

## Public Defense Under Fire

by Cierra Brown  
Chair, OGALLA: The LGBT Bar  
Association of Oregon

The Sixth Amendment of the Constitution guarantees defendants the right to an adequate defense, memorializing

the right that everyone deserves legal representation, regardless of income. Court-appointed attorneys meet this guarantee for those in our population who are considered indigent. The work is challenging and often thankless. I have the honor of providing public defense work to indigent folks. Most of you reading this wouldn't touch criminal defense work with a ten-foot pole. Working within the institution of criminal justice, defense attorneys deal with a wide variety of people: some are good people who make poor choices, some are straight-up innocent and have been wrongly convicted, some are jaded and untrusting because of continual mistreatment through institutional processes, wrongly or rightly so, and some are just downright difficult. As a defense attorney, you need to be flexible in your ability to work meaningfully with this diverse population. The hours are long, and the pay is extremely low when compared with the other parties at the counsel table. Defense attorneys are passionate about constitutional protections and fundamental notions of due process at every level; they are dedicated to the profession and do the best they can with what they are given. Many public defense contractors are the hardest working, most talented and passionate attorneys I have ever met.

**Most of you reading this wouldn't touch criminal defense work with a ten-foot pole.**

Recently, The Sixth Amendment Center, a Boston organization, was contracted to evaluate Oregon's public defense services against the backdrop of Sixth Amendment guarantees. So far, findings from the report have not painted our public defense funding system in a very positive light. The report findings suggest, among other things, that being paid a flat fee per case encourages attorneys to plead out cases as quickly as possible, and to take on as many cases as possible, to make a living wage. The report insinuates that defense attorneys only handle these cases for the money and will not take matters to trial and their performance will not meet the requisite standards of professional conduct. This line of reasoning is offensive to me and my fellow defense attorneys. That's like saying people become teachers because it's a lucrative line of work

Let me be frank with you, my friends - regardless of how you pay me, the ratio of pleading versus taking to trial stays the same. In my experience, in the day-to-day trenches of this work, my colleagues hold a similar conviction. We are the ones who see each other at the jail until 9 p.m. and then head back to the office to prepare for trial the next morning. We are the ones scouring secondhand stores to find court-appropriate attire for our clients, and we are the ones who miss our kid's Halloween parties to make sure a client has a

chance at being released prior to trial. There are many things wrong with our model of criminal justice, but the defense bar in Oregon is not one of them.

The findings of The Sixth Amendment Center seek to effectuate much needed change to the way we fund criminal defense services. It is undeniable that our legislature underfunds defense services. So yes, the funding model absolutely needs to change, but not because of an imaginary character flaw among defense attorneys. The study would have the reader believe that attorneys would provide better representation on an hourly rate contract or if they were made employees of the state. Under the report's reasoning, wouldn't that then encourage defense attorney's to take everything to trial and rack up the bill, or perhaps we would do better if we had access to loan forgiveness, retirement, healthcare, and paid vacation?

**It is undeniable that our legislature underfunds defense services.**

Instead of suggesting that my colleagues and I are providing inadequate counsel because we are paid in a way that incentivizes us to make our clients take deals, let's talk about the bigger issues. Let's talk about how we have homeless clients being held in custody with bail amounts that they will never be able to pay, or that quick and enticing plea offer from the state that gets our clients out of jail immediately versus them sitting in jail for 60 days while we prepare for trial. We should be talking more about how Oregon is now the only state that doesn't require a unanimous jury verdict in a felony trial.

Regardless of the outcome of this focus on public defense work, I, and the many others who do this much needed work, will continue to show up each and every day to advocate for our clients.

## SAVE THE DATE!

### MBA 17th Annual WinterSmash

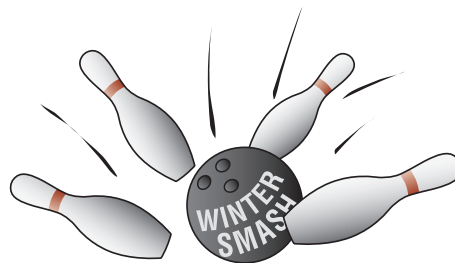
A Family Friendly Bowling Event

Saturday, February 2

11 a.m. - 2 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](http://www.mbabar.org) and log in as a member to register at the member rate.

### JANUARY

1.16 Wednesday

**Tips From the Courtroom: Insights from Current and Former Judicial Clerks**

Bonnie Calhoun  
Lee Ann Donaldson  
Kendall Gourley-Paterson  
Gabrielle Hansen  
Megan Oshiro

1.23 Wednesday

**ADA and FHA Architectural Access Provisions: A Blueprint for Building Inclusive Communities in Property Transactions and Leases**

Matthew Ellis  
Matthew Serres  
Ted Wenk

1.29 Tuesday

**Internal Investigations in the #MeToo Movement: Assessing the Risks and Rewards**

Derily Bechthold  
Elisa Dozono  
Kalia Walker

### FEBRUARY

2.7 Thursday

**Federal Civil Procedure: Crushing Pre-Trial Motions**

Honorable Stacie Beckerman  
Matt Colley  
Margie Schroeder

2.12 Tuesday

**Working with Self-Represented Parties**

Judge Steve Todd  
Shelly Matthys

2.20 Wednesday

**Current Topics in Electronic Discovery**

Ian Christy  
Bridget Donegan  
Shane Sawyer

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\*or the preceding Friday, if on a weekend.

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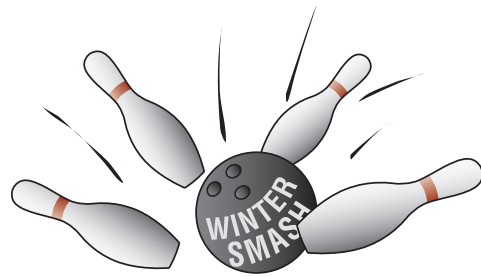
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## WinterSmash to Benefit Multnomah CourtCare



**A Family-Friendly Bowling Event**  
**Saturday, February 2**  
**11 a.m.-2 p.m.**  
**KingPins**  
**3550 SE 92nd Ave, Portland**

The 17th Annual WinterSmash will be held on Saturday, February 2 from 11 a.m.-2 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 afternoon of fun and food. Bumper lanes will be available for children. The event will help to fund the new, larger CourtCare space in the new Central Courthouse, scheduled to open in May 2020.

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 2001. 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, games, 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 sold at the event. WinterSmash promises

to be a good time; don't miss this opportunity! Register via the insert in this issue or at [www.mbabar.org](http://www.mbabar.org).

Thank you to the WinterSmash sponsors.

