



What is Your New Year's Resolution?

by Andrew Schpak
MBA President

New Year's resolutions can make a huge impact. Look no further than the parking lot of your local gym to witness the power of resolutions. I used to think that, because my birthday falls shortly after January

1, it made more sense to start new resolutions based on my birthday rather than the calendar year. But upon further reflection, I think it had more to do with the fact that I try to avoid making promises I do not think I can keep and because I was afraid of not living up to the new goals I set for myself.

That all changed a few years ago, when my good friends and fellow lawyers Gulgun and Brett Mersereau joined my wife Erica and me at our house for a glass of champagne on New Year's Eve. Erica asked the group what everyone's resolutions were, which was met with a collective groan. But Gulgun gave a great answer that has stuck with me: she resolved to engage in better self-care. Since then, I've tried to increase my awareness of the degree to which I am taking care of myself and do what I can to encourage others to do the same.

In the spirit of celebrating the New Year and putting our best selves forward in 2018, I asked a few MBA leaders and public figures to share their New Year's resolutions:



"My resolution will be to continue - and not let up - fighting for the civil rights and the environmental and consumer protections of Oregonians - especially the most vulnerable among us." - Attorney General Ellen Rosenblum

"In 2018, I resolve to continue to become comfortable with the uncomfortable, master moments of connections for lasting impact and work toward positive change."
- Judge Adrienne Nelson



"My resolution for 2018 is to continue helping marginalized members of our community with their needs and magnify their voices." - Rima Ghandour, MBA Secretary and President-Elect

"Be attentive in a world filled with distraction, be accurate to gain and preserve trust, be accountable and ask for the same in return. And, be nice." - Marshal Spector, MBA Treasurer



"Focus on raising awareness of the [MBF] civic education campaign across the metro Bar so that all MBA lawyers know the importance of the work the civic education fund benefits."

- Dana Scheele, MBF Immediate Past President



"My 2018 resolution is to start each day with the 7 Minute Workout, and continue to grow the Portland office of Holland & Knight LLP!"

- Matt Donohue, MBF President

"I would like to do something every month of 2018 that entails volunteering, whether it's through my work by providing pro bono services or volunteering with Legal Aid or through volunteering with local nonprofits in the community." - Mary Tollefson, YLS President



"I want to be more diligent about evaluating the impact of something before I do it."

- Shayda Zaerpoor Le, YLS President-Elect

"I'm resolving to be a better active listener, stop over-committing myself personally and professionally and be better about taking small vacations so I can recharge my batteries."

- Guy Walden, Executive Director of the MBA



"I resolve to increase inclusion and respect for different points of view. I resolve to increase my philanthropic giving. I resolve to mentor younger lawyers."

- Tyler Volm, YLS Immediate Past President

So what is my resolution? I'm going to focus on seeking out feedback and mentorship, spend a lot of time listening and learning, and generally work to be a better leader, lawyer, husband and father. I recognize that's a bit ambitious in its scope, but my hope is that I will improve at least incrementally if I make a concerted effort to focus on those goals.

Over the coming year, I challenge you to resolve to do something. There is so much room for improvement in the world and in ourselves. Even if we fall short of the goals we set, we nevertheless will have moved the needle in the right direction.

SAVE THE DATE!

MBA 16th Annual WinterSmash

A Family Friendly Bowling Event

Saturday, February 10

12-3 p.m.

KingPins

3550 SE 92nd Ave
Portland

A Multnomah CourtCare Fundraiser



See insert and page 2 for details.

mba|CLE

To register for a CLE, please see p. 4 or visit www.mbabar.org and log in as a member to register at the member rate.

JANUARY

1.10 Wednesday
Top 10 Family Law Electronic Discovery Tips and Ethics
Tom Howe

1.11 Thursday
You, Me, and Data Security
David Nijhawan
Brian Sniffen

1.17 Wednesday
Get Proactive! How to Address and Prevent Sexual Harassment in the Workplace
Anthony Kuchulis
Elizabeth Semler

1.18 Thursday
Top 10 Things All Attorneys Should Know about Indian Law
Stephanie Striffler
Tim Simmons

1.30 Tuesday
Refugee Rights: Where We Are One Year After the First Travel Ban
Cheryl Coon
Z. Hanah Riley

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2.20 Tuesday
MBA Employment Law Update: A Whole New (or Old) World
Derily Bechthold
Aruna Masih

MARCH

3.8 Thursday
Spousal Support Claims at Trial
Judge Beth Allen
Judge Katherine Tennyson

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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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DEADLINE for copy: The 10th of the month*

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*or the preceding Friday, if on a weekend.

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WinterSmash Benefits Multnomah CourtCare

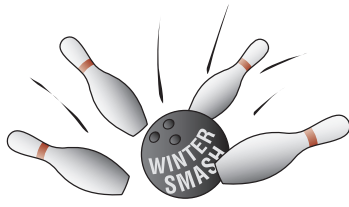
A Family-Friendly Bowling Event

Saturday, February 10

12-3 p.m.

KingPins

3550 SE 92nd Ave,
Portland



The 16th Annual WinterSmash will be held on Saturday, February 10 from 12-3 p.m. We are happy to bring back the Pin Setter registration option for \$20 per person. If you want to cheer on your team and enjoy pizza and drinks but you don't want to bowl, this one's for you!

Lanes will be available exclusively for MBA members and their friends, colleagues and families for an evening of fun and food. Bumper lanes will be available for children. The event serves as the kickoff for the annual Multnomah CourtCare fundraising campaign.

CourtCare is a drop-in childcare program for families with no other childcare options, many of whom are struggling with poverty, substance abuse and/or violence. CourtCare is located in the downtown and east county courthouses.

CourtCare has served 80 to 100 children each month since opening in December 2001. These children are protected from witnessing disturbing courtroom scenes involving their families and do not disrupt courthouse business. Instead, they receive attention from qualified care providers in a cheerful environment full of toys, art supplies and books. Trained caregivers offer a nurturing, safe environment for children, as well as information for parents on other community resources they may need.

So, come enjoy the company of your colleagues, some good food, play a game you know you love and support a good cause. Tickets are \$40 for adults and \$15 for kids 3-12 years old. Price includes food, drink, shoes, balls, lane time and the satisfaction of knowing you're supporting CourtCare. Prizes will be awarded for the highest and lowest individual scores, the group with the most participants in attendance and the group with the best bowling shirt. In addition, a traveling trophy will be presented to the group with the highest team score. Raffle tickets will be for sale. The event promises to be a good time; don't miss this opportunity! Register via the insert in this issue or at www.mbabar.org.

Thank you to the WinterSmash sponsors.

King Pin Sponsor



Life of the Party Sponsors

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Contact Kathy Modie at the MBA at 503.222.3275 if you'd like to add your name to the sponsor list or donate a raffle prize.

Calendar

JANUARY

1 Monday

New Year's Day – MBA office closed

9 Tuesday

Judge Waller's Recognition Event

Details on p. 10

15 Monday

MLK Day - MBA office closed

18 Thursday

Young Litigators Forum CLE Series begins

See insert for details

FBA Portland Monthly Lunch

22 Monday

Imprint Program Orientation

Details on p. 13

23 Tuesday

Solo & Small Firm Social and Tali Presentation

Details below

27 Saturday

OLIO Employment Retreat

13 Tuesday

Solo & Small Firm Workshop
Details on p. 11

14 Wednesday

YLS OR/WA Employment Law CLE Seminar

Details on p. 13

15-17 Thursday-Saturday

NAAC Moot Court Portland Regional

15 Thursday

FBA Portland Monthly Lunch

17 Saturday

Lewis & Clark Law School PILP Auction

16 Friday

OHBA Annual Award Dinner

19 Monday

Presidents' Day - MBA office closed

24 Saturday

MBA Portland Children's Museum Event

Details on p. 12

MARCH

9 Friday

ACLU of Oregon Liberty Dinner
www.aclu-or.org

16 Friday

OWLS Roberts & Deiz Awards Dinner
www.oregonwomenlawyers.org

FEBRUARY

1 Thursday

Are You Able to Live Well Today and Still Save for Tomorrow?

Details on p. 6

9 Friday

Blacks in Government Annual Black History Month Banquet

10 Saturday

WinterSmash

Details on this page

SOLO & SMALL FIRM TALI WORKSHOP AND SOCIAL

Tuesday, January 23

5-6:30 p.m.

