



## The Power of Bad

by Greg Moawad  
MBA President

Fistfights in grade school posted to YouTube. Sexual assaults photographed and bragged about. Drive-by shootings, triggered by shirt colors or perceived “turf” incursions. The unthinkable kidnappings and associated

sexual conduct and torture that were recently discovered to have occurred over a 10-year period in an otherwise nondescript house in Cleveland. 9/11. Racial or religious persecution and genocide in portions of the world.

Human beings have a stunning ability to conjure, display, and perform evil. As a result, it is often hard to look at what is happening on this planet without concluding that the great human experiment has gone awry.

I would like to think that it was not always like this. But, of course, that isn't true. As long as we have graced this planet – first forming families, then tribes, then countries and now gangs and armies – humans have engaged in the unthinkable.

I have days I grow so frustrated with the inherent cruelty in our collective personality that I wish I could get off the planet.

But for every act of evil I observe I see multiple acts of grand, kind, selfless, and inspired behavior that we are also capable of. The Boston attacks of April 15 are the perfect example. At least two depraved individuals indiscriminately struck a crowd of innocents, including children, to attempt to further their ideological position. Leaving a wake of carnage in their path, the bombers fled. Almost instantly, the spaces previously filled with smoke and the acrid scent of burnt flesh and clothing were filled by all the very best humans have to offer. Strangers leapt to tear down barriers. People literally gave the shirts off their backs to staunch bleeding for someone they had never met. Men and women knelt over the most seriously injured in order to provide comfort and stability via human contact while professionals worked to triage the casualties. And the people of Boston opened their homes to visitors stranded in the city by the tragedy.

I can't help but be bewildered by the disparate ways in which the bad and the good impact me. Why do I more often find myself emotionally destroyed, disheartened or angered by the evil and injustice in the world than I am lifted or moved by the positive – even when the number and nature of positive events I see every day significantly outweigh the negative?

I believe that answer lies in what I deem myself both capable and incapable of. I aspire to develop in myself the ability to come to the aid of others, to parent, to teach, and to lead. I don't see the ability to degrade, dehumanize and destroy without conscience.

So when I see humanity engage in behaviors that are caring, sympathetic or generous, I tend to think that is the way it is supposed

to be – thereby giving little value to how amazing and substantial the impacts of some of the smallest acts can become. And when I see evil rear its ugly head I tend to recoil and become irate, wondering how we ever got here as a society.

I appreciate that the dichotomy of those two reactions to opposite ends of the spectrum is odd. But that isn't what scares me. What truly scares me are individuals living amongst us that view the bad in the exact opposite fashion: they see evil as a run of the mill, expected daily occurrence and are unmoved by it. And of course, they must see that capability in themselves as well.

I need look no further than yesterday's, today's or tomorrow's paper from any city in the world to be reminded that those people exist.

After the Boston attacks, comedian Patton Oswalt (more) eloquently wrote about the battle between good and evil in everyday life: “This is a giant planet and we're lucky to live on it but there are prices and penalties incurred for the daily miracle of existence. One of them is, every once in a while, the wiring of a tiny sliver of the species gets snarled and they're pointed towards darkness.

But the vast majority stands against that darkness and, like white blood cells attacking a virus, they dilute and weaken and eventually wash away the evil doers and, more importantly, the damage they wreak. This is beyond religion or creed or nation. We would not be here if humanity were inherently evil. We'd have eaten ourselves alive long ago.”

I have no doubt he's right. Some days are just harder than others to remember that.

**What truly scares me are individuals living amongst us that view the bad in the exact opposite fashion....**

**I have days I grow so frustrated with the inherent cruelty in our collective personality that I wish I could get off the planet.**

## New MBA and YLS Directors Elected

Terms Begin July 1

**Welcome to the newly elected MBA Board of Directors class of 2016:**

**Maya Crawford**, Legal Aid Services of Oregon  
**Eric Dahlin**, Davis Wright Tremaine  
**Akira Heshiki**, Standard Insurance Company  
**Elizabeth Knight**, Dunn Carney

**Welcome to the newly elected YLS Board of Directors class of 2016:**

**Paige De Muniz**, Gevurtz Menashe  
**Mackenzie Hogan**, Harris & Bowker  
**Tyler Volm**, Elliott Ostrander & Preston

## mba|EVENT

### First Thursday Joint Social with Specialty Bar Associations

Perkins Coie

1120 NW Couch, 10th floor, Portland  
Thursday, June 6  
5-7 p.m.

The MBA Membership Committee invites you to a social and celebration of the contributions of diversity and inclusion in the legal profession. Please join us for hosted food and drinks, then take a map of the nearby art galleries and hit the streets to enjoy First Thursday in the Pearl District!

Thank you Perkins Coie for hosting the event.  
Thank you Farleigh Wada Witt for sponsoring the event.  
Thank you By Design Legal for sponsoring the wine at the event.

Space is limited. Please RSVP to Kathy Modie, kathy@mbabar.org, to reserve a spot.

## mba|CLE

To register for a CLE, please see page 3 or go to mbabar.org.

### JUNE

**6.4 Tuesday**  
**Litigating a Contested Foreclosure Case**  
John Bowles  
Pilar French

**6.11 Tuesday**  
**Summary Judgment Motion Practice**  
Judge Henry Breithaupt  
David Markowitz

### SEPTEMBER

**9.18 Wednesday**  
**Legislative Update**  
John Davis  
Shemia Fagan

**9.19 Thursday**  
**iPad Apps & Tips for the Courtroom**  
Kelly Anderson

### SAVE THE DATE

#### Battle of the Lawyer Bands

Thursday, September 5  
7-9 p.m.  
Kennedy School

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DEADLINE for copy: The 10th of the month\*

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

### NEWSLETTER STAFF CONTACTS

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## Boly:Welch is Committed to Civic Responsibility

The following article is one in a series from donors who helped support the Campaign for Equal Justice's annual fund drive to support legal aid. The MBA is grateful for their support of this important cause.

At Boly:Welch, we believe that everyone deserves the opportunity to reach their potential. Just as forging deep connections with our clients ensures a 'best fit' for their staffing needs, relationships nurtured with philanthropic organizations reinforce our ability to shape a community where we can live, work and prosper.

Civic responsibility starts at the top, and owners Diane Boly and Pat Welch are actively engaged in the community as board members of I Have a Dream Foundation and CASA, respectively. They strongly encourage Boly:Welch employees to follow in their footsteps - the company walks the talk by offering 12 annual days of volunteer service to each employee to connect with groups that resonate with their interests and concerns. Many have chosen issues related to social, civic and economic empowerment.

Our team is also focused on bringing awareness of issues, people and organizations that feed our passions, to myriad business contacts. We have forged relationships with CASA, I Have a Dream Foundation, Girls Inc., Family Forward Oregon, Community Warehouse, Dress for Success, and Big Brothers Big Sisters, bringing visibility to

their needs through these client connections. We are pleased to add the Campaign for Equal Justice to this list, recognizing that justice for the most vulnerable citizens is a commonly shared value across our client base.

Boly:Welch is proud to further extend the CEJ message to Portland / Vancouver legal clients, building on our commitment to their needs for nearly 30 years. From solo practitioners and small breakaway firms to large law firms and corporate legal departments, the investment in relationships extends beyond our direct service to the issues they care most about.

Equality and justice are values we hold very dearly; they are as important to the success and viability of our region as the education, health and welfare of our citizens. As a company, we recognize that we are not successful in a vacuum, but have an active role to play in the health of the community. It is in the best interest of all to help ensure assistance to citizens in need and to provide resources to those who are overlooked and underserved.

Building strong communities by addressing issues of equality, justice, education, health and welfare is good for business and for all Oregonians.

