



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

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

May 2008 Volume 54, Number 5



## “May it Please the Court” and Measure 51

By Thom Brown, MBA President.

I was asked to write a column about my principal practice area – appeals – and our appellate courts. I decided to also include some thoughts on Ballot Measure 51, which has qualified for the November ballot.

Roughly 150 times over the last 27 years, I’ve stood before three or seven appellate court judges and said “May it please the court.” I never tire of the phrase. In fact, to be honest, even today I get a chill down my spine because I know that, for the next 20 or 30 minutes, I’ll have a conversation with judges, who I most often know well and who are seeking my help in discharging their responsibility of determining whether a trial court erred and very often, in doing that, develop the law. And I never tire of writing briefs, a creative and challenging process that forces me to write clearly, simply and persuasively. All in all, I just really enjoy being a small part of a process that helps develop (and properly apply) the law. What can I say - I’m a true “appellate geek.”

I never planned (at least consciously) on being a lawyer, let alone an appellate lawyer. I decided to go to law school because I didn’t know what else to do at 24 after concluding that I didn’t want to stay in Minneapolis and go into my father’s business. I settled on Lewis & Clark because of its night program and because I fell in love with Portland on my very first visit. I settled in on being an appellate lawyer because: (1) I really enjoyed writing my first appellate brief in law school; (2) I had a great experience being a clerk at the Court of Appeals after law school; and (3) my firm needed an appellate lawyer. It may sound corny, but, a lot like what happened on my first visit to Portland, I fell in love with appellate work after handling my very first appeal. Twenty-seven years later, I still feel the same way.

During my career, I’ve been fortunate to have been involved in a lot of appellate-related activities – the Oregon Rules of Appellate Procedure Committee and the OSB Appellate Practice Section Executive Committee, to name a couple. Most meaningfully, I was appointed in 2003 to a committee tasked with looking at both how our legislature interacts with our appellate courts and impacts their work and how our appellate courts did their jobs. Appellate lawyers, former appellate judges and legal counsel for both courts met over a year, eventually preparing a report of almost 100 pages. The report, which included a number of meaningful and thoughtful recommendations, was given to both appellate courts. If, for some reason, you want to read the report, let me know and I’ll get you an electronic copy.

Unfortunately, there has not been (at least not yet) any formal follow-up to the appellate process committee’s 2004 report. I particularly hope that there is future follow-up on the committee’s recommendations regarding the relationship between the judicial

branch and the legislative branch, judicial branch funding, and the process the legislature should go through when adding to the burdens of our appellate courts by passing new laws or requiring certain kinds of appeals be handled directly by the Supreme Court or by one or both appellate courts in an expedited way. To me, all of these issues are vitally important to the existence of healthy, well-functioning appellate courts. When (not if) there is follow-up, I hope I have a chance to be involved.

Recently, I had lunch with Oregon Supreme Court Chief Justice Paul J. De Muniz and Oregon Court of Appeals Chief Judge David V. Brewer to talk about the committee’s report, the responses by each court, and the future of our appellate courts generally. While I can’t “do justice” to what we discussed in the limited space of this column, I did want to, at least, provide some highlights.

Both Chief Justice De Muniz and Chief Judge Brewer took the appellate process committee’s work very seriously. Both judges are also deeply committed to doing all they can to make sure that Oregon’s appellate courts process their important work in a timely, highly professional and highly competent way. And both judges have led their courts in making real, meaningful chances to help achieve that goal.

The Court of Appeals has, since 2005, published annual reports detailing initiatives taken by that court and the progress it has made on those initiatives. I encourage you to read the reports, which are available on the appellate courts Web page. They reflect that court’s deep dedication to its work and to serving well those who come to it for that work. While they cover a number of subjects, one addressed in the 2007 report is particularly noteworthy. In response to both the committee’s perception and its internal view that motions work (something like 20,000 are filed a year) needed to be done more efficiently and timely, with the support of the Chief Justice, the Court of Appeals added another staff attorney to assist with motions and restructured Appellate Legal Counsel’s office to adopt, in part, the Washington Motions Commissioner model.

Continued on page 9

## MBA CLE

To register for a CLE, please see the inserts in this issue or go to [www.mbabar.org](http://www.mbabar.org).

### May

**Thursday, May 1**  
**Settlement Conference and Mediation Advocacy**  
Judge Kristena LaMar  
Sam Imperati

**Thursday, May 15**  
**Annual Multnomah County Judges Trial Practices**  
Judge Janice Wilson

**Tuesday, May 20**  
**Civil Rights Litigation**  
Michelle Burrows  
Elden Rosenthal

**Wednesday, May 28**  
**Enforcing Family Law Judgments**  
Mark Kramer  
Jeffrey Renshaw

**Thursday, May 29**  
**Criminal Law for the Civil Practitioner**  
Lane Borg

### June

**Monday, June 2**  
**Nonprofit Entities**  
Scott Howard  
Penny Serrurier

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MULTNOMAH BAR ASSOCIATION  
620 SW 5TH AVE SUITE 1220  
PORTLAND, OREGON 97204  
503.222.3275  
FAX 503.243.1881  
WWW.MBABAR.ORG

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### MULTnomah bar Association Annual Meeting, Dinner and Judges Reception

wednesday, may 21, 5 p.m.

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*Linda Meng*

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*Denise N. Gorrell*  
*Yumi M. O’Neil*  
*Iayasha Smith*

Pro Bono Award  
*J. Chris Edwardsen*  
*Eric M. Kearney*  
*Joshua L. Ross*  
*Eric J. Waxler*

RSVP by May 9.  
Invitations have been mailed separately.

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THE MULTNOMAH LAWYER is published 11 times per year by the Multnomah Bar Association, 620 SW Fifth Ave. Ste. 1220, Portland, OR 97204 503.222.3275

An annual subscription is included in member dues or may be purchased for \$20. Letters, award and news items, and announcements are welcome. Articles by members are accepted. All submissions may be edited for length, clarity and style, are published on a space available basis, and at the editor's discretion. Views expressed in articles represent the authors' opinion, not necessarily the MBA's. The publication does not purport to offer legal advice.

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**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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# CALENDAR

For a complete MBA calendar, please visit [www.mbar.org](http://www.mbar.org).

## May

**1**  
Thursday, MBA CLE  
Negotiating Settlement  
Conferences  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

Thursday, YLS PDE Seminar  
See p. 10 for details.

**2**  
Friday, OCDLA Seminar  
Technology and the Law  
Visit [www.ocdla.org](http://www.ocdla.org) for details.

**6**  
Tuesday, MBA Board meeting

**7**  
Wednesday, Oregon Community  
Foundation Annual Meeting  
Visit [www.ocf1.org](http://www.ocf1.org) for details.

**9**  
Friday, June Multnomah Lawyer  
deadline

**13**  
Tuesday, YLS Board meeting

**15**  
Thursday, MBA CLE  
Multnomah County Judges'  
Trial Practices  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

Thursday, MBA Golf Outing at  
Heron Lakes  
See insert or [www.mbar.org](http://www.mbar.org) for  
details.

**17**  
Saturday, YLS Community  
Service Day with DoveLewis  
See p. 10 for details.

**20**  
Tuesday, MBA CLE  
Civil Rights Litigation  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

**21**  
Wednesday, MBA Annual Meeting  
See p. 1 for details.

**26**  
Monday, Memorial Day  
MBA closed

**28**  
Wednesday, MBA CLE  
Enforcing Family Law Judgments  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

Wednesday, MBA East County  
Social  
See Announcements for details.

**29**  
Thursday, MBA CLE – Criminal  
Law for Civil Practitioner  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

Thursday, YLS Drop-in Social at  
Thirst Wine Bar  
See p. 10 for details.

