



Lawyering in an Era of Indefinite Detention

by Sam Kauffman
MBA Board Director

Later this month, I am scheduled to travel to the Naval Base at Guantanamo Bay, Cuba to visit my client, a young Syrian man

named Abdelhadi. I describe him as a “young” man because that is how he still exists in my mind’s eye. When I first met Abdelhadi, he was a 23-year-old kid (he was 20 when he was arrested and sent to Guantanamo). He is now 31. Abdelhadi is currently entering his 12th year of imprisonment. I am now entering my seventh year of representing him.

Over the years, I have experienced with Abdelhadi each new positive event that we all felt would change the tide. I met with Abdelhadi following the decision in *Boumediene v. Bush*, 553 U.S. 723 (2008), in which the Supreme Court reaffirmed the right to habeas corpus and a meaningful hearing for those imprisoned at Guantanamo, and struck down a portion of the Military Commissions Act which limited that right. Surely, following *Boumediene*, we thought, Abdelhadi would get a meaningful hearing in U.S. District Court on our petition for writ of habeas corpus, and he would be released upon the court’s review of his case.

When I first met Abdelhadi, he was a 23-year-old-kid.... He is now 31.

Shortly after *Boumediene* was decided, U.S. District Court judges in the District of Columbia granted habeas petitions in numerous cases finding that the government had no legal basis for continued detention. However, nearly all of these cases were reversed by the District of Columbia Circuit Court of Appeals. Despite the Supreme Court’s holding in *Boumediene*, the D.C. Circuit established a “presumption of regularity” with respect to the government’s intelligence reports, regardless of how specious, that is nearly impossible for a petitioner to rebut. The Supreme Court has denied certiorari in all of the post-*Boumediene* Guantanamo cases brought before it.

I met with Abdelhadi in 2009 after newly-elected President Barack Obama declared by Executive Order that the prison at Guantanamo Bay would close within one year. That same year, he convened a task force to review all of the available intelligence and evidence regarding each detainee to determine who could be released to his home country or to a foreign country that would accept him. I met with Abdelhadi again that same year when the president’s review task force declared that Abdelhadi was “cleared for release” if another country would accept him. Certainly, we thought, after he was cleared for release, resettlement would be imminent.

It is now 2013, and Abdelhadi is one of 89 “cleared” men who are still imprisoned over three years after being so designated. This year, four years after he made his inaugural promise to close Guantanamo, the president signed an extension of the National Defense Authorization Act, which, among other things, prohibits his

administration from transferring a Guantanamo detainee to a third country unless the Defense Department can meet certain onerous certifications. No detainees have been certified for transfer since the NDAA was first enacted.

It is impossible for me to describe in this brief article what 12 years of confinement, much of it solitary, can do to a man. However, as deplorable as the physical conditions have been, the worst torture has been the indefinite nature of the imprisonment. There are few things that a government can do to an individual more cruel than to imprison him indefinitely. One of them is to give the individual some semblance of hope, only to later snatch it away.

Over the past 12 years, I and other bright-eyed lawyers visited Guantanamo and boasted about the American legal system, due process and the right of habeas corpus with our clients. Just wait, we would say, until we get into court or the Supreme Court decides the next big case. Now, with no end in sight for Abdelhadi and the others, the landscape bleaker than when I visited the very first time, what more is there to say?

...the worst torture has been the indefinite nature of the imprisonment.

mba|EVENT

Multnomah Bar Association Annual Meeting, Dinner and Judges Reception

Tuesday, May 28
Portland Marriott Downtown Waterfront
1401 SW Naito Parkway
5 p.m.

Celebrating the profession and recognizing
our colleagues

Professionalism Award Recipient
Thomas W. Brown

RSVP by May 17.

Invitations have been mailed separately.

MBA Golf Events

Visit mbabar.org for details.

May 16 - Golf Clinic & Networking at RedTail
Warm up your swing and network with lawyers, bankers and accountants

June 18 - Riverside Golf & Country Club
A longstanding MBA golf tradition

July 19 - Family & Friends at McMenamins Edgefield
Bring your family, your friends, your clients to this fun golf outing

August 12 - Lawyers & Law Students at Langdon Farms
A great networking opportunity

September 23 - 16th Annual MBA Golf Championship at The Reserve
Help the MBA raise \$20,000 for the Volunteer Lawyers Project at LASO



mba|CLE

To register for a CLE, please see pages 3 and 4 or go to www.mbabar.org.

APRIL

4.9 Tuesday
Clark County Presiding Court Update
Judge Richard Melnick
Don Jacobs

4.24 Wednesday
Annual Probate Court Update
Judge Katherine Tennyson
Judge Rita Batz Cobb
Judge Robert Herndon
Tim McNeil

4.30 Tuesday
Working Effectively With In-House Counsel
Leah Cronn
Matt Levin
Paul Loving

MAY

5.1 Wednesday
In-House eDiscovery for Law Firms
Tom Howe

5.8 Wednesday
Multnomah County Trial Practices Seminar
Judge Stephen Bushong
Judge Jean Maurer
Judge John Wittmayer

5.14 Tuesday
Construction Litigation
Judge Charles Bailey
Judge Mary James
Judge Judith Matarazzo
Judge Douglas Van Dyk

5.29 Wednesday
The Power of Presentation
Mike Hahn

In This Issue

Calendar.....	2
CLE Schedule.....	3
Announcements.....	6
Ethics Focus.....	7
Around the Bar.....	8
Book Review.....	9
CourtCare Campaign.....	9
News from the Courthouse.....	10
Tips from the Bench.....	10
Healthcare Employer Mandate.....	11
Profile: Judge James Egan.....	11
YLS.....	12
Classifieds.....	16
Corner Office.....	18
OLAF.....	18
Pro Bono Thanks.....	19
Multnomah Bar Foundation.....	20

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DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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WinterSmash Raises Over \$18,000 for CourtCare

by Kathy Modie

MBA Director, Events and Programs

What better way to raise money for a good cause than with a night of family fun, bowling competition, raffle prizes and a best bowling shirt competition? On Saturday, February 23,

about 220 MBA members and their families participated in the MBA's 11th Annual WinterSmash fundraiser at AMF 20th Century Lanes in Portland.

In the spirit of fun, teams gathered to vie for prizes based on their scores and outfits.



Paul Martinez and John Jay with their trophy for team high score

Best team score and the coveted bowling trophy went to the By Design Legal Graphics and Synergy Legal team, with their top three individual scores combined at 539. Dunn Carney Allen Higgins

& Tongue won the prize for best shirt with their "Spontaneous Gutterances!" design.

The prize winner for best individual score went to Lyle Altschul from the Buchanan Angeli Altschul & Sullivan team, with a score of 200.

The team with the most players again this year was Harrang Long Gary Rudnick, with 33 bowlers signed up. Barran Liebman and Stoel Rives had over 20 bowlers each.

WinterSmash benefits CourtCare, the free drop-in childcare for children of parents who have no other alternative than to take their children with them to court.

Thank you to Harrang Long Gary Rudnick for sponsoring the food and beverages again this year, and to our sponsors and all who participated. Thank you also to the WinterSmash Subcommittee for planning such a great event: Chair Melisa Beyer, Alice Garrett, Brad Krupicka, Chris Lombard and Tom Melville. Thank you, Sylvia Stevens, for selling raffle tickets at the event.



Harrang Long Gary Rudnick bowlers

See WinterSmash photos at www.mbabar.org/Membership/WinterSmash2013.html.

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Waterfront

Pumpkin Ridge Golf Club

Red Star Tavern & Roast House

20th Century Lanes

Calendar

To add your organization or firm's annual events to the MBA online calendar, contact Carol Hawkins, carol@mbabar.org.

APRIL

4.4 Thursday

YLS PDE Discussion: the Art of Rainmaking

Visit www.mbabar.org for details

4.5 Friday

MBA & YLS Board voting closes

4.15-5.3 Monday-Friday

CourtCare Fundraising Campaign

See p. 9 for details

4.19 Friday

Oregon Court Closure

4.24 Wednesday

Classroom Law Project Legal Citizen Award Dinner

Visit www.classroomlaw.org for details

4.26 Friday

MBA Judicial BrownBag

See Announcements on p. 6 for details

4.26-27 Friday-Saturday

Oregon Attorney Assistance Program Women's Wellness Retreat

Visit www.aaap.org for details

4.27 Saturday

Tell it to the Judge

Visit www.mbabar.org for details

4.27-5.3 Saturday-Friday

YLS Community Law Week

Visit www.mbabar.org for details

MAY

5.2 Thursday

YLS YOUTHFILM Project Screening

Visit theyouthfilmproject.org for details

5.16 Thursday

MBA Golf Clinic & Networking Event at RedTail

See p.1 for details

5.24 Friday

Oregon Court Closure

5.28 Tuesday

MBA Annual Dinner & Meeting

Visit www.mbabar.org for details

webcheck

Local bar organizations are welcome to add their metro area events to the MBA online calendar at this link: <http://mbabar.org/Calendar/SubmitAnEvent.html>

NOTICE: PRO TEM APPLICANTS

The MBA Judicial Screening Committee reviews applications for Multnomah County pro tem and fulltime judicial candidates. The committee typically meets the third Tuesdays of September through May or June. It does not meet during the summer.

Pro tem renewal candidates are asked to submit their applications at least three months in advance of the expiration date of their current appointments so that the committee may complete its work in a timely manner. The pro tem applicants are screened, and the committee's recommendations are sent to the presiding judge, who forwards her recommendation along with the application materials to the Supreme Court for consideration at a regular meeting.

There are two forms for pro tem candidates to complete; both may be obtained by visiting www.mbabar.org/Resources/FrequentlyRequestedDocuments.html or by emailing Carol Hawkins at carol@mbabar.org.



Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Clark County Presiding Court Update

Tuesday, April 9, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This year's Clark County Presiding Court Update will be presented by **Judge Richard Melnick** and local practitioner **Don Jacobs**, Attorney at Law. This class is designed for anyone who practices in Clark County, whether on a regular basis or only on rare occasions. Judge Melnick will provide valuable information regarding new practices or changes to existing practices within the Clark County Court system. Mr. Jacobs will focus on the aspects of a civil trial in Clark County and how it may differ from civil trial practices in the Portland tri-county area. If you currently practice in Clark County, or have been considering practicing in Clark County, this CLE is a must for you. This class is geared toward practitioners with all levels of experience.

For more information:

Call Don Jacobs, Attorney at Law at 360.695.1624. For registration questions, call the MBA at 503.222.3275.

Annual Probate Court Update

Wednesday, April 24, 2013
3:00-5:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members \$55
Non-members \$85

The MBA presents the 2013 Annual Probate Update, featuring the following panel members: **Judge Katherine Tennyson**, Multnomah County; **Judge Rita Batz Cobb**, Washington County; **Judge Robert Herndon**, Clackamas County; and **Tim McNeil**, Davis Pagnano McNeil et al. Mr. McNeil will provide an update of recent case law and legislation. The judges and staff will discuss current practices and procedures in the tri-county metro area. This CLE is a must for all probate practitioners and/or their staff.

For more information:

Call Todd Cleek, Attorney at Law at 503.706.3730. For registration questions, please call the MBA at 503.222.3275.

Working Effectively With In-House Counsel

Tuesday, April 30, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Unlike law firms, companies do not revolve around their lawyers. In-house counsel often wear multiple hats and are working on important business decisions as well as legal tasks. **Leah Cronn**, General Counsel for The Hecht Group, **Paul Loving**, Sports and Entertainment Counsel for adidas, and **Matt Levin**, a commercial litigator at Markowitz Herbold Glade & Mehlhaf, will share unique strategies for how to create and maintain effective working relationships with in-house counsel.

Our speakers will discuss the role of the legal department as part of the larger organization, strategies for building an efficient outside counsel/in-house team, how to create value for the in-house legal department by leveraging your expertise, and how to help an in-house legal department become a profit center.