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# Calendar

## JANUARY

**1 Tuesday**  
**New Year's Day**  
**MBA Office Closed**

**22 Tuesday**  
**New Admittee Social**  
[www.mbabar.org](http://www.mbabar.org)

15 Friday  
 OHBA 13th Annual Awards Dinner  
[orhispanicbar.org](http://orhispanicbar.org)

21 Thursday  
 CEJ 28th Annual Awards Luncheon  
[cej-oregon.org/events/](http://cej-oregon.org/events/)

22 Friday  
 ACLU of Oregon 2019 Liberty Dinner  
[aclu-or.org](http://aclu-or.org)

## FEBRUARY

**2 Saturday**  
**WinterSmash**  
 See details on this page

12 Tuesday  
 League of Women Voters  
 Women and Justice Panel  
[bit.ly/2F9c1Rw](http://bit.ly/2F9c1Rw)

**23 Saturday**  
**Portland Children's Museum Social**  
 Details on p. 12

The MBA Solo & Small Firm Committee Presents

## OVERCOMING CHALLENGES WITH CLIENT COMMUNICATIONS

**Friday, February 15**  
**Workshop: 12-1:30 p.m.**  
**Red Star Tavern Club Room**  
**503 SW Alder St., Portland**

Join us on February 15 for a workshop that goes beyond the basics, addressing the practical challenges practitioners face communicating with clients. **Barbara Long**, Vogt & Long, PC, **Joel Christiansen**, Voge & Christiansen, and **John Robb**, Kevin Sali, LLC, will lead the workshop and discuss their approaches, logistics, resolution of common challenges, and the degree to which they employ tech-based solutions to these issues. Particular attention will be paid to the presenters' practice areas (advising sex abuse victims, small businesses, and criminal accuseds, respectively), but attorneys in all areas of practice are encouraged to attend and participate.

Cost: \$20 members/\$60 non-members.  
 Lunch is provided.  
 The MBA will apply for one hour of CLE credit.

Register at [www.mbabar.org](http://www.mbabar.org).



## DON'T FORGET TO RENEW YOUR MBA MEMBERSHIP

If you have yet to renew your MBA membership for 2019, please take a few minutes to do so online at [www.mbabar.org](http://www.mbabar.org) or contact the MBA office at 503.222.3275.

We look forward to serving you this year.







The MBA will apply for 2 hours of general OSB MCLE credit unless otherwise noted; Washington credit 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.

### Tips From the Courtroom: Insights from Current and Former Judicial Clerks

**Wednesday, January 16 3-5 p.m.**  
**World Trade Center, Sky Bridge**  
 Members \$60/Non-Members \$95

Trial practice can be daunting for new and experienced attorneys alike. Knowing the role that each person of the courthouse plays in facilitating the judicial system is one way to ensure that litigation runs smoothly. Come to the MBA's January 16 CLE to learn more from a few current and former members of this system: judicial clerks. Current clerks, **Bonnie Calhoun**, **Kendall Gourley-Paterson** and **Megan Oshiro**, and former clerks **Lee Ann Donaldson**, Nichols Law Group and **Gabrielle Hansen**, Barran Liebman will discuss basics regarding common do's and don'ts when interacting with clerks and common mistakes lawyers make, with the goal of making everyone's time at the courthouse more efficient and enjoyable. Members' staff may also attend this class at the member rate.

**For more information:** Contact the MBA at 503.222.3275.

### ADA and FHA Architectural Access Provisions: A Blueprint for Building Inclusive Communities in Property Transactions and Leases

**Wednesday, January 23 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

Whether you represent plaintiffs or defendants in real estate transactions or landlord/tenant issues, this CLE is for you. Bob Joondeph, Executive Director for Disability Rights Oregon recently noted that "Disability touches everyone."\* This CLE will cover accessibility provisions under both the Americans with Disabilities Act, as well as the Fair Housing Act. Our panel of experts will also provide their insight on how you can best help your clients in complying with the spirit and intent of these two civil rights statutes, which aim to provide persons experiencing disabilities opportunity and choice in our society. As the number of Americans with disabilities continues to grow as our population ages and veterans return home with newfound disabilities, our experts will also discuss how embracing persons with disabilities is key to long-term success for all property owners and landlords.

Join us on January 23 for this timely topic given Portland's real estate boom. Our panelists will include: **Ted Wenk**, Managing Attorney, Disability Rights Oregon; **Matthew Serres**, Housing Attorney, Disability Rights Oregon; and **Matthew Ellis**, Law Office of Matthew C. Ellis.

\*See Bob Joondeph's Interview on OPB's Think Out Loud, [bit.ly/2QxTAey](http://bit.ly/2QxTAey)

**For more information:** Contact the MBA at 503.222.3275.

### Internal Investigations in the #MeToo Movement: Assessing the Risks and Rewards

**Tuesday, January 29 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

Although Harvey Weinstein sent the #MeToo movement into overdrive, harassment allegations are not limited to male-female interactions. Increasingly, organizations are facing claims of gender, sexual-orientation, racial and ethnic discrimination that may also be tied to historic and structural issues. How can companies get ahead of these allegations? What additional issues should public entities and nonprofits consider? And what happens when your investigations go public? Presented by **Derily Bechthold**, Portland General Electric, **Elisa Dozono**, Miller Nash Graham & Dunn LLP, and **Kalia Walker**, Bullard Law LLP.

**For more information:** Contact the MBA at 503.222.3275.

### Federal Civil Procedure: Crushing Pre-Trial Motions

**Thursday, February 7 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

Civil litigators spend the majority of their time in the pre-trial phase of litigation, and pre-trial motion practice is an indispensable tool for any strategic litigator. Please join the **Honorable Stacie Beckerman** of the U.S. District Court of Oregon and **Margie Schroeder** and **Matt Colley** of Black Helterline in discussing how to crush your next pre-trial motion in federal court. Topics include: motions to dismiss, discovery motions, motions for summary judgment, and motions in limine.

**For more information:** Contact Emily Miller, Miller Nies LLC at 971.255.1407. For registration questions, contact the MBA at 503.222.3275.

### Working with Self-Represented Parties

**Tuesday, February 12 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

It happens to all of us - we find ourselves with a self-represented party on the other side of a case. Sometimes the person is cooperative, sometimes not. In any case, the challenges presented by a self-represented party can be frustrating at best, infuriating at worst. How do you approach a case with a self-represented party? Can you even get the case resolved? Is there anything you can do to ease the case along? Our experienced speakers will assist us with learning how to work with self-represented parties. Come learn the tricks of the trade from those "in the trenches." Our speakers are **Shelly Matthys**, Matthys Family Law, formerly Executive Director of St. Andrew Legal Clinic, and **Judge Steve Todd**, Multnomah County Judge pro tem.

**For more information:** Contact Terry Wright, Willamette College of Law at 503.375.5431. For registration questions, contact the MBA at 503.222.3275.

### Current Topics in Electronic Discovery

**Wednesday, February 20 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

Litigants face considerable expense and risk in navigating the increasingly complex landscape of electronic discovery. This program will explore recent developments in electronic discovery law and practice, with an eye toward practical solutions to common problems. **Ian Christy**, Miller Nash Graham & Dunn LLP; **Bridget Donegan**, Larkins Vacura Kayser LLP; and **Shane Sawyer**, Streamline Imaging will discuss recent case law and offer tips for managing preservation, collection, review, production, and discovery motions in a cost-effective and efficient manner.

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

### The Break-Up: Terminating Ownership Interests in Closely-Held Businesses

**Tuesday, February 26 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

This CLE will provide a comprehensive look at all aspects of business breakups, including shareholder disputes, LLC member disputes, oppression claims, squeeze-out mergers, and reverse stock splits. Our speakers, **Bob McGaughey** and **Aurelia Erickson**, with the law firm McGaughey Erickson, will cover considerations for planning when forming entities as well as litigation that ensues over breakups in closely-held businesses. This is the ideal CLE for anyone advising businesses or engaged in business litigation.