Red Star Tavern Club Room

503 SW Alder, Portland

Tali is a conversational time-tracking assistant, powered by Amazon Alexa. With Tali, lawyers can track their time using nothing more than their voice. Tali even integrates with Clio, allowing you to sync your data with the click of a button - completely automating the chore of manual time entry! Tali is a Portland based company and will be doing a live demonstration of their product, including the Clio integration, and will be giving away some free Amazon Echo devices! You don't want to miss this! The demonstration will be followed by a networking reception with light hors d'oeuvres.

Generously sponsored by Clio and Tali.



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TALI

This event is free for members and \$15 for non-members.

Register at www.mbabar.org.



The MBA will apply for 2 hours of general OSB MCLE credits unless otherwise noted; 2 Washington credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

Top 10 Family Law Electronic Discovery Tips and Ethics

Wednesday, January 10, 2018 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Note: One hour of general credit and one hour of ethics MCLE credit will be applied for.

Evidence matters! Learn how to collect, review and present electronic evidence in your family law cases regarding custody, support, property division, and business valuation issues. You will see demonstrations and real-world examples showing the use of computer, smartphone, and social media evidence. Learn the top 10 things family law lawyers must know about electronic discovery:

- Updating client intake questionnaires and pleadings to deal with electronic evidence
- Preserving and collecting computer and smartphone evidence defensively.
- Using smartphone (iPhone and Android) evidence in your next case.
- Distinguishing your law firm with e-discovery best practices.
- Culling electronic data based on issues in the case (custody, support, and property division).
- Obtaining social media (e.g. Facebook) and online "cloud" data.
- Understanding the importance of text messages and email.
- Using effective search and sampling strategies for family law cases.
- Performing cost-effective and efficient legal reviews for family law cases.
- Producing electronic evidence to the requesting party.
- Persuading the family law judge with electronic evidence.

Learn the risk of client electronic information and how to protect client confidential communications.

- Protecting client confidential information.
- Computer security of client data.
- The importance of encryption and how to configure it.
- Using effective passwords.
- Backups to prevent loss of data.
- Breach of Attorney-Client Privilege through Electronic Surveillance and Spyware.
- The risk of computer metadata.
- Smartphone security.
- Closed Files: Destruction of Electronic Evidence.

A trial lawyer with a deep technical background, **Tom Howe** has over 25 years of experience in law and technology, and is a member of the Oregon and Washington Bar Associations. He has been referred to in articles as one of the leading e-discovery lawyers in the country, providing legal/technology consulting and expert witness services to some of the largest law firms, corporate legal departments, e-discovery vendors, and the federal government.

For more information: Contact the MBA at 503.222.3275.

You, Me, and Data Security

Thursday, January 11, 2018 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Please join banker and recovering lawyer **David Nijhawan**, Esq., KeyBank, and lawyer **Brian Sniffen**, Miller Nash Graham & Dunn to discuss how data security and data privacy issues affect your clients - and how you can help them navigate those issues. David and Brian will explore topics such as:

- Applicable laws and regulations that may apply,
- Best practices for data security incident preparedness,
- Case studies of cyber-attacks and cyber fraud, and
- Potential legal remedies.

They will also discuss ways lawyers and banks can help mitigate risk in this rapidly changing environment.

For more information: Contact Cody Elliott, Miller Nash Graham & Dunn at 503.205.2465. For registration questions, contact the MBA at 503.222.3275.

Get Proactive! How to Address and Prevent Sexual Harassment in the Workplace

Wednesday, January 17, 2018 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

A Sexual Harassment Policy is not enough. Join the MBA for a discussion focused on practical advice on preventing sexual harassment in the workplace including real world guidance on addressing harassment, responding to complaints, imposing discipline and avoiding claims of retaliation. Our speakers are **Anthony Kuchulis**, a partner at Barran Liebman LLP and experienced management side employment litigation attorney, and **Elizabeth Semler**, a partner at Sussman Shank LLP and head of the firm's employment group.

For more information: Contact Nicole Elgin, Barran Liebman LLP, at 503.276.2109. For registration questions, contact the MBA at 503.222.3275.

Top 10 Things All Attorneys Should Know About Indian Law

Thursday, January 18, 2018 - 3-5 p.m.

World Trade Center, Sky Bridge Room

Members \$60/Non-Members \$95

Regardless of your practice area, you may intentionally or unintentionally run into an intersection with Indian law. For example, if you practice commercial law, you may have business dealings with a tribal entity. If you are a family law practitioner, the Indian Child Welfare Act may impact one of your cases. If you are a criminal lawyer, you may run into jurisdictional issues on tribal land or when a victim or defendant is a tribal member. If you are in construction or real estate law, you may be faced with cultural resources issues on a property site. If you practice in natural resources or environmental law, you may need to navigate treaties and other tribal rights. The list goes on. This CLE class will provide an overview and brief introduction of the top ten things that all attorneys should know about Indian law. Join our speakers **Stephanie Striffler**, Oregon Department of Justice and **Tim Simmons**, US Department of Justice for this two-hour seminar.

For more information: Contact Liani Reeves, Bullard Smith Jernstedt Wilson at 503.248.1134. For registration questions, contact the MBA at 503.222.3275.

Refugee Rights: Where We Are One Year After the First Travel Ban

Tuesday, January 30, 2018 - 12-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Note: One hour of general credit will be applied for.

This class will explore the iterations of the travel ban, challenges to it along the way, and where we are now, with a discussion of "who's in; who's out." It will also explore the impact of the travel ban and the related devastating cuts in refugee admissions and how they are affecting refugee resettlement agencies, refugees abroad and refugees who live in Oregon. It will provide personal perspectives on who refugees are, the issues and challenges that refugees in Oregon are facing and what lawyers regardless of practice area can do to help. This class will provide relevant and helpful information to practitioners in refugee and immigration practices, as well as any attorney who may represent a refugee in their regular practice. **Cheryl Coon**, Executive Director and founder of Refugee Disability Benefits Oregon and **Z. Hanah Riley**, Staff Attorney at Refugee Disability Benefits Oregon will present this class.

For more information: Contact Jovanna Patrick, Hollander Lebenbaum et al at 503.222.2408. For registration questions, contact the MBA at 503.222.3275.

Anti-SLAPP Litigation in Oregon

Thursday, February 15, 2018 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Oregon's Anti-SLAPP statute is increasingly being used by strategic litigants across a range of industries and types of cases. In this CLE seminar the **Hon. Erin Lagesen** of the Oregon Court of Appeals and **Steven Berman** of Stoll Berne will provide an update on the growing body of case law applying the statute, lessons from past cases, and ideas of what might be to come. This is an area of law that all litigators should become familiar with.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.222.4424. For registration questions, contact the MBA at 503.222.3275.

MBA Employment Law Update: A Whole New (or Old) World

Tuesday, February 20, 2018 - 3-5 p.m.

World Trade Center, Sky Bridge Room

Members \$60/Non-Members \$95

With any new administration, some level of change is expected in federal policy enforcement. In the first year of the current administration, in the labor and employment world we've seen an overhaul of agency leadership, White House directives to federal agencies enjoining them from enforcing their own rules, and competing federal agencies taking opposing positions in the same litigation. More change has been promised to come. And while federal enforcement may be seen as taking a step back, states have become significantly more active in stepping up employee rights including the Oregon Legislature. This past fall, the newly configured US Supreme Court considered several cases with significant labor and employment implications. This CLE seminar will review labor and employment updates in federal enforcement, new legislation passed by the Oregon State Legislature, significant new cases, and anticipated developments on the horizon. **Derily Bechthold**, Portland City Attorney's Office and **Aruna A. Masih**, Bennett, Hartman, Morris & Kaplan LLP are the panelists for this must-attend class for all employment law attorneys.

For more information: Contact Liani Reeves, Bullard Smith Jernstedt Wilson at 503.248.1134. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

**SHARE YOUR LATEST MOVES,
PORTLAND LEGAL COMMUNITY**



As a free service to our members, the Around the Bar column of the *Multnomah Lawyer* newsletter is the way to share with colleagues your transitions, promotions and other honors within the profession. **All MBA members are invited to participate.**

Submissions (including text and a photo) can be sent to mba@mbabar.org.



CLE BOGO

The MBA is pleased to offer its **buy-one-get-one CLE policy** for participants in the MBA and OSB mentor programs.

OSB and MBA mentors: When you register for an MBA CLE, you can register your mentee to attend with you for free.

Contact **Kathy Modie** at 503.222.3275 or kathy@mbabar.org to add your mentee to the registration list.

Spousal Support Claims at Trial

Thursday, March 8, 2018 - 3-5 p.m.

