



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

100TH ANNIVERSARY

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

1906 - 2006

June 2006 Volume 52, Number 6



## From the President

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

"...the Multnomah Bar Association offers its services in **supplying speakers** before audiences in the city of Portland, **for the purpose of calling to the attention of the people of the needs of the government**, whatever those needs may be."  
\*\*\*\*\*

"Motion made and carried that the President appoint a committee to devise ways and means whereby the **Bar can be of service in the harvesting of Oregon crops**. That the matter be taken up with the State Bar Association and that the Courts be requested to **extend the vacation period over the harvest period thereby giving the judges as well as the members of the bar the opportunity to help in the harvest.**"

Portland, Oregon; March 26, 1918

This is my last column as president of the MBA, and I write it with some regret. I have enjoyed writing this column. As I have said to several members who have asked whether I like doing it, writing for an audience of 4,000 lawyers does focus the mind. That alone is its own reward.

Perhaps like you, the birth of my children marked the end of what I think of as my "BIG QUESTIONS" period. Sometime thereafter I more or less consciously decided to settle for little answers that made life work day to day. These columns, however, have afforded me the opportunity to reflect on policy issues with a seriousness that I have not indulged in years. It has been a revelation, really, and not a little disappointing, to realize how neglectful of public life I have been. I owe you, kind reader, many thanks: you have brought me back from the brink of the Silent Majority.

I also have enjoyed the great privilege and good luck of leading the MBA into its centennial year. Delving into the history of the MBA and using excerpts from the association's minutes began as a literary gimmick to give these columns some thematic continuity, and perhaps a bit of gravitas. The actual result has been more profound: a personal sense of connection to the bar's past, something quite frankly that I lacked at the beginning of my term. That connection will enrich my remaining years of practice in a way I never anticipated.

Which brings me to today's excerpt. The MBA is still in the business of "calling to the attention of the people of [sic] the needs of the government." This is especially true of the needs of our judicial branch, which have been so neglected in our time.

I commend to you the efforts of Chief Justice Paul DeMuniz and others to promote the independence and sustained excellence of Oregon's judiciary. The Chief Justice is campaigning for better judicial salaries; Oregon now ranks 49<sup>th</sup> among the States. If the

idea of trailing Mississippi and West Virginia is not compelling, then envision a future in which seasoned judicial candidates will come almost entirely from the public sector. Not that criminal defense or prosecution, or other public practices, are not good backgrounds for the bench, but judicial experience in complex civil litigation is critical to our courts, and it is in increasingly short supply. Businesses, and the attorneys who represent them, ought to be alarmed by this prospect.

Justice DeMuniz also is campaigning for new court facilities. Multnomah County is the MBA's special concern, of course, but we are by no means the only county with a geriatric courthouse. County courthouses all around Oregon are approaching their own centennials, and seem to be replaced only when they collapse.

It all comes down to this: respect for the place of an independent judiciary in our system of government. The Judicial "Department" is not the same as the Fish and Wildlife Commission, however important that may be, and its budget should not be treated the same by our legislature and governor. But it is, and that has got to change.

In March 1918, the Multnomah County courthouse was new, our judges were revered, and the bar's concerns extended to helping bring in the spring harvest. Just think of it. A different, more agrarian, past certainly, but the enduring lesson is inescapable: the profession must find ways to renew its connection to our fellow citizens, for in that connection reposes the good will necessary to a constituency for judicial independence.

We are making that connection with CourtCare, support of pro bono representation, our public outreach campaign, the Multnomah Bar Foundation, and with the myriad good works of the YLS and our membership at large. With your continued help and energetic leadership from the bench and bar, we surely will reap the good that we sow.

Please accept one last time my thanks for your support of the MBA, and the opportunity to serve as its president.

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## MBA CLE

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

## June

**Tuesday, June 6**  
**Serving on the Board of a Nonprofit Organization**  
*Protecting Yourself and Your Client*

Elizabeth Grant  
Scott Howard  
Jeffrey C. Thede

**Wednesday, June 7**  
**War Stories: Representing "Enemy Combatants"**  
*Lessons from Guantanamo Bay for Every Practitioner*  
Steve Wax  
Tom Johnson

**Monday, June 12**  
**Mandatory Arbitration Training**  
Hon. Edward J. Jones  
Bill Gibson  
Eric Neiman  
Nancie Potter

**Wednesday, June 14**  
**Charitable Giving and the Sale of the Closely Held Business**  
*A Case Study*  
Greg Harris  
Jason R. Orme  
Joseph Wetzel

**Thursday, June 29**  
**Understanding Psychological Evaluations**  
Dr. Lorah Sebastian  
Dr. Edward Vien

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

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

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# NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

**FEDERAL COURT PRACTICE HANDBOOK**, US District Court for the District of Oregon, rev. ed, 2005. Published by the Federal Bar Association, Oregon Chapter, 2005. (Ref. KF8840 F36f 2005)

**OREGON'S LEGAL GUIDE FOR GRANDPARENTS AND OTHER RELATIVES RAISING CHILDREN**. Janay Haas, contributing editor. Published by the AARP Oregon Chapter, 2005. (Ref. KF547 O7 O76)

**ACCOUNTING DESK BOOK**: The accountant's everyday instant answer book, 12th ed. edited by Tom M. Blank, Lois Ruffner Plank and Bryan R. Plank. Published by Aspen Publications, 2003. (KF320 A2 A24)

**BUSINESS TORTS AND UNFAIR COMPETITION HANDBOOK**, 2d ed. Published by the ABA Section of Antitrust Law, 2006. (KF3195 B87 2006)

**CONTRACTOR'S STATE LICENSE BONDS DESK REFERENCE** edited by David D. Lodgen, Catherine Squillance

and Mark D. Herbert. Published by the ABA. Tort Trial and Insurance Practice. Fidelity and Surety Law Committee, 2006. (KF1950 Z9 C65)

**ENERGY POLICY ACT OF 2005**: Summary and analysis of the act's major provisions edited by Kevin J. McIntyre, Martin V. Kirkwood, and Jason F. Leif. Published by LexisNexis, 2006. (KF2120 E56)

**MOTION PRACTICE AND PERSUASION** by L. Ronald Jorgensen. Published by the ABA Section of Litigation, 2006. (KF8875 J67)

**THE CRIMINAL LAWYER'S GUIDE TO IMMIGRATION LAW**: Questions and answers, 2d ed. by Robert James McWhirter. Published by the ABA Criminal Justice Section, 2006. (KF4819 M39 2006)