**30**  
Friday, Committee Sign-up  
forms due to MBA office

## June

**2**  
Monday, MBA CLE  
Nonprofit Entities  
See insert or register at  
[www.mbar.org](http://www.mbar.org).

**8**  
Sunday, YLS Board Retreat

**10**  
Tuesday, July/August  
Multnomah Lawyer deadline

Tuesday, MBA Golf Outing at  
Riverside Golf Club  
See insert or [www.mbar.org](http://www.mbar.org) for  
details.

**13-14**  
Friday-Saturday, MBA Board  
Retreat

**19-22**  
Thursday-Sunday, OADC Annual  
Convention  
See Announcements for details.

**21**  
Saturday, SALC Race for Justice  
See Announcements for details.

**25**  
Wednesday, MBF Board meeting

## July

**4**  
Independence Day  
MBA closed

### MULTNOMAH BAR ASSOCIATION

## Pro Bono Pledge

Take a matter that matters

The following firms have signed the 2008 Pro Bono Pledge for law firms. Please go to [www.mbar.org/MBA\\_Pro\\_Bono.htm](http://www.mbar.org/MBA_Pro_Bono.htm) and add your firm to the list.

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Davis Wright Tremaine LLP  
Dwyer & Miller LLP  
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Meyer & Wyse LLP  
Miller Nash LLP  
Parker, Bush & Lane, P.C.  
Perkins Coie LLP  
Quantum Law Group PC  
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Schwabe, Williamson & Wyatt PC  
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Todd Trierweiler & Associates  
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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Defensive Lawyering Revisited Part 1: Beginning the Representation



Five years ago, I did a series of columns on “defensive lawyering.” Then, as now, “defensive lawyering” means managing your practice in a way that tries to reduce civil and regulatory risk by documenting the key milestones in a representation. Then, as now, defensive lawyering has important benefits for both lawyers and clients. For lawyers, it provides a contemporaneous written record of how decisions were shaped if questioned later. For clients, it fosters clear communication on the central elements of a representation.

The need for defensive lawyering has only grown since I wrote the original set of columns five years ago as a variety of second guessers, ranging from disappointed clients to disaffected litigation opponents to regulatory authorities more intensively and routinely scrutinize lawyers’ work after the fact. Meanwhile, the civil and regulatory consequences of “wrong” decisions have continued to accelerate across a spectrum ranging from civil claims for legal malpractice and breach of fiduciary duty, to court-ordered remedies such as disqualification and fee forfeiture, to regulatory discipline that includes suspension as the functional equivalent of bar-imposed monetary fines. Technology has also continued to accelerate the pace of our practices which puts lawyers in situations more often where they need to make quick decisions that can have far reaching effects.

At the same time, the legal landscape here in Oregon has changed markedly in a number of ways since I wrote the original defensive lawyering columns. We have a new set of professional rules and an accompanying new set of formal ethics opinions from the OSB. We have also seen important new decisions from Oregon’s courts on lawyer civil liability like *Reynolds v. Schrock*, 341 Or 338, 142 P2d 1062 (2006). Given the sweep of these changes and the accelerating trends that led me to first write about defensive lawyering, I thought it would be a good time to revisit those themes. As we did five years ago, we will look at defensive lawyering in three monthly installments: at the beginning of a representation, midcourse and at the end.

At the beginning of a representation, I cannot overstate the importance of engagement letters. They offer four key tools for “defensive lawyering.”

**First**, engagement letters allow you to define who your client is. At first blush, it might sound odd that you

need to say who your client will be in a given representation. In many circumstances, it will simply be the person sitting across the actual or “virtual” desk from you. In many other circumstances, however, it will not. Lawyers, for example, often initially meet with more than one person as a part of the background context of a representation, including multiple company founders, a developer and a property owner, one affiliate of a diverse corporate group or several family members. In those situations, it is important to make clear to whom your duties will - and will not - flow so that if any other people in the circle you are dealing with are disappointed later, those people can’t claim that you were representing them, too, and you didn’t do right by them.

In this setting, polite “nonrepresentation” letters to those who you will not be representing should supplement your engagement agreement with your client to let the nonrepresented parties know precisely whom you do and don’t represent. The general rule in Oregon for determining whether a lawyer-client relationship exists was set out in *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990), and has two parts. The first is subjective: does the client subjectively believe that the lawyer is representing him or her? The second is objective: is the client’s subjective belief objectively reasonable under the circumstances? In the face of an engagement agreement clearly defining who the client is, accompanying nonrepresentation letters and conduct consistent with both, it will be very difficult for a nonclient to claim later that the lawyer was also representing him or her.

**Second**, engagement letters offer an excellent venue to define the scope of your representation. As the law becomes more complex, it is more common for businesses and even some individuals to have more than one lawyer handle discrete aspects of their legal needs. If you are handling a specific piece of a client’s work, it can be very useful to set that out in an engagement letter. In that way, you are less likely to be blamed later if another aspect of the client’s work, for which you were not responsible, goes sour. Defining the scope of the representation can also offer a practical tool in managing conflicts by structuring the relationship in a way that eliminates conflicts in the first place. If a representation is structured in a way that eliminates adversity between the positions of the clients involved, it may be possible to take on work that might otherwise have been

# ANNOUNCEMENTS

### Sign up for 2008-09 MBA and YLS Committees

Please see insert for the committee signup form. Meet new people and expand your personal networks and perspectives by serving on a committee.

### 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.mbar.org](http://www.mbar.org). The old practice areas will be removed soon.

### East County Social Scheduled for Wednesday, May 28, 4-6 p.m.

If you live or work in East Multnomah County and are a member of the MBA, we hope you will join us for our Annual East County Spring Social. This meet-and-greet event will take place at the Warren Allen firm, located at 850 NE 122nd Ave., on Wednesday, May 28 from 4-6 p.m. Appetizers will be provided. This will be a great opportunity to meet other east county members, share ideas and socialize. Presiding Judge Jean Maurer will share information about the new east county facility.

### 2008 Campaign for Multnomah CourtCare April 21 to May 9

Multnomah CourtCare is a free, drop-in childcare center for young children whose parents must go to court. Please help raise the \$100,000 needed to keep Multnomah CourtCare open. In addition to the donation card you will receive in the mail, there is also a donation form in this issue of the *Multnomah Lawyer*.

precluded outright or that at the least would have required waivers. An engagement letter is the perfect place to document structural arrangements of this kind. Another reason to document the scope of your work, especially with a client whom you do not otherwise regularly represent and may be opposite in the future, is that it will help define what the “matter” was under the former client conflict rule if you or your firm do indeed find yourselves opposing a former client in the future.

**Third**, if you need a conflict waiver to undertake the work, you need to also document the client’s consent up front. RPC 1.7(b)(4) requires that each client’s consent (both the one being represented and the one being opposed) must be “confirmed in writing.” This is not simply a regulatory requirement. Both the Oregon Supreme Court (see, e.g., *Kidney Association of Oregon v. Ferguson*, 315 Or 135, 142-44, 843 P2d 442 (1992)) and the Oregon Court of Appeals (see,

### Multnomah County Family Law Group

The next lunch meeting will be held on May 19, from 12-1:15 p.m. in the US Bancorp Tower; 111 SW 5th Ave., conference center on the main lobby floor, near the far right elevators as you face Burnside. Attorney Gil Feibleman will speak to the group about better client relations and full payment of attorney fees. Please contact David Bean at [dib@meyerwyse.com](mailto:dib@meyerwyse.com) if you would like to receive email invitations to future meetings.

### ABA Initiative in Kosovo Seeks Consultant Candidates

The ABA Rule of Law Initiative program in Kosovo seeks assistance in identifying possible candidates for a new consultant opportunity. The ABA will be conducting a comprehensive review of the Kosovo legal system to determine its capacity for instituting a regulatory bar. For more information or to apply, visit [www.abanet.org/rol/opportunities/positions.shtml](http://www.abanet.org/rol/opportunities/positions.shtml).

### FBA Board Member Openings

The Oregon Chapter of the Federal Bar Association is now accepting nominations or applications for board membership. If you or someone you know would be interested in serving on the board, please contact Katherine Heekin at [katherine@heekinlawoffice.com](mailto:katherine@heekinlawoffice.com).