World Trade Center, Plaza Conference Room

Members \$60/Non-Members \$95

Join Multnomah County Circuit Court **Judges Katherine Tennyson** and **Beth Allen** for a discussion about how to best present your spousal support cases at trial. They will discuss what evidence is most helpful for a decision about the amount and duration of support and how to effectively use experts, among other topics.

For more information: Contact Shannon Hall, Gevurtz Menashe at 503.227.1515. For registration questions, contact the MBA at 503.222.3275.

Presiding Court Update

Tuesday, March 13, 2018 - 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

In this session, Multnomah County **Presiding Judge Stephen K. Bushong**, the Chief Judges and court staff will present on the state of the court, review new Supplemental Local Rules, and provide tips on issues unique to practicing in Multnomah County. Judge Bushong will also give an update on the new courthouse, which is scheduled to open in 2020.

This seminar is designed for attorneys at all levels of experience and questions are strongly encouraged.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.222.4424. For registration questions, contact the MBA at 503.222.3275.

How to “Win” Your Next Mediation - Strategies for Effective Advocacy

Wednesday, March 14, 2018 - 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Note: 1.5 hours of general MCLE credit and .5 hours of ethics credit will be applied for.

Mediation is often your client’s “day-in-court.” If this is true, then effective advocacy in mediation is critical to serving your client’s interests. The strategies required for mediation can differ from trial advocacy. Mediation issues to consider that can make or break your case include:

- Should I even mediate and, if so, when?
- What kind of mediator and process - facilitative or evaluative?
- What should be in the mediation statement?
- What information should I disclose to my opponent?
- Who should attend the mediation?
- What case evaluation should I provide to the client?
- Should I worry about biases and emotions?
- What mediation ethics to know?

Join speakers **Hon. Jean Kerr Maurer**, retired Multnomah County Circuit Court judge and **Richard Vangelisti**, Vangelisti LLC for a lively discussion of strategies for “winning” your next mediation

For more information: Contact the MBA at 503.222.3275.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

CLE Registration Form

NAME _____	CARD NUMBER _____
FIRM _____	EXPIRATION DATE AND SECURITY CODE _____
ADDRESS _____	SIGNATURE _____
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Member Status:
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Payment Options:
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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:
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 620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
 503.222.3275 ■ Fax to: 503.243.1881

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

Seminar Selection:

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

- 1/10 Top 10 Family Law Electronic Discovery Tips and Tricks**
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- 1/18 Top 10 Things All Attorneys Should Know About Indian Law**
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- 1/30 Refugee Rights: Where We Are One Year After the First Travel Ban**
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- 2/15 Anti-SLAPP Litigation in Oregon**
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- 2/20 MBA Employment Law Update: A Whole New (or Old) World**
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- 3/8 Spousal Support Claims at Trial**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 3/13 Presiding Court Update**
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- 3/14 How to “Win” Your Next Mediation - Strategies for Effective Advocacy**
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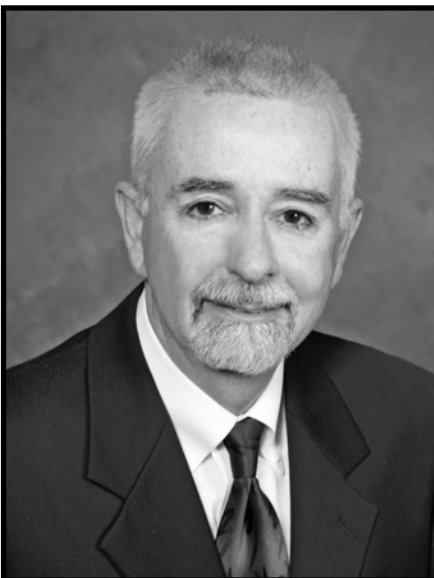
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Partner striking out?



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503-223-7555 | 65 SW Yamhill St, Ste 200, Portland 97204 | law7555.com

mba | ANNOUNCEMENTS

Conference Room Available for Reservation

Conveniently located downtown, the MBA conference room is available for reservation by members for client meetings, depositions and other practice-related uses. Contact the MBA for details and availability at 503.222.3275 or mba@mbabar.org.

Free CLE Webcast for MBA Members

The video webcast of the seminar “Managing Electronic Discovery” is available in the Members Center at www.mbabar.org. The webcast is approved for two hours of general OSB MCLE credit.

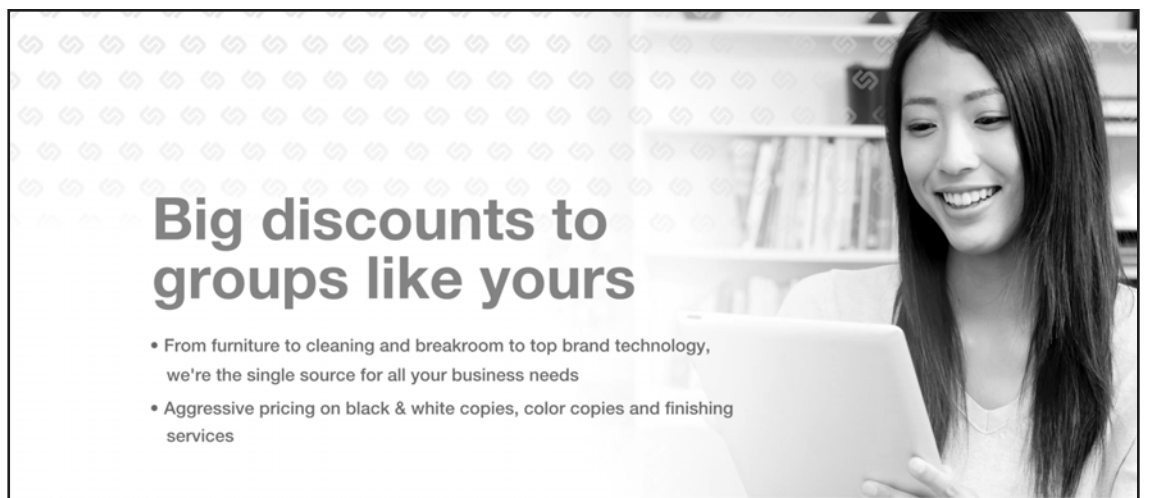
MBA members receive access to a rotating selection of six different CLE seminars each year - a \$360 value.

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Adina Flynn, JD, Bridge City Advisors/Ameriprise Financial Services, Inc. is our presenter.

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Update Your Directory Listing on the MBA Website

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

Ethics Focus

Delicate Dance: Risk Management Considerations in Law Firm Mergers

by Mark J. Fucile
Fucile & Reising LLP



Law firm mergers have become increasingly common for firms large and small. Many elements enter the mix when evaluating a potential merger ranging from firm “culture” to compensation systems. Risk management considerations are among the most central. In this column, we’ll look at two: conflicts and claims.

Conflicts

Business conflicts among corporate clients often figure into the strategic analysis from both sides of potential law firm mergers. Business conflicts alone, however, do not generally equate with legal ethics conflicts. Comment 6 to ABA Model Rule 1.7, on which Oregon’s multiple client conflict rule is patterned, puts it this way: “[S]imultaneous representation in unrelated matters of clients whose interests are only economically adverse,

Business conflicts alone...do not generally equate with legal ethics conflicts.

such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.”

Conflicts under the RPCs, however, can arise even before a merger is completed if lawyers from the respective firms involved are actively litigating or negotiating against each other on behalf of their clients. Very preliminary inquiries, such as a casual conversation over lunch between two managing partners about whether their firms would have an interest in combining, in most circumstances will not trigger a conflict. By contrast, once firms embark on detailed merger discussions, a conflict would be triggered when they are on opposite sides of a case or transaction. In that instance, the conflict rule involved is RPC 1.7(a)(2), which governs “material limitation” conflicts between a firm and its own clients. These conflicts are normally waivable - but the client involved needs to be

told that the firm is negotiating with the adversary’s lawyers. ABA Formal Opinion 96-400 (1996), which is available on the ABA Center for Professional Responsibility’s website, discusses the issues involved extensively. Although it is framed in terms of job negotiations between a single lawyer and a law firm, the principles involved have equal application to law firm mergers.