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

### Goldilocks and the Three Couch Surfers: Navigating the World of Establishing and Regulating Airbnbs in Oregon

**Wednesday, February 27 4-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$30/Non-Members \$50

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

This CLE will address the nuts and bolts of creating and regulating short-term rentals/Airbnbs within the city of Portland and elsewhere in Oregon, including a discussion regarding the various private restrictions an owner/operator of an Airbnb will need to consider before launching their operation (e.g. restrictive covenants, liability insurance, nuisance claims). Join speakers **Tony Garcia**, Portland Office of City Attorney and **Kathleen Profitt**, Profitt Law PC for this informative class.

**For more information:** Contact Adele Ridenour, Ball Janik LLP at 503.944.6062. For registration questions, contact the MBA at 503.222.3275.

### Collecting on Judgments

**Thursday, February 28 3-5 p.m.**  
**World Trade Center, Mezzanine**  
 Members \$60/Non-Members \$95

Judgments are great but collection is what your client cares about. Learn how to "get it done" efficiently and add to your tool chest of creative techniques while avoiding the minefields. Aimed at the business/commercial litigator as well as consumer-debt practitioners, we'll cover attachment, debtor exams, sheriff's sales, bankruptcy issues, deeds in lieu and everything in between that we can cover in two hours. Our speakers are two experienced litigators: **John Parsons**, Parsons Farnell & Grein LLP, and **Eleanor DuBay**, Tomasi Salyer Martin.

In this seminar you will learn:

- How to strategically use debtor interrogatories and exams;
- Options for enforcement proceedings, including writs and executions;
- Understanding the effects of a bankruptcy on your judgment;
- How to tee up a sheriff's sale or foreclosure.

**For more information:** Contact Emily Miller, Miller Nies LLC at 971.255.1407. For registration questions, contact the MBA at 503.222.3275.

**To register for these classes, see page 4.**



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Self-study materials from past CLE classes may be downloaded at [www.mbabar.org](http://www.mbabar.org).

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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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### Register online and order or download MBA self-study materials at [www.mbabar.org](http://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  
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#### 2/26 The Break-Up: Terminating Ownership Interests in Closely-Held Businesses

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#### 2/28 Collecting on Judgments

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## mba | ANNOUNCEMENTS

### Now Accepting Nominations for Pro Bono Awards

The MBA, Legal Aid Services of Oregon and Oregon Law Center are now accepting nominations for the 2019 Pro Bono Awards. Presented at the MBA Annual Dinner on May 14, these awards honor individuals who have displayed a special commitment in their service to pro bono in our community. Nominations are due Friday, January 25. See the enclosed nomination form for details.

### Conference Room Available to MBA Members

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 "Presenting Expert Witnesses at Trial" is now available in the Members Center at [www.mbabar.org](http://www.mbabar.org). The seminar was accredited 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.

### Commitment to Professionalism

The MBA Professionalism Statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free Professionalism Statement at [www.mbabar.org/assets/documents/profcertorder.pdf](http://www.mbabar.org/assets/documents/profcertorder.pdf).

### Noon Time Rides

Short fast rides with hills. Meet at SW corner of Pioneer Courthouse Square (Yamhill & Broadway) between noon and 12:10 p.m., Monday and Thursday. Contact: Ray Thomas 503.228.5222 with questions, or meet at start.

## Congratulations to Lauren Blaesing, Our Newest Shareholder



Lauren Blaesing is a highly-skilled trial lawyer who sees both the big picture and the details. Those traits, along with her keen interest in doing what's best for her clients, are the formula for her winning legal strategies. Kudos, Lauren.



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## Ethics Focus

### Fair Trial: New Oregon Ethics Opinion on "Affidaviting" Judges

by Mark J. Fucile  
Fucile & Reising LLP



Judicial disqualification comes in two forms in Oregon state trial courts. The first is "for cause" under ORS 14.210 and generally parallels Oregon Code of Judicial Conduct Rule 3.10. The respective statute and rule address conflicts on the judge's part such as when the judge was involved in the same proceeding as a lawyer before taking the bench. The second is "for prejudice" under ORS 14.250 and allows a party to seek disqualification of an assigned judge if the party or the party's attorney "believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge." Of the two variants, disqualification under ORS 14.250 is far more common and is generally known as "affidaviting" a judge.

The term "affidaviting" comes from a companion provision to ORS 14.250-ORS 14.260, which requires an affidavit with language mirroring ORS 14.250 supporting a motion for disqualification. ORS 14.270, in turn, requires that a motion and affidavit generally be filed at the time of assignment or if oral notice is given at the time of assignment by the close of the next judicial day. The Supreme Court in *State ex rel. Kafoury v. Jones*, 315 Or 201, 205, 843 P2d 932 (1992), held that the requisite belief simply has to be subjective and "not the objective

truth of that belief." Given that low bar, the Supreme Court in *State v. Pena*, 345 Or 198, 203, 191 P3d 659 (2008), described ORS 14.250 as "an exercise of legislative grace."

Despite that low bar, ethics issues remain in "affidaviting." The OSB last year released Formal Opinion 2018-193 that addresses three areas in particular: (1) Is a judge's perceived leaning for or against a particular class of litigants an appropriate basis for an affidavit as a matter of ethics? (2) May the lawyer consider the impact that filing an affidavit might have on the lawyer's other clients or the lawyer's reputation? (3) Does a lawyer have a duty to advise a client about the availability of the "affidavit" process? In this column, we'll survey all three.

#### Basis of the Affidavit

The first area Opinion 2018-193 discusses is predicated on a hypothetical in which the judge does not have a specific bias against the particular parties or attorneys in the matter concerned

#### ...ethics issues remain in "affidaviting."

but is perceived as being more or less favorable to particular classes of litigants - such as plaintiffs in personal injury cases or defendants in criminal cases.

As noted earlier, the Oregon Supreme Court has held that the "belief" that an attorney must have to satisfy the statute is subjective rather than objective. Various provisions of the Rules of Professional Conduct - including RPCs 3.3(a)(1), 8.2(a) and 8.4(a) - prohibit false statements. Opinion 2018-193 acknowledges that the inquiry under ORS 14.260 is subjective. Therefore, if a lawyer truly believes that the client cannot receive a fair and impartial trial and the affidavit is not made for the purposes of delay, then Opinion 2018-193 concludes that the subjective standard is met and the affidavit is proper. The opinion cautions, however, that simply using the "affidavit" process for forum shopping would constitute bad faith.

#### Impacts Beyond the Case Involved

Opinion 2018-193 notes that RPC 2.1 requires a lawyer to

exercise independent professional judgment and that RPC 1.7(a) (2) prohibits a lawyer from representing a client if the lawyer's representation will be materially limited by either the lawyer's duty to another client or the lawyer's own interest. Opinion 2018-193 (at 6) finds, therefore, that "[i]n the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit for change of judge on a case-by-case basis, without regard to [L]awyer's personal interests or the interests of others."

#### Duty to Advise

Under RPC 1.4(b), a lawyer must "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Similarly, RPC 1.2(a) requires a lawyer to "consult with the client as to the means by which ... [the objectives of the representation] ... are to be pursued." Opinion 2018-193 takes a nuanced view of the duty to advise. On one hand, it reasons (at 7) that if the lawyer believes that there is no legal or ethical basis to file an affidavit, "then there is nothing to discuss ... and Lawyer would have no duty ... to advise[.]" On the other, it concludes (at 7) that if a lawyer believes that an affidavit is an available tool, the lawyer "has a duty to ... to reasonably consult with ... [the client] ... about that decision."