### International Human Rights Specialist Joins Willamette University Clinical Law Program

Willamette University College of Law is pleased to announce that Gwynne Skinner will join the school’s Clinical Law Program as assistant professor of clinical law this fall.

A former criminal prosecutor and experienced civil litigator, Skinner practiced law for 12 years before

leaving her litigation practice in 2003 to found the Seattle-based Public Interest Law Group PLLC, where she engaged in impact litigation in the areas of international human rights and civil rights. In 2005, she was named one of Seattle’s top civil rights lawyers.

Skinner will launch the law school’s first International Human Rights Law Clinic in August. This new clinic will complement the College of Law’s specialized Certificate Program in International & Comparative Law, which was designed to prepare students to meet the challenges of legal careers in an increasingly global profession.

The June 10 luncheon will feature Multnomah County Judge Youlee You, who will speak about her path to the bench.

The cost is \$14, by cash or check only at the door. For more information, please contact Sarah Krick at 503.239.7273 or [kricklaw@msn.com](mailto:kricklaw@msn.com).

**OCDLA’s 29th Annual Conference June 12-14, Seventh Mountain Resort**  
This annual event features three days of CLE seminars and social events. For further information, please visit [www.ocdla.org](http://www.ocdla.org).

communicating current rates can avoid misunderstandings with clients once bills come due. Moreover, reserving the right to change your rates in the future will generally help you to avoid having to go back to the client for specific consent (as opposed to simple notice of adjustments) because the ability to modify the rate as time goes by was built-in up front. Absent that kind of mechanism, OSB Formal Ethics Opinion 2005-97 counsels that “[a] modification of a fee agreement in the lawyer’s favor requires client consent based on an explanation of the reason for the change and its effect on the client.” (*Id.* at 2.)

Engagement letters are not an insurance policy - but, they can offer key tools for defensive lawyering.

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](mailto:mark@frllp.com).

e.g., *PGE v. Duncan, Weinberg, Miller & Pembroke, P.C.*, 162 Or App 265, 275-78, 986 P2d 35 (1999)), have noted that the fiduciary duty of loyalty underlies the regulatory duties expressed in the conflict rules. As such, an unwaived conflict translates very directly into a potential breach of fiduciary duty claim. When a conflict waiver is necessary, either weaving it into the engagement letter or providing it as a stand-alone supplement offers a way to document both your disclosures to the client to be represented (along with a separate waiver letter to the client to be opposed) and the client’s consent.

**Fourth**, an engagement letter is a great opportunity to confirm both your existing rates (and other charges) and to preserve your ability to modify your rates. (Some fee agreements, such as contingent fees for personal and property damage cases falling under ORS 20.340 and flat fees denominated as “earned upon receipt” governed by OSB Formal Ethics Opinion 2005-151 and associated court decisions, are required to be in writing.) Clearly

# MBA Board Elects Officers

The MBA Board elected the following officers to serve a one-year term beginning July 1.



**Michael Dwyer**, currently President-Elect, will become President of the MBA. A partner with Dwyer & Miller, his practice focuses exclusively on mediation and negotiation. He came to Portland in 1989 and joined Cosgrave Vergeer Kester, became a partner in 1992, and in 1993 opened his own firm, which specialized in personal injury, psychological torts and family law. He previously worked in Los Angeles for a large civil firm and as an Assistant US Attorney, and in Honolulu as a criminal defense attorney. He is a graduate of UCLA and Loyola of Los Angeles Law School.



**Leslie N. Kay** was elected President-Elect. Kay, Regional Director for the Multnomah County Office of Legal Aid Services of Oregon, attended Harvard and Willamette Law Schools where she received her juris doctor degree. She practices poverty and civil rights law.

Kay currently serves as Treasurer and is on the MBA Budget and Finance Committee. Previously, she was on the MBA Equality and Court Liaison committees. She also is a member of the Executive Committee of the OSB Elder Law Section and has been a member of the OSB House of Delegates, Chair of the OSB Affirmative Action Committee and Chair of the OSB Persons with Disabilities Committee. She also served on the OCDLA amicus brief review committee, and on the board of the Miracle Theater (Teatro Milagro).



**Michelle S. Druce**, Wilshire Credit Corporation-Merrill Lynch, will serve as Secretary. She graduated from Willamette University College of Law in 1990 and was admitted to the OSB that year. Her practice areas are residential mortgage lending and servicing, consumer credit, consumer financial services and state and federal regulatory compliance.

Druce is on the MBA Budget and Finance Committee and serves on the Multnomah Bar Foundation Board. She chaired the MBA CLE Committee from 2003-04 and was president of the MBA YLS Board from 1997-98. She served as secretary of the OSB Business Law Section and has been on the Executive Committee since 2005. She chaired the OSB Business Law Section Financial Institutions/Commercial Finance Committee and served as commissioner on the ABA's Commission on Domestic Violence.



**Lisa M. Umscheid** will serve as Treasurer. She graduated from Willamette University College of Law in 1992 and was admitted to the OSB that year. Since 2006 she has been special counsel at Ball Janik LLP. Her legal expertise is in employment law counseling, employment litigation, labor law and general government law. Prior to joining Ball Janik, she was a senior attorney at Metro and previously was an employment and business litigation associate at Garvey Schubert Barer.

She serves on the MBA CLE and Budget and Finance committees. She chaired the MBA Equality Committee from 2004-06. She is on the OSB Leadership College Advisory Board and the OSB Affirmative Action Committee. She is a member of the OSB Government Law Section

## RICHARD G. SPIER ARBITRATOR & MEDIATOR



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**Kell Alterman & Runstein welcomes Trina Montalban** whose addition to our firm strengthens the services we offer. Trina's practice focuses on estate planning, business and land use law. Trina also gained ample experience in recycling and waste management while working for Mitsubishi Motors. Trina is a 2007 graduate of George Washington University. Ms. Montalban is admitted to practice law in Oregon, and a member of the Oregon State Bar, Multnomah Bar Association and the Imprint Program.

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# AROUND THE BAR



John Benazzi

## DAVIS WRIGHT TREMAINE

**John Benazzi** has joined the firm as an associate in its real estate and land use practice.

Benazzi also actively serves the community, working as a board member since 2006 for CASA for Children, which is committed to advocacy for children who have been abused or neglected and become wards of the juvenile court system.



Steve Bush



Katherine VanZanten

## SCHWABE WILLIAMSON &amp; WYATT

**Steve Bush** and **Katherine VanZanten** were recently selected as Fellows for the 2008 OSB Leadership College. The mission of the OSB Leadership College is to recruit, educate and retain emerging leaders in the legal community and the OSB. Fellows commit to a one-year program consisting of five three-hour sessions.

Bush, an associate, focuses his practice on the Oregon wine industry. Additionally, Bush has significant products liability experience pertaining to asbestos, motor vehicles, tires, industrial equipment, medical devices and pharmaceuticals.

VanZanten, a shareholder, is a member of the firm's tax and estate planning practice group where she assists businesses and families with wealth

preservation planning needs. She has significant experience in developing business succession strategies that include multi-tiered family businesses, charitable remainder trusts and establishing charitable organizations.

## BARRAN LIEBMAN

**Tamara Russell** joined the firm as a partner, specializing in litigation.

Russell's litigation practice includes representing employers in both federal and state courts, as well as handling agency charges before BOLI and the EEOC. She conducts internal workplace investigations for private- and public-sector clients. She frequently speaks in the community and trains clients on numerous topics, including drug and alcohol issues, workplace harassment and discrimination and family medical leave laws.



Michael O'Connor

**GARVEY SCHUBERT BARER** **Michael O'Connor**, an owner in the Portland office of the firm, was recently named the Oregon Club of Portland's "Duck of the Year." The annual award is presented to an outstanding club member, honoring his or her service and dedication to the booster organization throughout the year.