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dougbeckman@comcast.net



## Calendar

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

### JUNE

**6.6 Thursday**  
**MBA First Thursday Social with Specialty Bars**  
See p. 1 for details

**6.14 Friday**  
**Oregon Paralegal Day**  
Visit oregonparalegals.org for details

**6.18 Tuesday**  
**MBA Riverside Golf Event**  
See p. 9 for details

**6.22 Saturday**  
**SALC Race for Justice**  
Visit salcgroup.org for details

**6.27 Thursday**  
**3<sup>rd</sup> Annual YLS Summer Social**  
See p. 11 for details

**OMLA/Perkins Coie Summer Associate Social**  
Visit oregonminoritylawyer.org for details

### JULY

**7.4-5 Thursday-Friday**  
**Independence Day Holiday**

**7.19 Friday**  
**MBA Family & Friends Golf Event**  
Visit mbabar.org for details

### AUGUST

**8.1 Thursday**  
**OMLA Auction**  
Visit oregonminoritylawyer.org for details

**8.9-11 Friday-Sunday**  
**OLIO Summer Orientation**  
Visit osbar.org/diversity/programs.html#olio for details

**8.12 Monday**  
**MBA Lawyers & Law Students Golf Event**  
Visit mbabar.org for details

### SEPTEMBER

**9.2 Monday**  
**Labor Day Holiday**

**9.5 Thursday**  
**Battle of the Lawyer Bands**  
Visit mbabar.org for details

**9.7 Saturday**  
**Pro Bono Pedal**  
Visit mbabar.org for details

## The MBA Congratulates Grant High School on Winning We The People! Volunteer Coaches Needed for Classroom Law Project

The Grant team was awarded first place at the national constitution competition in Washington DC, a prestigious honor that went to Lincoln High School last year. If you would like to help students from neighboring high schools have the same opportunity, there are schools throughout the Portland area that are looking for volunteers to help coach a mock trial or constitution team. Please contact Classroom Law Project at office@classroomlaw.org.

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### 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.

### Legislative Update

**Wednesday, September 18, 2013  
12:00-1:00 p.m.**

World Trade Center  
Mezzanine Room  
26 SW Salmon, Portland  
Members \$35  
Non-members \$55

Please join two lawyer legislators to learn about the developments that took place during the Oregon State Legislature's 2013 session. This CLE will cover recent changes to civil laws that may affect your practice or your clients' interests. Panelists include two members of the Oregon House of Representatives: **John Davis**, a business and real estate attorney at McEwen Gisvold, and **Shemia Fagan**, a litigation attorney at Ater Wynne.

**For more information:**  
Call Heidee Stoller, Ater Wynne at 503.226.8616. 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](http://www.mbabar.org).*

## Registration Form

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*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.*

- 6/4 Litigating a Contested Foreclosure Case in Oregon**  
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 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_
- 6/11 Summary Judgment Motion Practice**  
 Class Registration Online (\$50 Members/\$80 Non)  
 Class Registration (\$55 Members/\$85 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_
- 9/18 Legislative Update**  
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 Class Registration (\$35 Members/\$55 Non) ..... \$ \_\_\_\_\_  
 CD-ROM & Written Materials (\$55 Members/\$85 Non) .. \$ \_\_\_\_\_

**Total due** ..... \$ \_\_\_\_\_

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

# mba | ANNOUNCEMENTS

**Take a Matter that Matters**

Sign the MBA 2013 Pro Bono Pledge at [www.mbabar.org](http://www.mbabar.org) and commit to taking at least one pro bono case this year.

**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 Paralegal Day**

Governor Kitzhaber proclaimed June 14 to be Paralegal Day in Oregon and encouraged all Oregonians to join in the observance. The Oregon Paralegal Association is hosting a celebratory event at the Old Spaghetti Factory in Portland at 715 SW Bancroft Dr. from 4:30-7 p.m. Pre-registration is free for all paralegals & OPA members registering by June 7. Registration fee at event is \$15. For more information, contact Linda Odermott at [lodermott@ci.tualatin.or.us](mailto:lodermott@ci.tualatin.or.us).



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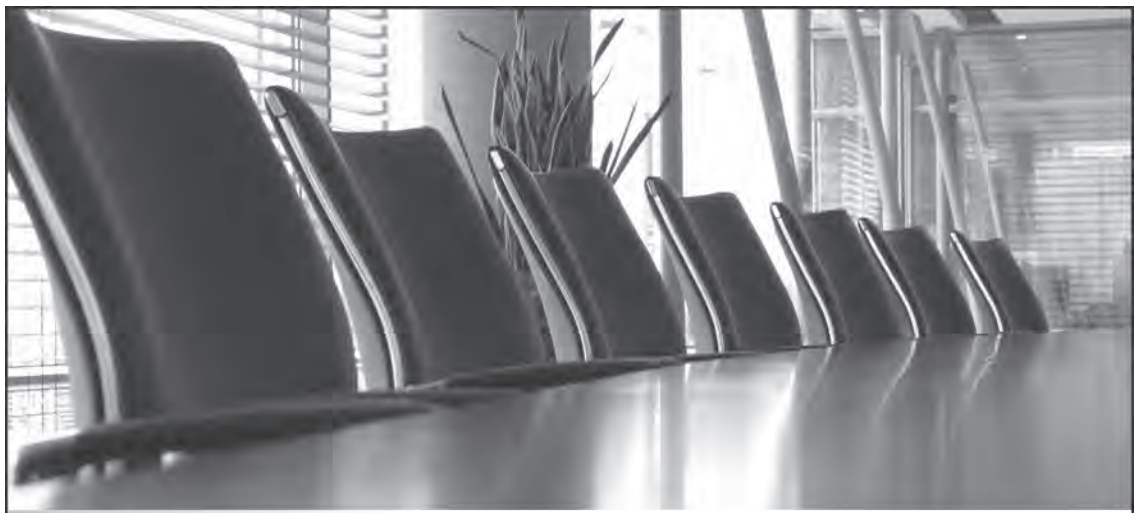
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## Around the Bar

### Doug Bray

The National Center for State Courts (NCSC) presented its 2012 NCSC Distinguished Service Award to **Doug Bray**, Court Administrator for Oregon's Fourth Judicial District. Bray received the award for his significant contributions to the justice system and for his support of the NCSC. During his 40-year career with the Oregon judicial branch, Bray has served on numerous state judicial committees, working to improve the administration of justice via the study and implementation of many projects. NCSC President Mary McQueen says "Doug Bray has been called the unsung hero of the Oregon court system ... he has been the mediator of change throughout his career and is a driving force in the transformation of the state's case management system."

The MBA congratulates Doug Bray on this well-deserved award.



Barbara Brainard

### Stoel Rives

**Barbara Brainard** has been elected to a fourth term on the Oregon Chapter of Volunteers of America Board of Directors. She is a partner in the Labor and Employment Section of the firm's Litigation Group, where she represents private and public employers in all aspects of employment law.



Keith Dubanevich

### Stoll Berne

**Keith Dubanevich** has been elected president of the Hoyt Arboretum Friends Board of Directors. Hoyt Arboretum is a living museum that consists of a unique collection of trees and plants from around the world spread across a peaceful urban refuge that is used to educate our community and conserve vitally important plant biodiversity.

Hoyt Arboretum Friends is a member-supported, nonprofit organization working in partnership with Portland Parks and Recreation to provide leadership, advocacy and sustainable resources to the Arboretum.

Dubanevich is a trial lawyer with over 25 years of experience in more than a dozen different jurisdictions around the country. He focuses his practice on complex dispute resolution and has extensive experience handling multi-state and international antitrust cases, consumer litigation and securities disputes.