For more information:

Call Shannon Armstrong, Markowitz, Herbold, Glade & Mehlhaf at 503.295.3085. For registration questions, call the MBA at 503.222.3275.

In-House eDiscovery for Law Firms (Large and Small)

Wednesday, May 1, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Recent legal trends and improvements of technology make it possible for law firms to control and manage their clients' electronically stored information internally, thus better protecting clients' sensitive information and reducing or eliminating dependence on expensive outside eDiscovery vendors. An incidental consequence of the inevitable evolution towards lawyer-management of eDiscovery processes is the opportunity to make in-house eDiscovery an additional profit center for law firms.

Differentiate your law firm by developing defensible and repeatable in-house capabilities to collect, review, produce, and present electronic evidence at trial. Incrementally bring more eDiscovery services in-house for better quality of work, control of the process, increased law firm revenue and cost savings for your clients. This CLE is very practical with many computer demonstrations.

Tom Howe has been a practicing attorney for over 25 years, licensed in Washington and Oregon. He helps law firms, corporations, and government clients with electronic discovery. He has written four books (law and technology) and speaks at legal conferences throughout North America and technology conferences around the world.

For more information:

Call Heidee Stoller, Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

Multnomah County Trial Practices Seminar

Wednesday, May 8, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

This year's program will feature presentations by **Judges Stephen Bushong, Jean Maurer** and **John Wittmayer**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. The panel will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter. The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

For more information:

Call the MBA at 503.222.3275.

Navigating the Procedural and Cultural Differences Between Local Counties in Construction Defect Cases

Tuesday, May 14, 2013
3:00-5:00 p.m.

World Trade Center
Skybridge Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Each county handles construction defect cases differently. This two-hour CLE will provide some insight into how Multnomah, Clackamas, Washington and Marion Counties approach construction defect cases. This class is intended to be different than the usual day-long seminars in that judges from these counties will be discussing: (1) current practices in their respective counties in handling dispositive motions, pretrial matters and trials; (2) hot topics that each judge has seen come up recently impacting these cases; and (3) words to the wise – what works and what doesn't from a judge's perspective.

Our speakers include: **Judge Judith Matarazzo** (Multnomah), **Judge Mary James** (Marion), **Judge Charles Bailey** (Washington) and **Judge Douglas Van Dyk** (Clackamas). The panel will be moderated by **Melissa Ward**, Spooner & Much, PC.

For more information:

Call Melissa Ward, Spooner & Much at 503.517.0777. For registration questions, call the MBA at 503.222.3275.

The Power of Presentation

Best practices, winning techniques and industry-leading tools

Wednesday, May 29, 2013
12:00-1:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members \$25
Non-members \$40
Co-Sponsored by LexisNexis Sanction

This one-hour seminar is intended to provide practical and useful suggestions to practicing litigators about technology tools for the courtroom. **Mike Hahn** is Senior Director Product Management for LexisNexis Sanction. He has provided consulting services for such landmark matters as United States v. Timothy McVeigh, the Washington DC Sniper Task Force and United States v. Hirko (Enron Broadband Trial).

This one-hour seminar will address a number of trial presentation topics including:

- Past and Present Technology
A brief overview of traditional courtroom presentation techniques, addressing their strengths and weaknesses and an analysis of new tools including trial presentation software, timeline software, and 3-D animation.
- Contingency Plans
A review of important backup measures to keep technology running smoothly throughout trial.
- PowerPoint in Opening Statement and Closing Argument
Sample slides to illustrate thematic techniques.

For more information:
Call the MBA at 503.222.3275.

Litigating a Contested Foreclosure Case in Oregon

Tuesday, June 4, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Judicial foreclosures have increased dramatically in Oregon due to the Court of Appeals ruling on MERS in Niday v. GMAC Mortgage and the mediation requirements imposed by Senate Bill 1552. Attorneys **Pilar French**, Lane Powell and **John Bowles**, Bowles Fernandez Law will discuss the key elements of litigating a contested foreclosure case in Oregon courts, from both a plaintiff and defense perspective.

For more information:
Call Heidee Stoller, Ater Wynne at 503.226.8616. For registration questions, call the MBA at 503.222.3275.

Summary Judgment Motion Practice

Tuesday, June 11, 2013
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Judge Henry Breithaupt will discuss the law of summary judgment and the points he sees as recurring problems for attorneys. He will also review points that have been helpful, or not, to him as a judge and the framework he uses in looking at the motions and participating in the oral argument.

David Markowitz will focus on preparing and presenting oral argument of summary judgment motions. His presentation will include: deciding what to argue; how to organize the argument for maximum persuasive impact; preparing visual images to use during oral argument; do's and don'ts of delivering the oral argument; responding to judges' questions; and the secrets to persuading the motions judge.

For more information:
Call Hollis McMilan, Attorney at Law at 503.972.5092. For registration questions, call the MBA at 503.222.3275.

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To obtain MBA member rates for seminars and events, sign in as an MBA member first:
<http://mbabar.org/Membership/Login.html>

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Or register online and receive a \$5 discount. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

Registration Form

Receive a \$5 Discount when registering online at www.mbabar.org.

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Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). 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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503.222.3275 ■ Fax to: 503.243.1881

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

Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available; an additional \$5 charge will apply.

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- 4/24 Annual Probate Court Update**
Class Registration Online (\$50 Members/\$80 Non) _____
 Class Registration (\$55 Members/\$85 Non) \$ _____
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- 4/30 Working Effectively With In-House Counsel**
Class Registration Online (\$50 Members/\$80 Non) _____
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- 5/1 In-House eDiscovery for Law Firms (Large and Small)**
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- 5/8 Multnomah County Trial Practices Seminar**
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Class Registration Online (\$50 Members/\$80 Non) _____
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mba | ANNOUNCEMENTS

MBA Judicial Brownbag – April 26

Please join judges of the Multnomah County Circuit Court for a brownbag discussion on Friday, April 26. The biannual judicial brownbag series provides MBA members an opportunity to have an informal discussion with our judges. The main topic of discussion for this session will be the outlook for the Oregon Judicial Department's budget in the current legislative session and the impact of anticipated cuts on the Multnomah County Circuit Court's operations, but feel free to ask questions about other subjects as well. Please bring your lunch and your questions to presiding court (courtroom 208) on Friday, April 26, from noon - 1 p.m.

Take a Matter that Matters

Please sign the MBA 2013 Pro Bono Pledge and commit to taking at least one pro bono case this year. A brochure about the pledge is available on the MBA website. Sign the pledge at <http://mbabar.org/AboutUs/ProBono.html>.

Noon Bicycle Rides

Take a noon break for a short, fast ride with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or just meet at the start.

Oregon Corporate Law Handbook – 2013 Edition

Robert J. McGaughey has recently completed the 2013 edition of *Oregon Corporate Law Handbook*, last published in 2006. The book can be browsed at www.law7555.com.

Federal Bankruptcy Judge Position

The Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of Bankruptcy Judge for the District of Nevada. This position will be available on or after July 10. The selection process may take up to 10 months to complete. The official duty station for this position will be in Las Vegas, NV.

The term of office is 14 years with a possible renewal appointment subject to reappointment procedures. The current salary is \$160,080 per annum. Relocation expenses are not reimbursable.

The Court of Appeals uses an open and competitive selection process. All applications are screened by a Merit Screening Committee, which selects a limited number of applicants for interview and contacts their references. From the initial group of interviewees, selected applicants will be referred for further interview by a Judicial Council committee, which then submits a recommendation of nomination to the Court of Appeals. The selected nominee will be required to satisfy FBI and IRS background investigations prior to appointment.

Basic qualifications for consideration include: (1) admission to practice before the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; (2) membership in good standing in every bar in which membership is held; and (3) at least five years of legal practice experience (certain other legal experience may be substituted). Applicants are considered without regard to race, color, gender, religion, national origin, age, disability, or sexual orientation.

The District of Nevada Bankruptcy Judge Application (specifically for use with this recruitment) may be downloaded from www.ca9.uscourts.gov. Applicants are advised to allow for sufficient time to complete and submit the application. One completed and signed original (and one copy) must be sent to the Office of the Circuit Executive. One scanned version of the completed application must be uploaded to <http://judgeship.ce9.uscourts.gov>. Applications must be in the format required and received by 5 p.m., Thursday, April 25. To be considered, letters of reference (though optional) must be submitted with the original (and copy) application and must be uploaded with the scanned application. The United States Courts are Equal Opportunity Employers.

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Ethics Focus

Choice of Law is Boring ... Until It's Not

by Mark J. Fucile
Fucile & Reising



Choice of law is an odd topic. In law school, it can have a powerful ability to induce drowsiness. Even in practice, choice of law doesn't come up all that often because the laws of most jurisdictions are relatively similar. When there is a distinction that makes a difference in the outcome of a case, however, choice of law becomes really interesting. In this column, we'll first look at the basic choice of law rules governing lawyer conduct and then turn to some illustrations of state variation that can make a difference in common practice settings.

...choice of law principles have been a part of the RPCs themselves.

The Basic Rules

Since Oregon moved from the former Disciplinary Rules to the Rules of Professional Conduct in 2005, choice of law principles have been a part of the RPCs themselves. (Before then, choice of law was governed in Oregon disciplinary matters by the Bar Rules of Procedure. See *In re Summer*, 338 Or 29, 35, 105 P3d 848 (2005).) RPC 8.5(b) now addresses choice of law as it relates to lawyer discipline. RPC 8.5(b), however, reflects the same general principles applied in other law firm contexts such as fee agreements (see, e.g., *Frost v. Lotspeich*, 175 Or App 163, 188-89, 30 P3d 1185 (2001)), lawyer civil liability (see, e.g., *Spirit Partners, LP v. Stoel Rives LLP*, 212 Or App 295, 304, 157 P3d 1194 (2007)), and disqualification (see, e.g.,

Philin Corp. v. Westhood, Inc., 2005 WL 582695 at *9-*10 (D Or Mar 11, 2005) (unpublished)).

RPC 8.5(b) divides choice of law analysis into two categories.

First, for conduct arising in the context of a court proceeding, RPC 8.5(b)(1) generally applies the law of the forum.

Second, for conduct arising outside the context of a court proceeding, RPC 8.5(b)(2) uses "the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct." RPC 8.5(b)(2) also notes that a lawyer will not be subject to discipline

...a lawyer will not be subject to discipline if the lawyer's conduct meets the rules of the jurisdiction....

if the lawyer's conduct meets the rules of the jurisdiction in which the lawyer "reasonably believes" the conduct will have its predominant effect.

With either, it is important to remember that although RPC 8.5(b) governs choice of law, RPC 8.5(a) addresses disciplinary authority and makes plain that the Oregon Supreme Court retains disciplinary authority over Oregon lawyers no matter where asserted misconduct takes place.

How They Can Make a Difference

With the adoption of the RPCs in 2005, Oregon moved into much closer alignment with the many other jurisdictions nationally that have professional rules patterned on the ABA Model Rules. Notwithstanding the closer alignment, Oregon's RPCs, like most of their counterparts across the country, still differ in many respects from the ABA Model Rules in both their form and their interpretation. The sources of this variation are several and are not consistent from state to state. In some instances, the wording of particular state rules is different from the ABA Model Rules. In others, case law or ethics opinions account for the variation. In still others, the variation flows from the fact

that most states have official comments patterned generally on those that accompany the ABA Model Rules, but Oregon never adopted comments.

To take a few examples in common litigation scenarios from Oregon and Washington:

- In Oregon, a line-level employee whose conduct is at issue generally falls within corporate counsel's representation and, therefore, is "off limits" from direct contact by opposing counsel under RPC 4.2 (OSB Formal Ethics Op. 2005-80). In Washington, by contrast, the limitation only applies if the line-level employee is classified as a "speaking agent" of the corporate employer under the Washington Evidence Rules (*Wright v. Group Health Hospital*, 103 Wn2d 192, 691 P2d 564 (1984)).