O'Connor is an owner in the firm's Litigation Group. His practice focuses on resolving business, employment and commercial litigation disputes, with specific experience in class action and non-competition agreement trial work.

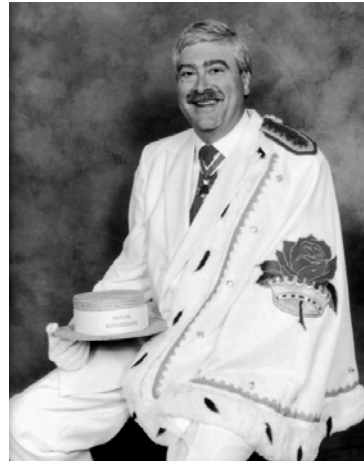


Laura Schroeder

**SCHROEDER LAW OFFICES, PC** **Laura Schroeder** was elected to the Board of Directors for the United States Committee on Irrigation and Drainage, a professional society whose multi-disciplinary membership shares an interest in the planning,

design, construction, operation and maintenance of irrigation, drainage and flood control works; agricultural economics; water law; and environmental and social issues affecting irrigated agriculture.

Schroeder received the 2008 Time Dedication Award at the 60th Anniversary Dinner of the Oregon Groundwater Association.



Peter Glazer

**GLAZER & ASSOCIATES** "The Royal Rosarian Honorary Knighting Ceremony honors worthy persons from many different backgrounds," says Prime Minister **Peter Glazer**, Lake Oswego lawyer and President of the Clackamas County Bar Association.

This year, the Royal Rosarians will confer honorary knighthood on the Chief Justice of the Oregon Supreme Court, Paul J. De Muniz; the first woman on the Oregon Court of Appeals and then on the Oregon Supreme Court, Senior Judge Betty Roberts; Senior US District Court Judge Robert E. Jones; Multnomah County District Attorney Mike Schrunk; Clackamas County District Attorney John Foote; Clatsop County District Attorney Josh Marquis; and Senior Judges Sid Brockley and Ray Bagley. Check [www.royalrosarians.org](http://www.royalrosarians.org) for details.

## ATER WYNNE

**Bill Prentice** joined the firm's Energy Group, as Of Counsel. Prentice has nearly 20 years experience providing counsel to major Northwest power companies. He advises energy clients on complex transactions involving wind, solar, geothermal, natural gas, coal and hydro power projects.



Aaron Harmon

## BALL JANIK

**Aaron Harmon**, an associate, has successfully completed the Leadership in Energy and

Environmental Design (LEED) certification program sponsored by the US Green Building Council (USGBC). According to the USGBC's Accredited Professional directory, Harmon is the only LEED certified attorney practicing in Oregon.

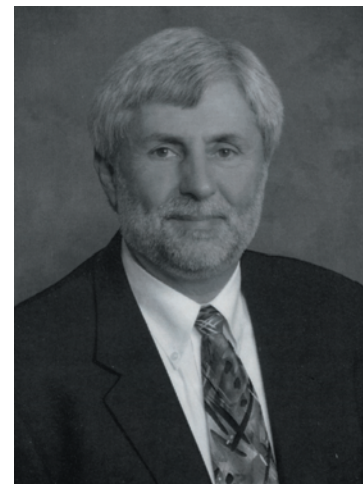


Dan Lindahl

## LINDAHL LAW FIRM

**Dan Lindahl** announces the opening of the Lindahl Law Firm, PC. Lindahl was formerly a shareholder at Bullivant Houser Bailey, where he chaired the firm's appellate department. The new firm specializes in appellate litigation in the Oregon and Washington appellate courts and the Ninth Circuit Court of Appeals.

The Lindahl Law Firm welcomes referrals from trial lawyers interested in associating with an appellate specialist. Lindahl may be reached at 121 SW Morrison St. Ste. 1100, Portland OR 97204. His phone is 503.241.4099; fax 503.241.5013; email: [dan.lindahl@lindahllawfirm.com](mailto:dan.lindahl@lindahllawfirm.com); Web site: [www.lindahllawfirm.com](http://www.lindahllawfirm.com).



Sam Imperati

## SAM IMPERATI

Mediator **Sam Imperati** received the Oregon Mediation Association Sid Lezak Award of Excellence for Outstanding Service to the Profession of Mediation in Oregon. He spoke at the ABA Dispute Resolution Conference on Impasse Breaking, and his article, "If Freud, Jung, Rogers, and Beck were Mediators, Who Would the Parties Pick and What are the Mediator's Obligations?" was published in Volume 43 of the *Idaho Law Review*.



Thomas Ped

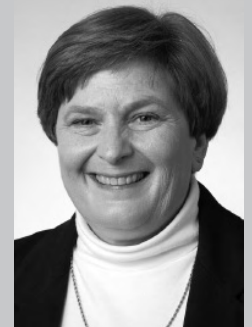
**WILLIAMS KASTNER & GIBBS** Attorney **Thomas Ped**, who practices in construction, general litigation, professional liability and product liability, has been elevated to member (partner) status in the firm.

*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](mailto:carol@mbabar.org).*

## In Memoriam – Linda Johanssen

Portland lawyer Linda R. Newman Johanssen died March 11, after a three-year battle with ovarian cancer. She was 57.

Linda was born on Sept. 11, 1950, in Aurora, Colorado, and was raised in Lake Oswego. She attended Lewis & Clark College for her undergraduate degree, where she met her future husband Cliff. After several years working in the business world, Linda discovered her passion for bankruptcy law and returned to her alma mater to attend Lewis & Clark Law School. She earned her law degree at age 39, joined the OSB in 1990 and began practicing in the bankruptcy area. She worked as a bankruptcy associate in several firms before becoming a partner at the firm now known as K&L Gates. In 2006, Linda was honored with an award of merit by the Debtor-Creditor



Section of the OSB for her work in the field of bankruptcy law.

Linda was passionate about many things in life, including white-water rafting, mystery novels and music. She devoted time to nonprofit organizations such as the Cascade AIDS Project, Habitat for Humanity and Outside In.

She is survived by her husband of 37 years, Cliff, her daughters Brynne and Amelia, and grandson Harper.

## Tips from the Bench

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

### The pleadings are not “settled” and trial is fast approaching

In your civil case you have been through a round or two of ORCP 21 motions, following each of which, there has been an amended pleading. We all know how long it takes to go through each of those processes. And all the while, the case is getting older and older, and the trial date is fast approaching. How many of you have found yourselves needing to file further Rule 21 motions on the eve of trial?

It is frequently pretty easy to deal with simple last minute motions on the day of trial, especially if any ruling can be amended by interlineating a previous pleading. But with more extensive motions, it can be a real problem, especially when adverse counsel needs to respond in detail to the motions, and may need to file an amended pleading after the order. How can these things be done on the day of trial?

UTCR 5.030 gives an opposing party not less than 14 days from service of a motion to respond to the motion. The rule does not contain an exception if you are on the eve of trial.

Tip: If you find yourself in this situation, I suggest you do any or all of the following:

- Do not mail your motion to the other side. Use a faster mode of service. This will save you the three additional days the other side has to respond pursuant to ORCP 10 C.



- Ask to have your motion heard on an expedited basis, instead of by the regular scheduling process. (Be aware that in Multnomah County the judges handling expedited motions have, for some time, taken the view that counsel's failure to plan does not constitute an emergency warranting special access to the resources of the court. A motion for expedited hearing is not likely to be granted if you simply weren't paying attention to the calendar.)
- Ask the judge to shorten the 14 day response time for the other side. UTCR 1.100 allows the court to grant relief from a rule (such as UTCR 5.030) on good cause shown to prevent a hardship or injustice.
- Schedule a conference with the presiding judge to deal with the approaching trial date or assignment to a judge for motions.

If all of these things fail, you just might find yourself without the opportunity to have your motions heard, and you may be going to trial on pleadings you believe are not proper.