Darien Loisel

### Schwabe Williamson & Wyatt

**Darien Loiselle**, a shareholder, has been named the 2013 recipient of the Associated Builders and Contractors' Kathleen Eldridge Award, presented annually to a person who demonstrates superior dedication to and participation within the organization.

Loiselle leads a comprehensive construction practice for Schwabe's Construction and Design Group. He represents owners, general contractors, designers and engineers, and specialty contractors. He has extensive experience negotiating agreements, solving complex disputes, and representing clients in litigation on major construction projects.

### Tonkon Torp

Litigator **Robyn Ridler Aoyagi** has been reelected for a second term as a Region 5 delegate to the OSB's House of Delegates, where she has served since 2010.

Aoyagi practices complex commercial litigation, focusing on appellate litigation and trial court motions practice. She was named a partner of the firm in 2006.



Robyn Ridler Aoyagi



David Rabbino



Max M. Miller Jr.

The firm has added senior environmental lawyer and a former attorney for the U.S. Environmental Protection Agency, **David Rabbino**, the newest member of the firm's broad-based and growing Environmental & Natural Resources Practice Group. He will focus on environmental and natural resources litigation. He has more than 20 years of experience in environmental law, and has represented both plaintiffs and defendants.

The Multnomah County Board of Commissioners and the Multnomah County Citizen Involvement Committee honored **Max M. Miller Jr.** with a 2013 Multnomah County Volunteer

Award for his service on the Regional Arts and Culture Council.

Miller chairs the Environmental & Natural Resources Practice Group. His business counsel and litigation practice focuses on complex hazardous waste, air and water pollution matters, as well as forestry and renewable energy.



Stephen Higgs

### Stephen Higgs

The Senior Advocates for Generational Equity (SAGE) Board of Directors announces that **Steve Higgs** has been selected as its first fulltime executive director. SAGE is a new nonprofit organization with a mission to inspire citizens over 50 to create opportunities for future generations to thrive. SAGE is committed to "raising awareness, encouraging dialogue, and inspiring action to address the needs of those who will follow in our footsteps."



Sarah Kutil

### Smith Freed & Eberhard

Associate **Sarah Kutil** has been admitted to the Washington Bar. She is also a member of the OSB. Her practice focuses on construction and development claims. She represents

landowners, developers and contractors in construction claims and contract disputes. For more information about her practice, please contact her directly at skutil@smithfreed.com.



Danielle Hunsaker

### Larkins Vacura

**Danielle Hunsaker** has been selected by the judges of the U.S. District Court for Oregon to serve as an attorney representative to the Ninth Circuit Court of Appeals. Her practice includes complex commercial litigation and business torts.



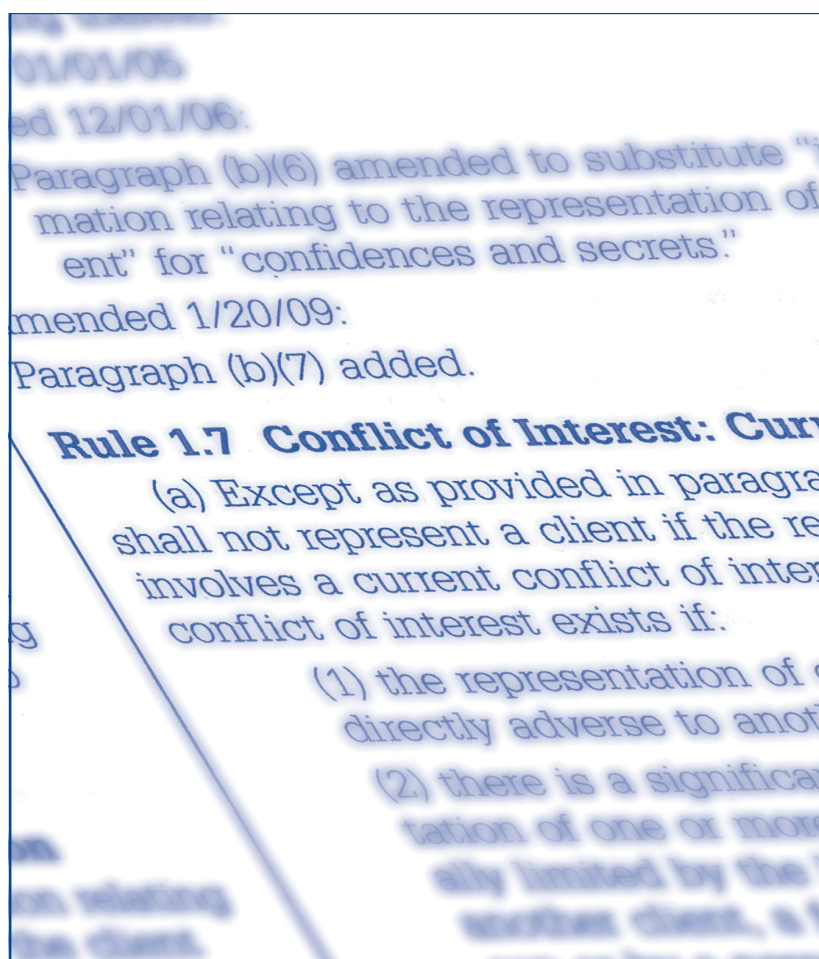
Peter Glazer

### Glazer Maurer & Peterson

**Peter Glazer** has been selected to serve on the Legacy Meridian Park Medical Foundation Board of Trustees.

Meridian Park Medical Center serves Lake Oswego, West Linn, Tigard, Tualatin, Wilsonville, Sherwood and other communities from its campus in Tualatin. This year Meridian Park celebrates its 40<sup>th</sup> birthday.

Glazer represents clients in personal injury, auto accidents, divorce, and insurance cases.



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## Ethics Focus

### Outsourcing From Down the Street to Across the Globe

by Mark J. Fucile  
Fucile & Reising



Outsourcing is not new either nationally or here in Oregon. In 1988, for example, the ABA in Formal Opinion 88-356 discussed the use of contract lawyers in detail. Similarly, in 1995, the OSB in Formal Opinion 1995-141 examined the use of third-party recycling services for the disposal of documents. Economic and technological changes, however, have had a powerful effect on the use of outsourcing by firms large and small. The scope of outsourcing today ranges from “down the street,” with the local copy service being a familiar example, to “across the globe,” with cloud computing being an equally ready example. Both the ABA and the OSB, in turn, have refined their guidance to reflect the increasingly integral role outsourcing now plays in virtually every practice. The ABA addressed outsourcing legal and support services in 2008 in Formal Opinion 08-451 and more recently in Report 105C from its 20/20 Commission and corresponding amendments to the

comments to the ABA’s influential Model Rules of Professional Conduct. The OSB addressed cloud computing, in particular in 2011 in Formal Opinion 2011-188.

In this column, we’ll look at three aspects of outsourcing. First, we’ll review our supervisory duties when we outsource both legal and support functions. Second, we’ll examine conflicts that can come with outsourcing. Finally, we’ll survey the confidentiality issues involved in sending work down the street or across the globe.

#### Supervisory Duties

Oregon’s RPCs split supervisory duties into two parallel rules. RPC 5.1 addresses supervision of lawyers and RPC 5.3 deals with supervision of non-lawyer staff. With both, the twin focus is on firm management and non-management lawyers within the firm who have direct supervisory authority over the lawyer or staff concerned. Importantly, our responsibility extends to independent lawyers and staff whom we incorporate into our firm’s work on a contract basis. In other words, we can contract out work, but not the ethical responsibilities that go into how our firms represent clients.

Closely aligned with supervision is selection. The OSB’s recent opinion on cloud computing, for example, underscores both the importance of “due diligence” in reviewing the qualifications of independent vendors and making sure they understand the professional obligations we as lawyers operate under. These complementary elements are key parts of our overarching duty to competently represent our clients as framed by both RPC 1.1 and the standard of care.