#### ...an attorney must have to satisfy the statute is subjective rather than objective.

Opinion 2018-193 recognizes that although ideally the consultation with a client should precede the decision to "affidavit" a judge, time constraints may require the lawyer to make a decision on the spot when a judge is assigned - such as at docket call or a similar assignment setting. In that event, the opinion counsels that the lawyer should discuss the issue within a reasonable time after the decision. Finally, if the lawyer and client disagree, the opinion defers to the lawyer - viewing the decision to disqualify a judge as going to the "means" rather than the "objectives" of the representation.



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## Around the Bar



Tim Fransen



Eamon P. McMahon

**Cosgrave Vergeer Kester LLP**

**Tim Fransen** has been named partner at Cosgrave Vergeer Kester LLP. His practice focuses on defending class action and individual claims against consumer financial institutions involving violations of federal and state financial and consumer protection law, including the FDCPA, FCRA, and TCPA. In addition, Fransen advises clients on compliance with financial and consumer protection laws and regulations, and helps clients respond to inquiries and investigations from regulators.

**Eamon P. McMahon** has joined the firm, and will specialize

in representing individuals and businesses in matters of product liability, tort, and commercial litigation. Prior to joining Cosgrave, McMahon worked as a deputy district attorney for Multnomah County and tried more than 70 cases to verdict, including 49 jury trials.



Robert Koch

**Tonkon Torp LLP**

Tonkon Torp attorney **Robert Koch** has joined the Advisory Board of Camp Kesem at the University of Oregon. Kesem is a national organization that provides free summer camps and community events to children impacted by a parent's cancer. Kesem provides these opportunities through local chapters organized and led by college students.

Koch joined Tonkon Torp in 2018 as Chair of the Appellate Practice Group and handles cases in state and federal courts of appeals. Prior to joining the firm, he worked in the US Department of Justice in Washington, DC, as part of its Civil Rights Division.



Josh Smith

Tonkon Torp welcomes Alto Law Group's **Josh Smith** to the firm, where he will be practicing in the Entrepreneurial Services, Intellectual Property, and Mergers & Acquisitions practice groups. Smith is joining the firm as a partner as Tonkon Torp absorbs Alto Law Group and its clients. Smith brings substantial corporate and intellectual property transactional experience in the startup and technology sectors. His practice focuses on counseling emerging and mature companies on venture capital and angel financing opportunities, mergers and acquisitions, strategic alliances and joint ventures, technology licensing, and commercial agreements.

**Chanpone Sinlapasai**

Immigration attorney **Chanpone Sinlapasai** of Marandas & Sinlapasai PC has joined the ACLU of Oregon Board of Directors. She also became a volunteer presenter in the new MBF outreach program, CourtConnect, and joined Judge Melvin Oden-Orr to address a citizenship class at SOAR, sharing information about the court system and procedural fairness.



Chanpone Sinlapasai, Judge Oden-Orr and Barbara Williams, SOAR



Ken Fransen

**Ken Fransen**

**Ken Fransen** has opened a boutique estate planning practice. Fransen was an attorney in 'that other state which shall not be named' for 38 years, then retired so he and his wife could move to Portland to be with their family, and also to travel. After 75,000 miles of road trips in just over two years, he found that he really missed practicing law. After taking the Oregon Bar exam this year, Fransen proudly became the oldest new lawyer in Oregon. He handles all manner of estate planning projects. As a solo, he is available for conflict assignments where a family member must be referred out for their estate planning due to an un-waivable conflict with other represented family members. He lives in South Waterfront and will offer in-home consultation for those who live in that area.



Robert Koury

**Miller Nash Graham & Dunn LLP**

The firm is pleased to announce that **Robert Koury** has joined the Portland office. Koury brings with him more than 20 years of experience with real estate and construction law, as well as extensive experience with contract transactions, banking and finance work and mergers and acquisitions. Koury is a member of the NAIOP Commercial Real Estate Development Association and is a board member of REACH Community Development.

*The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. Submissions may be emailed to [mba@mbabar.org](mailto:mba@mbabar.org).*

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**FWW is Pleased to Announce  
Dominic M. Sagona  
Has Joined the Firm**

Farleigh Wada Witt is pleased to announce that Dominic Sagona has joined the firm as an associate. His practice emphasizes estate and succession planning, taxation, and resolution of internal and external business disputes. Dominic is also very active in estate litigation including probate, guardianships and conservatorships.

Dominic attended law school at Gonzaga University. He earned his LL.M in Taxation from the University of Denver and returned to the Pacific Northwest to practice in estate planning and administration, taxation, and business disputes. He is a member of the Estate Planning & Administration and Taxation sections of the Oregon State Bar.

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**Ensuring Your Firm Sticks  
to Its Ethics**

by Elise Bouneff  
Columbia Bank

A good deal of business news these days does not report on growth, sales and product innovation, but rather on companies who are being investigated and even found culpable for ethical lapses. When businesses - both large and small - abandon their core principles, everyone suffers, including the company, the employees, the customers and the community as a whole.

In today's environment, top management, as well as employees within your firm, have a responsibility to carry out a culture of principles so it becomes the accepted way of doing business. Here are some ideas for how to do this:

**Start with an Ethics Program.** Develop a set of values and beliefs that define the firm and help guide decision making. Include a code of conduct to influence behavior.

**Offer Training.** Conduct onsite training to run through scenarios that people in business and at your firm face day to day. Offer scripts, role-playing and reference material for staff. Also, consider allowing employees to attend professional development seminars.

**Communicate Openly about the Topic.** While it's important to share a written document outlining expectations, ongoing communication will reinforce the importance of upstanding conduct.

Post printed materials throughout the office. Share these efforts with clients. Establish a recognition program for those who go above and beyond or who offer valuable ideas for incorporating ethics into the workplace.

**Walk the Talk.** It's not enough to create an ethics program or talk about the importance of ethical behavior. Partners and leaders must demonstrate the behavior every single day. It will make the most impact when it's not the easy choice.

**Provide Safe Harbor for Those Who Report Abuse.**

Sometimes, no matter how many background checks you conduct or how many references you call, a dishonest person might slip through the cracks. Firms can protect themselves by creating a whistleblower policy, which establishes a safe environment for employees to express concern about potential abuse or fraud.

Ultimately, working hard to ensure your firm functions ethically is not only the right way to operate, but really the only way to operate so that your reputation and your brand remain viable.

*Elise Bouneff is Senior Vice President and Commercial Relationship Banking Officer at Columbia Bank. She can be reached at ebouneff@columbiabank.com.*

**We Are Growing**

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Samuels Yoelin Kantor is pleased to welcome Jessica L. McConnell as a partner.

Ms. McConnell joins SYK with nearly 15 years of legal experience in federal, state, and local tax controversies, including tax audits, offers in compromise, tax collection matters, and bankruptcy with a tax nexus.

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## Tips From the Bench

by Judge Judith Matarazzo  
Multnomah County Circuit Court

Last week, as I rode in the courthouse elevator, I heard two attorneys talking and lamenting that the court had refused to award attorney fees as a sanction on a Motion to Compel. The exact comment was “I am not sure if he would ever find grounds to award sanctions!” Of course, I said nothing but went back to my chambers and began asking several judges their thoughts and practices concerning the award of sanctions for discovery violations or inappropriate behavior in court.