## Linda Meng Selected for MBA Merit Award

Linda Meng will receive the 2008 MBA Award of Merit at the Annual Meeting, Dinner and Judges Reception on May 21.

Meng was asked to chair the MBA Equality Committee just one year after she joined the committee. It is not surprising when you consider her leadership capabilities and past efforts to diversify the local law profession. For several years, she co-chaired the OSB First Year Honors Program with Dave Bartz, Schwabe Williamson & Wyatt. During this year's controversy within the bar's diversity community, she represented the Equality Committee while working with other groups focused on diversity. Her interest and capable skills added to the success of the joint retreat of the OSB Affirmative Action Committee, OSB Diversity Section and the Oregon Minority Lawyers Association. She believes that it is “urgently important to get the bar's demographics in line with our nation's and clients’



demographics ... it is crucial to our society.”

Nancie Potter, MBA Board Liaison to the Equality Committee, described Linda's involvement. “With the recent changes in the OSB Affirmative Action Department, it's been even more critical for us to take a leadership role in this area and Linda has more than risen to the challenge. Her wisdom and judgment have been a calming influence during a sometimes highly charged process, while



By Heidi Moawad, Multnomah County District Attorney's Office and Court Liaison Committee member.

### Report by Presiding Judge Jean Kerr Maurer

- East County Justice Center Update: a national architecture firm, HDR and local architect Stuart Emmons are on board to design a facility that will contain spaces for the Circuit Court, Multnomah County Sheriff's Office, Gresham Police Department and the Multnomah County District Attorney's Office. The project will take approximately 12 months for planning and 12 months for construction. Currently, the plans include four courtrooms with a design capability to build on two additional courtrooms if future use requires the expansion. The new facility will be located at SE 185<sup>th</sup> and Stark, near the MAX line.

By statute, all cited misdemeanor and traffic violations occurring east of 122<sup>nd</sup> Ave. go to the Gresham Court; there is no “hard and fast line” for jurisdiction over civil matters. The court facilities will be designed to handle out-of-custody misdemeanor trials, traffic violations, night court, FED, small claims court and filings.

The jurors will come from a county-wide pool, but report directly to the new facility (unlike current practices, where jurors report downtown, and then are told to report to the Gresham Court for a trial date later in the week). There may be an opportunity for *ex parte* matters.

her passion and empathy kept the MBA's committee focused on the vital work at hand. Linda has worked tirelessly to promote diversity in an effective, persistent way.”

Other past contributions to the legal profession include her years on the MBA Court Liaison Committee and most recently as the immediate past president of the Oregon City Attorneys Association. She is on the current slate for the OWLS Board of Directors.

- New Civil Motions Fees are now in effect. If an attorney shows up for motion hearings without the fees having been paid, the motion fee will be addressed with the party at the motion hearing.

### Web site Update

Judicial profiles are posted after the MBA receives each judge's approval.

### Court Questions by MBA Members

The Web site and e-newsletter solicits court-related questions from MBA members for the committee and court to answer.

### Tips from the Bench

As mentioned last month, Judge Wittmayer currently authors the monthly column but the July / August 2008 issue will be his last. A subcommittee may be formed to assist with creating topics for the “Tips” column to assist any judges who may volunteer to write the columns. It was noted that Judge Wittmayer's columns focused primarily on civil matters and it was suggested that three judges could rotate, with columns focusing on criminal, civil, family law and probate issues. This would alleviate some of the workload and have the potential of increasing the interest in the column itself. Another idea proposed was that committee members could interview a judge for tips and write the column to lessen the burden on the judges. Topics might be generated by the membership through the survey.

Meng, who is the City Attorney for the City of Portland, attended Towson State University and received her juris doctor from the University of Maryland Law School in 1979. Before she was appointed as City Attorney, her responsibilities with the city included advising the city's transportation, finance and housing bureaus, as well as miscellaneous litigation, including ballot measure litigation, condemnation and contract disputes.

### CourtCare Report

April 21 started the three-week annual fundraising campaign. The goal is to raise \$100,000. There will be Karaoke for CourtCare, and other competitions among members and firms.

### New Committee Member Solicitation

The May newsletter will solicit members for committee membership. A third of the Court Liaison Committee's members will be rotating off, and new members are sought.

### Committee Year-End Report

The Chair will write a report describing committee activities to the MBA Board at the end of the committee year. The information provided from this year-end report is used to summarize the committee's work for the MBA Annual Report, which is included as an insert in the September newsletter.

### Bar Liaison Reports

- **Clackamas County:** Fliers were recently circulated for a “Roast” of Dale Jacobs, to be held at the Oswego Lake Country Club.
- **Clark County:** The bar Web site is [www.ccbawashington.com](http://www.ccbawashington.com). The Clark County Superior Court Web site is [www.clark.wa.gov/courts/superior](http://www.clark.wa.gov/courts/superior). The 10th Superior Court Judge position for Clark County will have an effective date of September 1. The Governor's office is currently soliciting applications from attorneys interested in the position.

The award is presented for outstanding service and enduring commitment to the MBA's mission of promoting justice through service, education or leadership to the MBA, the legal profession and the community.



# Profile - The Honorable Timothy J. Sercombe Oregon Court of Appeals Judge

By Scott Shorr, Stoll Berne, and edited by Stephen Madkour, Multnomah County Attorney's office and Court Liaison Committee member. Edited and reprinted with permission from the OSB Appellate Practice Section.



Judge Timothy J. Sercombe

**J**udge Timothy Sercombe began life in the middle of the country and has lived on both coasts. Born in Columbia, Missouri, his family moved to Connecticut where he attended junior high and high school. He graduated from Evanston's Northwestern University in 1971, concentrating on political science and history.

He was always drawn to law, but initially was discouraged from a legal profession by his college professors. One professor was concerned that the future judge was already a "linear" thinker and that law would only make him more so. To dip his toes in the water, Sercombe worked as a paralegal at the Sidley Austin firm in Chicago. Rather than stifle or dissuade him, the experience confirmed his ambition, as he enjoyed the experience of working in the legal field.

Befitting his Midwest roots, Judge Sercombe is straightforward and polite. His plainspoken style, however, does not hide his curious mind. It was that curiosity which first brought him to Oregon in the mid-seventies. He saw Oregon as a place for progressive and new ideas

that would challenge his thinking. He enrolled in the U of O Law School, where he graduated first in his class in 1976.

Judge Sercombe began his legal career as a clerk for the Oregon Supreme Court, initially with Justice Kenneth J. O'Connell. He fondly recalls Justice O'Connell as an academic-type, constantly interested in discussing current ideas. Justice O'Connell, who wanted written opinions to be more gender neutral, was more likely to talk with Sercombe about current issues of feminism than to discuss the latest draft of an opinion. Justice O'Connell retired mid-way through Judge Sercombe's clerkship and Sercombe went to work for Justice Berkeley "Bud" Lent. Judge Sercombe finished his clerkship helping Justice Hans A. Linde with a few opinions as well and has sought out Justice Linde for both legal advice and mentoring many times since then.

Following his clerkship, Judge Sercombe started at the Harrang Long firm in Eugene where he developed a practice representing local governments. He was the lead attorney for the City of Eugene

for years and also represented other cities and counties, where he developed skills in municipal law and appellate work. In 1991, Judge Sercombe moved to the Preston Gates firm where he further developed his municipal, land use and appellate practice. He remained in private practice until March 2007, when he was appointed to the Court of Appeals by Governor Ted Kulongoski.

As a judge, Sercombe has found the court to be far less "isolating" and "ivory tower" than he initially feared. He enjoys the intellectual camaraderie of the court, which he describes as "very collegial" with "no rancor." Judge Sercombe still feels as if he is settling into the job, which he sees as a two-year process before he feels he can reach a comfort level. While he draws upon his past experience in land-use and municipal law on occasion, he is new to many of the substantive areas of the court, such as criminal law, workers compensation and juvenile law. In addition to the new substantive areas, Judge Sercombe believes the transition

is difficult because of the different time demands on a judge as compared to private practice.