**ADVANCED FEDERAL PRACTICE AND PROCEDURE**. Course materials from the February 17, 2006 Oregon Law Institute program in Portland. (\*KF8840 O7 O73)

**ESSENTIAL ISSUES AND UPDATE FOR THE OREGON BUSINESS LAWYER**. Course materials from the February 24, 2006 program in Portland sponsored by the Oregon Law Institute and the 2006 Lewis & Clark Business Law Institute. (\*KF889 O7 O73 2006)

**PROBATE PRIMER**. Course materials from the March 3, 2006 Oregon Law Institute program in Portland. (\*KF765 O7 O73pp)

**THE LATEST IN PROBATE PRACTICE**. Course materials from the March 3, 2006 Oregon Law Institute program in Portland. (\*KF765 O7 O73)

**LITIGATING AUTO ACCIDENT CASES**. Course materials from the March 17, 2006 Oregon Law Institute program in Portland. (\*KF1290 A8 O7 O73 l)

# CALENDAR

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

## June

**3 Saturday, YLS Board retreat**

**6 Tuesday, MBA CLE Serving on a Nonprofit Board**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**7 Wednesday, MBA CLE – Lessons from Guantanamo Bay**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**9 Friday, July/August Multnomah Lawyer deadline**

**12 Monday, MBA CLE Mandatory Arbitration Training**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**13 Tuesday, MBA Golf Tournament at Riverside Country Club**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**14 Wednesday, MBA CLE Charitable Giving and the Sale of the Closely Held Business**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**15-17 Thursday-Saturday, OCDLA Conference at Inn of the Seventh Mountain**  
Visit [www.ocdla.org](http://www.ocdla.org) for details.

**16-17 Friday-Saturday, MBA Board retreat**

**24 Saturday, St. Andrew Legal Clinic's Race for Justice**

**28 Wednesday, Multnomah Bar Foundation Board meeting**

**29 Thursday, MBA CLE Understanding Psychological Evaluations**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

## July

**3-4 Monday-Tuesday, Independence Day – MBA closed**

**19 Wednesday – MBA Golf Tournament at OGA Golf Course**  
Register at [www.mbabar.org](http://www.mbabar.org).

**26 Wednesday, Multnomah Bar Foundation Board meeting**

## August

**10 Thursday, September Multnomah Lawyer deadline**




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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Handle with Care: Contacting the Other Side's Experts

During the course of a case, we may be tempted to contact the other side's testifying experts. Depending on the forum, you may be able to contact the expert. But again depending on the forum, you may not be able to get any substantive information and in many instances you may be putting yourself and your case at risk. And, in all forums, you will generally not be able to contact the other side's consulting experts because they are considered agents of the other side's lawyer and are usually "off limits" under the attorney-client privilege and the work product rule. The OSB has three very useful ethics opinions on contacting opposing experts, with one each for civil, workers compensation and criminal litigation. With each, the ethics analysis turns largely on the rules of the forum because RPC 3.4(c) enjoins lawyers from knowingly violating the rules of the tribunal involved. Where contact is prohibited, the limitation applies to both lawyers and the law firm staff because RPC 8.4(a)(1) prohibits lawyers from violating the rules through others. All three ethics opinions are available on the OSB's Web site at [www.osbar.org](http://www.osbar.org).

### Civil Litigation

OSB Formal Ethics Opinion 2005-132 addresses civil litigation. It draws an important initial distinction between federal and state courts. In the former, where the vehicles for expert discovery are specified in FRCP 26(b)(4), lawyers in federal civil litigation are limited to the avenues provided in the rules - interrogatories and depositions. In Oregon state court, by contrast, there is no expert discovery. 2005-132, therefore, concludes that contact with opposing experts is not prohibited in state court. But, it also counsels that this is potentially a dangerous area for lawyers: attempting to discover information that is privileged, for example, may open the lawyer to both bar discipline and court sanctions such as disqualification or exclusion of the evidence. Moreover, because privilege is not waived with the filing of a complaint under OEC 511 and *State ex rel Grimm v. Ashmanskas*, 298 Or 206, 690 P2d 1063 (1984), privilege presents a significant practical barrier to obtaining any substantive information.

### Workers Compensation

OSB Formal Ethics Opinion 2005-154 covers workers compensation litigation. Given the nature of that practice, 2005-154 focuses on state workers compensation proceedings. 2005-154 finds that



no court or administrative rule prohibits contact with an opposing expert in workers compensation proceeding. 2005-154 also notes that under applicable workers compensation rules and *Booth v. Tektronix*, 312 Or 463, 823 P2d 402 (1991), the doctor-patient privilege does not apply in workers compensation proceedings. Therefore, workers compensation counsel can discuss the substance of an opposing medical expert's conclusions with the witness. Even in this context, however, 2005-154 cautions that other limitations, such as the lawyer work product rule, preclude discovery of the expert's discussions with counsel.

### Criminal Litigation

OSB Formal Ethics Opinion 2005-131 covers expert contact in criminal cases. 2005-131 notes that both state and federal criminal discovery rules promote access to witnesses and, therefore, contacting the other side's testifying experts is permitted. At the same time, 2005-131 counsels that the contact cannot be used to invade the other side's privilege outside the scope of anticipated testimony (see OEC 511 and *State v. Langley*, 331 Or 430, 16 P3d 489 (2000), for a discussion of privilege waiver in criminal cases). Similarly, a lawyer cannot use the contact to dissuade the expert from testifying, as that would constitute "conduct prejudicial to the administration of justice" under RPC 8.4(a)(4).

### Summing Up

Although not included in these three ethics opinions, the Oregon Supreme Court addressed the related question of contacting former expert witnesses in *State v. Riddle*, 330 Or 471, 8 P3d 980 (2000), concluding that contact was generally permitted but could not be used to invade the other side's privilege or work product. In any setting aside from workers comp, contacting the other side's experts usually presents more risks than potential returns. Even when it is nominally permitted, other practical barriers, principally privilege, limit the potential return. And, if the other side claims you've improperly invaded privilege, you may find yourself on the wrong end of regulatory or judicial sanctions.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers. His telephone and email are 503.224.4895 and [Mark@frllp.com](mailto:Mark@frllp.com).

# ANNOUNCEMENTS

### Noon Time Rides

MBA noon time bike rides - short fast rides with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Questions? Contact Ray Thomas, 503.228.5222, or meet at the start.