ORCP 46 gives the court wide latitude and discretion in determining whether to award a sanction, as well as the type of sanction. The court is permitted to impose sanctions for violations of the rules and for disregarding court orders. But the rules also permit the court to impose sanctions for conduct that undermines the purpose of the discovery. Imposition of sanctions under the rule turns on a reasonableness standard. The sanctions may be of a financial nature or the court may strike the testimony of a witness, the ability to testify at all, or strike, stay or dismiss a case. One Multnomah County judge required a law firm to hold a CLE on a specific subject and everyone in practice under 15 years was required to attend.

The problem for the court is that most incidents of unprofessional conduct occur outside the presence of the judge. In a discovery motion there are often accusations and counter-accusations, such that by the time it reaches the judge it's usually impossible to determine who, if anyone, is at fault. In many cases both parties contributed to the situation giving rise to the dispute.

The court also struggles with a limited factual record, which makes it difficult and time consuming for a judge to try and determine who “started it.” Time



constraints often force judges to attempt to resolve the allegations by resolving the underlying discovery dispute in such a way that allows the case to continue to move forward towards resolution.

In my experience, lawyers forget that most cases are not assigned to a judge for all purposes unless it is a complex case and thus judges don't live with a case the way lawyers do. While a motion judge is assigned to hear all motions, many cases only have a few motions so judges don't regularly interact with the lawyers on all matters pertaining to the case. A lawyer may reach his or her boiling point with another lawyer for a variety of reasons. However, most issues can be resolved, at least in part, with better communication. The single most frequent source of frustration appears to be the lack of opposing counsel's willingness to respond; thereby creating a sense of frustration or even anger. What might look like unprofessional conduct to the accusing lawyer with many months of personal experience might look different to the judge reading the motion.

Lastly, I found that many judges do in fact award sanctions, but, if you file a motion seeking sanctions that involves allegations of discovery violations or unprofessional conduct by another lawyer, make sure that the other lawyer will not be able to say the same of you in his or her response.

## Paul Bovarnick Joins MBA Board

**Paul Bovarnick**, Rose Senders & Bovarnick LLC, was appointed to the MBA Board of Directors to replace Richard Spier, who resigned in December citing time constraints.

Paul represents individual clients who have suffered railroad, construction, or medical malpractice injuries, or who have employment discrimination cases. He has been practicing law since 1979 and has given many years of volunteer service to the MBA and other bar-related organizations. Previously, Paul served on the MBA CLE Committee and MBA Professionalism Committee which he chaired from 2016-17.



Paul Bovarnick

The MBA welcomes Paul to the board. The MBA Board would also like to thank Rich Spier for his service.

## News From the Courthouse



by Jennifer Truzzolino  
Court Liaison Committee

### Presiding Judge's Report - Hon. Stephen Bushong

#### UTCR 21.080

This UTCR - which allows the filing of an e-filed document to relate back to the time the document was originally submitted - contains a trap for the unwary. If you attempt to e-file a document and it is not accepted for filing, the rule allows for the corrected filing to relate back to the date of the original attempted filing. This matters when the timing of the original filing is important, such as for statute of limitations purposes. To have the filing relate back, UTCR 21.080 requires the party to resubmit the filing within three days AND to request *as part of the resubmission* that the filing relate back to the original filing date. Appearing at *ex parte* after resubmitting the document to request the subsequent (correctly) filed document relate back to the original filing date does not fully comply with the rule. If that happens, the Presiding Court may grant the request, but without prejudice as to the timeliness or failure to comply with UTCR 21.080. The better practice would be to re-submit the document within three days and to request as part of that resubmission that the filing relate back to the original attempt.

#### Case Resolution/Notification to Court

A reminder to notify the court immediately when a case resolves. If the case resolves when motions are pending, please advise the motions judge so the judge does not waste time and judicial resources unnecessarily reviewing the materials related to the motion.

#### Disqualification of Judges

Be aware of the process to disqualify judges in Judge Bushong's article in the December 2018 *Multnomah Lawyer*. The court will deny a request to disqualify a judge that does not comply with the rules explained in that article.

#### Trial Reset

A reminder that a trial date set by the court at a Trial Readiness Conference (TRC) is considered a “firm” trial date. There are no “ordinary course” setovers. Any request to reschedule a trial

date selected at a TRC must be presented to the Presiding Judge at a scheduling conference even if the parties stipulate to a setover. See SLR 7.025. Do not go to *ex parte* to request a set over. Do not show up at call to request a set over. Attorneys are required to appear in person at the scheduling conference. Appearance by telephone is not allowed absent good cause and advance approval. At the scheduling conference, the court will set over a trial date only for “good cause.” Typically, “good cause” is that which could not have been anticipated when the trial date was set at the TRC. Additional time to engage in mediation or pursue settlement discussions, or to conduct additional discovery ordinarily will not be treated as “good cause” to postpone trial.

#### Judicial Vacancies

Judge Litzengerger retired at the end of 2018. Several other judicial vacancies are expected this year. Judge Bushong encourages those interested to apply for judicial vacancies.

#### Meeting with Legislators

Chief Justice Martha Walters, Judge Bushong, and Trial Court Administrator Barb Marcille addressed assembled legislators, judges, county officials, and other community leaders at a breakfast meeting on November 28. The program focused on the judicial branch's priorities for the upcoming legislative session, and included an overview of court functions, programs, and the new courthouse. The meeting was hosted by the MBA.

#### Family Law Department Report - Hon. Susan Svetkey

Judge Svetkey has been the Chief Family Law Judge since June 2018. She oversees the Family, Juvenile and Probate courts. Judge Tennyson is the Chief Probate Judge; Judge Henry will assume that role in January. Judge Holmes Hehn is the Lead Juvenile Judge.

#### Changes in Family Court

Beginning this month, Domestic Violence trials will be heard by general bench judges rather than family court judges. This change is the result of a Workload Task Force which found that Family Law judges' caseloads were overloaded. The Family Law department will continue to hear

Restraining Order Applications, Contested Restraining Order Hearings, and Violations of Restraining Orders.

Family Law has a revised trial assignment process. If no Family Law judge is available to hear a matter, lawyers/parties have the option to pick a new trial assignment date, or be on standby for either a general bench or Family Law judge. Parties on standby will be notified by email, by noon, of their assigned judge and hearing time. Family Law cases will no longer be sent to juvenile referees from the Trial Assignment docket, due to their overwhelming workload.

The Children's Representation Project (Lawyers for Kids) currently has approximately 125 volunteer lawyers to represent children in their parents' custody and parenting time cases. The program is pro bono, very busy, and much appreciated by all the judges. If you are interested in being on the list of lawyers to assist, please contact Judge Svetkey's judicial assistant at [rachel.a.finn@ojd.state.or.us](mailto:rachel.a.finn@ojd.state.or.us).

Judge McKnight's settlement program has been successful and will continue. Feedback from participants has been overwhelmingly positive.

The Local Family Law Advisory Committee (LFLAC) has been resurrected. An executive committee has been formed. The LFLAC will focus on access to the court for self-represented litigants. The next meeting is January 17 at noon in courtroom 318; all are encouraged to attend.

#### Reminders

Any questions related to scheduling, filing or general Family Law matters should be directed to the Family Law clerks' office (room 211), not Presiding Court. The supervisor, Lisa Holland, can be contacted at [lisa.mae.holland@ojd.state.or.us](mailto:lisa.mae.holland@ojd.state.or.us).