ABA Formal Opinion 08-451 and amended comment 6 to ABA Model Rule 1.1 also note that, depending on the nature of the legal services to be provided by a lawyer-contractor and the corresponding degree of supervision over the lawyer-contractor, the hiring firm may need to both consult with and obtain the client’s advance permission.

#### Conflicts

Whether an independent contractor’s conflicts will be imputed to a firm most often turns on the degree to which the contractor is integrated into the firm. Under RPC 1.0(d), lawyers “working for or with a firm on a limited basis” are not ordinarily considered firm “members” (unless the particular facts suggest otherwise). By contrast, lawyers who are sufficiently integrated into a firm to be designated “of counsel” (or similar terms) are generally considered firm “members” under RPC 1.0(d). OSB Formal Opinion 2005-155 notes that when the association crosses the sometimes indistinct line from “temporary” to “of counsel” the lawyer’s conflicts will be imputed to the firm as a whole under RPC 1.10 (the “firm unit rule”). This can be a particularly sensitive issue when, as in the situation addressed in Formal Opinion 2005-155, “of counsel” lawyers have such relationships with more than one firm and may bring with them the possibility of disqualifying conflicts from the other firms with whom they work.

#### Confidentiality

Client confidentiality is a bedrock principle for lawyers. It follows, therefore, that we must make all reasonable efforts to ensure that independent contractors we use - whether for legal or support services - understand and operate

consistent with this key duty. A local copy service that has client confidential information spread out over the counter in a busy customer reception area should raise as many questions as a cloud computing vendor whose servers are located in a country not known for its respect for privacy.

OSB Formal Opinion 2011-188 also notes that our obligation to review a vendor’s procedures is not static. Rather, safeguards that were cutting edge when a contractor was first hired may have dulled considerably with technological changes over time. Therefore, just as selection and supervision are watchwords

in our competent use of independent contractors, periodic review is equally important in making sure that the vendors we are using are continuing to meet the standards by which we, as lawyers, will be judged.

*Mark Fucile handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and mark@frllp.com.*

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## Tips From the Bench

### Role of Children's Attorney in Family Law Cases

by Judge Maureen McKnight  
Multnomah County Circuit Court



Our family law bench considers itself extremely lucky to have the service of the Multnomah County attorneys who participate in the Representation of Children program. Appointing these advocates for children helps over 150 families in our community every year and is possible because of the family law bar and the efforts of Judge Svetkey and her staff. The program significantly improves the decision-making of our bench and outcomes for families by allowing children's situations to be expertly assessed and presented, a critical need in any case but especially urgent with the high rates of parents representing themselves. While the value of the program is clear, the lawyers' sometimes difficult role has prompted recent questions at MBA CLE events. This article attempts to summarize a few thoughts on that issue.

The nature of a lawyer's representation of children in domestic relations cases has been the focus of discussion for many years. Oregon has not adopted standards specific to this type of representation. The ABA and other national organizations have promulgated model standards that can be helpful as guidelines. And the OSB has developed principles for representation of children in dependency cases that are helpful grounding for domestic relations cases. Attorneys should keep in mind, however, that some of the differences between dependency cases and family law cases may affect either (or both) the attorney's and the child's evaluation of what goes into determining the "best" outcome.

We have a local rule that sets out judicial goals in this arena: "To the extent possible, appointed counsel [for children in family law cases] will represent their clients' legal interests in obtaining a secure, stable home life and a balanced relationship with both parents and will be answerable only to their client and to the Court." SLR 8.085(5). Similarly general are the ABA Model Rules of Professional Conduct and the Oregon Rules of Professional Conduct (RPC). To analyze the most frequently asked question of whether representation of a child is "client directed" or "best interest" representation, an attorney should nevertheless start with those ethical rules. RPC 1.14

recognizes that it is not always possible to maintain a "normal" lawyer-client relationship when the client is under a legal disability such as minority or incompetence. When a client's ability to make adequately considered decisions is diminished, the lawyer must nevertheless maintain as normal a client-lawyer relationship as possible. So, the first step when representing children is to determine whether the client is capable of considered judgment, an easy question to answer if the client is a toddler. Lawyers must consider the client's age, developmental stage, and the ability of the client to understand the consequences, risks, and finality of the decision, among other considerations. If a client is not able - whether globally, or on particular issues - to participate in a "normal" lawyer-client relationship, the lawyer may take necessary protective action, which includes "best interest" representation.

Ultimately, each child is unique and each child's circumstances are unique. Representation must also be unique, taking into account not only the child's age and maturity, but also her/his ability to understand the short and long term implications of events occurring at the present time. The court's priority is that children not be asked to choose between two loving parents and that our appointment of advocates for children not make it more difficult for these young clients to maintain loving, healthy relationships with both parents, to the extent either is possible.

One last thought is the suggestion for children's attorneys to plan proactively on how their client's position will be relayed to the court. It helps no one for that attorney to be caught unprepared when the non-testifying child does not have evidence or stipulations (as opposed to attorney argument) to prove the facts necessary to support the child's position.

Judge Svetkey's program holds periodic meetings and encourages discussion and mentorship among participating attorneys. She hopes to provide a full training before the end of the year at which the role of a child's attorney will be a topic of discussion.



## News from the Courthouse

by Daniel Duyck  
Court Liaison Committee

### Presiding Judge's Report Oregon Judicial Department Funding

Judge Waller reported on the status of OJD funding, including legislative hearings with respect to the OJD funding. The current recommended budget does not fund OJD to its current service level. There is a potential for a budget cut of about 2% to 3%, plus a 2% "hold back" of appropriated funds which would not be available until the second half of the 2013-15 biennium, unless needed to offset further revenue shortfalls in that period. A "hold back" creates the image but not the benefit of the appropriated funds; it is a reduction in the sense that its imposition requires the curtailment of resources presently in use. In 2012, the legislature kept the hold back funds for the 2011-13 biennium. These potential reductions for 2013-15 biennium come on top of the earlier cumulative 15% reductions in staff and resources over the current and previous biennia since 2009. The May revenue forecast for the State of Oregon set the stage for the final appropriation decisions by the Oregon Legislature for this session.

Judge Waller reported good attendance at the public rally dubbed "Court Day" in Salem, where lawyers had the opportunity to meet with legislators to explain the impact of court funding issues. Members of the bar are encouraged to reach out to legislators, including Senator Peter Courtney, Representative Tina Kotek, and Senator Devlin, all of whom are involved in the budget-making process.

### Pending Legislation re: Courthouse

Judge Waller reported on the effort to replace the Multnomah County Courthouse. House Bill 3156 is making its way

through the legislature. The bill would allow the state to match county funding where the primary function of the capital construction project is a state "operated" court facility. If the bill passes, bonds could be sold without having to refer the matter to voters. If HB 3156 is enacted, and the expense of a new courthouse becomes a county-state partnership, then there is a significant probability that a new courthouse will be built. The governor was scheduled to tour the Multnomah County Courthouse in late May.

### eCourt at Multnomah County

Judge Waller and Doug Bray reported that eCourt is some 372 days away from implementation in Multnomah County, in May 2014. For about 60 days prior to the implementation the court will be at 50% staffing because staff will be rotating through training programs. Judge availability will also be affected, but to a much smaller extent. There also will be a training program for members of the bar and their staff on reading the new system's information.

Odyssey has some significant differences from OJIN. For example, Odyssey uses the term "created" rather than "entered" to signal that an event or document has been entered in the register. Register "entry" has legal significance for signaling time periods within which an action must occur, such as filing a notice of appeal. In Odyssey there will be a "created" date which must stand in for the "entered" terminology. Attorneys and their staff need to be aware of this difference in terminology.