- In Oregon, an adverse expert in a state court proceeding can, in theory, be contacted

...Oregon's RPCs, like most of their counterparts across the country, still differ in many respects from the ABA Model Rules....

directly by opposing counsel (OSB Formal Ethics Op. 2005-132, with caveats). In Washington, by contrast, opposing counsel can only contact an adverse expert through a deposition (*In re Firestorm 1991*, 129 Wn2d 130, 916 P2d 411 (1996)).

- In Oregon, an insurance defense lawyer is generally considered to have two clients - the insured and the insurer (OSB Formal Ethics Op. 2005-121). In Washington, by contrast, an insurance defense lawyer only has one client - the insured (*Tank v. State Farm*, 105 Wn2d 381, 715 P2d 1133 (1986)).

In short, although Oregon's RPCs are now based on the ABA Model Rules, "model" doesn't mean "uniform." Material nuances remain from state to state in areas that are not necessarily predictable. With lawyers more frequently practicing across state lines, the chance that choice of law can get interesting is increasing as well.

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Around the Bar



Traci Ray

Barran Liebman

The firm's Annual Employment, Labor & Benefits Law Seminar has been named the 2012 Promotional Event of the Year by the Northwest Legal Marketing Association. This is the firm's third consecutive year being recognized with the award. Every September, over 700 HR professionals, business owners and in-house counsel attend and are treated to a morning of up-to-date information about the laws and regulations affecting their businesses and employees. The entire seminar is planned and managed in-house by the firm's Executive Director, **Traci Ray**.



Corbett Gordon



Tatiana Perry



Craig A. Foster

Tonkon Torp

Corbett Gordon, one of the Pacific Northwest's most respected labor and employment lawyers, has joined the firm's labor and employment practice.

Reflecting the firm's commitment to the rapidly emerging area of privacy law, attorneys **Tatiana Perry** and

Craig A. Foster have earned designation as a Certified Information Privacy Professional for the United States, a certification offered by the International Association of Privacy Professionals.

The firm launched its information privacy & security practice group last year. Six attorneys in the practice advise businesses on the proper and practical collection, use, protection, disclosure and disposal of sensitive data, as well as on breach responses and privacy-related litigation.



Robert W. Nunn

Sussman Shank

Firm partner **Robert W. Nunn** has been elected to serve on the Multnomah Athletic Club Board of Trustees for a three-year term. Nunn has been a member and involved with the MAC for 26 years. He is a business lawyer and concentrates his practice on issues affecting private businesses, their owners, and the owners' families. He also serves as outside general counsel to privately held and family owned businesses.



Myles Conway

Marten Law

Myles Conway, a leading Oregon real estate and land use lawyer, has joined Marten Law's Portland office as a partner. He assists clients with real estate and development projects throughout the Pacific Northwest and Alaska. Conway, who will split his time between Portland and Bend, has more than 24 years of experience in the areas of real estate law, land use, public lands, and environmental law.

Lane Powell

Shareholder **Michael R. Silvey** was recently appointed to the board of nonprofit fee housing and development organization Proud Ground, formerly known as Portland Community Land Trust.

Proud Ground and Clackamas Community Land Trust (CCLT) recently integrated their operations. Silvey, a real



Michael R. Silvey

estate attorney, represented CCLT in the integration of the two organizations. He was also one of the founding board members of CCLT, which, like Proud Ground, was formed in 1999. The combined organizations have developed more than 250 homes, which are sold to low-income families.

Lane Powell recently received an award for the greatest dollar increase in contributions over the previous year from the large law firms in Portland at the annual Campaign for Equal Justice luncheon.

The increase in contributions will help the campaign in its goal "to improve the well-being of the people of Oregon by supporting access to critical civil legal services to those who live in poverty by developing and distributing resources through fundraising, public education, and law-related projects."



Jeremy Vermilyea



John Mansfield



Leora Coleman-Fire

Schwabe Williamson & Wyatt

Jeremy Vermilyea, a shareholder, was recently presented with the much-coveted Associated General Contractors Oregon-Columbia Chapter (AGC) President's Award. He currently serves as the counsel to the board of directors of the chapter. He has previously

served on the board as well as on various other chapter committees.

Vermilyea focuses his practice in the areas of construction, commercial litigation, real estate and environmental law. He has over 15 years of experience representing general contractors, specialty contractors, developers, design professionals and other members of the construction industry. He has litigated numerous complex matters in the state and federal courts including public works payment claims, ERISA claims, construction delay claims, construction defect claims, and lien and bond claims.

John Mansfield, a shareholder, was appointed by Chief Judge Aiken as a Ninth Circuit representative for the District Court of Oregon. The appointment is a three-year term. His duties will include representing the district at Ninth Circuit judges' meetings and conferences.

Mansfield focuses his practice on IP litigation and advice. He represents clients in disputes relating to software and hardware contracts and technology, patents, trademarks, copyrights, and trade secrets, in numerous federal and state courts, arbitrations, and in the ITC. **Mansfield** relies on his experience in large cases to help his clients find cost-effective ways to manage complex electronic and other discovery issues.

Leora Coleman-Fire, an associate, recently joined the board of directors for Portland's Q-Center, which has a vision of a broadened positive perception of lesbian, gay, bisexual, transgender and queer (LGBTQ) people. Its mission is to provide a safe space to support and celebrate LGBTQ diversity, visibility and community building. Q-Center offers multi-generational programs and services in four core areas: arts and culture; education and training; health and wellness; and advocacy. The board of directors provides governance to fulfill Q-Center's mission and vision. **Coleman-Fire's** board position is for a two-year term.

Coleman-Fire focuses her practice in the area of labor and employment law. She is experienced in pretrial and trial motions, along with providing legal research and writing memoranda, and document review.



Marsha Murray-Lusby

Dunn Carney

Marsha Murray-Lusby was elected chair of the executive committee of the Estate Planning and Administration Section of the OSB for 2013. One of the roles of this committee is to recommend new state laws in estate planning

and administration or suggest changes to the laws. She is also a member of Portland Estate Planning Council and a frequent lecturer on trust and estate topics.



Richard Vangelisti

Vangelisti Law Firm

Richard Vangelisti has established a new firm. He will continue to focus his practice on plaintiff's personal injury and wrongful death cases in Oregon and Washington. His new office is located at 121 SW Morrison St. Ste. 475, Portland OR 97204; phone: 503.445.2101; email: richard@vangelisti.com. The firm's website is www.vangelisti.com.



Rob Kline

Kline Law Offices

Rob Kline has moved his firm to the Bank of America Financial Center in downtown Portland. The firm's new address is 121 SW Morrison St. Ste. 475, Portland OR 97204. The telephone and fax numbers remain the same. **Kline** continues to focus his practice on representing individuals in serious personal injury matters in Oregon and Washington.

Wrenn Bender

The firm has opened a Portland office. **Phillip M. Bender**, **Christine L. Hein**, **Karen L. Reed** and **J.W. (Jeff) Ring** are founding partners of the firm. **Mark P. Strandberg** is an associate. **Wrenn Bender** specializes in complex commercial litigation, appellate law, environmental and natural resources law and litigation, real estate, land use, water rights and municipal law. Website is www.wrennbender.com.

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

CourtCare's 10th Annual Fundraising Campaign

April 15 - May 3

by Amy Angel
CourtCare Fundraising Committee Chair

If you have been in the downtown Multnomah County courthouse recently, you have probably noticed colorful and prominent signs posted in the hallways advertising CourtCare. A project of the MBA, CourtCare is located in a converted jury room on the second floor of the downtown Multnomah County courthouse. The program has served more than 10,000 children since 2001, providing free, drop-in childcare

extremely successful and has increased the number of children served by an average of 41% per month without resulting in any increased costs for the program.

Going to court can be very intimidating, especially for young children whose families are already stressed to the limit by divorce proceedings, custody battles, eviction proceedings, or criminal charges. In its 11 years of operation, CourtCare has made a difference for countless families,



many of whom struggle with violence and poverty. Children are welcomed into a cheerful place where they are sheltered from adult issues in court. Their parents are able to focus on their court business knowing that their children have

for children whose families have court business. CourtCare has traditionally offered services to children ages six weeks to five years. Last summer, the program obtained temporary permission to care for children up to 10 years of age. This expansion of services has been

a safe and happy place to stay. Ask any Multnomah County judge, and you will hear that CourtCare has also improved the administration of justice because courts operate more efficiently without having children in the courtrooms and hallways.

Two-thirds of the annual budget for CourtCare is funded by the efforts and contributions of the local legal community. The CourtCare Campaign began in 2004, with an annual goal of raising \$100,000 from Portland-area legal organizations, law firms, individual attorneys, legal assistants, paralegals, other support staff, and judges. Since the beginning of the CourtCare Campaign, our legal community has contributed over \$875,000, and we are extremely grateful for this ongoing generous financial support. Virtually every Multnomah County Circuit Court judge has contributed annually to the campaign in the past 10 years, a testament to the value placed on the program by those who see it in operation every day.

The 10th Annual CourtCare Campaign will run from April 15 through May 3, with a goal of again raising \$100,000. (Last year we raised \$103,000!) Every dollar helps, and the campaign will give special recognition to donations at the \$150 and \$500 levels. The campaign also recognizes the firm or organization with the highest per capita contribution with the Loftiest Leap award and the firm or organization with the largest total contribution to the campaign with the Proudest Pride trophy. Last year, those awards went to Buchanan Angeli Altschul & Sullivan and Davis Wright Tremaine, respectively.

To learn more about CourtCare or the campaign, please contact me at aangel@barran.com or 503.228.0500. Also, please see this month's insert to make a donation by mail or visit www.mbabar.org to make a donation online and to view a short video about the CourtCare program. Thank you in advance for your continued support of this very important program.

BOOK REVIEW

Business and Commercial Litigation in Federal Courts

Third Edition

Robert L. Haig, Editor in Chief

by Paul Conable
Tonkon Torp



advice for litigators, checklists, and extensive sample pleadings and forms (provided both in the text of the edition and in electronic form in an accompanying disc). More than a rundown of substantive law, the West treatise provides a how-to manual for federal business litigation.

This is not to suggest that the treatise is devoid of substantive content. In its 11 volumes, the publication addresses virtually every subject relevant to commercial litigation in the federal courts. The Third Edition is expanded to add 34 new chapters addressing areas not included in the Second Edition. Examples are *International Arbitration*; *Regulatory Litigation With the SEC*; *Immigration*; and *Federal Claims Based on Land Use Regulation*. Because of its practical, step-by-step overview of federal court business litigation, *Business and Commercial Litigation in Federal Courts* is a valuable resource for litigators. No other resource for federal court practitioners so effectively combines practical advice on the nuts and bolts of commencing and trying a case in federal court with specific discussion of a multitude of substantive areas that business litigators face.

West has produced a third edition of its valuable treatise, *Business and Commercial Litigation in Federal Courts*. West's treatise runs to 11 volumes. It covers all aspects of business litigation in federal court, from pleading requirements to substantive federal law to jury instructions and verdict forms. The treatise is a significant resource, both for lawyers who practice regularly in federal court and for those who only rarely leave state court.