If a conflict arises from a single pending case or transaction in which the prospective merger partners are working opposite each other, screening may be a solution. RPC 1.10(a), the so-called “firm unit rule,” imputes one lawyer’s conflicts to the law firm as a whole. RPC 1.0(c), however, permits the lawyers from one firm to be screened (and withdraw) from the matter involved when they join the new firm. In *Cavender v. U.S. Xpress Enterprises, Inc.*, 191 F Supp2d 962 (ED Tenn 2002), for example, the court refused to disqualify a successor firm when the lawyers joining the firm through merger had been on the other side of the case involved but were screened and had withdrawn. On a practical level, screening becomes a less viable option when multiple matters or clients are involved. OSB Formal Opinion 2005-120, which is available on the OSB website, discusses screening procedures in the lateral-hire context in detail.

One option that is not available under the colorfully named “hot potato rule” is to simply “fire” a less economically attractive client creating a conflict. OSB Formal Opinion 2005-11 (at 2 n.1) describes the essence of this rule: “A lawyer cannot ‘fire’ a current client in mid-matter to avoid the current-client conflict-of-interest rules.” In *Picker Intern., Inc. v. Varian Associates, Inc.*, 670 F Supp 1363 (ND Ohio 1987), for example, a large law firm was disqualified when a smaller firm it acquired through a merger “fired” a long-standing client in multiple matters to “clear” a conflict with one of the larger firm’s clients that stood in the way of the merger.

Because conflicts can arise even before a merger is completed and may even be “show stoppers” for the merger if they cannot be resolved, early conflict review is essential. RPC 1.6(b)(6) allows conflict checking information (such as client names and the general nature of the matters involved) to be shared with a potential merger partner unless the very fact of a representation is itself confidential.

Claims

Claims usually present two distinct issues when considering law firm mergers: (1) have all potential claims been disclosed? and (2) are claims stemming from pre-merger conduct covered?

On the first point, both firms need to know what they are getting into. If, for example, one of the firms has a checkered history of malpractice claims, that often raises “red flags” about the competence and management

Because conflicts can arise even before a merger is completed...early conflict review is essential.

skills of the lawyers who may soon be the other firm’s new partners. Further, if one claim or set of claims potentially exceeds the firm’s malpractice coverage, the risk must be evaluated dispassionately and balanced against the corresponding potential benefits of the merger. Finally, even a set of claims that is within the firm’s policy limits may trigger significant distractions from billable work for the newly merged firm.

On the second, if both of the firms are solely within Oregon and the claims involved do not exceed the PLF basic plan, then any claims should be covered. If, however, the firms have non-Oregon offices and the potential claims involved are significant, excess or other potential coverage should be examined carefully to determine both the liability of the successor firm for pre-merger claims and the extent of coverage for those claims.



Don’t Forget to Renew Your MBA Membership

If you have yet to renew your MBA membership for 2018, please take a few minutes to do so online at www.mbar.org or contact the MBA office at 503.222.3275.

We look forward to serving you in 2018.



Family Mediation: From Parenting Plans to Plans for Aging Parents

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Around the Bar



Gregory Hall



Haley Morrison



Adam Murray



Drea Schmidt

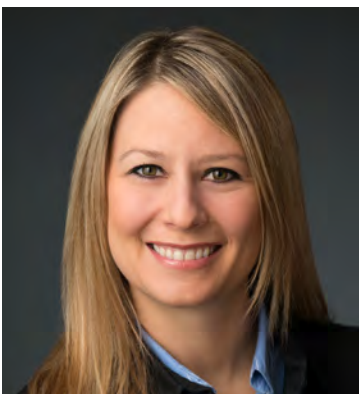
Landerholm, P.S.

The firm welcomes **Gregory J. Hall** as an associate attorney with the firm. Hall counsels clients in corporate law, business law, and estate planning. Before joining Landerholm, Hall worked in a solo practice and as a CPA helping business clients navigate through the complex world of business transactions and taxation.

Landerholm, P.S. also welcomes **Adam P. Murray** as an associate attorney with the firm. Murray's corporate law practice focuses on helping clients with business formations, transactions, and long-term strategic planning. Before joining Landerholm, Murray owned and operated several hospitality and tourism businesses and served as a law clerk in a federal district court and the Ninth Circuit Court of Appeals.



Rocky Dallum



Jessica Morgan

Tonkon Torp LLP

Rocky Dallum, Jessica Morgan, Haley Morrison, and Drea Schmidt have been elected to the partnership, effective January 1.



Drew Eyman

Hart Wagner LLP

The firm welcomes **Drew Eyman** as the newest associate in the Portland office.

Eyman joins Hart Wagner after clerking for the Hon. Rives Kistler at the Oregon Supreme Court. He graduated, cum laude, from Boston University School of Law in 2016, where he served as an editor on the Journal of Science and Technology Law. During law school, he was a summer associate at Cohn & Dussi LLC and a legal intern for the US Attorney's Office, Civil Division, in Boston.

Eyman's practice will focus on appellate law, commercial litigation, employment litigation, and medical and legal malpractice defense.



Melissa Chinn

Kauffman Kilberg LLC

Melissa Chinn has joined Kauffman Kilberg LLC as an associate. Her practice focuses primarily on criminal defense, including state and federal matters.

Chinn recently graduated from the University of San Diego School of Law, concentrating in corporate litigation and criminal defense litigation. She was magna cum laude at Oregon State University, and is pleased to return to her Oregon roots after a brief California stint.

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

MBA Launches New Member Benefit Program with Columbia Bank

by Marshal Spector
MBA Treasurer



While a number of banks show a strong commitment to the legal profession in Portland, Columbia Bank stood out for several reasons. Its recent merger with Pacific Continental Bank increased the size of its IOLTA portfolio and added a number of team members with a proven history of providing banking services specifically for lawyers. Columbia Bank has an existing branch network and operational footprint that closely matches that of the MBA membership. In 2017, the combined contributions of Columbia Bank and Pacific Continental to the Oregon Law Foundation totaled \$186,557. As part of its commitment to the legal community, Columbia Bank is increasing its IOLTA rate from .7% to at least 1%. That translates to a 2018 contribution of at least \$269,110 with its current IOLTA portfolio. Columbia Bank also supports a number of other law-related causes and programs, including the Classroom Law Project and Campaign for Equal Justice.

Columbia Bank has three dedicated contacts in the Portland metro area who are assigned to the MBA partnership program:

Downtown: Elise Bouneff, 503.542.8560

East Side: Joe Connors, 503.350.5173

Washington and Clackamas Counties: Gwyn Hilden, 503.736.6034

I encourage you to reach out to Columbia Bank and find out what they can do for you and your practice. With comments or question about the banking relationship, call me at 503.227.1515 or MBA Executive Director Guy Walden at 503.222.3275.

The MBA is pleased to announce that effective January 1, its newest affinity partner is Columbia Bank. Columbia Bank offers a comprehensive line of commercial banking products and services including business and personal loans, commercial and residential real estate loans, and deposit services such as checking, online banking and a full array of cash management services. The new member benefit banking program will offer a range of services specifically for MBA members, including waived setup fees, VIP banking and access to wealth management services.

The existing MBA relationship with Bank of the Cascades was scheduled to expire on December 31, 2017 and several recent mergers have changed the landscape with regard to banking partnership opportunities for the MBA. We issued a request for proposal (RFP) last summer to every bank that qualifies as a "Leadership Bank" as defined by the Oregon Law Foundation's (OLF) Interest on Lawyers' Trust Accounts (IOLTA) Program. The OLF uses the interest generated by the IOLTA program to award grants to programs across the state that provide legal services for Oregonians of lesser means, expand public education about the law and promote diversity and inclusion within the legal profession. Seven banks submitted proposals, and after careful consideration, the MBA Board voted to partner with Columbia Bank at its December Board meeting.



Office location:
620 SW 5th Ave.,
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The MBA conference room is available for reservation by members for client meetings, depositions and other professional law-related business.

Contact the MBA for details and availability at 503.222.3275.

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We Are Growing

Introducing the newest member of our family

Samuels Yoelin Kantor is pleased to welcome Caitlin Wong, who has joined the firm as an Of Counsel attorney.

Ms. Wong joins SYK with nearly a decade of legal experience in the Portland area. Her practice focuses on the estate and trust, tax, and business law needs of individuals and businesses located in Oregon and Washington.

For over 90 years, our family of lawyers has helped generations of families with their personal and business legal needs.



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Tips From the Bench



by Judge Patricia McGuire
Multnomah County Circuit Court

I've been asked to share some of what I've learned as the most recent appointee to Family Court in Multnomah County, so here goes:

You really do need to get your trial memorandum in by noon, the day prior to trial.