#### Juvenile Court

Sandra Vallejo is the new juvenile court referee. She was hired after Referee David Knofler retired. The Court thanks our juvenile referees: Carol Herzog, Linda Hughes, Morgan Wren Long and Sandra Vallejo. Their work is extremely challenging and they work very hard on a daily basis. They are rarely publicly acknowledged. The court could not meet the needs of the families in our community without their valuable work.



## Treating Clerks Well is in Everyone's Best Interest

by Judge Katharine von Ter Stegge  
Multnomah County Circuit Court

Imagine graduating from law school and being offered your first job. Imagine that the pay for this job is not great and it requires you to work in a high-pressure environment, but you decide to take the job because everyone assures you it will offer great experience. Imagine you start the job, only to find that in addition to the low pay and high stress, other lawyers sometimes take things from your desk without asking, ask you to make them copies and get them beverages, and stand chatting with their friends in your office so that you can't concentrate on other work. What is this position, you're probably wondering, and why did you accept it?! I am describing the very important and ever-challenging job of the Multnomah County Circuit Court clerk.

The above job description is a dramatization for effect of the particular annoyances clerks periodically face. Clerks will assure you that the burdens of clerking certainly don't outweigh the benefits. Clerks value their court-side exposure to the strategic aspects of litigation as well as the opportunity to serve the public. The clerks are a sharp bunch who know what they're getting into when they sign on with the court. They embrace the fast-paced, sometimes-entertaining, and broadly diverse experience of clerking for trial court judges. To quote one clerk, they love their front row seats watching "attorneys do their thing."

As a Multnomah County Circuit Court Judge who sees and hears about some of the questionable ways lawyers occasionally treat clerks, I am

asking our legal community to consider how it approaches and interacts with our hugely valuable circuit court clerks. Though I am now a judge, I feel like I have a handle on the full range of interactions and "incidents" out in the courtroom because I began my career as a law clerk, and then for many years was that stressed-out litigator. In full disclosure, I will tell you that I once was busted by one of Judge Kantor's excellent law clerks for sneak-eating pretzels during a trial break.

At the beginning of my own career I was a law clerk for a federal judge. I got into the courtroom, but mostly I did research and writing. I was treated like I was special, but I was fungible. My current circuit court law clerk, Ann Marie Schott, is one-of-a-kind. Ann Marie is both my eyes and ears in the courtroom and chief troubleshooter. Though I know I will have to replace her so she can be off to the rest of her career, she is irreplaceable.

Ann Marie's job requires a vast and deep skill set. She alerts me to scheduling delays and is able to get logistical information quickly, find missing lawyers, in-custody defendants, and jurors, and assess the building-wide "situation" with the calm demeanor of a veteran air traffic controller at a high-volume international airport. She tells me who is in court, but also uses her sky-high social IQ to take the temperature of the lawyers and the parties and tell me if there are any interpersonal dynamics on display that I should know about. She is witness to unbelievably upsetting statements and testimony in court and has to keep doing her job

before she can take care of herself. Ann Marie takes care of everyone else first: she calms down anxious lawyers and jurors by patiently answering all of the questions they won't ask me. She also tells me when I need a break. She is an ally and diplomatic liaison to juries and brings me their concerns (and sometimes arranges an emergency delivery of Cheez-Its for them or successfully advocates for a break in the trial for a juror to do a job interview over Skype). In her sparest of time at work, she does excellent research and writing on complex legal issues. In short, she is my extremely competent clerk and work friend. I would like her, and all of our other hardworking clerks, to always be treated like the legal professionals they are.

Following are tips for how to make your clerk interactions a success. While these tips are based on some questionable behavior that has occurred in real courtroom life, I will say that most of this behavior probably resulted from the simultaneous hyperfocus and stress-induced distraction that lawyers in court regularly experience.

1. Please introduce yourself and your client to the clerk when you come into the courtroom. The clerk needs to be able to assess whether everyone is present and the hearing can start. The clerk will also give the judge a heads up about who is present and where they are seated to eliminate confusion.
2. Please also keep in mind that the courtroom is the clerk's actual and sole office. Many lawyers and litigants linger in court to talk, but it works better for the clerk if you move out into the hall because other parties may need the courtroom. Additionally, if you hang around for a long time at the end of a hearing or a day of trial chatting or organizing your papers, you could be



Judge von Ter Stegge and Ann Marie Schott show off the original AV equipment in Courtroom 526

3. Please try to remember to do all of your printing and copying before you get to court. To begin with, an individual courtroom has a tight budget and well-worn printing and copying equipment. Clerks are usually able and happy to help in an emergency, but please try not to use the court clerk as your legal assistant.
4. Please mark your exhibits before you come to court. Proceedings run more smoothly if you don't have to visit the clerk's desk each time you want to offer an exhibit. And once an exhibit is in evidence, it isn't yours to remove without permission.
5. Please be respectful if you need more water or cups. I have seen some very strange behavior around empty water pitchers that I will not detail here, except to say that hydration issues in court can get unexpectedly primal. Clerks are generally happy to supply these courtesies on breaks, but need to be present in the courtroom during the hearing.
6. Please don't take anything from the clerk's desk without asking permission first. It's a golden rule thing. Clerks routinely discover after the fact

7. Please do not try to find a way to break into a locked courtroom. Just please don't do it! There is such a thing as breaking into a courtroom, even if you are a taxpayer.
8. Please say please and thank you. Clerks are helpful. Everyone, clerks included, likes to be acknowledged and appreciated for performing well. A clerk can be an excellent resource for you if you are nice about it.

Treating clerks well is in everyone's best interest. You will make the clerk happy, you will make the jury happy, and you will make your client look good. Also, you are investing in your future. Don't steal the clerk's stapler because the clerk is statistically likely to be a smart lawyer with a good memory. Any clerk might be your opponent on a future case, or in time, just might be your judge.

Join the MBA on January 16 for a CLE seminar titled "Tips from the Courtroom: Insights from Current and Former Judicial Clerks" - details on p. 3.

## Introducing the Free Federal Law Clinic

by Hon. Stacie F. Beckerman  
US Magistrate Judge

The US District Court is pleased to announce the grand opening of the Federal Bar Association's Free Federal Law Clinic. The clinic will open at the federal courthouse on Thursday, January 10.

The FBA's Free Federal Law Clinic will be held in our courthouse library and will be open every other Thursday morning from 10 a.m. to noon. Self-represented litigants may schedule a 30-minute meeting with a volunteer attorney, either at the clinic or by phone. Several law firms graciously allowed me to visit this fall to announce the opening of the clinic, and the end result was a full roster of volunteers for the FBA's six-month pilot project. The court is thrilled that we now have an onsite resource for our self-represented litigants to obtain helpful guidance.

The FBA hosted a training session for interested volunteers at its October 2018 luncheon. A distinguished panel of attorneys

presented on areas of law relevant to many of the court's self-represented litigants. The court videotaped the training session, and it is available from the FBA for viewing at [oregonfederalbarassociation.wordpress.com/resources](http://oregonfederalbarassociation.wordpress.com/resources).

If you come into contact with someone trying to navigate federal court as a self-represented litigant, or someone contemplating filing a new case in federal court, please spread the word about the FBA's Free Federal Law Clinic. Please direct them to [www.fedlawclinic.com](http://www.fedlawclinic.com), where they will find a short questionnaire seeking information about their case. The questionnaire allows the volunteer attorneys to clear any conflicts prior to the scheduled meeting.