There was discussion about the \$10 eFiling fee and the process by which indigent litigants obtain a waiver or deferral for the eFiling system's fee. The \$10 fee applies to each use of the system, but when filing multiple documents in a single case, all of the documents can be submitted in an "envelope" and constitute a single "use" of the eFiling system. Statutory filing

fees associated with documents must be paid at the time of the eFiling and will be assessed by the system. At this time, and until further order of the chief justice, unsigned orders or judgments in a case and applications for fee waivers or deferrals cannot be eFiled.

When Odyssey File and Serve is implemented in a circuit court, there will be a short window of time before all attorneys in Oregon are expected to use the system for that court. Currently, that window is estimated to be six months by the Oregon eCourt program staff, but that duration could be changed. eFiling will be available in Crook, Linn, Jackson, Jefferson and Linn County Circuit Courts by mid-June.

As additional circuit courts implement the Odyssey case and document management system, Odyssey File and Serve will be added one month after implementation. The next implementation of the Odyssey case and document management system is for Clatsop, Columbia and Tillamook County Circuit Courts in mid-August, which forecasts eFiling availability for those courts in mid-September.

### TurboCourt Interactive Forms

Judge Waller reported that work on implementation of the TurboCourt interactive forms for self-represented litigants continues in the Oregon eCourt Program. Currently the TurboCourt FAPA forms application is being used with great success by petitioners. This TurboCourt contract was implemented by the City of Portland for use in Multnomah County.

Judge McKnight has worked with OSB committees and the OJD's Family Law Advisory Committee to ensure a smooth transition to automated forms for self-represented litigants. This technology also is a key part of the vision for the transformation of the traditional "law library" into a law center with resources for self-represented litigants, as well as the traditional research services for attorneys.



# Forensic Collection of Cell Phones

by Sim Rapoport



This article first appeared in the May, 2013 issue of the WCBA Newsletter.

## Background

As recently as 10 or 15 years ago, owning a cell phone was something of a novelty. By 2011, however, 85% of adults in the United States owned a cell phone. And, of those, 42% owned smartphones.

And, by 2011, as many as 26% of homes had abandoned landlines in favor of cell phones. This trend shows no sign of slowing down as younger generations – who have never had a landline of their own – establish their own households.

Cell phones are becoming an integral part and a personal record of people's lives. Cell phone owners rely on their devices not only as telephones, but also as cameras (54% of users), internet browsers (44%), and mobile bankers (18%).

Information collected by cell phones - whether through a business call, a tweet, or the filming of a family event - is recorded and preserved within the phone long after it has been forgotten or even deleted. Forensically, a phone can be a vital tool in establishing liability or non-culpability in a civil case, or demonstrating an individual's guilt or innocence in a criminal case.

Although a cell phone's capacity for data storage may be immense, the way in which a cell phone stores data means that some items may be overwritten fairly quickly. Older phones may only store data for 50 calls before the information is lost.

What is not overwritten becomes a chronicle of the cell phone owner's personal habits and interactions. A cell phone can reveal the identities of the people the owner spoke or texted with, the number of calls and messages, dates and times, and length of communications. The calendar tracks events attended, the browser history reveals a person's interests, and the photographs show a picture story. The longer a person has owned the phone or re-used the SIM card, the more complete the record.

## Extracting Evidence from a Cell Phone

Unlike a laptop or a desktop computer, cell phones do not have standard operating systems

across all models, thereby making forensic data extraction more difficult. Most cell phones can be read via compatible computer cable, Infra-Red, or Bluetooth, but some older phones and prepaid phones cannot have their data extracted to a computer. The "collection" of these phones needs to be done the old-fashioned way - by making the data appear on the phone's screen and then taking a picture.

Although a cell phone is like a miniature personal computer in many ways, its components work differently. Cell phones have greater control over access to memory since they are designed for memory conservation. The phone itself is a combination of the handset, the SIM card, and a memory card. With a newer cell phone, information is typically stored directly on the handset. The SIM card is responsible for identifying the subscriber, containing limited information on call records, and retaining a few text messages. If a phone has a memory card, it stores the user's pictures, games, and applications.

Forensic examiners use a number of tools to extract information from cell phones instead of just cracking them open or taking pictures of what is present on the screen. Popular tools include XRY, Lantern, MPE+, Paraben Device Seizure, MobilEdit!, and EnCase. Each has advantages and disadvantages, and no single tool works with all cell phones.

Even after the data has been extracted, the forensic examiner must still manually check the cell phone to ensure the extraction tool did not miss any obvious data. Missing key pieces of data is a sign that a collection was not complete.

Information that might (or might not) be extracted includes:

- Serial numbers of SIM card and handset
- Serial number of previous handsets using the same SIM card
- Cell phone's personal settings
- Details of previous calls made, received, and missed, along with corresponding timestamps
- Text messages received and saved, along with corresponding timestamps
- Deleted text messages
- Music, voicemail, and similar files
- Photographs and other media, as well embedded information pertaining to date and time of creation
- Data from applications stored on the cell phone
- Calendar entries
- Email
- Internet browsing and search history.

The risk of improper collection is loss or spoliation of evidence.

## Gaining Evidence from Service Providers

In addition to collecting information from the cell phone itself, information may also be obtained from service providers. Service providers keep detailed records for tax reasons and marketing purposes, and because homeland security laws require communication records to be maintained for at least 90 days (see 18 U.S.C. § 2703) although records may be retained for longer periods. To access this information, non-governmental parties will need the owner's written consent and will often need a subpoena.

Information that a service provider may have retained includes:

- Telephone numbers for each call, and additional detailed information if the party is registered with the service provider
- Date and time of the call's start and finish
- Time at which a text was sent and received
- IP addresses assigned to the device
- Cell tower history (which helps track the movement of the phone)
- Paid bills

## Retention Periods of Some Major Providers

It is important to know what might be recovered from a service provider since information can sometimes be retained longer than within the cell phone and the information cannot be destroyed

by the cell phone account holder. (See Fig. 1.) These records can also provide a unique perspective regarding the cell phone user's habits, such as special purchases posted to the bill and call records going back many years beyond the user's current cell phone.

## Securing Evidence

During an investigation, the cell phone should be secured as early as possible. Any delay increases the risk that evidence could be lost or destroyed. Cell phones have a limited amount of memory, service providers only keep records for so long, and the cell phone's custodian could potentially damage the phone beyond the point that data will be recoverable. Upon securing the phone, a chain of custody (COC) document needs to be created to detail all recovery steps taken and to track the phone as it changes custodians. Any known passwords should also be recorded in this document.

For many people, a cell phone is an indispensable belonging, and the owner should be reassured that forensic analysis will be completed in a timely manner, that the phone will be returned as soon as possible (sometimes within several hours or less), and that the phone will not be damaged. And, information is not only collected from cell phones within the other party's custody or control, a party will often want to preserve the information on cell phones within that party's custody or control.

## Recommendations

To ensure a safe, efficient, and defensible collection, establish a procedure before the cell phone is secured.

- Secure the cell phone at the first opportunity.
- Turn off the cell phone to prevent regularly scheduled network updates that may overwrite evidence.
- Ensure the cell phone is secured for transport so that it will not be damaged or accidentally turned on.
- Fully charge the cell phone. Allowing the battery to completely discharge may result in the loss of date, time and other information.
- Establish a COC document to track the forensic analysis process and any changes in custodians.
- Obtain any passwords for the cell phone (e.g., passwords for lock screen or voicemail).
- Establish the identity of the cell phone's registered owner.
- Establish a history of cell phone ownership.
- Determine if any further collection is necessary, such as from other cell phones or from service providers.