### Portland's Columbia Symphony Orchestra

The orchestra celebrates its 25th Anniversary Season in 2006-2007 and seeks an energetic and passionate board member to assist with its Planned Giving Strategy. The board currently consists of 13 members who work with two staff people to produce a 10-concert season. Monthly meetings are held downtown Portland. For more info please call Betsy Hatton, Executive Director at 503.234.4077 or visit [www.columbiasymphony.org](http://www.columbiasymphony.org).

### Ride Connection

The organization seeks a member for a two-year term on its Board of Directors. Ride Connection's Board of Directors meets monthly for two-hour sessions. Board members participate in the Annual Fundraising Luncheon in December, are encouraged to serve on one Ride Connection committee and support the work of transportation for older adults and people with disabilities in the Portland metropolitan area.

Ride Connection began its work in 1988, and currently provides transportation through 31 community providers. Service areas include Multnomah, Washington, Clackamas and Clark counties. Paid and volunteer drivers are utilized. A new program called RideWise, where older adults and people with disabilities learn to ride public transportation, is offered. Visit [www.rideconnection.org](http://www.rideconnection.org) to learn more. Contact Susan

Tingley, Community Outreach Director at [stingley@rideconnection.org](mailto:stingley@rideconnection.org) or 503.528.1734.

### Queens Bench

On June 13, Gail Nicholson will be leading a facilitated luncheon on integrating work and personal life. Nicholson has a Master's degree in Counseling Psychology and over 20 years experience as a personal and career counselor. She is a past president of the Oregon Career Development Association and currently maintains a private practice in downtown Portland.

Luncheons are the second Tuesday of the month from 11:45 a.m. to 1 p.m. at Jax Restaurant. The cost is \$12 in cash or checks. Seating is limited. For more information, contact Barbara Smythe at [barbara@barbarasmythe.com](mailto:barbara@barbarasmythe.com), 503.703.4892, or Nicole DeFever at [nicole@defever.com](mailto:nicole@defever.com), 503.735.5323.



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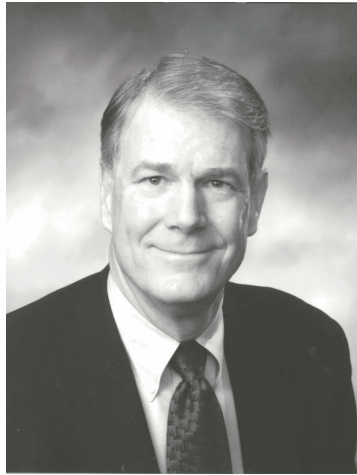


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# AROUND THE BAR

## OREGON STATE BAR

**Sylvia Stevens**, past MBA President, is the new General Counsel of the OSB, succeeding George Reimer. She is the first woman General Counsel of the OSB.

## BULLIVANT HOUSER BAILEY

MBA Board Director **David A. Ernst** has become the firm president. As president, he will oversee operations in the firm's six west coast offices. He will continue his practice as a nationally recognized expert in food and beverage industry litigation. **Jeffrey S. Eden** will replace Ernst as the Portland office shareholder in charge.

## MARTIN BISCHOFF

**Philip A. Rush**, a partner at the firm, has been given the Jim Barron Award by the OSB Aviation Section. He has also been appointed the executive committee chairperson for the section.

## DAVIS WRIGHT TREMAINE

**Carol Bernick** was presented Lewis & Clark Law School's Joyce Ann Harpole Award, which recognizes professionals for balancing their careers, families and community activities. Bernick's practice specializes in employment, employment litigation, health law, hospitality and recreation.

## TONKON TORP

**Paul W. Conable** and **Michael W. Fletcher** have been elected partners of the firm. Conable's practice is focused primarily on commercial litigation. Fletcher concentrates on assisting companies with their general business law needs.

## JORDAN SCHRADER

**Hafez Daraee** has joined the firm. Daraee has more than 13 years of legal experience representing clients in all facets of complex commercial, construction and real estate litigation as well as real estate, construction and commercial transactions.

## STOLL STOLL ET AL

The International Society of Barristers has inducted **N. Robert Stoll** into its membership. Membership is by invitation only to a few prominent, experienced trial lawyers in North America.

## Christina Beatty-Walters

has become a shareholder in the firm. Her work concentrates on financial fraud, unfair competition, intellectual property and employment matters.

## DUNN CARNEY ET AL

**John R. Barhoum** joined the firm, where his practice will include business and commercial litigation with a focus on products liability and insurance coverage litigation while Wilmot will focus on environmental, natural resources and water law.

## LANE POWELL

**Robert E. Maloney Jr.**, firm shareholder, recently chaired the dinner program for the inaugural Oregon Independent College Foundation (OICF) Ethics Bowl.

Co-chairs at the event included John Emrick, President and CEO of Norm Thompson and **Bob Hirshon**, CEO of Tonkon Torp.

The OICF is comprised of 10 member colleges and universities, which sent representative teams of students to the Ethics Bowl. These teams appeared before panels of judges staffed by senior officers of major Portland businesses to present and answer business ethics questions raised by case studies on real business situations.

**Jill R. Long** has joined as counsel to the firm in its real estate and land use practice group. Long's practice emphasizes land use, real estate and business law, including a focus on obtaining entitlements for developers and property owners.

**Dominic G. Colletta** and **John C. Pinkstaff** have joined the firm as shareholders in the real estate and land use practice group.

**Suzanne H. Kim** was named 2006 winner of the Lane Powell George V. Powell Diversity Scholarship Award. She is currently attending the University of Washington School of Law and expects to complete her JD in June 2007.

Kim's numerous honors and activities include receiving the Korean American Bar Association of Washington 2005 Scholarship, serving as Vice President of the UW Multicultural Law Student Association, and serving as the UW Student Representative of the Korean American Bar Association of Washington.

Lane Powell's Diversity Scholarship Program awards a second-year law student a substantial academic scholarship for the student's third-year law school tuition and expenses, in addition to a paid summer associate position in either the Seattle or Portland office for the summer immediately following the student's successful completion of their second year of law school. Students can be from any ABA accredited law school. The first scholarship was awarded in the summer of 2005. For more information on the scholarship program, visit [www.lanepowell.com](http://www.lanepowell.com).

## STAHANCYK, KENT, JOHNSON & HOOK

**Arthur K. Saito** has joined the firm as an associate, where he will continue to practice family law and estate planning.

