future success." Volunteering helped emphasize for her, and others, the importance of understanding the challenges kids in our community face.

Year after year, Imprint proves to be a fun and valuable program for both students and volunteers. Ediza says that Imprint is about "sharing a love of reading and writing, connecting with teenagers, and learning about our community." Stinson sums it up: "Books, mentors, writing - what more could teachers ask from a program? Imprint has it all."

If you are interested in volunteering for the Imprint Program, please contact Kathy Maloney at kathy@mbabar.org.



YLS May Drop-in Social

On May 29, the YLS held a drop-in social at Thirst Wine Bar. The event was well attended and a great chance to catch up with colleagues and to meet others.



YLS May Drop-in Social Scene

10 Questions for the Qualified



In this installment of the series, we are excited to feature Sandra Hansberger, Executive Director of the Campaign for Equal Justice. Sandy received her B.A. from Pitzer College and her J.D. from Lewis & Clark Law School, where, as a clinical professor, she supervises law students in judicial and administrative hearings and appeals. In addition, Sandy is chair of the OSB Low Income Legal Services Committee, a board member of Oregon Legal Services and Oregon Women Lawyers Foundation, a past board member of St. Andrew Legal Clinic and Oregon Women Lawyers, and the recipient of both the OSB President's Membership Award for outstanding law-related volunteer services to the public and the MBA Professionalism Award.

Q. Knowing what you know now, if you could go back in time to the first year of your legal career and give yourself some advice, what would it be?

A. Friends and family can help keep you grounded. Look for support through the MBA, OWLS, OMLA, OTLA - whatever group works for you.

Q. What is the most common mistake that you see young attorneys make?

A. It's too easy to put things in an email that you would never say to someone's face or even put in a letter. Sarcasm and humor do not translate well in email and we all need to be reminded of this (myself included).

Q. What was your best day as an attorney (highlight of your legal career)?

A. Being honored by the MBA with the Professionalism Award.

Q. What was your worst?

A. I was involved in a case many years ago where opposing counsel lost perspective, was unprofessional and abused the legal system through

underhanded, dirty tricks. I think the case took a toll on my clients, me and the integrity of our system of justice.

Q. What changes do you see happening to the practice of law over the next 10 years?

A. Professionalism will continue to be elevated; technology will continue to change law practice; and I hope we will make big strides in access to justice - overcoming the barriers of poverty, language and race and also making certain that we treat people equally once they get access to the system.

Q. What are your hobbies outside of work?

A. I love music, movies, biking, traveling, camping and just spending time with my family and friends.

Q. What advice would you give to a young attorney who would like to eventually end up in your position?

A. Every job provides new contacts and new skills. Pro bono work and volunteering for bar committees really helped me advance my career in working for low-income clients.

August drop-in social

Don't miss the next YLS Drop-in Social, which will be a joint social with Oregon Society of Certified Public Accountants on **Thursday, AUGUST 7** at Perkins Coie, located at 1120 NW Couch on the 10th floor, starting at 5:30 p.m.

Representatives from local nonprofit organizations will be on hand to discuss leadership opportunities for young lawyers within the nonprofit community, such as becoming members of a board of directors.

Appetizers and drinks are generously sponsored by The Commerce Bank. It is First Thursday, so this is a good place to start your evening and then head out to enjoy the Pearl and First Thursday activities.

Q. What is your favorite book, and what are you currently reading?

A. I just finished *Three Junes* by Julia Glass, and am currently reading *Saturdays* by Ian McEwan. One perennial favorite book is Tolstoy's *Anna Karenina*.

Q. Tell me about one of your mentors.

A. As a new lawyer I shared office space for a short time with four really terrific older lawyers and they were all patient, respectful and gave

very sage advice. They helped me better understand the concept of professionalism by their example.

Q. If you could change one thing about yourself, what would it be?

A. I have to work at having good balance in my life.

If you would like to nominate someone to be featured in this series, please email Andrew Schpak at aschpak@barran.com.

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Robin Wolfe: A Pro Bono Leader

This article is the first of two profiles on juvenile defense attorneys whose commitment to their clients and to improving the juvenile justice system is evident in their advocacy and in their pro bono activities.