For advice, Judge Sercombe suggests attorneys focus their briefs as much as possible. While he readily admits that as an attorney he would repeat an argument many times to ensure his point was made, he finds those briefs more fatiguing as a judge, who has to read countless briefs. He urges attorneys to make their points concisely in a shorter argument section rather than many times over. He is very impressed with his fellow judges and is confident that they will spot an argument made well once. He is also impressed (and perhaps surprised, based on his pre-court notions) by the amount of vetting that an opinion gets from the clerks, staff attorneys, support staff and the judges themselves.

For oral argument, Judge Sercombe suggests that attorneys focus more on preparing to address the one or two core issues that the court is likely to address. There is no time for a long, prepared speech at argument. Attorneys should know the record and the law and strive

to communicate the core points of the appeal. He also suggests acknowledging weakness, but directly addressing it when an issue is not conceded.

Judge Sercombe has twin boys who are currently seniors in high school, a daughter in college, and an adult daughter who is a lawyer at a large firm in New York. Sercombe's wife, Jane Van Boskirk, is a longtime actor/producer and founder of the Oregon Repertory Theater in Eugene. Outside of work, Judge Sercombe and his wife enjoy theater, music and current events/politics. Judge Sercombe is also active in his Portland church, where he is a member of the choir.

Judge Sercombe's judicial style sounds much like his personal style: polite, direct and intellectually curious.

## Jeffrey M. Batchelor to Receive 2008 MBA Professionalism Award

The MBA is pleased to announce that **Jeffrey M. Batchelor** is the recipient of the 2008 MBA Professionalism Award.

Batchelor is a partner at Markowitz, Herbold, Glade and Mehlhaf, where he focuses his practice on appellate work.

His peers have praised his professionalism and integrity and, as one colleague wrote, his "commitment to fairness and respect for every participant in a legal dispute. He serves as a mentor to young lawyers and was noted for being a role model to practicing lawyers of all ages." Oregon Supreme Court Justice Paul J. De Muniz commented that he "has earned universal respect from the Oregon bench for his competence, professionalism and unmatched integrity."

One peer and supporter of Batchelor's nomination said: "I believe the exemplary trait of character that has motivated and governed Jeff's conduct in the practice of law has been his compassion for others. Time and again, over the years ... Jeff has acted, or refused to act, in situations where other lawyers would have been tempted to do otherwise."

Another said: "He has practiced law at the highest level of ethics and integrity. His professional and

personal ethics are recognized and highly regarded by members of the bar and bench ... Mr. Batchelor has consistently treated colleagues, adversaries, the bench, staff and his clients with respect."

As an appellate specialist, he regularly represents clients in commercial, employment and personal injury litigation, having briefed and argued more than 200 appellate cases. Drawing on this background and his experience as a pro tem circuit judge, he has worked as a mediator since 1995 and as an arbitrator since 1989. He has served as a special master in federal court and as a discovery referee in state court.

Many of Batchelor's cases have made new laws in the Oregon courts. His advocacy in *McGarty v. Staudenraus* resulted in the refinement of three torts under Oregon law: intentional interference with economic relations, intentional infliction of severe emotional distress and wrongful discharge. In another case, *Portland 76 Auto v. Unocal*, the Ninth Circuit Court of Appeals agreed with his construction of the Robinson-Patman Act and reversed a multi-million dollar antitrust judgment against his client. In a third high-profile case, *Pool v. VanRheen*, the Ninth Circuit Court of Appeals affirmed the



dismissal of a Section 1983 claim that his client had violated the first amendment rights of a commander in the sheriff's office.

Batchelor attended Brigham Young University and Oklahoma State University on wrestling scholarships, and competed in the 1968 Olympic trials. A native Oregonian, he returned to the state in 1969 to attend Willamette University, where he was editor-in-chief of the *Willamette Law Review*.

The MBA Professionalism Award honors men and women who hold the highest ethical standards and exemplary conduct in the practice of law, and make the practice of law more enjoyable.

### President's Column

*Continued from page 1*

The Supreme Court hasn't developed published reports, but has developed initiatives and realized real progress on them. For example, Chief Justice De Muniz's "State of the Courts" report issued last January reflects that, in 2007, the Supreme Court decided a record 74 percent of its cases within six months of argument and submission, and decided 40 percent of its cases within three months of argument. And the report highlights the critically important progress recently made, in light of the Chief Justice's leadership, in the relationship between the legislature and the judicial branch, in judicial branch funding, and the judicial branch's "eCourt" program (starting first in our appellate courts) that will transform the operations of the judicial branch, which will benefit Oregonians in many important ways.

Both appellate courts, given the limited resources available to them, work extremely hard to serve the people of Oregon well. And, again, both "Chiefs" – who are really excellent leaders – are committed to working hard each year to have their respective courts meet that goal better. But the task is not easy. The Court of Appeals is one of the country's busiest intermediate appellate courts, yet its staffing hasn't changed significantly in 32 years (including the number of judges). In 2007, each of that court's judges participated in more than 1,000 cases and the court authored a record 572 written opinions. In 2007, the Supreme Court decided more than 1,200 petitions for review and issued 80 written opinions, many addressing the state's most difficult and important legal issues of the

day. Continued critical thinking needs to be done by the bench, bar, legislature and public to ensure that our appellate courts properly serve their essential public function well now and into the future and have the resources needed to do that. I hope that many, if not all, of you will take part in that effort.

And that thought brings me back to Measure 51 which, if you aren't familiar with it, asks voters to "cap" contingent fees on all kinds of cases to 25% of the first \$25,000 recovered and 10% of any recovery above \$25,000. As it has with other initiatives that affect justice or our judicial system generally, the MBA Board will decide soon its position on Measure 51. I'm reasonably sure that the board will vote to oppose the measure at its May 6 meeting, as other legal associations and groups have already done or will do in the near future.

The proponents of the measure are very well funded and reliable polling shows that the measure has (at least initially) strong support. So, I encourage you to vigorously oppose the measure, not just with your vote, but with your time and money. And I especially encourage you to take the time to reach out to non-lawyers and help them understand why this measure is an insidious and ill-advised concept. Now, as before, I believe that MBA members must be leaders (within our profession and community) in defeating every initiative that threatens the independence of our judiciary and fair access to justice for all Oregonians. If you share my view (and soon, I believe, the board's collective view) that Measure 51 is such an initiative, please do your part to help defeat Measure 51.

## YLS Board Elects Officers

The following YLS Board members will serve as officers for the term beginning July 1.



Andrew M. Schpak



Justin D. Leonard

**Andrew M. Schpak**, currently President-Elect, will advance to the position of YLS President. He graduated from Cornell Law School and was admitted to the OSB in 2004. He practices in the area of employment and labor law at Barran Liebman. Schpak has been on the board since 2006 and served as chair of the YLS Membership Committee in 2005-06. He chaired the MBA Fun Committee in 2006-07, which raises money for CourtCare at the WinterSmash event. He is active in the ABA as the Vice-Chair of the ABA-YLD Labor and Employment Committee, a YLD Fellow to

the ABA Equal Employment Opportunity Committee, and a member of the planning committee for the 2006 ABA-YLD Spring Meeting in Portland. He also serves as President of the Board of Directors of Film Action Oregon and is a board member of NW EEO / Affirmative Action Association.

**Justin D. Leonard** was elected to the position of YLS President-Elect. He graduated from Lewis & Clark Law School and was admitted to the OSB in 2003. He practices in the areas of bankruptcy and creditors' rights and complex litigation/insurance recovery at Ball Janik. Leonard, on the board since 2007, was a founder and is a current member of The YOUthFILM Project. He served as chair of the YLS Service to the Public Committee in 2006-07 and chaired the YLS Community Law Week's Fundraising and Publicity subcommittees in 2004-06. Leonard regularly volunteers for the Legal Aid Bankruptcy Clinic and has mentored for the MBA YLS Imprint Program since its inception. He was recently selected as a 2008 OSB Leadership College Fellow and currently serves on the OSB House of Delegates. He is a past-president of the Mt. Tabor Neighborhood Association Board and served as commissioner for the Oregon Health Resources Commission.