For Oregon readers, the tone of the treatise is reminiscent of the OSB's CLE series. Like the series, the West treatise provides practical advice to lawyers on virtually every aspect of civil litigation. While the Wright & Miller treatise, for example, focuses more narrowly on the substantive law, West has chosen to combine substantive legal discussion with practical

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Tips From the Bench

Dealing with Self-Represented Litigants How to Avoid Becoming Goliath Against David

by Judge Youlee You
Multnomah County Circuit Court



These days, attorneys are facing pro se opponents more frequently in court. When dealing with self-represented litigants, what works and what doesn't? How do you, as the one wearing the power suit, avoid looking like Goliath against David? I have spoken with attorneys who spend much of their practice dealing with self-represented litigants, as well as judges who have observed trials involving attorneys against pro se litigants. They offer these tips:

1. Give your "Pro Se Miranda warnings."

The first question out of your mouth should be, of course, "Are you represented by counsel?" After determining that the opposing party does not have counsel, make your disclosures. Be sure to include that you represent the opposing party and cannot give legal advice. One attorney I spoke with calls these his "Pro Se Miranda Warnings." Like Miranda warnings, by sticking to a script, you can be sure you have given everyone the same disclosures every time.

2. Don't be afraid to talk with them - they won't bite.

Too often, attorneys are reluctant to speak with self-represented litigants. This likely stems from our fear about speaking with unrepresented individuals.

Failure to communicate, however, leads to all kinds of problems including discovery delays and an inability to resolve the case. The key is in how you communicate, which is discussed below.

3. When they talk, listen.

Self-represented litigants are often confused, angry, and frustrated. Before meeting you, they have been dealing with what

they perceive are large, uncaring, and impersonal institutions. Frequently, they just need to vent and then you can begin a productive dialogue. Be patient and listen. Try to be sympathetic and understand where they are coming from. It will usually lead to a more fruitful conversation.

4. Check your ego at the door.

Dealing with self-represented litigants is very different from dealing with opposing counsel. Attorneys are used to "playing the game." Pro se litigants are not and don't know the rules. If you project the same type of adversarial demeanor with pro se litigants as you do with fellow attorneys, it very well might backfire. They could get angry, become entrenched in an unreasonable position, and refuse to back down for emotional and irrational reasons. Before taking action, question whether your actions will help you achieve a resolution or are more likely to be counterproductive.

5. Ditch the lingo.

Unless they studied Latin in high school, self-represented litigants often don't understand the terminology we use in the legal profession. So when you speak with them, remember they are not attorneys. Talk to them like you are explaining things to non-attorneys like, for example, your parents.

6. Restraint is the name of the game.

Pick your battles. Don't lose your cool. Don't nitpick. Slow down your presentation at trial so that self-represented litigants can keep up and it does not appear you are trying to run roughshod over them. As one judge so wisely put it, "Restraint is the name of the game."



News from the Courthouse

by Jennifer Truzzolino
Court Liaison Committee member

Presiding Judge's Report

Assignment of some hearings or trials to the East County courthouse in the future

Judge Waller clarified a comment she made during the MBA Presiding Court Update seminar in February. Her comment was that there are two "state of the art" jury trial courtrooms in the East County courthouse and that she may assign civil hearings and trials to judges sitting in that facility. This comment has been reported back to her as a statement that in the future all civil cases would be heard in the East County courthouse. This is not what she said. What she actually said was that on occasion, civil actions may be assigned for hearing or trial to judges sitting at the East County courthouse - but this will not take place until later this year. She has assigned a rotation for the circuit court's judges to sit in that courthouse, but the rotation's implementation has been delayed while working out the system changes for the direct summoning of Multnomah County jurors to the East County courthouse.

Board of County Commissioners' action regarding the Multnomah County courthouse

In February, the board was briefed by Partnerships BC on its report of the downtown courthouse project. This report was requested by the board in December 2012, and its purpose was to assess whether the replacement or remodeling of the Multnomah County courthouse would be a good fit for a public-private partnership. The conclusion by Partnerships BC was that building a new courthouse would be a good fit; remodeling the existing courthouse would be risky and would only be considered if the building was vacant and gutted when the work began. Remodeling the occupied

building would not be suitable for a public-private partnership under any circumstances with such an old structure; it is far too risky for the private investor.

Following the presentation by Partnerships BC, Michael Bowers, Manager, County Facilities & Property Management, addressed the board. His recommendation was to investigate the feasibility of a new courthouse, and leave to the future the analysis of how to address the existing Multnomah County courthouse. The board gave informal consent to this approach. Judge Waller reported that Bowers will develop a request for proposals for an appropriate vendor to accomplish a combined programming and business case analysis review of a decision to construct a new courthouse building for downtown Portland, and will report on that proposal to the board.

Legislature to consider use of state bonds to assist counties in courthouse construction

House Bill 3126 would allow for the use of Oregon Constitution Article XI-Q general obligation bonds, approved by the voters in 2010, to finance the construction and improvement of courthouses. The bill's sponsors are Representatives Wally Hicks, Jennifer Williamson and Chris Garrett and Senator Chuck Thomsen. The bill creates the Oregon Courthouse Capital Construction and Improvement Fund. If enacted, it would permit the state to partner with a county in the construction of a new courthouse. Since no county is able to fully manage the burden of courthouse financing, state partnership on funding would be instrumental in addressing the need for safe, functional and efficient court facilities throughout Oregon.

Judicial vacancy update

The ceremonial investiture of Judge Beth Allen took place in February; Judge Amy Holmes Hehn's investiture was in March. They are both sitting in the family court. The process for selecting a replacement for Judge Janice Wilson is underway. The MBA submitted its

list of highly qualified candidates to the governor on March 8.

Judge Michael McShane's nomination to be a U.S. District Court judge for Oregon is proceeding in the U.S. Senate; Judge McShane had his confirmation hearing before the Senate Judiciary Committee on February 13. The vote to advance his nomination to the full Senate is expected in March. When Judge McShane is confirmed, Governor Kitzhaber could appoint a replacement to fill the vacant position from the current list of highly qualified candidates.

New civil pretrial case management processes reviewed

Members of the civil trial bar and the judges who developed the new civil pretrial case management rules and processes met in February. The meeting was opened by Judge Janice Wilson and discussion was led by Judge Judith Matarazzo. The purpose was to discuss how the new pretrial process is working for the trial bar, to discuss any issues that need to be addressed, and to gather suggestions regarding possible changes. Generally, the trial bar supports the new pretrial case management system. One focus of concern at this meeting, however, was the difficulty presented for solo practitioners by the Initial Case Management Conference process, which provides that the initial case conference date, once set, cannot be moved. Notice of these conferences arrives only a few days before the scheduled proceeding. When the attorney is not available on that date and gives immediate notice of that situation, there is no relief to allow the date to be adjusted in light of an absolute conflict. Judge Waller added that the initial conferences were also problematic for the court since it requires 2.5 days of judge time per week to conduct them. An option under review to address both problems, she said, is the possibility of using an email-based reporting system rather than an actual courthouse

Continued on page 14

MBA Judicial Brownbag April 26

The main topic of discussion will be the outlook for the Oregon Judicial Department's budget in the current legislative session and the impact of anticipated cuts on the Multnomah County Circuit Court's operations, but feel free to ask questions about other subjects as well. Please bring your lunch and your questions to presiding court (courtroom 208) on Friday, April 26, from noon - 1 p.m.

Judge James Egan Oregon Court of Appeals

by Jeanne Chamberlain
Court Liaison Committee member

The newest member of the Oregon Court of Appeals is **Judge James C. Egan**. A longtime Linn County resident, Judge Egan was raised in Tangent and graduated from West Albany High School. A teenage dad, he worked his way through college, and earned a degree in political science and economics from Willamette University in 1979. Upon graduation, he joined the United States Marine Corps, where he served until entering the University of Oregon School of Law.

Jim practiced with Kryger, Alexander, Egan, Elmer & Carlson in Albany, Oregon for 25 years. He represented plaintiffs in workers' compensation claims, product liability cases, injury

Judge Egan had previously represented the church's bishop in seeking Social Security recovery.

accidents, and employment matters. He is particularly proud of a case he tried in the late 1990s: *State v Hays*, 155 Or App 41 (1998). Jim represented a father who was prosecuted for

criminally negligent homicide based on failure to seek medical care for his 8-year-old son. The boy died of acute leukemia. The family belonged to a small Pentecostal denomination, the Church of the First Born. Church beliefs allowed members to undergo medical examinations, but did not allow medical treatment. Judge Egan had previously represented the church's bishop in seeking Social Security recovery. Years later, when the bishop's daughter and son-in-law were arrested, he turned to Judge Egan and asked him to help. Judge Egan took on defense of the father on a pro bono basis and found experienced co-counsel for the bishop's daughter. After several weeks of trial, the father was acquitted of manslaughter but convicted of negligent homicide. The mother was found not guilty. Judge Egan's three eldest children attended every day of the trial and that experience led two of his daughters to enter the legal profession. His eldest followed in his footsteps, attending the University of Oregon Law

School, and is a legal aid lawyer in Bend, Oregon. His middle daughter later attended Michigan Law School and is a Public Defender working exclusively with juvenile offenders in Baltimore, Maryland.

During much of his legal career, Judge Egan served in the Marine Corps Reserves. In 1996, after 15 years of service, he resigned his commission with the Marine Corps at his wife's request. World events rekindled his interest in military service and beginning in 2005 he volunteered at Fort Vancouver. He entered the U.S. Army Reserves in 2006. That led to his 2008 active deployment in Kuwait.

During much of his legal career, Judge Egan served in the Marine Corps Reserves.

Prior to his military deployment, Judge Egan expected to be in private practice for the remainder of his career. But his experience in Kuwait awakened his interest in public service. He was able to exercise discretion in administering matters that made a practical difference to the 30,000 soldiers and contractors who lived and worked on the base. While there, he taught a business law class to soldiers who were working toward undergraduate college degrees. Judge Egan

was appointed as an adjunct professor at the University of Maryland and held business law classes twice weekly for the two semesters he was overseas.

He hit the ground running on his return to Albany and his firm. When two positions opened on the Linn County

Egan himself grew up in a dysfunctional home, and as an adolescent he acted out in school and in the community.

bench in 2010 he threw his hat in the ring. Governor Kulongoski appointed Judge Egan to the circuit court bench. There he handled a wide range of cases. Judge Egan considers his juvenile court work his most important achievement at the circuit court. He took special satisfaction from his interactions with young offenders and it is one of the things he misses at the Court of Appeals. Egan himself grew up in a dysfunctional home, and as an adolescent he acted out in school and in the community. His father knew the local sheriff and most of his deputies and wasn't shy about calling them to the family home to teach his son a lesson. These experiences gave Judge Egan the ability to relate to the young people who appeared in his court. He exploited that experience at every opportunity if he thought it might help one of



Judge James Egan

them. On occasion he would take a juvenile up to the fourth floor of the courthouse where the holding cells were located. Egan could connect with young offenders and motivate them by showing them the segregation cell that he himself had occupied years ago.

Egan describes the trial court bench as a roller coaster. Serving on the Court of Appeals is more of a merry-go-round. Judge Egan has learned that skills of persuasion are important. You have to convince the other judges that your decision is correct. That is not a task that was required on the trial court bench. Judge Egan embraces it wholeheartedly, saying it's the best job ever. He is proud to bring to the court a common person's view of life.

Healthcare Reform 101 The Employer Mandate

by David O'Brien
Group Health Insurance Committee Chair



This article, the final segment of a three-part series on healthcare reform, focuses on the Patient Protection and Affordable Care Act's (PPACA's) employer shared responsibility provisions, also known as the employer mandate. Essentially, the employer mandate requires applicable large employers to offer minimum essential coverage to its fulltime employees and their dependents. The coverage must be both affordable and of a certain minimum value. Applicable large employers that fail to provide such coverage could be subject to assessable penalties.

Like the healthcare exchange and individual mandate addressed in the first two segments of this series, the employer mandate goes into effect January 1, 2014. This is a very complicated part of PPACA. The employer mandate will pose significant implications for many employers. Many of the complex issues addressed by the proposed

regulations are outside the scope of this article, which attempts to highlight essential elements of the employer mandate.

What is an applicable large employer?