For Robin Wolfe, who handles delinquency, dependency and termination of parental rights (TPR) cases in Multnomah County, there is no distinction between the clients she represents for the state and those she assists pro bono.

In contrast, OSB Bylaws define pro bono as “all uncompensated services performed by lawyers for the public good.” Inherently, the bylaws distinguish between two types of projects: services provided for no fee and those for payment. This distinction reflects the separation between most attorneys’ work-a-day practice and clients and their pro bono cases and clients. Yet, for many public defenders, the distinction in the bylaws is challenged by their clients’ circumstances.

The distinction breaks down because her clients have significant legal needs that are outside the scope of, but are intertwined with, her paid representation. Resolving these secondary issues sometimes makes all the difference.

“If you’re a mother, and your children have been placed with

foster parents until your abusive partner moves out, how do you get your kids back if he threatens you and refuses to leave?” asked Robin, an attorney with Troy, Rosenberg & Wolfe, PC, who accepts dependency and TPR cases.

In Robin’s client’s case, the solution began with her own willingness to help her client get a restraining order in place. Although not covered by her firm’s contract with the Oregon Public Defense Services Commission, the restraining order was crucial to resolving the dependency issue that the contract addressed.

The restraining order, one of numerous pro bono projects she has accepted, reflects Robin’s commitment to her clients. Her pro bono work with a Guatemalan immigrant demonstrates that her willingness to improve her clients’ lives isn’t tied to a billable hour requirement.

“Edward” was living in Portland with his aunt, awaiting resolution of his immigration case, when Robin began representing him on an unrelated dependency issue. He was 14 at the time and had traveled to the US to earn enough to send remittances home to his ill father. As Edward faced deportation, she took on his dependency case. Appealing an earlier ruling, she secured an



immigration designation which allowed him to permanently remain in the country. Robin then organized a fundraiser to help pay for his residency application, enabling him to continue his education.

Robin’s other current pro bono work includes volunteering for domestic relations legal services, participating on a committee focused on improving the state’s dependency system, staffing a parent orientation subcommittee, mentoring a child for the last five years and providing photographs of her clients’ families.

PRO BONO VOLUNTEERS

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

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Bodyfelt Mount welcomes **Erika J. George**, of counsel, to the firm. Erika will continue to defend construction defect, professional negligence, and product liability claims.

We also welcome to the firm as associate attorneys:

Heather A. Bowman, a 2007 graduate of the University of Washington School of Law and

Nikhil T. Chourey, a 2005 graduate of Willamette University School of Law, and judicial clerk to the Honorable Jean Kerr Maurer in Multnomah County.

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Meet Karen Norris

MBA Hires Foundation Development Coordinator



M U L T N O M A H B A R
 ■ F O U N D A T I O N ■

We are pleased to introduce Karen Norris, our newest staff member. She has been hired as the Multnomah Bar Foundation's Development Coordinator.

With the foundation's development plan starting to take shape, we think Karen is a perfect fit to help get its fundraising campaign up and running.

Karen has been a grant writer and development manager in Phoenix, Arizona, and Portland and has more than seven years of experience working with nonprofit organizations. She received her bachelor's degree in English from Arizona State University and went on to work as a document specialist, development specialist and development manager for various nonprofits in Arizona.

In Portland, she has been a grant writer for the Albertina Kerr Centers, as well as working independently for various nonprofits in the area.

"I wanted to do something with a positive impact," she said. "I found after working in the nonprofit field that I really liked it. I thought, if I'm going to work hard, I want to work hard for a good cause."

She will help the foundation with implementing its development plan, creating a multi-year fundraising campaign.

"I want to help the foundation reach or exceed the goals it has set forth regarding the three-year campaign," she said. "I would never want to put a cap on how much money can be raised."

Karen will work on researching prospective funders, attend foundation board meetings, collaborate with staff to design a communications strategy and brand, and implement a giving campaign. She will also assist in the foundation's grant-giving process.

Karen lives in Portland with her husband Jeff and their two daughters, Sophie, four, and Sadie, four months. She enjoys reading, yoga and traveling when she can. "My family is my biggest hobby right now," she said.



Karen Norris



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