**Katie A. Lane** will serve as YLS Secretary. She graduated from Lewis & Clark Law School and was admitted to the OSB in 2003. She is a Contract Negotiator at PGE for its Information Technology Department. Lane has been on the board since 2006, serving as Treasurer in 2007-08. Prior to joining the board, she chaired the YLS Service to the Public Committee in 2005-06 and Community Law Week in 2005. She is a founding member of The



Katie Lane



Klarice Benn

YOUthFILM Project and is a mentor with Lewis & Clark Law School. Lane also serves on the Board of Directors of Live Wire! Radio.

**Klarice Benn** will serve as YLS Treasurer. She graduated from the University of North Carolina School of Law and was admitted to the OSB in 2003. She is with Abbott & Paris and practices in the areas of construction defects, products liability, professional liability and insurance defense. Benn has been a member of the YLS Board since 2007 and a member YLS Service to the Public Committee from 2003-07. She implemented that committee's Imprint Program in 2004, and was responsible for the program from 2004-07.

## YLS Selects its Award of Merit Recipients

Three YLS volunteers will receive awards for their contributions to the YLS at the MBA Awards Dinner on May 21.



**Denise Gorrell** serves on the YLS Pro Bono Committee. She enthusiastically planned and organized a fundraising event, along with Neil Olson, Will Glasson, Sara Scott and Nick Kampars, at a local wine store that raised money to publish the committee's Juvenile Rights and Domestic Violence handbooks. This was the first time the committee had planned an event of this caliber and more tickets

were sold for the event than expected, so a significant amount of money was raised.



**Yumi O'Neil** has been on the YLS Professional Development and Education Committee for three years. She attends every meeting, often volunteers to be secretary and always offers helpful contributions and ideas, and is a beacon of positive energy. This year, Yumi co-chaired the committee's "You be the Judge" professional development seminar, along with Rebecca Thiebes, where her position as the Multnomah

County Circuit Court Analyst proved to be an invaluable resource. Yumi's job with the court also reflects her passion for professional development. She supervises the education, training and professional development of the court staff and judicial clerks and has created the training curriculum she uses.



**Iayasha Smith** has served on the YLS Service to the Public Committee for four years. She has worked passionately on multiple



## YLS DoveLewis Volunteer Day

Volunteer at the Tails and Ales Dog Wash to benefit DoveLewis! Please join the YLS Service to the Public Committee at the Lucky Lab Brew Hall, located at 1945 NW Quimby, on **Saturday, May 17 from 10:45 a.m. - 1:15 p.m.** We'll join animal lovers from all over the Portland area to get dirty dogs squeaky clean. Family, friends and children over the age of 16 are welcome to join us. Volunteers are needed to wash and dry dogs as well as help with registration. To volunteer at the Tails and Ales Dog Wash or for more information, please email Gina Delahunt at [gdelahunt@ueainc.com](mailto:gdelahunt@ueainc.com).

## YLS Members Volunteer at Humane Society

The YLS Service to the Public Committee sponsored two successful volunteer events at the Oregon Humane Society in April. About 20 animal-loving volunteers socialized with dogs and cats to give the animals the attention they need and the social skills to help them find new homes. Volunteers reported having a great time and were appreciative of the opportunity to work at the shelter. All, including the animals, enjoyed themselves. One more session is scheduled for May.

## YLS Celebrates March Madness



Amy Vandebrooke, Jennifer Crooks, Winter Drews and Kim Griffith at the March 25 Drop-in Social

projects over the years. This year, she is part of a team planning courthouse tours for the public during Community Law Week. She is on the subcommittee organizing Community Project Days, providing discreet volunteer opportunities for lawyers with local nonprofits

including the Oregon Food Bank, Blanchet House, DoveLewis, Oregon Human Society, Start Making a Reader Today (SMART), Friends of Trees and SOLV. These projects help the MBA make a significant positive impact on our community.

## Join the YLS at Thirst wine bar!

The MBA YLS will hold a Drop-in Social at Thirst Wine Bar (315 SW Montgomery St.) at RiverPlace from 5:30-7 p.m. on Thursday, May 29. This casual get-together is a great opportunity to meet and network with young lawyers in the area. Gourmet cheeses will be provided to complement the wine. Thirst validates parking for the garage on Montgomery.

Grab your friends and co-workers and head down to RiverPlace!

## Eric Waxler Receives the MBA Pro Bono Award of Merit

Eric Waxler, of Zipse Elkins & Mitchell is the 2008 Pro Bono Award of Merit recipient, which is awarded to attorneys who have set an example for the legal community by their dedication to providing pro bono services to those clients who are unable to afford them. Eric represents low-income domestic violence survivors in contested restraining order hearings through Legal Aid's Domestic Violence Project. Since 1999, when he became an attorney, he has worked on and promoted pro bono initiatives and task forces.

Waxler is a former YLS President and YLS Pro Bono Committee Chair. He was also an inaugural committee member of the

coordinating committee that created the statewide Pro Bono Fair (now in its fourth year), and was a member of the OSB committee that created a Web-based interactive Firm Pro Bono Policy Toolkit.

Most recently, Waxler was the driving force behind the creation of the MBA Pro Bono Pledge. The pledge challenges individual lawyers to take one pro bono matter a year, and challenges firms to adopt pro bono policies and encourage their lawyers to provide pro bono legal services. Additionally, the pledge challenges both firms and individuals to make financial contributions to organizations that provide legal services for



low-income people. Waxler notes, "Taking one case in a year is a modest commitment, but if we all do our part, we can open the door to the justice system for a lot of people."

## Senior Law Project Pro Bono Award Chris Edwardsen, 2008 Recipient

By Catherine Petrecca, Oregon State Bar.

Chris Edwardsen was selected for the Senior Law Project Volunteer of the Year Award. After retiring in 2007, he changed his status to Active Pro Bono, which allows him to engage in pro bono work through LASO, a certified program. He has fully embraced his new status, teaching himself senior law and volunteering extensively for the Senior Law Project. In addition to seeing 28 clients with a variety of legal issues, he spent considerable time attending CLE seminars with the intent of becoming an even better volunteer.

According to Chris, he felt remiss in not doing more pro bono work before he retired, and views his current work as a chance to catch up a little. He chose senior law because of the vulnerability of the population. He recalls his first court case in private practice, over 30 years ago: "I sought to recover payments totaling nearly \$100,000 which an unprincipled insurance salesman had claimed were 'gifts' to him by an impaired and lonely elderly woman whom he said had 'befriended' him. We got back what was left of her money,



but for every one of these cases we know about, there are probably 10 others which never come to light. LASO provides a great framework for retirees and others to assist some of these people, and it's a good way for a retiree to stay involved with our profession."

## Michael E. Haglund Award Eric Kearney and Joshua Ross, 2008 Recipients

By Nicholas Kampars, Davis Wright Tremaine and YLS Pro Bono Committee member and Lynne Lloyd, Legal Aid Services of Oregon and YLS Membership Committee member.



Eric Kearney



Joshua Ross

The 2008 Michael E. Haglund Award recipients are Eric Kearney and Joshua Ross.

This award goes to young lawyers who, in the tradition of Michael Haglund, founder of the Volunteer Lawyers Project, have displayed a special commitment to pro bono service.

Eric's devotion to pro bono work is nothing less than outstanding. As a new member of the OSB, Eric hit the ground running by volunteering his time and services to a variety of pro bono clients. Specifically, Eric worked more than 192 pro bono hours in 2007 and provided low-income and elderly individuals access to the legal system. This dedication has yielded extraordinary results and unsolicited praise from his clients, as well as the variety of organizations with which Eric works. Last year, he assisted the St. Andrew Legal Clinic, Legal Aid's Domestic Violence Project and Legal Aid's Senior Law Project.