An applicable large employer with respect to a calendar year is one who employed an average of at least 50 fulltime employees (or fulltime equivalent employees) on business days during the preceding calendar year. To help transition into 2014, employers will be able to look at a period of any six consecutive calendar months to help determine their status as large employers in 2013. That 2013 determination will dictate an employer's 2014 status. For many companies, this determination will be no easy task. Seasonal workers, high-turnover positions, and part-time employees must all be properly considered. For instance, 20 part-time workers working 24 hours per week will be considered 20 fulltime equivalents under the PPACA calculations.

What is a fulltime employee?

The statute defines a fulltime employee as someone who works an average of 30 hours of service per week in a given month. Hours for vacation, sick and FMLA leave are considered as hours of service in that calculation. Applicable

large employers will need to make this fulltime employee determination for employees with variable hours on either (a) a month-to-month basis; or (b) utilize a "Safe Harbor" to look back over a "Measurement Period" of three to 12 months to determine employee eligibility. If an employee averages 30 or more hours of service during the "Measurement Period," the employer will need to offer coverage during a "Stability Coverage" which is the greater of six months or the length of the chosen "Measurement Period." Again, this can be complicated.

What is minimum value coverage?

The employer mandate requires that offered plans have an actuarial value of at least 60%, meaning, that an employee, on average, would be responsible for 40% of the costs of covered benefits under the plan. On a healthcare exchange, a Bronze Plan would provide the minimum value coverage of 60%. On February 20, the Center for Consumer Information and Insurance Oversight released a minimum value calculator designed to help employers determine if the plans provided comply with PPACA's minimum value standards.

What is affordable coverage?

According to HHS, a plan is considered affordable if a fulltime employee does not have to pay more than 9.5% of her household income for her share of the premium for the lowest-priced offered plan which provides minimum value. The

cost of dependent's premiums is not included when considering affordability under the act. Employers will be allowed to rely on the employee's reported Form W-2 when determining affordability.

What is the assessable payment for failing to comply with the act?

An applicable large employer that fails to offer minimum essential coverage (MEC) to its fulltime employees and their dependents may be subject to a penalty if any fulltime employee receives a tax credit or cost-sharing reduction on a healthcare exchange. The maximum annual penalty is \$2,000 for each fulltime employee, disregarding the first 30 fulltime employees. If for example, an applicable large employer with 50 fulltime employees fails to offer MEC, that employer will be subject to a \$40,000 annual penalty (50 - 30 x \$2,000 = \$40,000). Employers that do offer minimum value coverage to their fulltime employees and their dependents may be subject to an annual penalty of \$3,000 for each fulltime employee who receives a tax credit or cost-sharing reduction on an exchange because the employer coverage is not affordable. If 10 employees can't afford the coverage and receive a tax credit or subsidy on the exchange, that employer will receive a \$30,000 penalty. All penalties will be imposed and collected by the IRS. Again, employees going to the exchanges for insurance will trigger the penalties. An employee whose household income is less than the 400% of the federal poverty level is entitled to a subsidy on

an exchange. For instance, an employee in a family of four with income level of \$90,000 falls under the 400% federal poverty level and is entitled to a 30% subsidy.

The applicable large employer law firms offering coverage to their employees through the MBA's Group Health Plan for the plan year starting April 1 of this year can rest assured that they are offering their employees minimum value plans. The affordability of such plans will be determined by the burden firms and employees share in the premiums.

With 2014 fast approaching, we can expect substantial changes stemming from the ambitious and far reaching PPACA. The employer mandate may prove to be the most complex of the act's provisions. In January of this year, the Treasury Department issued proposed regulations to give guidance to employers. The comment period closed on March 18. Employers will be able to rely on the proposed regulations until the final ones are issued. Meanwhile, everyone should make an effort to monitor healthcare reform developments. They are coming and they will impact all of us.

David O'Brien manages the human resource function at Hart Wagner. He is the current chair of the MBA Group Insurance Committee - on which he has served since 2008.



Young Lawyers Section

Community Law Week Events

by Julie Nimnicht
YLS Service to the Public Co-Chair

The YLS Service to the Public Committee celebrates Law Day every year with a series of events designed to encourage members of the legal community to volunteer. These events also aim to promote awareness about the Law Day theme, which is selected by the ABA each year. The theme of Law Day 2013 is *Realizing the Dream: Equality for All*. 2013 marks the 150th anniversary of the issuance of the Emancipation Proclamation. One hundred years after President Lincoln's famous decree, Martin Luther King Jr. delivered his iconic "I Have a Dream" speech, urging America to "make real the promises of democracy." This year's Law Day theme invites us to reflect on the strides that have been made toward realizing equality for all, and also serves as an important reminder of the work that remains to be done.

Community Law Week is a series of events organized by the YLS Service to the Public Committee that will take place between April 27 and May 2. The goal of the week is to reach out to under-served members of our community, assist those individuals in accessing legal resources and engage the entire community in thinking about the movement for civil and human rights in America and how it has promoted equality under the law.

Volunteer support is critical to the success of the community outreach events held during Community Law Week. Please consider joining in this year's celebration of our community, civic education, and the MBA YLS by volunteering your time to any one of the projects listed below. For more information about Community Law Week, visit www.mbar.org/YLS/CommunityLawWeekYOUthFILM.html.

Free Legal Information Booths:

Each year, volunteers provide general legal information and disseminate brochures at free legal information booths in various locations in Multnomah County. On Saturday, April 27 from 12-4 p.m., the Service to the Public Committee will host two legal information booths: one booth will be located at the Lloyd Center Mall, and a second booth will be located at the Multnomah County Library's Central Branch. Two volunteers will staff each booth for two hours at a time. To volunteer, contact

Joseph Mueller (jmueller@larkinsvacura.com) or Jennifer Eadie (jenny@pekelderlaw.com).

Tell it to the Judge: This event allows community members to talk directly with a local judge about their questions, concerns, and opinions on the justice system. On Saturday, April 27 from 12-4 p.m., volunteers are needed to facilitate public interaction with the judges. To volunteer, contact Colin Hackett (colinrockey@yahoo.com) or Kelvin Adkins-Heljeson (kdadkins@gmail.com).

YOUthFILM Project: Community Law Week will culminate with a celebration of young filmmakers at the YOUthFILM Project award ceremony and film screening. This filmmaking contest provides students with an opportunity to express themselves creatively, while learning about the justice system and the legacy of the civil rights movement. Participants will produce short films or videos based on this year's theme: *Realizing the Dream: Equality for All*. The top films will be screened for the public at the Hollywood Theatre in Northeast Portland on May 2 at 6:30 p.m. Prizes will be awarded by Oregon Supreme Court Chief Justice Thomas A. Balmer. Please visit www.theyouthfilmproject.org for details.

Community Law Week would not be possible without the support of our generous sponsors. Thank you to our committed sponsors:

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It's never too late to become a sponsor or volunteer! If you or your organization is interested in sponsoring this year's Community Law Week, please contact Marcel Gesmundo (gesmundo@oglawpdx.com) or Elizabeth Edwards (elizabeth.edwards@state.or.us).

Email Service of Pleadings A Growing Trend

by Troy Pickard
YLS Futures Committee member



Over the last 100 years, modes of business communication have evolved dramatically. Technological improvements have made correspondence and document exchange more reliable, more secure, and almost infinitely faster. Most legal communities, Oregon's included, have typically been slow to adopt new communication methods for the purpose of ORCP 9 service. Now, a growing number of jurisdictions are amending their civil procedure rules to allow for, or even require, service of pleadings via email. As for Oregon, the question is not whether it will join states like Florida; the question is "when?"

Email is indisputably ubiquitous in both business and social communication. Billions of business emails are sent every single day, and more than 80% of professionals say they use email as their primary business communication tool. Whereas every letter sent through the mail costs 46 cents and needs a piece of paper and a printer, emails are free to send and need no paper, making them central to the idea of a paperless office. Faxes still need paper (often special paper) and are now widely considered an inefficient anachronism. And

at many firms, small and large, most important documents are now scanned and digitized after receipt. Email allows the recipient to cut out that step. But presently, mail and fax are both embraced by the Oregon Rules of Civil Procedure as legitimate methods of serving documents while email under ORCP 9 G is in fact a *prohibited* method of service, unless the parties not only make a specific written agreement about email service, but also email a response acknowledging receipt each time they receive a pleading or filing via email.

The fact that Oregon and many other jurisdictions have not yet adopted email service as routine is not surprising, when one considers the historical adoption of new communication methods for service of pleadings. Telegraphs had been in widespread use since the 1830s, but Oregon's rules of civil procedure did not allow for telegraph service until 1952, over 100 years later. The ORCP continued to allow telegraph service of pleadings until 2007, a year after Western Union closed down its telegraph service altogether.

Even though fax machines were widely adopted by the business community in the late 1960s and early 1970s, the ORCP did not allow fax service until 1991. Instead of a 100-year wait, practitioners had a delay of only about 25 years. The current ORCP still allow service via "telephone facsimile communication device."

And finally, email. Although many Oregonians were using email for all sorts of communications in the late 1990s, the ORCP did not mention

email service until 2007, when it enacted an almost-identical version of the current rule.

While history may suggest that Oregon will adopt email service sooner or later, other jurisdictions have already beaten Oregon to the punch. Since mid-2012, Florida's rules not only allow email service, but actually make it *mandatory*. In Florida, email service is treated as service by mail for timing purposes, giving recipients even more time to respond than they might have with regular mail. The rule requires specific wording in the email's subject line, enabling recipients to ensure that emailed pleadings don't wind up in a spam folder; any modern email program can use a filter to ensure that no emails with particular wording ever get sent to a spam folder. The rule also requires that the emailed document be a PDF, a universally-accepted format for business documents.

Florida's rule provides an escape clause for attorneys who can demonstrate to the court that they have no email address and lack internet access at their office. This provision highlights the contrast between Florida's rule and Oregon's: email service is automatic and Florida lawyers can only opt-out under limited circumstances, whereas in Oregon, email service is generally prohibited unless lawyers specifically opt-in.

Florida has attempted to modify their service rules to reflect the reality about email, while creating safeguards to prevent abuse and mistakes that might scare some practitioners away from email service. In light of Oregon's historical trend of embracing new communication technologies for service purposes, even if it does not happen in 2013, email service is likely coming soon.

YOUthFILM Project's Screening & Awards Ceremony Join us on Thursday, May 2

Mark your calendars! Come enjoy a night of popcorn, the chief justice, students from our local schools and some short films that will be sure to entertain. On May 2 at 6:30 p.m., the YOUthFILM Project hosts its 7th annual film-screening event at the Hollywood Theatre as part of Community Law Week. There will be a reception following the screening. Everyone is invited!

Partially funded by the MBF, the YOUthFILM Project is the capstone of the YLS Service to the Public Committee's Community Law Week events. The YOUthFILM Project is an exciting forum for elementary through high school students all over Oregon and SW Washington to show off their creativity, knowledge and skills by producing short films on civics' issues.

The filmmaking teams of up to five students must incorporate this year's ABA Law Day theme "Realizing the Dream: Equality for All" and include topics such as equality in the eyes of the law, equality in the future, influential persons or events from the civil rights movement in America, and how injustice everywhere threatens justice everywhere.

Top films will be screened for the public at the Hollywood Theatre in Northeast Portland during Community Law Week. Honored guest, Oregon Supreme Court Chief Justice Thomas A. Balmer, will award prizes.

This year brought new developments in the YOUthFILM Project, including an emphasis on attorney mentorship and outreach. We anticipate an exciting and entertaining event on May 2.

We hope to see everyone there! For more information, please visit www.theyouthfilmproject.org.

YLS Horoscope

April brings spring into view - a time of growth and renewal. Embrace the season in your personal and professional life.