Family Court judges are scheduled back-to-back with hearings every day. People are stacked up in my courtroom like it's the DMV most days, so there is no time to read a memorandum that is filed on the day of trial. That's a shame, because not only is a memorandum helpful to me as the factfinder, I assume that you want me to read it because you spent your time writing it (and presumably have billed your client for that time). If you want a judge to read it, it needs to be here the day before trial. If you only remember one thing from this column, remember that.

If you're a jerk to a clerk, judicial assistant, or any other court staff, we'll hear about it.

Perhaps you just don't play well with others, and your approach to court staff reflects that. Guess what? We all talk to each other, so we'll eventually find out which attorneys are rude to staff. If you just can't figure it out, just pretend that you're on a reality show where every encounter with a human being in the courthouse is filmed and watched by a judge - the judge you are about to appear before. Maybe that will help.

The rules of evidence and civil procedure apply in family court.

Trying cases is fun if you know the Oregon Rules of Civil

Procedure and the Oregon Evidence Code (really!). For every piece of evidence you have, figure out how you will get that evidence admitted, anticipate the objection you may hear in response and have a backup plan in case that objection is sustained (bonus: sometimes your opponent won't be prepared with an objection to your backup plan). If you lack experience in the rules, reach out to a trial attorney with more experience and use that person as a mentor. Other lawyers are happy to answer your questions. Judges are happy to answer questions if they don't pertain to a case in front of us.

Even though you're an advocate for one party, don't forget that we are all trying to solve problems for the entire family.

We all realize that Family Court is different because once we resolve the current dispute, most of those parties have to continue to interact and co-parent. Don't forget that things said on the stand can't be unsaid. Go out of your way to try to resolve a case without the parties (or their children) having to say bad things about each other in court. If your opponent is a self-represented litigant (SRL), don't be afraid to pick up the phone and talk about the case with them - and really listen to what they have to say without arguing your client's case to them. Sometimes the best way to resolve a case with a SRL is to give them the opportunity to air their grievances to someone. Listening to them doesn't mean you aren't being an advocate for your client; in fact, it means the opposite. Family Court requires that we all have empathy during some of the worst times that a family may go through. We all need to think creatively about how we can leave a family in a better state than when we found them.

If you get an opportunity to try the corn dogs in the cafeteria at the Juvenile Justice Center, do it.

They are amazing.



News from the Courthouse

by Shayda Zaerpoor Le
Court Liaison Committee

Presiding Judge's Report and Courthouse Update - Barbara Marcille, Trial Court Administrator, on behalf of Judge Nan Waller

The Impact of Budget Cuts

Despite deep cuts to the Oregon Judicial Department budget, the court has not had to eliminate staff positions but the court does have to hold vacant positions open longer, for a minimum of four months. When a department has several people leave within a short period of time, it results in a severe staff shortage. The operations units that support court functions, such as the staff processing filed documents and those completing data entry and calendaring, are all short-handed. Lawyers should keep that in mind and are asked to be patient. Also, the circuit courts in the larger counties such as Multnomah County currently have to make greater cuts than other courts since smaller courts don't have enough staff turnover to reach the level of savings they

need by holding vacancies. In the meantime, in larger courts, budget cuts are interfering with efficiencies the court has been working to develop. Once we are closer to the short legislative session, the OJD will likely be asking for some additional support to help provide examples for the legislature of the impact of the cuts on service to the community.

New Judges

There have been a number of new judges taking the bench in Multnomah County this year. The investiture of Judge Ben Souede was held in November and Judge Patricia McGuire's investiture is on January 12.

Breakfast with Legislators

The MBA Legislative Breakfast took place in November. It was well-attended and included a slate of speakers, including Chief Justice Tom Balmer, Presiding Judge Nan Waller, Multnomah County Chair Deborah Kafoury, Trial Court Administrator Barb Marcille, Judge Adrienne Nelson, Judge Cheryl Albrecht, Judge Ed

Jones, Judge Tom Ryan, Judge Amy Holmes Hehn, Presiding Judge-Elect Steve Bushong and Susan Marmaduke, Chair, MBF Public Outreach Committee. The focus of the event was to update county and state legislators on the work of the courts and what the court has been able to accomplish this year, highlighting some of the procedural justice initiatives, civil justice initiatives, progress with the new courthouse, and changeover in leadership of the court.

ADA-Related Training

The court is evaluating the ways in which courthouse staff work with disabled members of the bar and the public. The court has met with different focus groups to consider ways to make the physical space in the new courthouse accessible and accommodating to individuals with mobility constraints or other limitations. The court and the Multnomah County Sheriff's Office are also interested in finding ways to make the existing downtown courthouse more welcoming and user-friendly for those with disabilities even though the design of the physical space in the building is far from ideal.

mba | EVENT

Judge Waller Recognition Event

Tuesday, January 9
Jefferson Station
1230 SW 1st Ave., Portland
5-7 p.m.

The MBA is grateful to Judge Nan Waller for her leadership, service and commitment to the justice system and the community. In addition to her many accomplishments during her six years' tenure as Presiding Judge of the Multnomah County Circuit Court, we want to recognize and thank Judge Waller for her efforts to make the new Central Courthouse a reality.

Please join us for hors d'oeuvres and refreshments at a reception honoring Judge Waller.



Judge Nan Waller

RSVP to Kathy Modie
(kathy@mbabar.org, 503.222.3275).

The Honorable Steven Powers Oregon Court of Appeals Judge

by Shayda Zaerpoor Le
Court Liaison Committee

While recently appointed to the Oregon Court of Appeals, Judge Powers has been an active member of our state's legal community for years. He has been a member of the MBA, served on the Court Liaison Committee, CLE Committee, and as a volunteer with the Imprint Program through Parkrose High School. He was a founding board member of the Oregon Filipino Lawyers Association. He has also served as a mentor through the OSB New Lawyer Mentoring Program and a number of other attorney mentor programs.

Ask any legal professional what they value about their profession, and many will undoubtedly mention respect for the rule of law. Judge Powers is particularly known for this perspective, perhaps in part because he was naturalized as a United States citizen. In fact, he continues to carry in his work bag a copy of the United States Constitution. He notes that the rule of law has allowed him to be where he is today, along with "serendipity, perseverance, and good fortune." Those who were present at Judge Powers' investiture heard colleagues and friends describe him as a calming presence, ever temperate in his demeanor and decision-making. For his own part, he took the time to highlight that what we do in the legal profession affects people on a very personal level, and that members of the bar have the weighty responsibility of strict adherence to the rule of law, while still incorporating a recognition of the consequences of the court's decisions.

Judge Powers brings to the bench a broad range of legal experience. He has practiced in both private and public spheres; has worked in civil, criminal, and administrative law; and has conducted jury and court trials and argued numerous cases on appeal, appearing in both state and federal courts. While all judges contribute their own unique background of professional experience, Judge Powers' path to the bench brings the benefit of both appellate experience and significant involvement with the executive branch of state government.

Most recently, Judge Powers worked in private practice at Parsons, Farnell & Grein LLP, focusing on insurance coverage

issues as well as handling civil appeals. Immediately prior to that position, Judge Powers was Deputy General Counsel and public safety policy advisor to the Office of Governor John Kitzhaber. His portfolio of responsibilities included public safety agencies, the Oregon Lottery, the Oregon Racing Commission, the Oregon Liquor Control Commission, and assisting the general counsel with tribal issues and judicial and district attorney appointments. When asked what he enjoyed most about this position, Judge Powers commented on the breadth of exposure, from reviewing proposed or recently enacted legislation to dealing with gaming issues and clemency.

Prior to that role, Judge Powers was a Deputy District Attorney in the Multnomah County District Attorney's Office, where he had over two dozen jury trials and numerous bench trials, civil commitment hearings, arraignments, and probation hearings. He was formerly the chairperson at the Oregon Board of Parole and Post-Prison Supervision, which gave him the unique perspective of running a state agency that was at the confluence of both administrative and criminal law. He previously served as an Assistant Attorney General in the Appellate Division of the Oregon Department of Justice, where he handled criminal, civil, and administrative appeals, as well as special projects such as drafting ballot titles and serving as contact counsel for the Board of Parole. Judge Powers also served as both a Public Honors Fellow and a Petitions Law Clerk at the Oregon Supreme Court.

A case of particular note is *Gonzales v. Oregon*, 546 US 243 (2006), for which Judge Powers was on the briefing and argument team, which successfully defended Oregon's Death with Dignity law from intrusion by the federal government. His work on the case began when the federal government filed its petition for certiorari, but once the US Supreme Court granted review, Judge Powers also worked on the brief on the merits and subsequently went to Washington DC to help prepare Assistant Attorney General Robert Atkinson for oral argument, holding several moot courts, and watching the



Judge Steven Powers

argument in the courtroom. In addition to the successful outcome, Judge Powers also noted that at the same time that he was working in opposition to the federal government on this case, Oregon DOJ was working with the federal government on another case before the US Supreme Court, strategizing and coordinating their respective positions because they aligned. He says it remains an excellent "reminder of the importance of disagreeing without being disagreeable."