## MARKOWITZ, HERBOLD, GLADE & MEHLHAF

**Jeffrey M. Edelson**, a firm shareholder, has joined the Portland Metro Board of Directors of the American Heart Association's Pacific Mountain Affiliate, where he will serve a two-year term.

**David Markowitz**, a founding shareholder of the firm, received special recognition for his dedication to teaching younger attorneys and clients how to

develop business for themselves. The "Mentor Award" was one of only four special honors bestowed at the first-ever *Commerce Magazine* Rainmaker Awards.

## JOHNSON RENSHAW & LECHMAN-SU

**Mark Johnson** has been elected to serve as Oregon's new state delegate to the ABA, succeeding Katherine O'Neil. The state delegate serves as the chair of the delegation and as Oregon's voice on the ABA's Nominating Committee. Johnson is a former President of the OSB and practices family law.

## YATES, MATTHEWS & ASSOCIATES

**Jeffrey S. Matthews**, firm shareholder and Multnomah Bar Foundation President, was recently admitted to the American Academy of Matrimonial Lawyers.

## STOEL RIVES

**Wally Van Valkenburg** has been appointed as managing partner for its Portland office. Van Valkenburg chaired the firm's technology and intellectual property group for the past five years. **Steven T. Lovett** will replace Van Valkenburg as the new group chair.

## MEYER & WYSE

**Jennifer K. Neth** has joined the firm as an associate, where she will focus her practice in the areas of estate planning, probate and litigation.

## RICHARD MAIZELS

Maizels moved his office to 621 SW Morrison St Ste 1025, Portland OR 97205, phone 503.223.2126, fax 503.274.8575, email [rmaizels@comcast.net](mailto:rmaizels@comcast.net). He continues to offer arbitration and mediation service.

## ROSE LAW FIRM

The firm has moved to 1211 SW 5th Ave Ste 2330, Portland OR 97204, phone 503.546.0505, [www.roselaw-nw.com](http://www.roselaw-nw.com), where it continues to focus its practice on business and real estate transactions and disputes.

## ST. ANDREW LEGAL CLINIC

**Matthew A. Levin** and **Robert J. Neuberger** have joined the board of directors. Both will serve two-year terms. In addition, **David A. Bledsoe** has been named chair of the board for 2006.

Levin is a shareholder at Markowitz Herbold et al with substantial litigation experience in federal and state courts as well as private mediation and arbitration. Neuberger, an MBA Past President, specializes in professional malpractice, product liability, admiralty and maritime and personal injury law. Bledsoe is a partner at Perkins Coie and his areas of practice include commercial, environmental and insurance coverage litigation.

## GARVEY SCHUBERT BARER

**Michael R. O'Connor**, an owner in the firm's Portland office, has

been elected to the Cascade AIDS Project Board of Directors. He was also named one of *Portland Business Journal's* "Forty Under 40" for 2006, an annual award given to up and coming professionals.

O'Connor focuses his practice on business and commercial litigation, class action litigation and labor and employment law.

**Scott Schiefelbein** joined the firm as an associate, where he practices in the areas of business, and federal, state and local taxation.

## BATEMAN SEIDEL ET AL

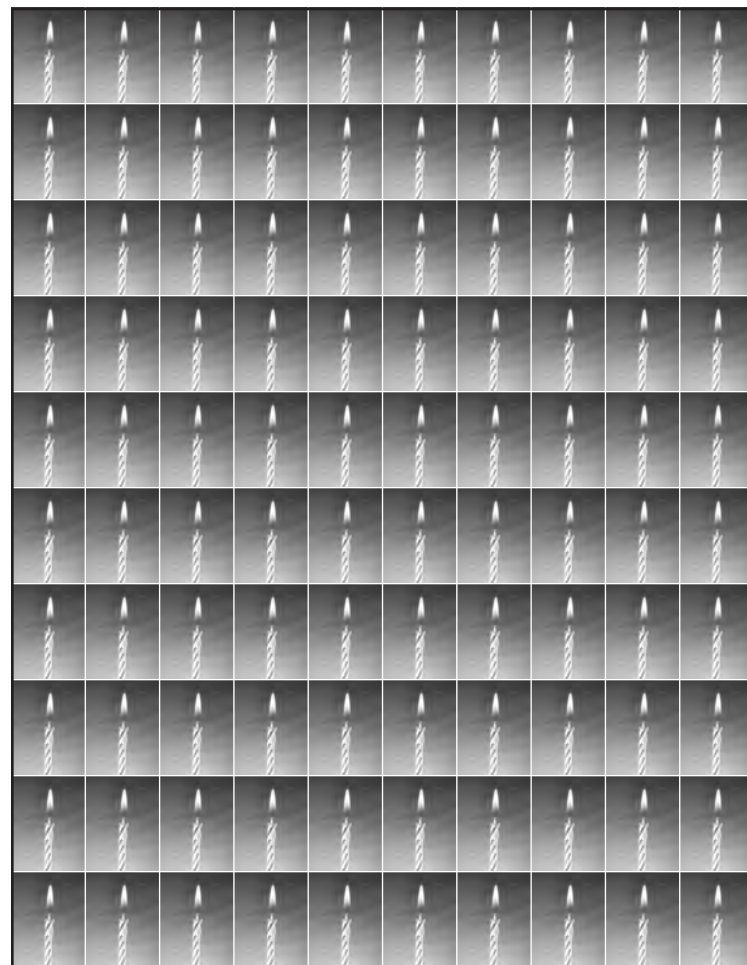
**Abby Wool Landon** has joined the firm, where she will assist its estate planning and probate

administration practice and will continue her practice in business, family and business succession planning.

## ROBERT J. MCGAUGHEY

McGaughey announces the publication of the third edition of *Oregon Corporate Law Handbook*. Earlier editions were published in 1988 and 1999.

*The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. Items may be submitted by email to [carol@mbabar.org](mailto:carol@mbabar.org) and are edited to fit column format and used on a space-available basis.*



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# Tips from the Bench

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

## City - County Operator telephone number

We all know how important it is for you to be in court on time. But sometimes you just get stuck in another courtroom with something that took longer than you expected, or there is an accident on the freeway that delays you, or you did not anticipate how long the security line would be to get into the courthouse. Common courtesy dictates that you call the judge's office before you are expected to be there if you will be delayed.