Allow it to breathe energy into your day and focus your perspective. You may experience some stress at home or the office, but this will simply reveal what you need to focus on. Stress can help you stay energized and engaged. Use it as a guiding factor as to whether you are on track, or if you need to rethink any decisions that you have made. Remember, you have the ability to direct your future and create your own story. Your present situation does not have to be static and you do not have to let others tell your story. Focus on cultivating yourself and nurturing your strengths and you'll reap the rewards later.

Listserv Mentoring

by Tom Noble
YLS Futures Committee



What if you have a legal question and don't know the answer? For most younger attorneys, you probably look in Bar Books. Its general overview will typically point you towards relevant statutes or case law. But what if the answer is still unclear or the issue is a bit too nuanced for Bar Books? If you work with other attorneys, you might seek out the experienced attorney down the hall. But what if the attorney down the hall doesn't know the answer, or if, like many practitioners today, you work alone? Most attorneys have encountered this dead-end at some point in their career.

Fortunately, the bar section listservs and other various organizational listservs exist. Despite the occasional off-color diatribe, they serve as a digital arena where an experienced attorney can provide an answer to a difficult question.

Who are the attorneys responding to the listserv queries? There are two general categories: attorneys who offer helpful personal anecdotes and attorneys who draw from a vast general knowledge base. Consequently, everyone, especially less-experienced attorneys, benefits from access to a forum comprised of the finest legal minds in Oregon. Whatever the area of law, there is likely a cadre of attorneys who serve as collective "listserv mentors."

Currently, I subscribe to the solo and small firm practitioners, the estate planning section, the Oregon Trial Lawyers

Association, and the Oregon Women Lawyers listservs. Although numerous attorneys respond to law-related queries, there are a dozen or so attorneys who consistently respond and whose responses are widely respected among their colleagues. An individual who embodies the worthiest aspects of this select group on the estate planning section listserv is Warren Deras.

I met with Warren for lunch near his home in Southwest Portland. We discussed his career and the growth of listservs. Warren is a tall, spry man in his 60s. He is a friendly, animated individual with a strong and immediate grasp of the law.

Although Warren is now officially retired, he practiced law in Oregon for over 40 years. He moved out to Oregon after serving in Vietnam and attending Yale Law School. Warren began his career at the firm that is now Miller Nash. After several years, he broke out on his own and began renting space in Portland with two other attorneys. He had a civil practice and was widely regarded as an expert in state election law, serving as legal counsel to the Oregon Republican party. Warren also worked as a Special Assistant Attorney General, representing the Oregon Department of State Lands in escheat estates.

While Warren no longer practices law, he continues to share his wealth of knowledge and experience with younger and older attorneys alike. In the past month, Warren responded to over 50 queries on the estate planning listserv alone. His responses are always thoughtful, detailed, and incredibly helpful. The respect other attorneys have for Warren is obvious in the deference given to his responses when an issue is unclear and is being debated among several attorneys on the listserv.

Over lunch, we discussed the relevance of listservs to

young attorneys. Warren enjoys being a resource to less experienced attorneys, acting as the proverbial "attorney down the hall" for young attorneys or solo practitioners without the access to the abundant resources available to attorneys at large firms.

I turned the conversation to the issues attorneys face at the beginning of their careers. I asked Warren if he could relate to the plight of many recent law school graduates and new attorneys faced with a sagging economy and large amounts of student debt. Warren was refreshingly honest; he couldn't relate. In his day, higher education was simply more affordable. That's not to say he didn't work long hours at a job while attending school. He did, yet it was possible to work a part-time job to pay tuition, and graduate with little to no student debt. As we all know, that experience has become less common for today's graduates.

Warren felt newer attorneys faced another disadvantage. In a nutshell, Warren felt that the law had become so increasingly complex that with each passing year, the amount of knowledge required for minimal, if not sufficient, competency in a given area forces new attorneys to specialize. Warren thought the growing complexity made it difficult for a new attorney to do as he had done, work as a sole practitioner, and take anything that walked through the door until you had narrowed down your areas of interest.

I really enjoyed meeting with Warren. The lunch ran long, but went by quickly. His life story is fascinating and could easily fill many more pages than this column allows. I'm still amazed that with all his brilliance and donative sensibilities, Warren is but one of the many experienced attorneys who share their valuable time and experience enriching the various listserv communities. As a seldom poster, but frequent reader, I would like to thank all the attorneys who contribute to the discussion.

YOUTHFILM Project. Over the course of his Film Racing experiences, Trause wrote the screenplay and co-wrote the musical score for a short film that won a series of awards and was later screened at the 2011 Cannes Film Festival.

And what better way to combine Trause's interests in law and filmmaking than as an attorney mentor for the YOUTHFILM Project? In its seventh year, the YOUTHFILM Project is a student filmmaking contest involving elementary through high school students from all over Portland and its surrounding areas. The project allows students to develop and display their creativity, knowledge, and filmmaking skills by producing a short film

The Nonprofit Project With Nonprofit Association of Oregon Pro Bono Spotlight

by Therese Adams
YLS Pro Bono Committee member

Many of the opportunities listed in the MBA Pro Bono Opportunities Handbook involve providing legal services directly to individuals. However, some attorneys - whether due to personal preference or practice focus - wish to provide services at the organizational level.

This is where the Nonprofit Project fits in. The project is a collaborative effort between the Nonprofit Association of Oregon (NAO) and the MBA YLS, which partners attorneys with organizations who need pro bono legal assistance on single-issue, non-litigation matters.

NAO serves approximately 500 members throughout the state of Oregon. Their mission is to "strengthen the collective voice, leadership, and capacity of nonprofits to enrich the lives of all Oregonians." Coordinating the provision of pro bono legal assistance is one mechanism used to build capacity in nonprofits in Oregon.

Community-based organizations with a 501(c)(3) tax-exempt designation that serve a broad public interest and whose budgets are under \$300,000 are eligible to receive legal services through the project. Organizations wishing to receive legal assistance through the project apply through NAO. If the organization meets the criteria above, the opportunity is shared with attorneys interested in the program through a listserv maintained by YLS (see below for information on how to join this listserv). Once an attorney chooses to take on an opportunity, the attorney works directly with the organization on the legal matter.

Alexis Millett of NAO is the point of contact for organizations interested in legal assistance through the program. She states the program is an extremely important one and explains that up to one-third of all projects are general "check-ups" needed by nonprofits that want to ensure they have their legal structure in order. Currently, there are about one to two opportunities per month sent on to interested attorneys, but Alexis believes the program has potential to expand.

Alexis explains, "There are so many small, volunteer-run nonprofits doing incredible work that need to be compliant, and are dedicated to being compliant. Legal services that don't cut into their limited budget are an invaluable resource."

The opportunities available through the Nonprofit Project are great for transactional attorneys or attorneys with experience in legal matters affecting Oregon nonprofit corporations. Legal assistance needs range from bylaws' review to real estate transactions. Attorneys volunteering services for this project should have their own PLF coverage, and it is recommended that newer attorneys have access to an experienced mentor.

Note: Attorneys who wish to be notified monthly of opportunities available through the Nonprofit Project can contact Christi Taylor, christi.taylor@millernash.com to join the listserv. If you work with a nonprofit interested in the program, please contact Alexis Millett at 503.239.4001 ext. 115 or amillett@nonprofitoregon.org.

Jonathan Trause YLS Public Service Spotlight

by Nadia Dahab
YLS Service to the Public Committee

Jonathan Trause is a recent OSB admittee with a commitment to serve the greater Portland community. A 2011 graduate of Lewis & Clark Law School, Trause became interested in family law by participating in the Lewis & Clark Legal Clinic and serving as a clerk to Portland State University's Student Legal Services. As part of those programs, Trause gained experience not only in family law, but also in landlord-tenant disputes, debtor-creditor relations, consumer law, employment law, personal injury law, and small

claims. Now, Trause primarily practices family law while also engaging in local bar activities and other community service projects. He is also a member of the Gus J. Solomon Inn of Court and the Oregon New Lawyers Division Pro Bono Committee.

In law school, Trause also became involved in a short-film competition called Film Racing, where he developed skills that he is finding particularly useful in his most recent volunteer endeavor, serving as an attorney mentor for the MBA

on civics' issues. This year's theme, "Realizing the Dream: Equality for All," invites students to explore the movement for civil and human rights in America and its impact on the ideal of equality under the law. As an attorney mentor for YOUTHFILM, Trause volunteers at Self Enhancement, Inc. (SEI), a nonprofit organization providing YOUTHFILM as an after-school program to at-risk urban youth. There, he works with the classroom instructor to help guide the students in their filmmaking projects.

In his role as a mentor, Trause seeks to have a positive impact on the SEI youth participating in the program. "I want to get them thinking about the legal concepts, but also help them



Jonathan Trause

have fun, get creative, express themselves, and find their voices," he said. This year's YOUTHFILM Project films will be showcased at an awards presentation at the Hollywood Theatre on May 2.

The MBA and Multnomah Lawyers Step Up for Justice

by Sandy Hansberger
CEJ Executive Director

In a time of crisis for legal aid, the Oregon legal community turned out in force this year to support justice for all. With a donation of \$25,000 from the MBA, the Campaign for Equal Justice (CEJ) met its annual goal of \$1.2 million in support of legal aid!

Over 60% of the funds raised for legal aid are from the generous contributions of Multnomah County legal professionals. Many Multnomah



Alexander Gund and Ward Greene

County volunteers asked their colleagues to contribute, spoke at and recruited guests for fundraising events, stuffed envelopes, helped staff events, and solicited corporate sponsorship. Colin Love-Geiger, the campaign representative for Tonkon Torp associates said, "It feels great to be part of this effort because I know it's the right thing to do."

On February 20, 470 Oregon lawyers and legal professionals



Robin Selig, Anne Marie King, Hon. Anna Brown, and Hon. Paula Kurshner

gathered at the CEJ Annual Awards Luncheon to hear remarks by U.S. Senator Ron Wyden and Chief Justice Tom Balmer and to celebrate the Oregon legal community's commitment to access to justice. Mark Wada, CEJ Board president, emceed the event.

Darcy Norville of Tonkon Torp acknowledged individual donors. Lane Powell and Stoel Rives received special recognition; both firms increased their contributions by over \$8,000, with Stoel Rives contributing over \$90,000. Samuels Yoelin & Kantor and Farleigh Wada Witt were recognized for their increases in contributions and donors. Elaine Albrich and Andrea Thompson of Stoel Rives received awards for outstanding fundraising efforts.

Chief Justice Balmer spoke about the wave of self-represented parties, noting that in domestic relations cases, 70% of cases have at least one self-represented litigant, and in 50% both litigants are self-represented. He explained judges and staff must spend extra time with pro se parties, causing delays that affect everyone, and pointed out that legal aid lawyers help alleviate that burden.

Senator Wyden, introduced by Katie Haraguchi of Miller Nash, lauded the state, federal, and private partnership that funds Oregon's legal aid, noting that other states envy our model. Senator Wyden began his career as a legal aid lawyer and is a strong supporter of the campaign, fighting for legal aid in Congress and personally supporting the campaign as a Champion donor.

OSB President Mike Haglund and



Senator Wyden and Hon. Ellen Rosenblum

former president Mitzi Naucler presented the Equity and Justice Cups. Jackson County won the Equity Cup for the highest percent increase in donors. For the second year in a row, Lane County won the Justice Cup for the highest percentage of lawyers giving: about 35%. Multnomah County came in third for the Justice Cup, with almost 28% giving.

The program concluded with the presentation of the Henry H. Hewitt Access to Justice Award.

The award, first given to Henry Hewitt of Stoel Rives, recognizes substantial contributions to legal aid for low-income Oregonians, and strong leadership, consistent effort and commitment to the ideal of equal justice under the law. The award was presented to Michael Mason and Lou Savage, both longtime leaders in Oregon legal aid.