Judge Powers noted that some of the projects or initiatives he has appreciated most throughout his career include those which help to demystify the legal profession, especially for youth and aspiring college and law students. Earlier in his career, Judge Powers spent a few seasons coaching We the People Constitutional Law Teams at Parkrose and Jefferson high schools, and continues to volunteer with the Classroom Law Project from time to time. In recognition that these types of efforts help to foster a legal community which better reflects the community we all serve, Judge Powers, who is the first Filipino American appellate judge in Oregon, has also been involved with the Oregon Minority Lawyers Association, the Oregon Asian Pacific American Bar Association, and the Oregon Filipino American Lawyers Association. Judge Powers still recalls an OMLA Road to the Bench CLE seminar he attended in which Judge Roosevelt Robinson spoke about his path from working as a janitor to eventually becoming a judge in Multnomah County. Judge Robinson, as well as many others, inspired Judge Powers not only to pursue a career in the judiciary, but also to continue to take the time to engage with law students and other members of our legal community.

Judge Powers earned his Bachelor of Arts from Western State College of Colorado (now known as Western State Colorado University) and his Juris Doctor from Willamette University College of Law. He took the bench at the Oregon Court of Appeals in July 2017.

MBF Invites Letters of Inquiry for 2018 Grants

by Pamela Hubbs
Office and Foundation Administrator

Local nonprofits interested in receiving 2018 grant funding for programs that promote understanding of the justice system, the importance of voting, the political process or civic involvement are encouraged to submit a letter of inquiry to the Multnomah Bar Foundation (MBF) by January 19. Grants are awarded to 501(c)(3) organizations whose programs increase civic education and involvement and understanding of the rule of law. Priority is given to new projects that utilize MBA volunteers in the geographic area served by the MBA.

Criteria for letters of inquiry, deadlines, and other information about the grants program may be found at www.mbabar.org/foundation/grants.html. Grant awards will be announced and funded in May.



In 2017, the MBF granted a total of \$47,320 to Bus Project Foundation, City Club of Portland, Elders in Action, League of Women Voters of Oregon, League of Women Voters of Portland, MetroEast Community Media, Northwest Family Services, Oregon Tradeswomen, Inc., Saturday Academy and Sponsors Organized to Assist Refugees.

For more information, please contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).

Solo & Small Firm Committee Workshop

UNDERSTANDING BASIC ACCOUNTING/ BOOKKEEPING WITHIN YOUR LAW FIRM

Tuesday, February 13
Workshop: 12-1:30 p.m.
Red Star Tavern Club Room
503 SW Alder, Portland

It is not enough to have an IOLTA checking account or give your financial records to a bookkeeper and tax accountant. Learn what happens once you have a client trust account, where the money is located on your financial statements and how it coincides with your legal management system. Learn how your day-to-day business activities are reflected in your monthly financial statements. Learn basic accounting concepts and safeguards to protect your clients and your practice. **Lozelle Mathai**, MBA, CFEI, will share her vast experience with us. She is a financial educator and accountant and the founder of Closing Your Books, LLC.

Cost: \$20 members/\$60 non-members.

Lunch is provided.

One hour of Business Development CLE credit will be applied for.

Register at www.mbabar.org.

mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, which includes any MBA member in practice less than six years or under the age of 36. The YLS provides leadership, networking, professional development and service opportunities. And we have fun!

Ask the Expert

Dear Expert,

My New Year's resolution is to get back in shape. But as an associate at a busy firm with billable hours, CLEs, and professional development expectations, how do I find time to actually get out and exercise?

Sincerely,
Sedentary Solicitor

Dear Sedentary,

If you feel like there are not enough hours in the day, you are not alone. When trying to keep both clients and partners happy, it's easy to put exercise and your physical fitness on the back burner. However, the benefits of making time for fitness are worth the extra effort, both personally and for your practice. Here are a few tips to help you get started:

Tip 1: Find a time that works with your schedule. Not everyone is cut out for hitting the gym at 5 a.m. Heck, I know I am not! I'm more likely to hit the snooze button several times and sleep in.

The trick is to find a time in the day that fits with your work and sleep schedule. If you're an early riser, seize the day! If you like to stay up late binge-watching *Stranger Things*, maybe it is better to exercise in the evening. Other options are to exercise during lunch or at a set time every day. Finding time to exercise may seem like a chore at first, but after a while, it will become a habit.

Tip 2: Look for ways to incorporate physical activity into your firm. Physical fitness does not have to be a solo mission. Today, perhaps more than ever, employers are committed to the health and well-being of their employees. As an associate, don't be afraid to suggest activities that match your firm's values and culture.

For example, if your firm has a lot of runners, you could sign up for a fun run or sponsor a Hood to Coast relay team. Alternatively, you could recruit a softball, kickball, or indoor soccer team. If you don't have enough interest among coworkers, consider recruiting a team of fellow young attorneys or law school classmates, which can provide valuable networking opportunities in addition to exercise.

Tip 3: Ditch the car. Let's face it, traffic in Portland is not getting better anytime soon. If you are getting tired of paying for gas and parking, consider biking to work. You will not only save money, but will get a workout in as you go.

Public transportation is another solid option. According to Trimet ridership studies, on average bus riders walk a quarter of a mile to their stop. MAX riders typically walk half a mile. Taking public transportation is a sneaky way to get some extra steps in during the day.

Tip 4: Go outside! As attorneys, we spend a lot of time indoors. Exercise is a great way to get your vitamin D fix. Need to chat with a co-worker? Try a walking meeting and kill two birds with one stone.

On weekends, consider making time for longer activities that you enjoy doing. Go for a hike. Hit the slopes. Get a round of golf in. Activities like these not only burn calories, but they provide a much-needed mental break as well.

Finding time for exercise may seem challenging, but once you start, it will become part of your routine. Remember, you can't take care of your clients unless you take care of yourself, so get out there and start moving!

Sharae Gross YLS Member Spotlight

by Mary Tollefson
YLS President

Sharae Gross cannot remember a time when she did not want to be a lawyer. As a child, when she still thought that adults would get a summer break, she would tell people that she wanted to be a lawyer during the school year and a paleontologist during the summer. She remembers watching *Matlock* and *Perry Mason* at her grandmother's house as a child and thinking that being a lawyer was her calling in life.

Sharae grew up in Vancouver, Washington and attended Fort Vancouver High School. She was part of the legal magnet in high school, which was a program with a focus on the law. Her high school even had a courtroom where she participated in mock trials.

In college, Sharae focused her studies on history while attending the University of Washington. Sharae always enjoyed studying history and knew that area of study would allow her to hone her research and writing skills. Sharae liked looking at past events and evaluating how those events fit into a bigger picture. One of the most rewarding experiences for Sharae was being a resident advisor in college. She liked creating a community for the students and serving as a peer resource during what can be a very challenging time.

Sharae made the decision to attend law school at NYU Law because it offered the opportunity to experience living in a very different part of the country. Although moving across the country was somewhat a leap of faith, attending law school at NYU offered a supportive community of students and friends. In her spare time, she was able to continue to foster her love of history by touring various landmarks and learning about the rich history of the city.

Sharae loved the time she spent in New York, but she knew she wanted to return to the Northwest upon graduation. Although this decision baffled some of the attorneys she had met in New York, she knew that she wanted to be a part of the Oregon legal community. Sharae had spent a summer clerking at Miller Nash Graham & Dunn, and returned as an associate after graduation. She is a member of the firm's employment law and education practice teams. While the day-to-day practice of law may not be as dramatic as *Perry Mason* or *Matlock*, Sharae enjoys helping clients solve problems and addressing complex issues.

In her spare time, Sharae likes to paint. She will be the first to admit that she's no Van Gogh,



Sharae Gross

but she is proud that several of her Christmas-themed paintings are currently hanging in her parents' house. Sharae also loves ghost stories. While she doesn't necessarily believe in ghosts, she likes the history that she learns from the stories.