But we have 38 judges in Multnomah County, all with different telephone numbers. You cannot be expected to have all 38 telephone numbers in your cell phone memory. The good news is that you do not have to know the telephone number of any individual judge. The City of Portland and Multnomah County together share a telephone operator that can get you to any office in the courthouse. Just call 503.988.3511 and ask for the office of the judge who is expecting you. Put the city-county operator's telephone number in your cell phone memory and you will be able to reach any judge's office easily.

## Plea agreements criminal cases

The vast majority of criminal cases are concluded with some type of plea bargain, and without a trial. Most of these pleas are accomplished in court with no problem. But, occasionally a misunderstanding about the "bargain" becomes apparent in court at the time of the plea. Prosecutors and defense counsel should work to have a clear understanding about the nature of the plea bargain, to avoid these misunderstandings. The misunderstanding often results from an incomplete understanding by the lawyers of the nature and scope of the agreement, e.g. what financial obligations are included in the agreement.

Usually with these plea agreements, in exchange for a guilty plea, the DA agrees to reduce the charge, i.e. a plea to a lesser included offense, or to move to dismiss other charges, or to make a particular sentencing recommendation to the court that is acceptable to the defendant. The misunderstanding occurs when, at sentencing, the defendant asks the court to impose a sentence different than the sentence agreed upon in the plea bargain. Did the prosecutor and the defendant agree that defendant was free to ask for a lesser sentence than the prosecutor agreed to recommend in exchange for the plea? Was the prosecutor expecting the defendant to ask for a lesser sentence than agreed upon in the plea bargain? Usually not.



Sometimes the plea is pursuant to ORS 135.432, the "plea agreement" or "plea contract" statute. When a plea is presented in this format, it means that the judge has been advised before the plea of the agreement, the reasons for it, and has told the lawyers he/she will follow the agreement. Lawyers involved in these agreements should read ORS 135.432 so they have a clear understanding of the process and the benefits of such a plea.

The question is: in exchange for the consideration granted by the prosecutor, e.g. charge reduction, dismissal of other charges, and/or a particular sentence recommendation, is the defendant agreeing to ask the judge to impose that sentence, or is the defendant reserving the right to seek a lesser sentence? Either approach is fine - but we should not be discovering that the prosecutor and the defendant have a different view of this at the time of sentencing.

## Welcome to Judge Adrienne Nelson

In February, Governor Kulongoski appointed Adrienne Nelson as a Circuit Court Judge, to replace Judge Sidney Galton, who retired. Judge Nelson came to us from Portland State University, where she was the Director of the Student Mediation and Legal Services Office. Before that position, Judge Nelson was in private practice in Portland with the Bennett Hartman firm, and previously was a public defender.

## In Memoriam – William N. Stiles

**William N. Stiles** died unexpectedly on April 11, 2006.

Bill graduated from Grant High School in 1956. During high school he worked at Riverside Country Club and developed a life-long love of golf, including a final round on the morning before his death. Bill attended Yale University where he attained both his undergraduate degree and law degree. After Bill graduated from law school in 1963 he served as a law clerk for the 9<sup>th</sup> Circuit US Court of Appeals and was admitted to the California State Bar. Bill returned to Oregon to practice law in 1965 and passed the Oregon State Bar that year.

Bill began his career in Oregon at the firm today known as Miller



By Greg Silver, Metro Public Defenders and Court Liaison Committee member.

## Presiding Judge's Report

Judge Koch reported that the Multnomah County Facility Division's staff is talking to downtown landowners regarding land for a new courthouse. Discussions will continue throughout the year.

The county chair's budget, released on May 4, included a 20% reduction in funds the Sheriff's Department uses to provide security at the courthouse and transport inmates to court. If implemented, the reduction would have a significant impact on the time it takes people to pass through security to enter the courthouse and the time it takes to get individual inmates to courtrooms for trials, hearings and other matters. The money could possibly be re-allocated internally, but that would require cuts to other areas of the Sheriff's budget. The process is ongoing.

Between 11 and 13 judges will be eligible for retirement by the end of 2008.

Julia Hagan will report to the MBA Board on Court Liaison Committee activities. She requested chairs of the subcommittees to give her brief reports on the work their subcommittees have done this year, the work that is in progress and what is recommended for next year. She asked Doug Bray to provide the report for the Jury Verdicts Subcommittee and Michael Merchant to provide the report on the OJIN Subcommittee. Julia will write the report for the Judicial

Practices Subcommittee. No report is needed from the Web site Subcommittee.

Judge Christopher Marshall will host the spring Judges' Brown Bag on May 25. The Brown Bag will focus on issues of interest to the civil bar. Other judges will likely participate as well.

Judy Edwards reported that as of May 5, the MBA had approximately 500 reservations for the May 13 *Century of Service* event. The MBA has raised almost \$235,000 to date for the "MBA Community Gift Fund" and has made its first grant to the Classroom Law Project to expand its "We the People" program to Parkrose and Franklin High Schools and two feeder middle schools.

As part of the *Century of Service* theme, the June issue of the *Multnomah Lawyer* focuses on women in the bar. The July/August issue will focus on diversity; September on legal aid services; October and November will highlight specific practice areas; and the December issue will focus on law-related organizations.

Judy also reported that the CourtCare 2006 fund raising goal is \$100,000. Contributions have been "light" so far. CourtCare did survive in the county chair's budget proposal and one additional person has been added to the staff so it no longer has to close if one person is out sick or on vacation. CourtCare has served over 5,000 children.

Julia reported that the Safety Planning Committee continues to meet. The state committee is focusing on business continuation planning – how the courts could continue to operate if current facilities became unusable.

## New Business

The committee reviewed the 2005-06 charge from the MBA Board. There was consensus that next year's committee should continue most of the same actions, noting that the committee should evaluate how best to facilitate or encourage feedback on the judiciary and the court. There has been very limited use of the Judicial Feedback program.

MBA members are encouraged to recommend venues for the Judicial Speakers Bureau. Judge Koch noted that the bureau's focus is on speaking to non-lawyers about the role of the judiciary in the community. The best time for speakers is early morning, the noon hour and after work. Members may contact Carol Hawkins, carol@mbabar.org, with suggestions.

New and continuing appointments to the Court Liaison Committee will be made by the MBA Board, beginning in June. The board will appoint a new chair this summer.

Chair Julia Hagan thanked the committee for its work during the past year, and the committee members thanked Julia for her great work as chair.