In an increasingly digital world, more and more evidence lies within cell phones. It is important to collect this information correctly and defensibly, because even one mistake can lead to the spoliation of evidence and a lost or significantly weakened case.

	Verizon	AT&T	Sprint	T-Mobile
Call Logs	1 year	5-7 years	2+ years	2+ years
Texts	3-5 days	Not retained	Not retained	Not retained
Text Details	1 year	5-7 years	2 years	2 years
IP Session Information	1+ years	3 days	60 days	Not retained
IP Destination Information	90 days	3 days	60 days	Not retained
Bill Copies	3-5 years	5-7 years	7 years	Not retained
Cell Tower History	1 year	3+ years	18-24 months	4-6 months

Fig. 1 - Retention Periods of Some Major Providers, U.S. Department of Justice, 2010

## mba | EVENT

### MBA Golf Event

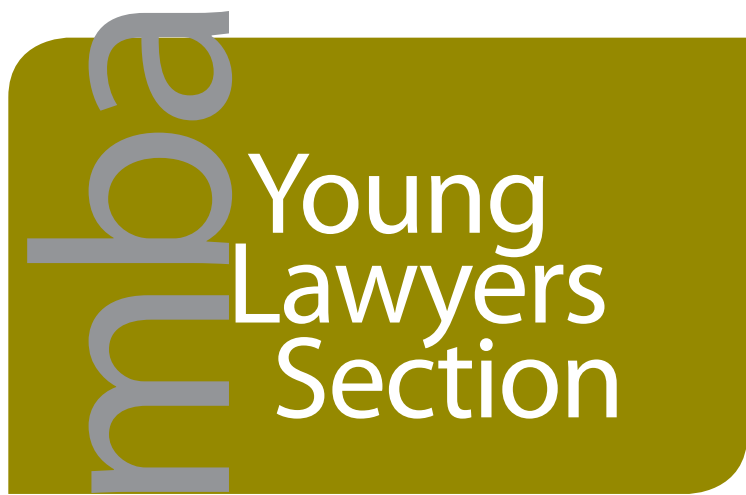
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## Young Lawyers Section

### Thank You for a Fantastic Year

by Duke Tufty  
YLS President



I want to take this opportunity to thank everyone for a fantastic YLS year and hope that you can join the section in celebrating our success on June 27<sup>th</sup> at the 3<sup>rd</sup> Annual Summer Social at Red Star Tavern. This year would not have been possible without the hard work of the committee members, committee chairs, YLS board, and the MBA staff, and without the support of the MBA, MBA members, YLS sponsors and you. Thank you!

The YLS had another successful year and the following are a few of the select highlights. The Professional Development & Education Committee brought us a comprehensive business law CLE series, another Markowitz-inspired rainmaking event, and ended the year with a unique program to help us manage our stress. The Membership Committee kept our calendars full with opportunities to meet fellow attorneys and other professionals in the Portland metropolitan area. In addition to helping connect YLS members with pro bono opportunities, the

Pro Bono Committee started the year with the Pro Bono Pedal to raise money for Legal Aid and is busy planning next year's event right now. The Futures committee kept the MBA and YLS informed of current trends and issues facing young lawyers through its articles in the *Multnomah Lawyer*. And the Service to the Public Committee continued the success of the Imprint Program, came through with a fantastic Community Law Week and orchestrated a standing room only YOUthFILM event and post-event party.

I'm excited to be turning over the reins of the YLS to Traci Ray and next year's board and I'm looking forward to being part of another great year next year. For those of you who occasionally attend an event, a CLE, or simply read some of the YLS articles in the *Multnomah Lawyer*, I want to encourage you to get involved and join a committee next year. Working with fellow attorneys to put on the YLS events and programs will help you connect with and become part of the local bar. For many, you will be working in the local bar for decades to come and the people you meet early in your career may become your colleagues, your referral sources, and your friends. I cannot overemphasize the importance of getting out of your office and connecting with the local bar. For more information, visit the MBA's website.

### YLS Horoscope

You have many talents and sometimes you feel that you are underappreciated. Success takes time and others appreciating your success can take even longer. Be patient, work hard, and you will be rewarded.

Your fortunes will increase soon, but not as a direct result of your talents. You will meet someone with an opportunity, but be careful not to miss it. Pay close attention to those around you and genuinely connect with them, and you will not regret it.

## Community Law Week Events Encourage Civic Engagement

by Julie Nimnicht and Paige De Muniz  
YLS Service to the Public Committee co-chairs

On a busy Saturday afternoon in April, Multnomah County Circuit Court Judges Nan G. Waller, Maureen McKnight and Cheryl A. Albrecht stepped down from their benches, and fielded questions from the crowd at the Lloyd Center Mall as part of the Service to the Public Committee's annual Tell it to the Judge event. Volunteers rounded up interested participants, who asked the judges about everything under the sun, with questions ranging from family law practices and procedures to requests for the judges' thoughts on issues like racial bias in the law.

Tell it to the Judge is just one event that makes up Community Law Week (CLW). CLW is a series of events organized each year by the YLS Service to the Public Committee in conjunction with the ABA's Law Day celebration. Using a different theme every year, Law Day aims to highlight how law and the legal process contribute to the freedoms that all Americans value. This year's theme was Realizing the Dream: Equality for All.

In addition to Tell it To The Judge, this year's Community Law Week also featured public legal information booths, which were enthusiastically received by the community. Staffed by volunteer lawyers, the booths shared information on legal resources available in the area, particularly for low-income individuals in need of legal assistance. This year, a booth was manned for an afternoon at Multnomah County's Central Library, along with another booth at Lloyd Center Mall in conjunction with the Tell it to the Judge event.

Community Law Week concluded on May 2 with the 7th annual YOUthFILM Project film screening and award ceremony. Following a screening of this year's top films, special guest Oregon Supreme Court Chief Justice Thomas A. Balmer presented awards to the winning filmmakers. The YLS Service to the Public Committee hosted a reception following the award ceremony at the Columbia River Brewing Company where the

young filmmakers and their families enjoyed food and drink in the company of Chief Justice Balmer, Justice Rives Kistler and Judges Nan Waller and Jean Maurer from the Multnomah County Circuit Court. The Service to the Public Committee would like to thank all the volunteer lawyers and judges who made Community Law Week possible. We hope you'll join us again next year. The committee would also like to give special thanks to our Community Law Week sponsors:

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Partially funded by a Multnomah Bar Foundation grant.

## Merrill Maiano YLS Public Service Spotlight

by Nadia Dahab  
YLS Service to the Public Committee

Before Merrill Maiano enrolled at Lewis & Clark Law School in 2004, she led an impressive career in the culinary arts. A graduate of the Culinary Institute of America, Maiano spent her years before law school cooking aboard schooners on Maine's Penobscot Bay and working at restaurants in Texas, Colorado, and Maine. When she sought out her career in the law, she left the restaurant business behind and moved to Portland, but she certainly did not leave behind her love of cooking.

Now an attorney at Wyse Kadish LLP, Maiano focuses her practice on estate planning and administration. But when she is not serving her clients or developing that practice, she spends her time volunteering with Oregon Food Bank's Nutrition Education Program. As a volunteer chef, she shares her enthusiasm for food and teaches basic cooking skills to individuals of all ages, backgrounds, and experiences.

Oregon Food Bank's Nutrition Education Program uses Share Our Strength's Cooking Matters™ curriculum, which helps participants develop the

skills, knowledge, and confidence necessary to make healthy and affordable meals in their own homes. The program is available to low-income individuals and families in and around Portland; some classes are offered in partnership with community organizations and social service agencies, while others are hosted by the food bank itself.