Eric is a member of the MBA Public Outreach Committee and serves on the OSB New Lawyers Division Pro Bono Subcommittee.

Josh graduated from Lewis & Clark Law School in 2003 and joined the firm of Stoll Berne after nearly two years clerking for the Hon. Rick Haselton on the Oregon Court of Appeals. Josh has volunteered for LASO since 2006. In 2007, he spent nearly 100 hours representing survivors of domestic violence in their contested restraining order hearings. Not only did Josh spend significant time working with clients, his spirit and dedication inspired high praise from his pro bono clients. After each case, his clients commended his communication with them and his hard work on their behalf. Josh's contribution of hours is significant, and beyond that, his dedication to serving his clients well is what makes him an exemplary volunteer.

His other volunteer activities include helping coordinate the Imprint Program and coaching high school Mock Trial.

## Consider Volunteering for an MBA or YLS Committee

Please see insert for committee signup form.

### Volunteering Rewards

Meeting new people and expanding personal networks and perspectives are just a few of the reasons members cite for serving on committees. When you join a committee, you become part of a team of colleagues. As you contribute your own particular strengths to the work of the committee, you also learn from other committee members.

### MBA Committees

#### Continuing Legal Education (CLE)

Plans, conducts, and evaluates 30 or more CLE seminars a year. Classes are developed for attorneys in practice 10 years or longer and topics reflect various areas of practice.

#### CourtCare Fundraising Campaign

Plans the annual fundraising campaign for the free childcare program at the Multnomah County Courthouse.

#### Court Liaison

Serves as the MBA's interface with the court; fosters dialogue between membership, the judiciary and the court administrator.

#### Equality

Promotes equality in the profession and justice system and identifies ways in which the MBA can promote diversity in the practice of law.

#### Fun

Plans the annual WinterSmash event that benefits Multnomah CourtCare

#### Golf

Conducts several golf tournaments between April and September, including the MBA Championship Tournament benefiting the Volunteer Lawyer Project at Legal Aid Services of Oregon.

#### Group Health Insurance

Monitors quality, low-cost health insurance options for MBA members; negotiates renewal rates with insurance carriers; and explores additional services for the program.

### Judicial Screening

Screens judicial appointment candidates and makes recommendations to the Presiding Judge, Chief Justice and the Governor, in accordance with the MBA process.

### Membership

Reviews membership renewal and recruitment efforts and focuses on diversity and under-represented practice areas.

### Professionalism

Creates and conducts programs that promote professionalism in the practice of law and assists with the nomination and selection process for the professionalism award.

### YLS Committees

#### Membership

Plans drop-in, meet-the-judges, fall new admittee and winter third year law student socials. The committee also publishes the New Admittee Survival Guide.

#### Pro Bono

Encourages lawyers to donate their time and legal skills to the poor; publishes handbooks on juvenile rights and domestic violence; coordinates volunteers for at-risk youth programs; and sponsors a nonprofit project pairing volunteer attorneys with nonprofit organizations.

#### Professional Development and Education

Plans and sponsors YLS CLE seminars and sessions that help young lawyers develop their careers. These seminars address the needs of attorneys in their first five years of practice.

#### Service to the Public

Educates and serves the general public with efforts such as Community Law Week, the Dropout Prevention Program and the Imprint Program. The committee also trains and coordinates volunteer attorneys who act as judges in Multnomah County Animal Services hearings.

#### YOUTHFILM Project

Organizes the annual filmmaking competition for grades K-12 focusing on the Community Law Week theme.

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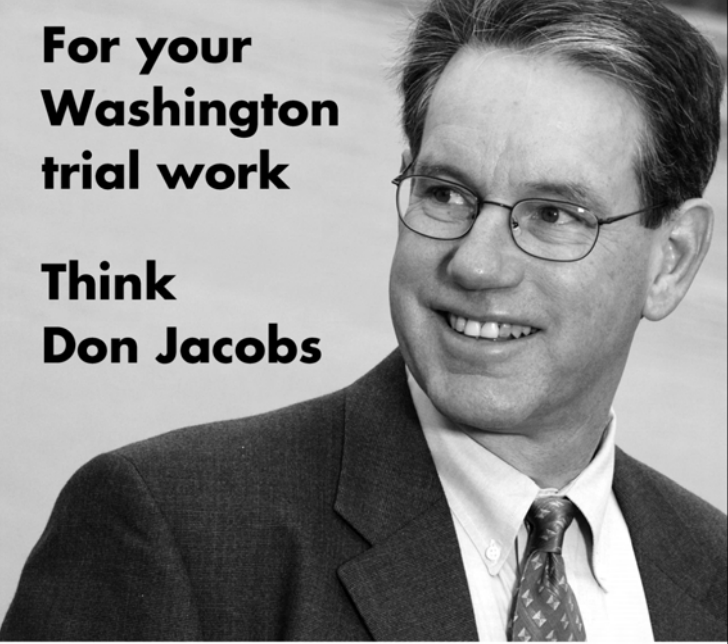
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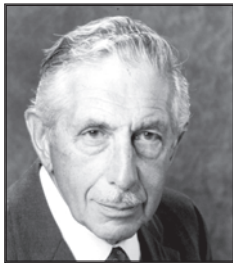
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# Does Your Firm Support Nonprofits?

by Kennedy Smith, MBA.



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

Do you or members of your firm support nonprofit organizations? And, has your firm created its own charitable nonprofit? If so, the Multnomah Bar Foundation wants to hear about it.

The MBF is interested in partnering with nonprofit organizations that are aligned with our mission of furthering civics education and expanding the public's knowledge of the justice system.

As part of this mission, the MBF has granted thousands of dollars to groups such as the Classroom

Law Project, the MBA Young Lawyers Section Service to the Public Committee, the Northwest Constitutional Rights Center, the OSB Constitutional Law Section and the Oregon League of Women Voters.

Countless law firms have written into their mission statements the importance of nonprofit work.

For example, Ater Wynne helped create the Oregon Children's Foundation, which developed SMART (Start Making a Reader Today) in 1992, and continues to provide pro bono legal services to them, along with other cultural and business-related nonprofit entities.

Davis Wright Tremaine assists Habitat for Humanity, Northwest

Women's Law Center, United Way, YMCA, Mercy Corps and the Children's Relief Nursery.

Members of Garvey Schubert Barer's Portland office volunteer at the Oregon Food Bank, a statewide network of over 900 hunger-relief agencies, and the Toys for Kids Carnival, for kids who may not otherwise get the chance to experience a day of free food, games, pony rides and prizes.

Lane Powell participates in pro bono work, volunteering, board memberships, fundraisers, sponsorships and donations. The firm supports community organizations, from the Campaign for Equal Justice to Habitat for Humanity, United Way and the Children's Relief Nursery.

Many firms, like Perkins Coie, have in-house Community Service Committees, which oversee programs and support volunteerism in nonprofit and pro bono work.

These are just a few examples law firms reaching out to the community.

Hundreds of individual lawyers and law firms are involved with nonprofit organizations across the state. In fact, about 200 individuals and firms have signed the MBA Pro Bono Pledge, stating that they will provide pro bono services for at least one legal matter in 2008. To see who has signed this year's list, go to [www.mbabar.org/MBA\\_Pro\\_Bono.htm](http://www.mbabar.org/MBA_Pro_Bono.htm).

Let us know about your nonprofit and pro bono efforts by contacting Kennedy Smith at [kennedy@mbabar.org](mailto:kennedy@mbabar.org).

*The Multnomah Bar Association is currently displaying a plaque recognizing those who generously gave to the MBA 100<sup>th</sup> Anniversary Gift Fund. It will be at the MBA office through May and will then be transferred for display outside the presiding judge's courtroom at the Multnomah County Courthouse.*



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