Nash. In 1972 he joined the firm now known as Sussman Shank and continued to practice as a partner there until the time of his death. Throughout his legal career, Bill wrote and spoke on numerous legal issues including creditor's rights, administering trusts, asset protection and insurance law. Bill was a long-time member of the Debtor-Creditor Section of the OSB, served as the chairman of that section (1979-1980) and was the recipient of that section's Award of Merit in 1996 for his many contributions. He was also a past president and board member of the Oregon Law Institute. Bill was a lifetime member of *Who's Who in American Law*.

Bill's vast knowledge, professionalism and ethical standards combined with his generous spirit made him an ideal mentor and role model to scores of lawyers over the years. Perhaps it is most significant that Bill was always cognizant about how the law affected people in their daily lives. He knew the difference between what was merely legal and what was right and always sought an outcome that preserved the dignity of the parties to the greatest possible extent.

Bill had a keen intellect and an encyclopedic knowledge of many things. Although he would never say so, he was almost always the smartest person in the room. Bill could (and would) talk with anyone about almost anything



and add valuable insight and information to the conversation. His integrity and decency are legendary. Although blessed with many talents, it never occurred to Bill to rely on such gifts in place of hard work. Despite his many successes and accomplishments, Bill was proud of, and never forgot, his humble upbringing (in fact, Bill rarely forgot anything). His family and friends will never forget him.



# Profile: Referee Leon Colas, Multnomah County Circuit Court

By Hon. Adrienne Nelson, Court Liaison Committee member.

**Leon Colas** grew up in Klamath Falls, as the third of five children. After his high school graduation, he attended Western Oregon University where he planned to study to become a gymnastics and physical education coach. Leon enlisted in the Air Force after two years of college, following in his father's footsteps.

While in the Air Force, Leon built a Vietnamese refugee camp and interacted on a regular basis with Vietnamese officers and refugees. After he finished his enlisted time with the Air Force, Leon returned to Western Oregon University and received his Bachelor of Arts degree in Social Science (with an emphasis

on corrections) and a minor in Psychology.

After his graduation from college in 1977, Leon became a police officer. He worked in Dallas and Salem for 11 years and then went to law school. Leon said that his experience as a police officer with the justice system helped him believe that he could be an attorney. In 1992, Leon graduated from the U of O Law School. After law school, Leon worked as an associate at Browning and Heil in Forest Grove practicing family law.

The same year that Leon worked for Browning and Heil, he became a pro tem judge for the Gaston Municipal Court. That

experience made Leon want to be a judge. In September 1995, he became a partner in his law firm while continuing his pro tem judge duties. In June 1997, Leon became a Cornelius Municipal Court Judge for two afternoons per week. In January 1998, he became a McMinnville Municipal Court Judge one day a week and left his firm to establish his own firm. As a McMinnville municipal court judge, he presided over jury and DUII trials; his interest to become a circuit court judge was strengthened.

In June 1999, Leon moved his practice to McMinnville so he could maintain his family law practice and his pro tem judge

duties. From September 1999 to 2002, Leon continued his pro tem judge duties but suspended his law practice to spend time with his son, who was born in the fall of 1996. During this time, Leon taught his son to read and volunteered at his school so that he could grow closer to his son and develop a deeper bond with his son.

When Leon's son went to kindergarten, he began his practice again. Leon practiced family law for two years before he became a full-time pro tem judge for Multnomah County. He was sworn in as a pro tem judge on August 2, 2004.



Leon Colas

Leon is family-oriented and a person who can do multiple projects well. While maintaining a career and being a good father and husband can be overwhelming, he takes it all in stride. Leon says that he can do all things in his career and his judicial campaigns, with his wife and son's support.

## MBA 100th Anniversary Celebration

If you didn't make it to the May 13<sup>th</sup> event at the Portland Art Museum, you missed a big party! Over 500 people attended, toasted to the first 100 years of the MBA, watched an excellent video, munched on delectable appetizers and outrageous desserts and danced until midnight. Please take a look at the photos and enjoy it vicariously if you weren't there.

### MBA Commemorative Publication Now Available

We are pleased to announce the new publication that commemorates MBA's 100<sup>th</sup> anniversary. The beautiful, softbound compendium of historical MBA and law-related events, significant court cases and lawyers who have made their mark in the legal community is easy to read, yet pays serious tribute to the many who have contributed to MBA's *A Century of Service*.

Everyone who purchased a ticket to the May event or donated to the MBA 100<sup>th</sup> Anniversary Community Gift Fund receives a free copy. To purchase a copy, please contact the MBA at 503.222.3275.

We want to express our sincere appreciation to those who spent many hours researching, writing, editing, selecting photos, designing and proofreading the publication at many stages of its production. They include Lori Foleen, Don Marmaduke, Katherine O'Neil, Carol Hawkins, Kathy Maloney, Judy Edwards, Jonathan Fine (writer) and Laurie Causgrove Design (graphic design).

### MBA Historic Video

Attendees at the May event enjoyed watching an eight-minute video, which focused on several topics associated with the MBA. Starting with the early years of the legal community, it addressed the changing practice of law; worthy MBA projects

such as the professionalism summit, Multnomah CourtCare, Volunteer Lawyers Project (VLP), judicial screening, the 1950s MBA radio show "You and the Law" and Multnomah

Law Library; lawyers who went to Mississippi in the 1960s to donate their time to try civil rights cases; women and diversity in the bar; legal aid; and the Young Lawyers Section.

We thank Katherine O'Neil who acted as moderator at all seven taping sessions and for formulating the questions. We also appreciate the time spent by each of the panelists.

### Changing Practice of Law

Neva Campbell, Tom Cooney, Dianne Dailey, Adrienne Nelson, John Ryan

### Worthy MBA Projects

Carol Bernick (judicial screening), Cathy Keenan (VLP), Albert Menashe (professionalism summit), Robin Selig (Multnomah CourtCare), Norm Weiner (MBA radio program), Jacque Jurkins (Multnomah Law Library)

### Mississippi Lawyers

Bernie Jolles, Don Marmaduke, Jake Tanzer

### Women in the Bar

Susan Hammer, Noreen Saltveit McGraw, Lynn Nagasako, Katherine O'Neil

### Diversity in the Bar

Hon. Richard Baldwin, Hon. Ancer Haggerty, Sonja Henning, Yi-Kang Hu

### Legal Aid

Leslie Kay, Tom Matsuda, David Thornburgh, Steve Walters

### Young Lawyers Section

Mike Haglund, Katie Lane, Andrew Schpak, Ruth Spetter



### Appreciation to The Naegeli Reporting Corporation

The video was produced by The Naegeli Reporting Corporation, which donated all services relating to the video, including taping more than 10 hours of raw footage, adding interesting photos, writing the script, selecting music and providing voice overs. Most importantly, they edited the many hours of raw footage into an insightful, effective and first-rate video about the MBA, its members and its many projects over the years - a video that will be appreciated for years to come. We especially want to express our appreciation to owners **Marsha Naegeli** and **Troy Moody** and videographers Michael Gramza and Travis Shields. The company presented a complimentary copy of the video to each attendee at the May event. Thank you Marsha, Troy, Michael and Travis for your generosity and your fine work.