"The Cooking Matters curriculum covers nutrition, food safety, and basic cooking skills. It also teaches individuals how to make the most of their money when they are shopping for groceries and planning meals," Maiano said. She teaches the six-week-long program periodically throughout the year, using some of her own recipes and collaborating with two classroom assistants and a shopper for each class of eight to 16 participants. During each class, Maiano teaches the participants how to make two to four recipes. The food bank provides each program graduate with a *Cooking Matters* cookbook and a gift bag filled with various kitchen tools and resources.



Merrill Maiano

"I am a huge believer in Oregon Food Bank, and volunteering in this way seemed like the best use of my skill set," said Maiano. "It is very rewarding to hear program graduates tell us that they feel so much more confident in the kitchen and that they are eating healthy things that they never ate before."

If you are interested in getting in touch with your inner chef and contributing to the greater good in the process, Maiano would be happy to talk with you about her volunteer experience. She can be reached at mm@wysekadish.com.

Oregon Food Bank is often looking for volunteers for its nutrition education programs, food repack, or special events. For more information about Oregon Food Bank's Cooking Matters program, or to volunteer, visit [www.oregonfoodbank.org/volunteer](http://www.oregonfoodbank.org/volunteer).

## Elisa Dozono Pro Bono Spotlight

by Christi Taylor  
YLS Pro Bono Committee

Elisa Dozono is a Portland native whose ties to the community run deeper than most. Since graduating from Lewis & Clark Law School in 2006, Dozono has devoted countless hours to pro bono work. Now a partner at Miller Nash LLP, Dozono not only dedicates her own time to pro bono clients, but she encourages others to be involved in pro bono by recruiting and supervising associates who help her with pro bono projects.

Dozono's pro bono projects are wide-ranging and diverse. In 2009, she worked on a clemency petition for a young man who was aging out of the juvenile system and would otherwise have gone to adult prison with nine months left on his sentence. In an ongoing criminal case, Dozono has been working on appeals on behalf of a mentally ill defendant concerning his competency to represent

himself at trial. And, over the past year, Dozono oversaw the representation of a family from the Marshall Islands in a juvenile proceeding over the legitimacy of a family member's adoption paperwork.

Dozono has also partnered with the ACLU on several recent projects. She successfully fought the Jackson County Jail's restrictive inmate mail procedures with the ACLU and filed an amicus brief for the ACLU in *State v. Haugen*, a death penalty case.

When Dozono isn't working on her own pro bono projects, she's overseeing others. As a former member of the board of directors for the Cascades AIDS project, Dozono currently supervises pro bono work on contract and trademark disputes. Additionally, she recruited an associate at her law firm to donate



Elisa Dozono

pro bono services to develop contractual agreements and forms for a loan partnership program for Albina Opportunities Organization. The organization provides gap financing to help women and minority-owned businesses grow and sustain jobs, and Dozono currently serves on its board of directors.

Dozono's commitment to pro bono work extends beyond her individual pro bono projects - she is helping to foster a culture focused on serving underrepresented communities by encouraging others to follow her lead.

Most important, if you decide to go solo, make sure you have a realistic budget. Have enough in savings to sustain yourself and your practice for at least the first few months. Know yourself and your work habits in making important decisions such as whether to work from home or rent an office. Personally, I knew that even though it was an extra expense, I needed to rent an office because I can't work efficiently from home. However, I have met other young solos who have no problem working from home and using satellite locations to meet with clients.

The best decision I made in setting up my office was to reach out to other young solos who had hung a shingle shortly after passing the bar. They shared with me invaluable information about how to start my own practice. Without them, I would have struggled far more in trying to put everything together.

So for those who are struggling to find work and gain experience, I highly recommend getting out there and finding your own clients. You have all the knowledge you need and the support of the community. All of the older and successful attorneys once upon a time started out with no experience as well. Have confidence in yourself and know that with hard work, you can do it.

## Going Solo with Little Experience

by Joshua Wallace  
YLS Futures Committee



"We are sorry to inform you that you do not have enough experience for this position." It's the ultimate Catch-22. How does one get experience when firms will only hire people with experience? After months of being unsuccessful in finding a fulltime position or steady contract work, and seeing many of my young colleagues in the same boat, I recently decided to take the leap and hang a shingle. Now in my second month of having my own firm, it was a decision I am glad I made.

I decided that if no one will give me an opportunity to get experience, that I will make my own experience. That being said, opening your own office takes a lot of work and sacrifice, and is scary as well as exciting. You must make sure to do things the right way from the beginning to minimize having problems in the future.

For example, one of the first things that I learned was a lot of attorneys are improperly handling their clients' money when payments are received via credit card. Most credit card merchants

upon the swiping of a card will put the funds in and take their percentage fee out of the same account. In this scenario, if you have credit card payments going into your IOLTA account, you are letting the merchant take their fees out of your IOLTA account. According to the PLF you are essentially taking out client funds for a payment before the funds are earned. Luckily, there are companies that will allow you to put credit card payments into your IOLTA account and withdraw the merchant percentage from your operating account.

Something else I have found is that although many older practitioners are either not hiring or are only looking for attorneys with significant experience, it has been surprising how friendly they can be if you reach out for help. As a young solo, one of the most nerve-racking things is wondering if you are handling everything correctly, from drafting, to filing, to procedure. Fortunately, Oregon is full of helpful and friendly older and experienced attorneys.

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## mba yls | EVENT

### 3rd Annual YLS Summer Social

Red Star Tavern - Club Room

503 SW Alder Street, Portland

Thursday, June 27

5-7 p.m.

Join the YLS for the evening. Event includes hors d'oeuvres, signature cocktails, and a celebration of the YLS and its service to our community.

Thank you to Miller Nash and Barran Liebman for supporting this event.

## YOUthFILM's 7th Annual Filmmaking Competition

by Paige De Muniz and Julie Nimnicht  
YLS Service to Public Committee co-chairs

On May 2, an enthusiastic group of middle and high school student filmmakers packed the historic Hollywood Theatre in Portland for the culmination of this year's YOUthFILM Project.

The YOUthFILM Project is an annual student filmmaking contest, presented by the YLS YOUthFILM Project Committee as part of Community Law Week. The YOUthFILM Project affords K-12 students a creative way to learn about legal issues and civics through the medium of film. The goal is for students who participate in the project to remain engaged with local and national issues and continue to be active participants in the civic process. This year's theme was "Realizing the Dream: Equality for All."

The overall top film, *I Have a Dream*, was produced by students from Self Enhancement Inc. Academy. It used the historic speech of Martin Luther King Jr. on the steps of the Lincoln Memorial in Washington D.C. on August 28, 1963 as a backdrop for SEI students, teachers, and parents to verbalize their own dreams for an equal society. The editing of the film, which was done by a student at SEI, used King's famous words of 50 years ago and the film participants' words of today to create a powerful vision of what equality should look like. Students from an 11<sup>th</sup> grade Spanish class at Grant High School also had a strong presence at this year's



event, with three of their films taking first, second, and third place in the high school division. Students from Lincoln Park Elementary took first place in the elementary school division with a humorous depiction of what Abraham Lincoln might think of today's world.

After the screening, students, teachers, parents, and judges enjoyed a social at Columbia River Brewing Company, where everyone had an opportunity to get together to talk about their films, the court system, and the



importance of civic education. Special thanks to guest speaker Chief Justice Thomas Balmer, who emphasized the importance of civic engagement and the court system, and all the other judges and attorneys who attended the screening event and social.

This year's YOUthFILM Project was a great success, with 25 film entries and over 100 student participants. We look forward to next year's continued success. Check out <http://theyouthfilmproject.org/> to see pictures from this year's event and the winning films, which will soon be added to the website!