Sharae is the current chair of the YLS Membership Committee, which is responsible for planning the YLS social events. She has been involved with that committee for several years. She has enjoyed watching the committee evolve and grow, and is very proud of the successes the committee has already experienced this year. Sharae has found that one of the many benefits in being involved with a YLS committee is connecting with her peers in the legal community and gaining insight into different areas of law. Sharae has found the YLS to be a wonderful resource for young lawyers and would encourage any lawyer to get involved.

YLS Community Service Day at Oregon Food Bank

by Ashley Carter
YLS Service to the Public Committee

On November 14, YLS members spent an evening at Oregon Food Bank sorting and packaging fruit that would provide food assistance to individuals and families throughout Oregon. Kevin Flannery, Ashley Carter, and Melissa Chinn (pictured right) joined about 80 other volunteers in packaging 20,264 pounds of apples and pears, amounting to the equivalent of 16,886 meals. All had a good time getting to know one another and other volunteers, while helping many in our community experiencing food insecurity.



MBA Visits the Portland Children's Museum

Saturday, February 24, 5:30-7 p.m.

4015 SW Canyon Road, Portland

Each year, the YLS Membership Committee reserves the Portland Children's Museum (4015 SW Canyon Road, Portland) for this private networking event. Families will have free reign to explore the museum and complimentary refreshments will be provided for kids and adults. Admission is free.

Please register early as space is limited - submit your party's RSVP list to ryan@mbabar.org.

Thank you to our sponsors:



Employment Law: Washington Tips and Traps for the Oregon Attorney

by Anyika Corbett
YLS CLE Committee



Please join the YLS at Kells Irish Pub on February 14 from 3-4:30 p.m. for a panel with three distinguished Portland attorneys, each of whom are barred in Washington as well as Oregon, as they discuss key areas of employment law where Washington and Oregon differ. A social with the presenters will follow the presentation from 4:30-5 p.m.

Employment law is ever-changing and full of grey areas. To add to the confusion, many businesses in the Portland metro area have employees in both Oregon and Washington. For those attorneys newly barred in Oregon, it can be daunting to pick up a client phone call and be asked any questions, let alone Washington state employment law questions. This CLE will get you thinking about differences between Oregon and Washington employment law, and how to answer those questions about our neighboring state.

The panel will include attorneys Megan Crowhurst, partner at Bullard Law: admitted to the Oregon bar in 2013, Washington bar in 2016; Joseph J. Haddad, founder at JJH Law: admitted to the Oregon bar in 2000, Washington bar in 2014; and Andrew Schpak, co-managing partner at Barran Liebman: admitted to the Oregon bar in 2004, Washington bar in 2008.

Why did you become barred in Washington?

Crowhurst: As an employment defense attorney, many of my corporate clients have operations in both Washington and Oregon. Moreover, many employees may live in Vancouver, but work in Portland (or vice versa). Being barred in both states allows me to offer a broader range of client services.

Schpak: I had a couple clients with cases in Clark County and wanted to be able to provide seamless legal support to them, so I applied for reciprocal admission in order to be able to represent those clients in Washington's state and federal courts.

Haddad: I went to high school in Vancouver, WA, and wanted to

capitalize on an under-served market in Clark County and Southwest WA.

How has your practice grown, evolved, or benefited from being barred in multiple states?

Haddad: In a number of ways, and not just by measuring increased revenue or larger client portfolio. Admission into Washington has opened up a separate community of legal and business professionals, which has expanded my own personal network and has even reconnected me with old friends.

What should new Oregon attorneys be wary of when giving legal advice to Washington clients?

Schpak: Although we are neighboring states and often get confused for one another by East Coasters, Oregon attorneys should be wary of the fact that Washington state employment law differs from Oregon state employment law on a number of substantive topics. Moreover, litigators should be aware that the rules of civil procedure and local rules in Washington state courts can be very different from what we're used to in Oregon, so I always recommend that attorneys research and confirm applicable state law and procedure at the outset of the case.

Crowhurst: Employment law in the Pacific Northwest is oftentimes state specific. Although many states have almost no state employment laws (i.e., Alabama, Mississippi, and many other southern states), Oregon and Washington have many statutes governing employment practices that go well beyond the requirements under federal law. For example, the two states have different types of leave laws (i.e., bereavement leave, domestic violence leave) and different requirements for issuing a final paycheck. In addition, similar laws may apply differently to the same business. For example, the Washington Family Leave Act applies to employers with 50 or more employees, whereas the Oregon Family Leave Act applies to employers with 25 or more employees. When advising small businesses, it is imperative that the attorney first determine whether a state's statute applies before offering advice.

What do you enjoy about practicing employment law?

Schpak: My favorite aspects of practicing employment law are the opportunities it provides to find creative solutions to

inter-personal conflict in the workplace and how much of the cases implicate human nature and psychology.

Haddad: People = Drama.

Crowhurst: Employment law is relevant to everyone. Whether I'm talking to a family member, friend, business owner, or client, everyone wants a better understanding of how employment laws apply to them. I especially enjoy defense law work, because I work with small business owners to understand how to apply certain laws to grow and develop their business. Ideally, my clients will call me to discuss a reasonable accommodation or a risky termination first so that we can evaluate the best outcome. When defending my clients in litigation, I'm usually talking with multiple people who were involved in a termination decision, and I get a better understanding of the challenges they face in the workplace. My favorite part of the job is visiting the workplace to understand the witnesses' jobs and their role in the business.

Can you give us a sneak peek at one of the topics you are most excited to discuss at the upcoming CLE?

Haddad: Practical considerations for plaintiff versus employer side counsel when practicing in WA!

Crowhurst: The many types of leave laws that apply to employees under each state's laws.

Schpak: As nerdy as it sounds, I'm looking forward to comparing and contrasting key aspects of Oregon and Washington wage and hour law, including some new laws that have just gone into effect.

Any early 2018 updates that employment attorneys should be aware of?

Haddad: Update to Washington Paid Sick Leave Law (initiative 1433), minimum wage increases, not to mention Paid Family Leave in 2020.

Crowhurst: Oregon's Equal Pay Act was enacted last year and, effective October 6, 2017, employers are prohibited from seeking the pay history of an applicant or employee from the applicant or employee or a current or former employer of the applicant or employee before the employer makes an offer of employment to the prospective employee that includes an amount of compensation. BOLI will begin enforcement on January 1, 2019, which means that many employers will need to revise employment applications and interview processes in 2018 to avoid requesting salary history of job applicants.

The event is \$30 for MBA members and \$50 for non-members. To register, please visit www.mbabar.org or call 503.222.3275. 1.5 hours of OSB MCLE credit will be applied for.

mba yls | EVENT

YLS Drop-in Social

Wednesday, January 10

5-7 p.m.

Paddy's Bar & Grill

65 SW Yamhill St., Portland

Join the YLS to watch the Portland Trail Blazers take on the Houston Rockets. Appetizers will be provided.



No RSVP necessary.

Imprint Program Seeks Volunteers

by Ashley Carter

YLS Service to the Public Committee

The Imprint Program has returned for another fun year of reading great books and corresponding with local high school students. This popular program is sponsored by the YLS Service to the Public Committee and is a way for high school students to connect with attorneys in their community. The program also provides an opportunity for the students to develop written and analytical skills. Each student in the participating class will be paired with a volunteer attorney, and both will be assigned to read the same novel over a three-month period. The student and attorney will write approximately four letters each, discussing their lives and interests as well as the portion of the novel most recently read. By the end of the program, the student and attorney will have developed a mentoring relationship and will have the chance to meet at an informal gathering celebrating the project.


This year, students and their paired attorneys will be assigned one of the following books:

- *The Last Leaves Falling*, by Sarah Benwell
- *Diamond Boy*, by Michael Williams
- *A Time to Dance*, by Padma Venkatraman
- *Life of Pi*, by Yann Martel
- *Bamboo People*, by Mitali Perkins

To participate, you must be able to attend one of two program-end parties at Parkrose High School in Northeast Portland. That's right - a top requirement is that you relax and attend a party (and refreshments are included)! Specific party dates and times to be announced.

An orientation meeting for volunteers will be held on Monday, January 22 at the Standard Insurance Center. Attendance at the orientation is not mandatory but is strongly encouraged, especially for first-time volunteers. The first letters will go out in mid-February.

To sign up for the program, contact Deryn Isaac at the MBA at deryn@mbabar.org or 503.222.3275. If you have any questions, contact Amelia Andersen at amelia.andersen@gmail.com or Gabby Hansen at gabhansen@gmail.com.



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The Corner Office PROFESSIONALISM

One of the newer lawyers in my law firm visited me recently. She was demoralized. She's someone whose personal and professional life is a template for treating everyone she encounters fairly, and for helping those persons overcome obstacles they did not create but had to deal with.