### Photos:

1. Wally Sweek and Jack Faust
2. Don Marmaduke and Randall Kester
3. Marsha Naegeli, Katherine O'Neil, Toby Graff
4. Katie Lane, Jacinta Wang, Noëlle Saint-Cyr, Sherilyn Waxler, Mary Lou Haas, Eric Waxler

# Thanks for Another Great Community Law Week!

By Kristin Sterling, Stoel Rives and Community Law Week Chair.

The members of the YLS Service to the Public Committee once again recruited members of the Multnomah County legal community to host a week of legal-focused events for the general public. From May 1 - 6, over 70 law firms and legal professionals donated their time and resources to Community Law Week, an annual event that provides legal education, access and assistance to the public. As before, this year's CLW volunteers coordinated a clothing drive for the Dress for Success charity at local law firms, organized a "Tell it to the Judge!" event at Lloyd Center Mall, and hosted Free Legal Information Centers throughout Multnomah County during CLW.



Young lawyers Anton Labrentz and Maya Crawford at Tell it to the Judge

This year's CLW volunteers also hosted a community symposium at Portland State University on May 1, which is nationally recognized as Law Day, to discuss this year's Law Day theme, "Liberty Under the Law: Separate Branches, Balanced Powers," as it relates to the Foreign Intelligence Surveillance Act (FISA) and the president's secret executive order



Young lawyers Karstan Lovorn and Angela Engstrom volunteer at a Legal Information Center

authorizing the National Security Agency to conduct warrantless wiretapping. The panel, which was moderated by PSU Political Science Professor Regina Lawrence, included Professor William Funk from Lewis & Clark Law School, who co-authored FISA during his tenure as a staff member for the House Permanent Select Committee on Intelligence, David Fidanque, Executive Director of the ACLU of Oregon, and Special Agent Jared Garth from the FBI Portland office. This impressive panel drew a crowd of downtown lawyers,



Referee Cheryl Albrecht talks with Lloyd Center Mall patrons

PSU students and community members that dodged the May Day immigration rally taking place just outside the PSU Student Union that day. Professor Funk provided symposium attendees an insider's view to the drafting of FISA, Special Agent Garth explained the hoops that the Bureau must jump through to obtain a FISA warrant, and Fidanque explained the civil liberties concerns where domestic wiretapping occurs in the absence of a warrant. This engaging discussion was co-sponsored by several departments at Portland State University and supported by a grant from the League of Women Voters Education Fund and the Program on Constitutional and Legal Policy of the Open Society Institute. Committee members **John Belknap, Angela Engstrom, Marc Jolin, Katie Lane, Erin Lillis and Trung Tu** were also instrumental brainstorming ideas, recruiting speakers and otherwise organizing this successful event.

CLW would not have been possible but for the assistance of the following individuals on the YLS Service to the Public Committee:

**Justin Leonard** of Ball Janik resumed his post as Community Law Week's fundraising chair. Justin did a remarkable job last CLW raising funds, thereby enabling the committee to purchase 40 streetlight banners that will be prominently displayed every CLW around the Multnomah County Circuit and Federal courthouses. This year Justin continued to amaze, bringing in monetary and in-kind donations that will guarantee the success of CLW for years to come.

**Jennifer Durham** of Bodyfelt Mount Stroup & Chamberlain complimented Justin's fundraising efforts by coordinating publicity for CLW. Jennifer worked with our printers and designers, Bridge City Legal and LazerQuick, to put



Referee Steven Todd talks with a Lloyd Center Mall patron

together brochures and posters that were distributed throughout Multnomah County. Jennifer also composed and sent press releases and advertisements to more than a dozen area publications and organizations.

**Angela Engstrom** organized this year's Legal Information Centers, involving 26 attorneys at 11 locations throughout Multnomah County. The centers provided citizens with valuable legal information, including handouts from the Oregon State Bar and Legal Aid Services of Oregon.



Young lawyers Steven Powers and Sarah Creem at Tell it to the Judge

**John McVea** recruited seven judges from Multnomah County Circuit Court to meet with the public and answer questions for "Tell it to the Judge!" held Saturday, May 6 at the Lloyd Center Mall. There, the public had a chance to interact with the judges and learn about the judicial system. There was also a calligrapher on hand to create and present certificates for individuals who had served as jurors.

**Trung Tu** of McEwen Gisvold and **Jennifer Durham** successfully organized a clothing drive for Dress for Success of Oregon, the local chapter of the international nonprofit organization that helps women get back on their feet and prepare for the workforce. This year we had 16 "Law Firm Captains" who encouraged their colleagues to donate work-appropriate women's clothing and accessories for local jobseekers. This year we also enlisted a handful of volunteers assist in picking up the donations at all of those firms!

CLW is truly an amazing collaborative event of Multnomah County legal community. If you were unable to participate this year, please consider joining in on the fun next year!

## Thank you Community Law Week sponsors!

Ater Wynne LLP  
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Homan Hart & Wagner LLP  
Kirklin Folawn LLP  
League of Women Voters  
Pacific Northwest Paralegal Association  
Perkins Coie LLP  
Portland State University  
Ramis Crew Corrigan LLP

## A special thanks to our continuing Banner Sponsors!

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## Thank you Law Day Symposium Panelists!

David Fidanque, ACLU of Oregon  
Professor William Funk, Lewis & Clark Law School  
Special Agent Jared Garth, FBI  
Professor Regina Lawrence, Portland State University

## Thank you Community Law Week Volunteers!

### Legal Information Centers

Peter Bangay  
Robin Bellanca  
Bob Bouneff  
Cary Cadonau  
Christina Dirks  
Owen Dukelow  
Angela Engstrom



## April Social a Success

By Maya Crawford, Legal Aid Services of Oregon and YLS Membership Committee.