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### "Lawyers Can't Lie"

A story passed around our office involves a lawyer/client being reminded, in the context of a discussion regarding the limits of statements that can be made by lawyers during settlement negotiations, that lawyers cannot lie. Incredulous, the lawyer scoffed "When did that start?"

An examination of the Oregon Rules of Professional Conduct (RPCs) shows that the ethics rules are replete with versions of the "lawyers can't lie" rule. RPC 7.1 through 7.5, the advertising rules, are at their core a prohibition on lying about lawyer qualifications - or allowing others to do so on the lawyer's behalf - in order to attract new clients. RPC 4.1(a) forbids lawyers from making material false statements of fact or law to a third person. RPC 8.4(a)(3) arguably broadens that rule in stating that "dishonesty, fraud, deceit or misrepresentation that reflects adversely on a lawyer's fitness to practice law" may constitute professional misconduct. Judges get particular protection from lawyers' lying ways, with RPC 3.3, the "Candor to the Tribunal" rule, which prohibits lawyers from knowingly making false statements to the tribunal and requiring that lawyers correct a false statement previously made.

With all that the RPCs cover, are there any exceptions to the "lawyers can't lie" rule? If so, where's the line? One area of practice where the line blurs to some degree is in settlement

negotiations, during which lawyers typically posture, bluff and puff their way to a negotiated resolution. For example, during a settlement conference opposing counsel asks what amount of money your client will require in order to settle the case. You state with determination that your client will settle for \$100,000 even though your client told you five minutes ago that he would settle for \$50,000. You're puffing and bluffing - everyone does it right? Have you just violated the "lawyers can't lie" rules? You'll be relieved to know that there is some breathing room here.

Not all lies are treated equally under the RPCs. Although RPC 4.1 forbids false statements of material fact, Comment 2 to the ABA Model Rules of Professional Conduct, upon which Oregon's RPCs are based, carves out an exception for settlement statements and says that a parties' stated intention as to an acceptable settlement is *not* material and, thus, is not something upon which the other side can rely. That is, a lie isn't a lie under the RPCs unless it's material. Similarly, ABA Ethics Opinion 06-439 excludes a statement of negotiating position from the category of disciplinable material statements of fact. The ABA opinion states, "Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken

as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category." (By contrast, statements about a client's insurance policy limits are almost certainly statements of material fact regardless of the context in which the statements are made.)

What if an otherwise permissible settlement negotiation "lie" is told to the tribunal? Suppose that the parties are in a court-ordered settlement conference with a judge and the judge specifically asks for your client's "bottom line" settlement number? Do you have to tell the truth or can you puff? According to ABA Ethics Opinion 93-370, you may not puff under penalty of discipline under RPC 3.3 and 8.4(a)(3). If a judge asks you to state your client's bottom line you have two choices: you can answer truthfully or you can decline to answer at all. This can lead to what is admittedly some hair-splitting. A lawyer might, for example, tell a judge that the extent of the lawyer's authority at that moment is \$X without stating what the client might or might not subsequently agree to do. But at least in those situations in which the other side is not present with you, and the judge has assured you that he will not disclose your position to the other side, the "lawyers can't lie" rule applies.



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## Multnomah Bar Foundation

### MBF Awards \$44,000 in Grants

by Pamela B. Hubbs  
Office & Foundation Administrator

Since 2006, the MBF Civic Education Fund has given over \$240,000 in 44 grants to advance civic education and engagement and enhance public understanding of the justice system. Meet our 2013 recipients.

**Bus Project Foundation** was awarded \$8,000 for its *Democracy Cup* program that engages young professional mentors to teach high school students about civic participation and voting, creates student teams to reach out to peers, family and neighbors and challenges the teams in a regional competition to register thousands to vote.

**City Club of Portland** was granted \$2,500 for a Civic Education Award to recognize excellence in individuals, student groups and organizations or collaborations of organizations that promote civic and political knowledge and skills, teach civic values, present an innovative approach to civic engagement and address the opportunity gap at the high school level.

**Classroom Law Project** received \$10,000 to expand its *Mock Trial* and *We the People* programs. Elementary, middle and high school students will spend at least a month studying the US Constitution or a trial and will learn about

current issues' connections to constitutional principles.

**Elders in Action** was granted \$8,000 for *Basics of Civics 101*, which will teach the fundamentals of civics and regional government and provide older adults with opportunities for volunteer civic engagement. This is an expansion of their Speaker's Bureau Program and will reach people age 60+ in underserved communities.

**League of Women Voters of Portland** was granted \$4,000 to produce *The General Welfare*, a free, current, monthly program with expert panelists examining the legal, political, economic and social aspects of various general civic issues. Meetings will be open to the public and shared statewide via TV, web streaming and YouTube.

**MetroEast Community Media** was awarded \$4,000 to produce the final two episodes in its *Legal Logic*

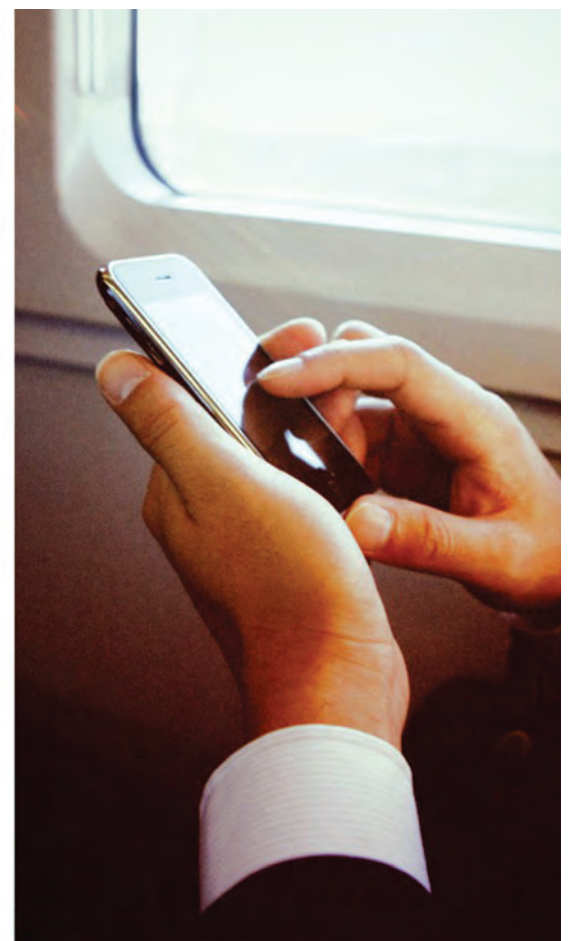
series, a public affairs show that will foster an increased understanding of the judiciary. Topics may include new developments like e-court and legal cases that have shaped society. The program will reach 350,000 households through cable, on-demand and KZME radio.

**Northwest Family Services** received \$2,500 for its *Four Cities Peer Court* program, a community partnership involving, supporting and educating youth about restorative justice through a combined effort of peer attorneys and jury members, volunteer attorneys and local police. Teen leadership and skill development are promoted as young people learn about the justice system from legal professionals in a hands-on program that endeavors to help teens in trouble.

**Sponsors Organized to Assist Refugees** received \$4,000 for its *Voter Education*

*Project*, a series of free, monthly classes that teach low-income, newly naturalized citizens about the democratic process and empower them with the practical skills and knowledge of the voting system to allow for full integration, meaningful civic participation and voter engagement.

**YOUthFILM Project** was awarded \$1,000 for the annual Law Day-themed student filmmaking contest, *Realizing the Dream: Equality for All*. Through the creativity of film, K-12 students learn about civic involvement and the law. Grant funding helps with marketing and outreach, equipment and production advice, mentorship opportunities and the awards ceremony and reception.



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