Oregon's legal aid programs have faced 20% layoffs in the past two years and have closed two offices. This comes at a time when the demand for services is at record highs. Janice Morgan, Executive Director of Legal Aid Services of Oregon,



Andrew Schpak, Traci Ray, Ed Harnden, and Laura Salerno Owens

thanked Oregon lawyers for their tremendous support and talked about the clients who received help from legal aid this year.

News from the Courthouse

Continued from page 10

appearance for these initial conferences.

Impacts of the staff reductions in the 2011-13 biennium

Judge Waller reported that she is still without her second clerk, and civil judgments by stipulation or default can't be screened and signed in a timely fashion; the delay is approximately three weeks from submission to signing. As a result, Judge Waller asked that attorneys not wait until the last day provided in a Rule 7 notice of dismissal before filing a stipulated or default judgment to avoid the dismissal. It is very likely under today's operating conditions that the judgment won't be signed and entered into OJIN for two to three weeks. The other major backlog for the court is putting all of the filed and entered paper documents into the case file to be available to judges, the bar and the public. Deep reductions in administrative staff mean fewer people in the file room handling the same volume of documents, which leads to this delay.

Judicial department funding and the 2013 legislative session

Judge Waller said the next step of the state budget process is the release of the Ways and Means co-chair's proposed balanced budget for the 2013-15 biennium. That release is expected in early March, to balance the March forecast for state revenue in 2013-15. She told the committee that the Oregon Judicial Department's Ways and Means budget hearing will be held in late March or early April before the Public Safety Subcommittee, and the co-chair's budget will be instructive on possible overall outcomes. The MBA and the OSB are collaborating with partners and the community on court funding, including a May 1 day of action. Watch the MBA website for more information about this event.

Brownbag with judges

Ryan Bounds is organizing the spring brownbag, which has been rescheduled to April 26. Topics for the brownbag were discussed, including an update on court funding (budget issues) and the new courthouse. Future topics to consider for a brownbag include issues related to filing documents under seal, and a review of the Odyssey File and Serve system.

eCourt implementation and expected impacts on case calendars in March through May, 2014

A representative from Tyler Technologies, Inc., gave a presentation to the Multnomah County judges in February on the implementation of the Odyssey case management system in Multnomah County. Implementation activities have begun and will continue through May of 2014.

Continued on page 15



On behalf of the attorneys and staff of Oregon's legal aid programs, the Campaign for Equal Justice board and staff extend a

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News from the Courthouse

Continued from page 14

In 2014, during the period from March 17 through May, 30 court employees and judges will be involved in intensive training regarding the Odyssey system, which will be installed on May 12, 2014. During this period, the courthouse will run at about 50% of the normal operations capacity. Aside from any matters required to be set by law, the court will restrict setting cases for hearing or trial during this

March through May time period. The cases will get older and the court will relax the time standards over this period. This operational slowdown will occur in every county as it proceeds through eCourt implementation

As the court draws near to the May 12, 2014 implementation date, the bar and law firm non-attorney staff will be trained on the new case management system; there will be significant changes from OJIN. There will also be training on the electronic filing system for attorneys and their office staff when that system is available in Multnomah County.

Odyssey File and Serve, the Oregon eCourt electronic filing system, is presently being pilot- tested in Yamhill County. It should be available fully for Yamhill, Crook, Jefferson, Linn and Jackson counties by May or June of this year. Odyssey File and Serve should be available for filing in Multnomah County by June, 2014. MBA members with statewide practices may be experienced users of Odyssey File and Serve by the time it is available for the Multnomah County Circuit Court.

Court resources


Ryan Bounds reported that this subcommittee is monitoring court resource efforts. The MBA Court Funding Committee has hired a consultant to assist in advocating for a fully-funded court system.

Feedback for the court

Committee members were asked to provide feedback to the court regarding any issues of concern. One suggestion was to provide directional signs for the parking lot at the East County courthouse, which is currently hard to find.

Judge Waller also solicited feedback on safety in the courthouse in light of a recent shooting in a Delaware courthouse. The idea is to be proactive in safety. If there are any ideas on this, please let Judge Waller know.

Judge Waller also asked for comments on the new case management system. Currently, motions for summary judgment are not heard by the motions judge. If an MSJ is filed, and a sitting judge is requested, it is assigned to Judge Breithaupt. Judge Waller inquired if the MSJ should then be assigned to the motions judge.



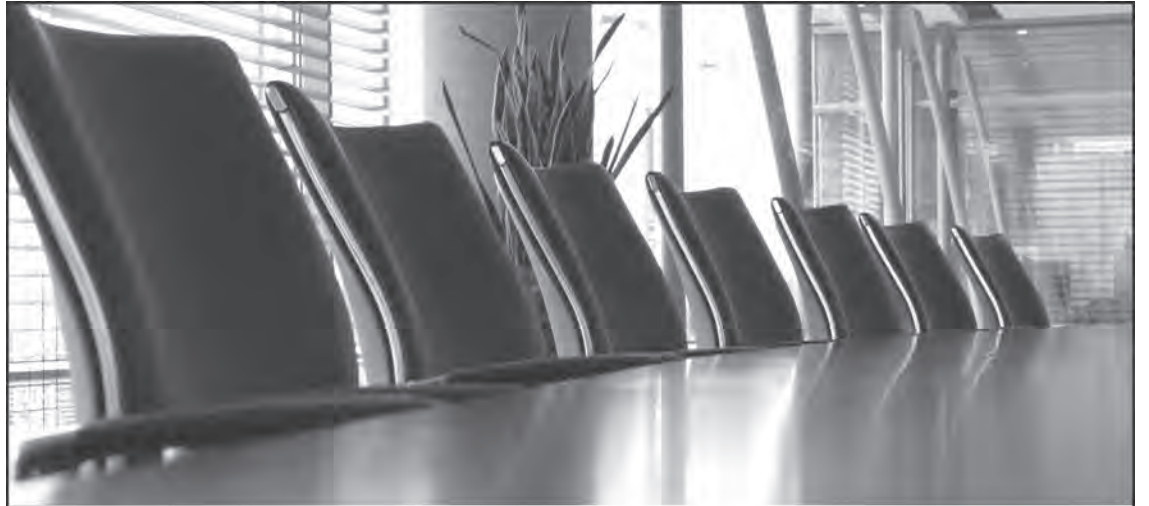
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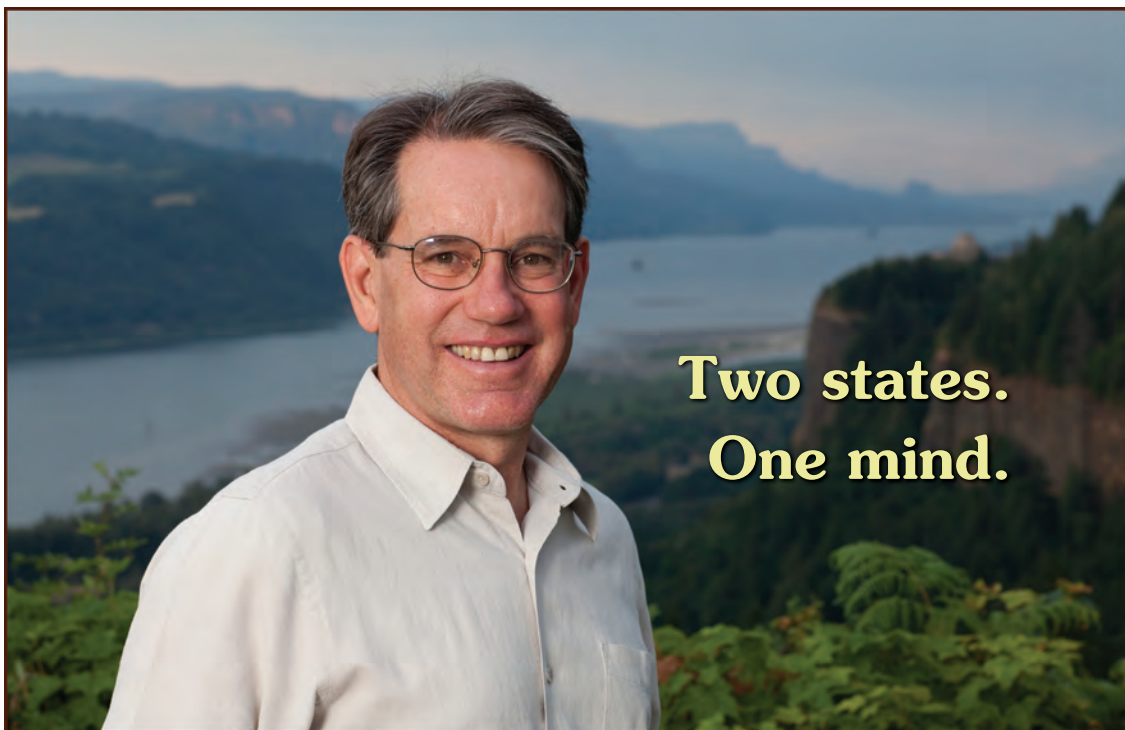
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by Barbara Fishleder
OAAP Executive Director



Now that the whirlwind of the holidays have passed, hopefully you each have a chance to enjoy a moment or two of calm and a fresh start to the new year. It is a great opportunity to consider how fortunate we are to be in a profession that has a keen spirit of professionalism and recognizes that it applies both to clients and to lawyers helping each other.

As this new year unfolds, I encourage you to draw upon this spirit of professionalism and help the Oregon Lawyer Assistance Foundation (OLAF) help a fellow lawyer in need. It may surprise you to learn that many lawyers are unable to obtain needed mental health or addiction treatment due to lack of insurance and lack of funding for community services. OLAF helps to fill the treatment gap that has been created by these difficult economic times and the resulting dramatic social service cuts.

OLAF provides treatment grants and loans to lawyers who access the Oregon Attorney Assistance Program (OAAP). The OAAP provides support, helps get lawyers to resources, and provides short-term counseling, but treatment is outside the scope of services offered by the OAAP. With an OLAF grant or loan, a lawyer who is suffering can get his or her life back on track by accessing treatment. Your help changes a desperate situation into a positive contribution to the legal profession.

OLAF is funded exclusively with private donations. OLAF loans and grants assist lawyers who suffer from depression, anxiety disorder, post-traumatic stress syndrome, addiction, alcoholism, bipolar disorder, and other mental health and addiction-related diseases. Lawyers receiving OLAF funds are asked to contribute back to

the foundation when they return to health and a productive career. To date, OLAF has authorized 19 loans and 20 grants. Several of these loans have already been fully repaid.

Most Oregon lawyers know at least one professional colleague who has suffered with the challenges of mental health issues or addictions. The lawyer you help may be a former classmate, a lawyer you know and care about personally, a colleague in the community, or



someone you will someday meet. Since most mental health issues and addictions are treatable, contributing to OLAF helps to save lives, families, and careers.

For more information about OLAF, go to www.oaap.org and click on OLAF at the top right corner of the navigation bar. Or, contact me at 503.684.7425 or barbaraf@oaap.org. OLAF is a 501(c)(3) tax-exempt organization.

We hope that you and your firm will be part of this inspired effort to help fellow lawyers. When you help another lawyer, you help the profession and the public we serve.

On behalf of Oregon lawyers in need, we thank you.

Barbara S. Fishleder serves on the board of the Oregon Lawyer Assistance Foundation. She is the Professional Liability Fund director of personal and practice management assistance and OAAP executive director.

The Corner Office PROFESSIONALISM

Here in the Corner Office, we get the opportunity to mentor young lawyers quite a bit. However, recently one of my partners stopped by with an intriguing problem: "I've agreed to participate in the bar's mentor program for new lawyers. I'm excited about this, but now that I've committed to it, I realize that I really don't know much about mentoring. I think I could use some mentoring myself!"