On Thursday, April 20, the YLS Membership Committee hosted its annual Meet the Judges Drop-in Social at Fernando's Hideaway. This year's event was a great success, as many attorneys and judges were in attendance. Young lawyers had an opportunity to meet judges from all levels of state and federal court in a relaxed setting. Both the bench and the bar welcomed the opportunity to speak with one another in a collegial atmosphere and gain from each other's experiences.

This year's social also featured a raffle drawing, the proceeds of which went to the Multnomah County CourtCare program, a nonprofit childcare service that provides children with a safe and comfortable place in the courthouse. YLS would like to acknowledge the generosity of the local businesses that donated prizes for the raffle. Thanks to their support we raised over \$2100 for CourtCare!

Thank you to all who participated. We look forward to seeing you again next year!



Judges Mike King and Kristena LaMar with young lawyers Ben Eder and Jennifer Durham

## Thank you to raffle sponsors

The YLS appreciates the businesses that donated prizes for the CourtCare raffle held at the annual Judges' Social.

**Grand Prize Donors** - Rich Mann of Gallery Furniture of Beaverton and Tim Rasch of EPB&B Insurance

Donors - Additional thanks to: Daniel and Stephanie Brown; Julie Robinson Massage; Perkins Coie, LLP; Sarah Lindstrom at Blue Chair Salon; Michael Leland at Mortgage Trust, Inc.; Hair M; Acadia Restaurant; Salon LaMuse; Cargo; The Pearl Retriever; Newport Bay Restaurant; Peet's Coffee; the Avalon Hotel & Spa; Starbucks; Fernando's Hideaway; Stephanie Curtin Massage; Andina Restaurant; and the YLS Board

Thanks to their generosity over \$2100 was raised for CourtCare.

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Continued on p. 11

# Children: The Silent Victims of Divorce Child Centered Solutions

By Jody L. Stahancyk, Child Centered Solutions Board Chair.

When things go badly for parents, the situation is often even more terrible for their children. Parents, schools, attorneys and courts all profess to put children first, but the reality is often much different. Child Centered Solutions, a 501(c)3 (pending) foundation has been formed by attorneys, counselors and community leaders to address the issues of children in family crisis.

Beginning with the belief that most participants want to put children first, CCS's mission is to educate, advocate and communicate concerning the needs of children, especially during and after a divorce.



giving a voice to children in divorce

Through education about the concept of "stewardship parenting" (children's needs first) vs. "ownership parenting" (parent's needs first), CCS hopes to prepare parents for the challenge of meeting their children's needs during divorce. This is particularly important since 50 percent of all marriages end in divorce.

Maintaining a stewardship stance is easy in the abstract while difficult in the delivery. Participants often place more emphasis on conflict avoidance than the best interests of children. Like the parents who give into their child's public tantrum, the short-term fix is to avoid conflict and this causes the child long-term problems. With education and system support comes the skill to solve the root issue.

Child Centered Solutions can provide attorneys and judges with opportunities to explore and practice how to prioritize children's needs. If both parents exercise stewardship parenting with the court's support, children will be protected from the adult issue of divorce.

"High conflict" families who cannot follow a stewardship-parenting model cause the greatest damage to children. Attorneys and judges can be educated on how to determine which parent or parents are ownership based and will not be able to put children's needs first. Once this group is identified, there are specific tactics that can be used to make attorneys and judges a part of the solution.

Child Centered Solutions will support pro bono attorneys to represent children in divorces with a program that will provide free access to medical and mental health consultation experts to help craft long-term solutions.



Beginning in September, Child Centered Solutions will fund a position to be held by a non-affiliated attorney who will, at the request of the Multnomah family law judges, represent children in pro per divorce cases where the court is concerned that the needs of children are not being met. This attorney will represent the child, drawing together both parents and with professional medical and mental health assistance, will craft the best child centered plan.

The problem is clear, but the solution overwhelming. It is Child Centered Solution's intent to take simple, coordinated steps to give all participants - parents, schools, attorneys and judges - tools to make children's needs a priority.

To be a part of the answer, Child Centered Solutions invites your comments and your ideas. Tell us how to protect children from becoming the silent victims of divorce.

Contact us at: Child Centered Solutions, PO Box 0397, Portland OR 97207, 503.546.6383, info@childcenteredsolutions.org.

## PRO BONO VOLUNTEERS

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

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## St. Andrew Legal Clinic – 6th Annual Race for Justice

Saturday, June 24, St. Andrew Legal Clinic holds its 6th Annual "Race for Justice" event in NE Portland.

The race begins at 10 a.m. at McMenam's Kennedy School. Walkers and runners will have a choice between the 6K and 10K courses. A post-event party includes free pizza, beverages, live music, a raffle and awards.

St. Andrew Legal Clinic (SALC) is a nonprofit organization that has provided legal representation since 1979.

The 2006 "Race for Justice" is sponsored by 15 local law firms and companies and underwritten by adidas, Ater Wynne, Bullivant Houser Bailey, Kent & Johnson, Perkins Coie, Stoel Rives and Standard Insurance. The event's

goal is \$100,000, which helps SALC provide more low-income families with critical legal assistance.

The race registration fee is \$35, but that fee is waived for those who raise \$100 or more in pledges. Pre-registration is encouraged before June 21. Onsite registration is available for \$40. For more information or to register, call 503.281.1500 ext. 24, or go to [www.salcgroup.org](http://www.salcgroup.org).

## Community Law Week

Continued from p. 10

Andrew Schpak  
Iaysha Smith  
Kristin Sterling  
Rebecca Thiebes  
Kim Tucker

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Maya Crawford  
Sarah Creem  
Saville Easley  
Adam Gamboa  
Katie Lane  
Steven Powers  
Dana Scheele

## Generation Gap Survey

In March, the MBA conducted a generation gap survey, which explored views on the practice of law among attorneys from a wide range of ages. There were 1325 people who completed the survey. Thank you to everyone who took the time to participate. A committee is currently reviewing the responses and preparing results for further discussion and distribution to the legal community.

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## CourtCare Fundraising Campaign Continues

The Multnomah CourtCare Fundraising campaign is approaching its goal of raising \$100,000 to help fund the Multnomah Courthouse childcare program. The campaign task force would like to thank all of those who have generously contributed so far, and encourage those who have not to support this important program. To learn more about the CourtCare program and obtain a donation form, visit the MBA Web site at [www.mbar.org](http://www.mbar.org) or call the MBA at 503.222.3275.

We would also like to thank graphic designer Laurie Causgrove as well as Pacific Legal for providing free design and printing services for the campaign.



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