The Free Federal Law Clinic is the result of the initiative and hard work of Susan Pitchford (Chernoff Vilhauer LLP), joined by US Magistrate Judge Jolie Russo, Nadia Dahab (Stoll Berne), Gosia

Fonberg (U.S. District Court), Ninth Circuit Branch Librarian Julia Sathler, and Melissa Aubin, Nicole Munoz, and Elizabeth Potter of our clerk's office. Key to the clinic's success is the generous contribution of Tonkon Torp, which is supporting the volunteer efforts of legal assistant Ruth Betancourt to provide administrative support to the clinic under the supervision of Christopher Pallanch, a Tonkon Torp partner. Jack Scholz (Chernoff Vilhauer) also provided valuable assistance by scouting a similar clinic in another district, and Holland & Knight attorneys pitched in to draft the clinic's limited scope retainer agreement.

The FBA and the district court owe a debt of gratitude to the clinic's inaugural volunteers, including Hope Del Carlo, Jacob Goldberg, Michael Fuller, Kennon Scott, Samantha Sondag, Angela Ferrer, Alysia Castro, Anit Jindal, Stanton Gallegos, Paul Bierly, Heather St. Clair, Tim Fransen, John Rake, Mike Porter, Trisha Thompson, Randi Ensley, Christopher Morehead, and Traci Ray, as well as their colleagues from Buchanan Angeli Altschul & Sullivan, Stael Rives, Markowitz

Herbold, Cosgrave Vergeer Kester, Larkins Vacura Kayser, Miller Nash Graham & Dunn, Sather Byerly & Holloway, Holland & Knight, Ogletree Deakins, and Barran Liebman.

A free legal clinic for people in need? This is what happens when our legal community comes together for justice. We are hopeful

that the success of the pilot project will result in a permanent clinic at the courthouse. If your law firm is interested in adopting a month, or you are interested in volunteering on an individual basis, you may contact the clinic at [oregonfederalbarassociation@gmail.com](mailto:oregonfederalbarassociation@gmail.com).

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**What is the YLS?**

An inclusive section of the bar, comprised of 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,

*I am a newer attorney and have recently encountered a very difficult opposing counsel. We correspond primarily by email and it seems like every conversation becomes contentious no matter how minor the subject. I dread checking my inbox. How should I deal with them?*

Sincerely,  
You've (Unfortunately) Got Mail

Ahh, email. It makes our work more efficient, except when it doesn't. The problem with email is that it does not always carry the tone we intend. What might be intended as a quick and direct message can be misread on the other end as overly terse or even rude. This problem can go both ways. Perhaps your communications are being read as discourteous by the other side, or maybe you are reading too much between the lines or perceiving an unprofessional tone that wasn't intended by the sender. The real issue is that things can quickly escalate from a professional misunderstanding to unnecessarily confrontational all based on misinterpreting tone or misunderstanding what the other side is trying to communicate. Here are a few tips to prevent contentious email from clogging your inbox.

First off, try giving your opposing counsel the benefit of the doubt. Don't read between the lines or interpret an unprofessional

tone where they are just being direct. On your end, when you send an email always try to be as professional as possible. Write your email as if a judge might one day read it, which is possible depending on the issue you're discussing. Respond calmly, professionally, and ground your responses in the law or rules applicable to the situation. And if the other side is truly being unprofessional, never sink to their level. You can't control how others act, but you can always control your own conduct.

If you feel your opposing counsel is bullying you or misrepresenting what you are saying, in addition to the advice above, draft your response and then wait to send it. If you respond reflexively, you may write something you later regret - something that damages your client's position or your professional reputation. There's usually no harm in waiting. Take a break, work on something else, and review your response again after a few hours. You may find that what you wrote strikes a harsher tone than you had intended.

A final word: don't overlook the benefits of an old-fashioned phone call. Oftentimes, a direct conversation can easily rehabilitate any miscommunication. Call your opposing counsel and clear the air. Let them know that it seems there may be a misunderstanding and get the conversation back on track.

**Ron Cheng**  
YLS Member Spotlight

by Jamison McCune  
YLS Board

I first met Ron Cheng at an Oregon Asian Pacific American Bar Association speed networking event for law students. He was one of the attorneys volunteering for the event. The next night I saw him again, this time at the volunteer training for the YLS Imprint Program. As we joked about running into each other at back-to-back events, he quipped "I'm either working or I'm networking." In the four years I have known Ron, I have learned there is some truth to that.

Ron was born in Portland, but grew up in West Virginia. When he was in elementary school, he saw pictures of his family living in Oregon and thought it was the most beautiful place he had ever seen. After graduating from West Virginia University with a political science degree, he jumped at the chance to move across the country and attend Lewis & Clark Law School.

In 2014, Ron was hired as an associate at Pickett Dummigan McCall LLP. There, he practices plaintiff's side personal injury law and specializes in representing individuals in dram shop, dental malpractice, and catastrophic injury cases. Ron has tried six cases to verdict, including serving as co-counsel in a personal injury case where the jury awarded his client a seven-figure verdict.

When not sticking up for his clients in court, Ron is an active member of the Oregon Trial Lawyers Association, Oregon Chinese Lawyers Association, and Lewis & Clark Law School Recent Graduate Council. He also volunteers with the Classroom Law Project and Portland State University's Explore the Law Program. For his volunteer efforts, he has received the Lewis & Clark Community Spirit Award, Lewis & Clark Andrea Swanner Redding Outstanding



Ron Cheng

Mentor Award, and the Oregon New Lawyer Division Public Service Award. Ron is a frequent presenter at CLE seminars as well, including the "Applying the Rules of Evidence" course that was part of the 2018 YLS Advanced Litigation Skills Series.

Even with all of this, Ron still finds time to pursue hobbies such as boxing, fencing, cooking, and wine tasting. While Ron joked that he only works or networks, it is obvious that is only a small piece of the picture.

**YLS Service Day Recap**

by Nicole Elgin  
YLS Service to the Public Committee



On December 2, YLS members went to the Oregon Humane Society for some "paw"-lunteering! Alex Bluestone, Alysha Van Zante, Angela DeLuca, Peter Tran, Jonathan Ogden, Wilson Jarrell, Anna Claypool, Kristie Cromwell, and I were able to spend time learning about the community services that OHS provides to animals both in Oregon and in other shelters worldwide. The volunteers also socialized with several dogs, which is critical for dogs, and especially for those that have had limited social interaction in the past. We were elated to hear that several of the dogs we worked with that day were adopted within hours!

**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
- The Alchemist*, by Paulo Coelho

To participate, you must be able to attend one of two program-end parties at Parkrose

High School. 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 January 9 at 5:30 p.m. in the Standard Insurance Center Atrium Room (900 SW Fifth Avenue). 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 Ryan Mosier at the MBA at ryan@mbabar.org or 503.222.3275. If you have any questions, contact Nicole Elgin at nelgin@barran.com or Ashley Carter at carter.ashleym@gmail.com.

**mba yls** | EVENT

**MBA Visits the Portland Children's Museum**

**Saturday, February 23**  
**5:30-7 p.m.**  
**4015 SW Canyon Road, Portland**

Each year, the YLS Membership Committee reserves the Portland Children's Museum 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 [lauren@mbabar.org](mailto:lauren@mbabar.org).