I suspect that most mentoring relationships evolve organically and are very dependent on the personalities of the mentor and the mentee. However, particularly in a structured program like the bar's, it might be good to think a bit about how to be an effective mentor. Here are a few of my thoughts:

Show, don't tell. You've probably heard this sage advice before. However, in the context of mentoring, it takes on a somewhat different light than it does for, say, preparing to talk to a jury. As a mentor, you will have the opportunity to offer lots of advice. This is good. Your mentee will even heed some of it! However, your influence over your mentee's professional reputation will extend beyond the words of wisdom you impart. More important than what you say is what you do. When you return phone calls promptly, treat support staff and opposing counsel with respect, your mentee will learn to do the same. Your mentee is new to our profession. She is still learning the unwritten norms of our legal community and you will be her model for how the real world works.

When we are young lawyers, our actions build our own professional reputation. When we are mentors, our actions have double the impact. They not only sustain our reputation, they

also influence the professional reputation of those we mentor. What we say will have influence, but not nearly as much as what we do.

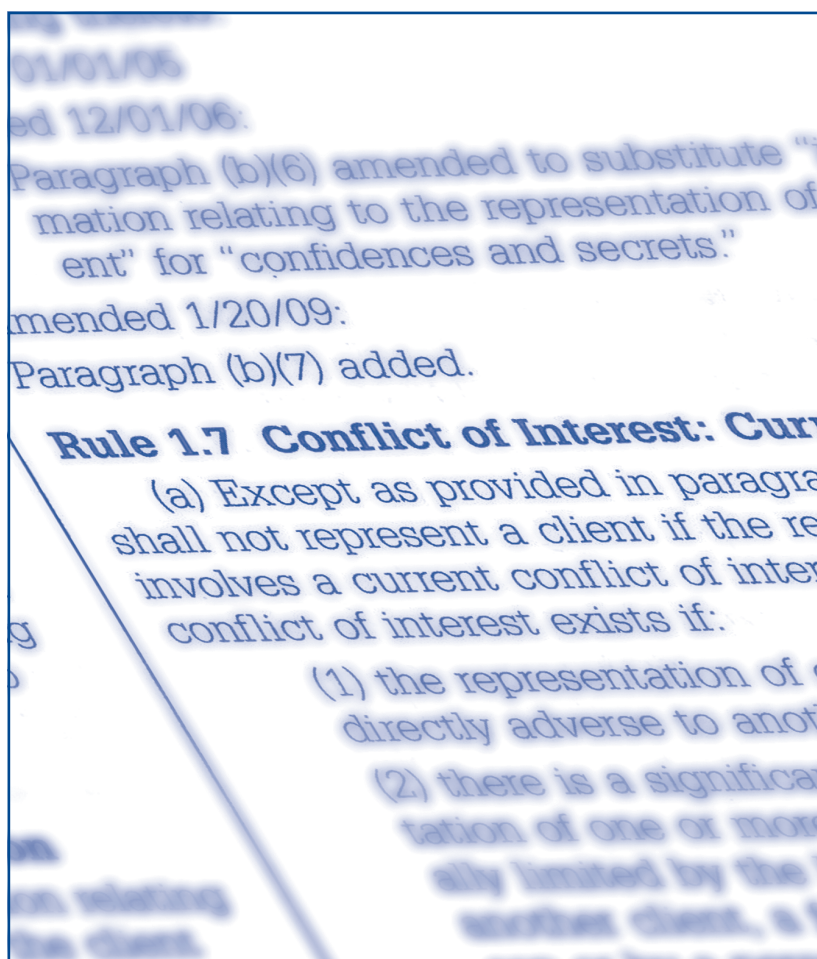
Remember, if they knew everything, they wouldn't need mentoring. When Jack Ramsey was hired to coach the Trailblazers, at one of his first practices, he spent considerable time teaching his players a drill called a "turnout." The drill was new to the players, including Bill Walton. A year later, when Ramsey was teaching the drill to a new crop of players, Walton was heard to exclaim, "I can't believe these guys don't know what a freakin' turnout is!" Walton's comment reflects a common phenomenon - once we learn something new, it no longer seems new at all. Before long, something that was novel just a few weeks earlier can seem routine and obvious. This is also true in the practice of law. And once we have been at it for a few years, much of what we learned early in our career will seem to be something that is so self-evident that even the newest lawyer should know it too. Well, they don't. (And there was a time when we didn't either.)

Our mentees are smart. They expect to work hard. They want to succeed. And they desperately want to feel like they belong in the legal community. However, many of them secretly feel that they have so much to learn about lawyering that they don't even know what questions to ask. And they're right about that. A mentor needs to recognize that all new lawyers have gaps in their knowledge of the law and the legal community. Those gaps will sometimes be surprising. At some point, you may hear yourself thinking, "How did you get through law school without

knowing that?" Well, it takes 10 years to go from being a novice to an expert. Law school is only three or four years long. So if it seems like your mentee has an awful lot to learn, there's a reason for that. He does. The good news is that you get to help teach him!

We are preparing our colleagues for their future, not our past. When I went to law school, I spent a lot of time cursing Shepards - those damned purple books filled with nothing but numbers and tiny superscript. But I also knew how important it was to update authority, so I slogged through Shepards along with my classmates. Today's students don't even know what a Shepard's volume looks like. Heck, many don't even know how to use a digest! However, thanks to technology, they are able to find (and update) authority a lot faster, and a lot more reliably, than I could as a young lawyer.

As you think about what is important for your mentee to learn, try to avoid the tyranny of tradition for tradition's sake. Your experience, wisdom, and judgment can be invaluable to a new lawyer. Your perspective as one who has traveled a similar professional road will help your mentee avoid some of the potholes that tripped you up. However, little is gained from insisting they practice law as it was done 20 or 30 years ago. Our tools will continue to change. Our ideas of professionalism - trust, respect for others, fidelity to our clients - will endure, at least as long as we share them with the newest members of our legal community. Impart those fundamental principles, along with a healthy dose of practical advice, and your mentee will make you proud.



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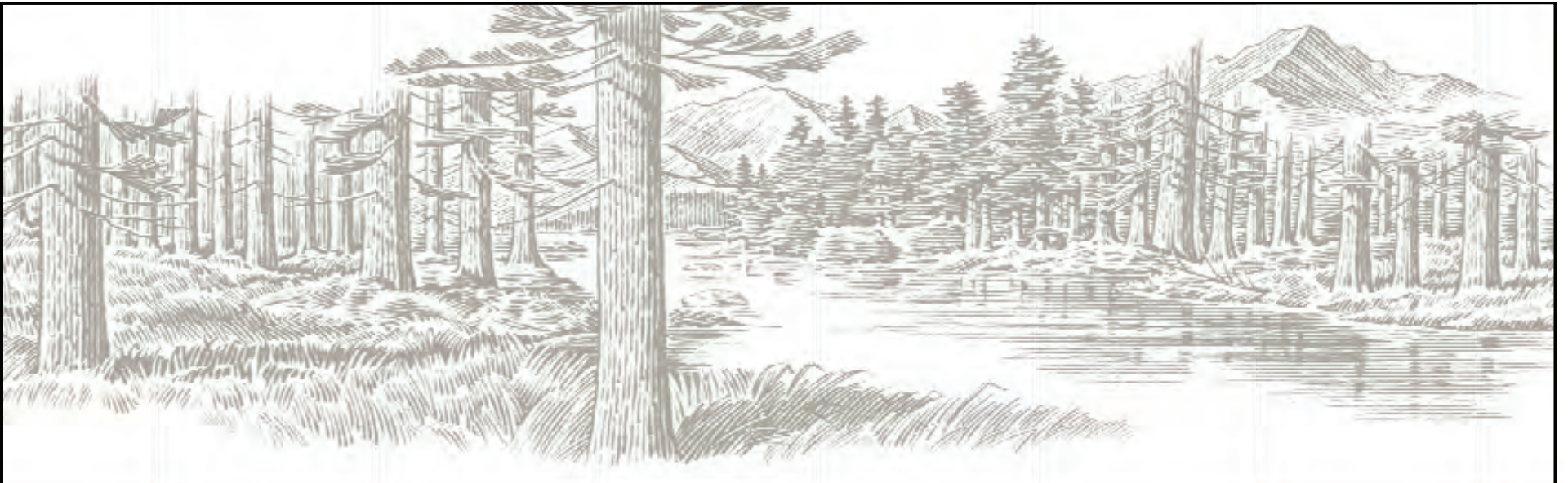
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Is It a Wrap? News from MetroEast

by John Lugton
Production Services
MetroEast Community Media

March will see the final video completed in the MBF civic education series. That's six in total: *The Court System, The Courthouse,* the two-part *Voting 101: Register, Engage, Vote, Civic Engagement* and *Civil Discourse*. But there is still a fair amount of background work to do to finish the MBF signature project.

The next phase for us is the distribution of *Civic Engagement*

and *101 and Civil Discourse* and reformatting all the videos in HD to Blu-ray to create the final master copy. Several of



Still from Responsible Civil Discourse video

the channels we administer at MetroEast will soon transition to HD and we'll re-submit the videos for a whole new viewing experience. I have to add, they really look spectacular in this format. If you haven't had a chance to see all the videos, they can be viewed on the MBF website and YouTube channel.

From our research and work in and around the courts during the production of the civic education videos, we were inspired to create *Legal Logic*, a studio talk show that includes dynamic conversation, field interviews and pre-recorded segments. We've been fortunate to receive two grants from the MBF to create the series, which picks up on some of the areas we felt needed further explanation and deeper exploration. The first episodes

saw us tackle "An Impartial Judiciary" and "Alternatives to Incarceration;" the next two episodes will focus on the role of juries. The series is available on demand at metroeast.org. We welcome your comments.

I'd like to thank everyone who participated in the signature



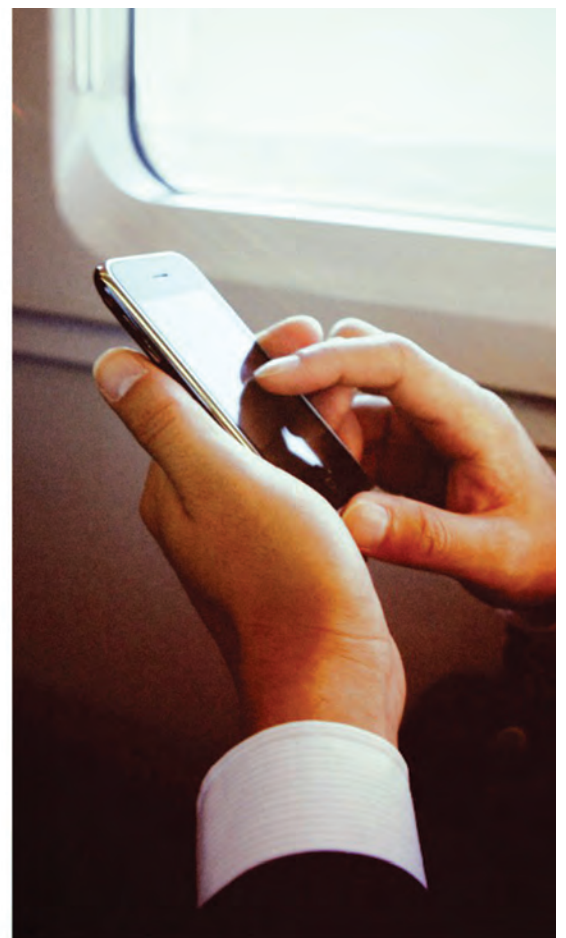
project, especially the actors and extras who spent many a long weekend in the courthouse and at various locations around the city.



Still from Responsible Civil Discourse video

I'd also like to thank the MBF and members of the legal profession for all the support, expertise and words of encouragement offered along the way. It's been a great experience for us. We hope you enjoy the videos.

To see the videos online, visit the Foundation page at mbabar.org and scroll to Civic Education.



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