She had just taken the Implicit Association Test. The IAT is an online exercise that attempts to measure the extent of an individual's "implicit bias." You can learn about it, and take one or more of its tests by going to www.implicit.harvard.edu/implicit/faqs.html#faq3. My colleague thought she had "failed" because her scores showed that she had moderate implicit bias in several categories.

Implicit bias refers to an individual's unconscious stereotype or associations about other people or groups that can unintentionally impact perceptions or decisions. Although we're experiencing a rebirth of talking about implicit bias, it has been recognized in the law at least since *Price Waterhouse v Hopkins*, 490 US 228 (1989) and discussed in many opinions such as *Thomas v Eastman Kodak Co.*, 183 F3d 38 (1st Cir 1999). In *Thomas*, the court not only relied on *Price Waterhouse v Hopkins*, but reached back to opinions more than a decade before that Supreme Court opinion. The *Thomas* court observed that "The concept of 'stereotyping' includes not only simple beliefs such as 'women are not aggressive,'

but also a host of more subtle cognitive phenomena which can skew perceptions and judgments."

Implicit bias can apply to categories that include race, age, sex, religion, disabilities, and others. The IAT includes these categories and more, including weight, skin tone, and others.

The IAT has its critics; maybe it doesn't really measure anything. In an October 9 opinion in the *Wall Street Journal*, the author called implicit bias a multimillion dollar consulting industry and criticized the IAT as a device that lacks reliability as a psychological instrument because test scores "have almost no connection to what IAT research ludicrously counts as 'discriminatory behavior.'" Some court opinions, albeit it they are in the minority, exclude evidence of the IAT as "junk science."

My colleague observed that the role of a lawyer involves encounters with others on many fronts: We are employers and employees. We select jurors. We interact with clients and witnesses. We make presentations to judges. We deal with opposing parties and their lawyers. Every one of these creates an opportunity. Is it the opportunity to form a relationship and solve a problem by piercing through stereotypes to reach what matters, or is it the opportunity to make poor decisions without even realizing that they are generated by biases that we are not even aware we carry?

I did not engage my colleague in a debate on whether the IAT has merit. I said that implicit bias is real, even if we may not have an agreed-upon way to measure it. I told her that the only way to "fail" the IAT was to ignore the result. She might not get a better grade if she took the test again, but she would be a better lawyer if she remembered that implicit bias is something that she should think about as she makes decisions. Taking the IAT from time to time might be a good reminder of that. Reading about other studies would also be illuminating. There have been studies about implicit bias in a variety of contexts: one involved partners in law firms evaluating a legal memorandum purportedly written by a third year associate. The opinions on the quality of the memorandum varied widely, when the only change in facts was that half the partners were told that the author was Caucasian, and half were told that the author was African-American. In other studies, female job applicants perceived as married were offered fewer jobs (and lower salaries) than similarly situated single females.

And I reminded her that being sensitive to implicit bias was not just a personal improvement project: stamping out bias is something that we lawyers have an ethical obligation to do. That's why this column is being written. The MBA Professionalism Standards have these obligations:

"We will treat all persons with courtesy, fairness and respect, without regard to any distinguishing personal characteristic such as gender, race, ethnicity, disability, sexual orientation, gender identity or expression, social or economic status, military status, age, national origin, or religion."

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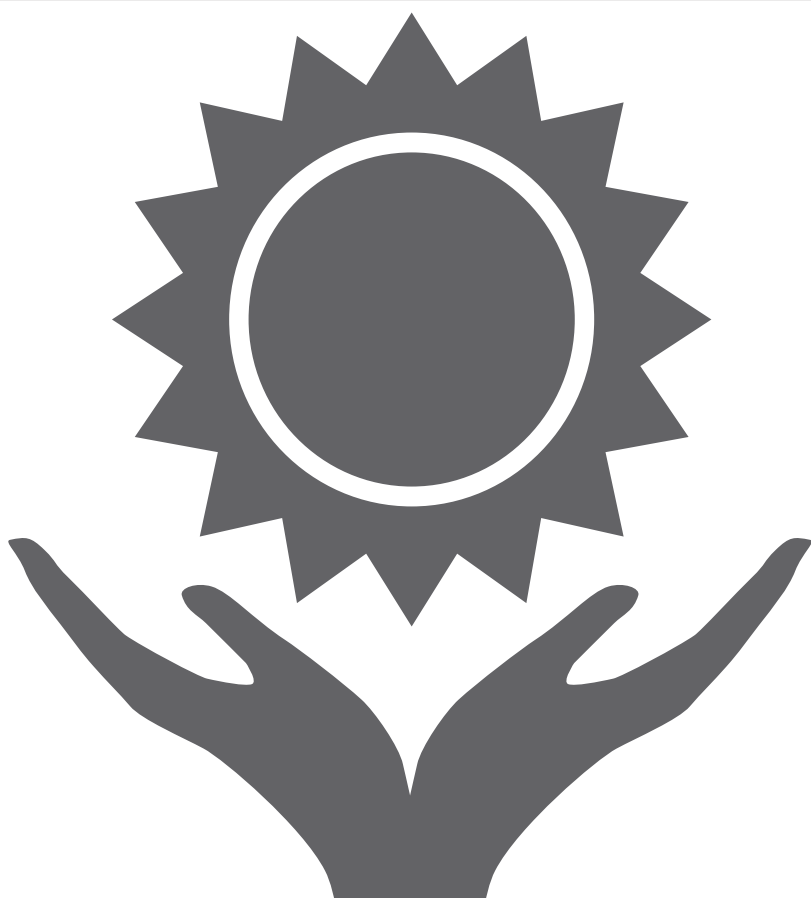
The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer your question. Questions may be submitted anonymously.

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

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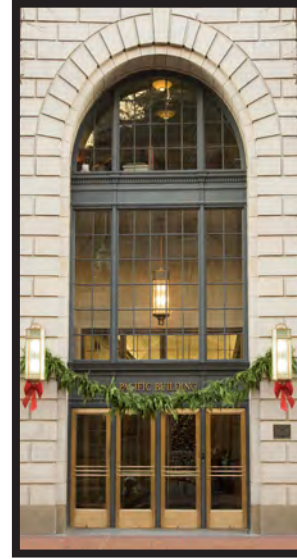
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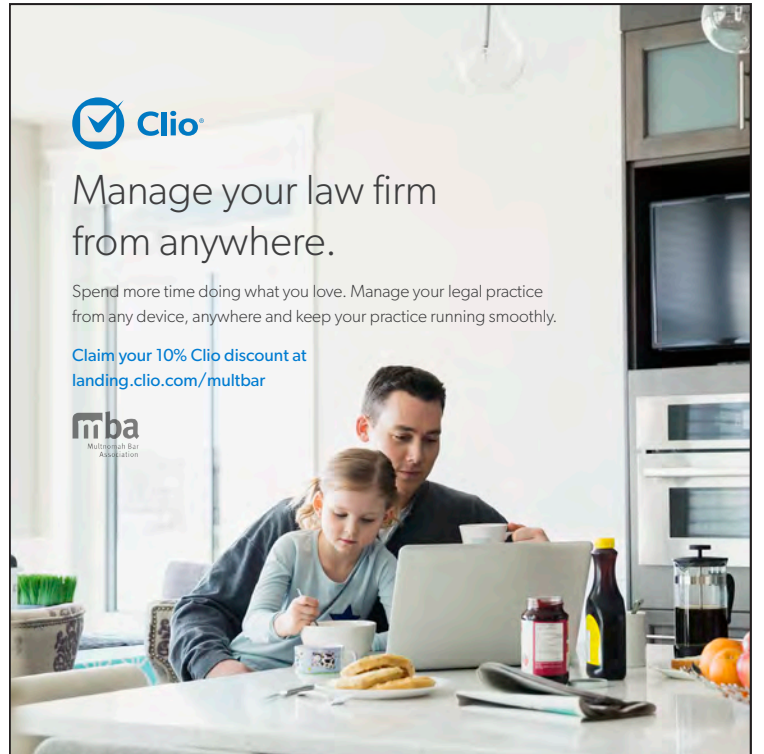
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Volunteer Opportunity: Case Monitor



Your task will be to review the case, visit independently with the Guardian and the Protected Person and write a report to the Court. This information will be essential in ensuring the Protected Person is safe and thriving.

If you want to help prevent abuse and neglect, let's talk.

Contact: Kristy Wood 503.724.9063
Kristy@guardian-partners.org



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