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**James O'Connor  
Pro Bono Spotlight**

by Anthony Blake  
YLS Pro Bono Committee

Early in life, James O'Connor realized he had an overarching desire to help people. He went to Georgetown Law School with the intent of using the law as a tool for change. After graduating in the Ronald Reagan era, O'Connor found himself searching for a job that allowed him to assist individuals and couples in finding solutions to the issues that many families face. So, he traveled to a rural part of Arkansas where he worked as an attorney for Legal Aid of Arkansas. His next stop was Legal Aid of Greater Cincinnati. At each of these locations, he had the freedom to combine his education and personal experience to brainstorm new ways of approaching old problems. "My early positions allowed me to attack the cause of problems instead of just spotting the symptoms," O'Connor said. The on-the-fly experience he gained as a budding legal aid attorney would stick with him for the rest of his career. Eventually, O'Connor walked away from the family law arena and worked as general counsel for the International Union of Operating Engineers in Washington, DC. There, he provided various services to the union and its 4,000 members.

In 2006, he opened his own firm, Jim O'Connor LLC, in Northeast Portland where he works as a mediator and collaborative divorce attorney. After opening his firm, O'Connor wanted to re-connect with his family law roots in a way that he does not always get to experience in his daily practice. Thousands of miles away from the Arkansas Delta where he started, O'Connor became a volunteer at Legal Aid Services of Oregon. Since then, he's found a way to volunteer at LASO at least once a month for the last 12 years. This commitment has



James O'Connor

allowed him to provide family law assistance to almost 200 clients. "Jim's long-term dedication to assisting low income clients is truly remarkable. Jim provides critical legal help with family law legal issues and goes above and beyond to ensure low income individuals receive assistance," said Jill Mallery, Staff Attorney/ Pro Bono Coordinator at LASO's Portland office. When asked why he continues to volunteer at LASO each month, O'Connor responded, "Family is everything to the people who come through the doors of LASO. They have the same issues we all have. Their feelings are real and they're extremely appreciative of the services volunteers provide."

Despite decades of helping hundreds of families, O'Connor remains grateful for every opportunity, "It's a privilege to use your education to help people." Without dedication from volunteers like O'Connor, a majority of the families at LASO would have to face the legal system on their own. He's a great example of what it means to remain committed to finding a way to help the less fortunate, regardless of one's career path. "On behalf of the hundreds of clients Jim has assisted, we thank him for his commitment to increasing access to justice," said Mallery. Our local community is lucky to have him.

**Christopher H. Kent**

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*Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.*







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Brian's practice emphasizes estate planning, mergers and acquisitions, and resolution of internal and external business disputes. Brian is also very active in real estate transactions, and succession planning for family-owned businesses.

Brian attended law school at the University of Miami and returned home to Portland to practice in 2005. He currently serves as a board member for Chess for Success and Sanaga-Yong Chimpanzee Rescue.

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## Classifieds

### Positions

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appellate and business lawyers in Oregon. We welcome and value attorneys with an entrepreneurial spirit and an interest in growing our business.

Cosgrave is an equal opportunity employer. We welcome all applicants and strive to provide a workplace in which all employees feel included, respected, and valued.

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Applications must include all documents for consideration. All inquiries will be handled confidentially.

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Cosgrave Vergeer Kester LLP has an open position for an associate attorney to join our civil litigation practice. Work assignments may include personal injury, general liability, business, and construction litigation. A minimum of three years of civil litigation experience is required. Strong academic record, demonstrated analytical and writing skills, and Oregon State Bar membership are required.

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## Pro Bono Volunteers

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, and Changing Lives Forever Project. To learn more about pro bono opportunities in Multnomah County, go to [www.mbar.org](http://www.mbar.org) and click on "About Us" and "Pro Bono."

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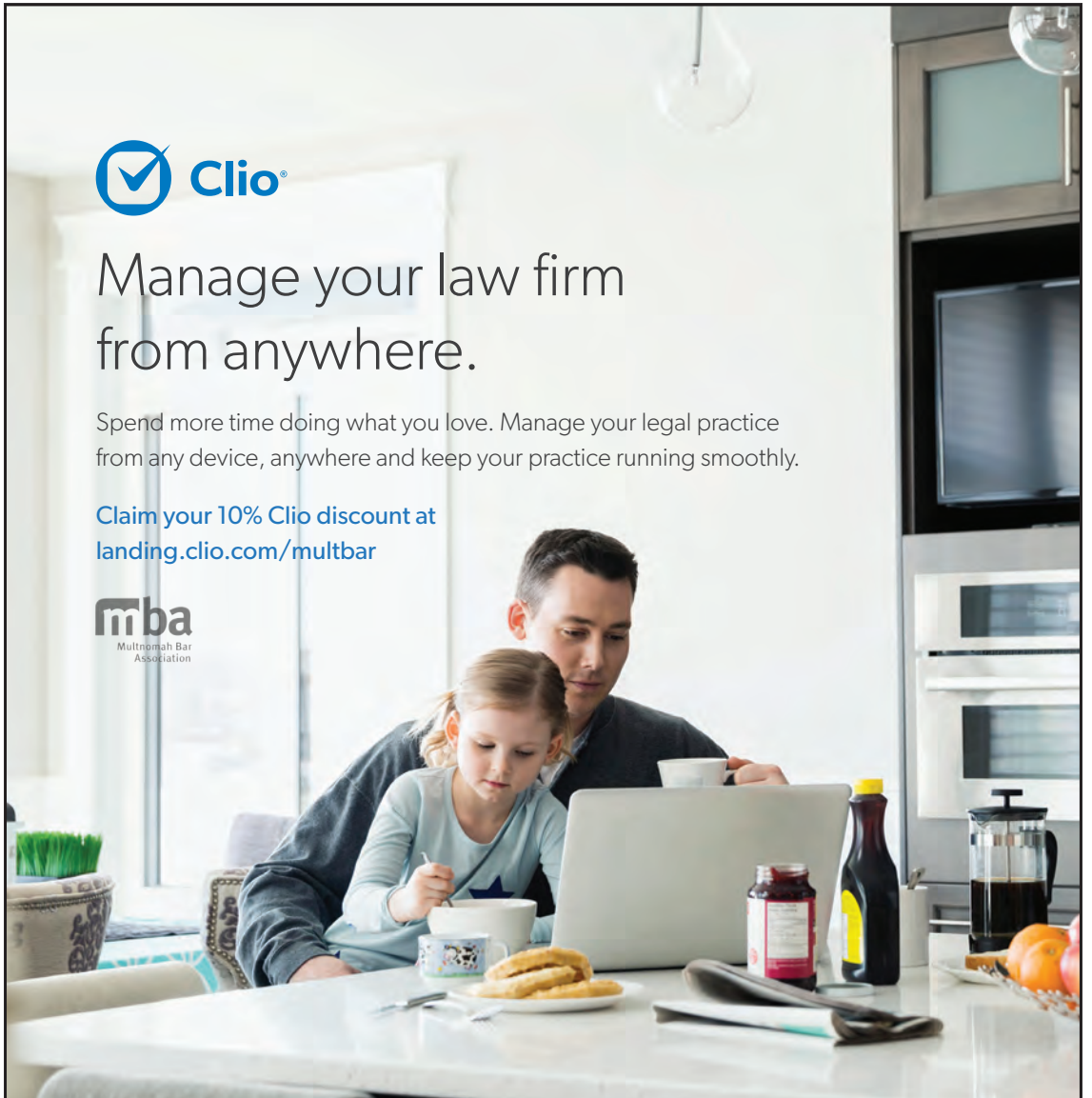
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