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FOR THE DISTRICT OF OREGON

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IN THIS ISSUE

THE INTEGRAL ROLE OF LOCAL COUNSEL IN THE DISTRICT OF OREGON

By: The Honorable John V. Acosta and Richard Vangelisti [1]

Local counsel's presence and participation have not been rendered obsolete by liberal rules for granting *pro hac vice* admissions, the increase in cross-border practice, or the availability of electronic filing. Strong participation of effective local counsel better serves the client and ensures that cases are handled in conformity with local rules and custom and with the level of professionalism expected of lawyers practicing in the District of Oregon. A relatively small bench and bar comprises the District of Oregon, and this characteristic has promoted and preserved collegiality and professionalism. This "Oregon Way" permeates local practice and procedure. This article covers topics that out-of-district counsel and local counsel should consider during their association on a matter and provides a judicial perspective on local counsel's importance.

"Meaningfully Participate." Out-of-district counsel may be admitted to the District of Oregon *pro hac vice* if they associate local counsel "who will meaningfully participate in the preparation and trial of the case." Local Rule 83-3(a)(1). This local rule provides flexibility to the court and counsel as to the appropriate level of participation by local counsel. If there is some doubt, however, on whether local counsel should participate in some aspect of the case or court proceeding, counsel should err on the side of participation. Out-of-district counsel should inform the client that the District of Oregon requires local counsel to "meaningfully participate."

No "Mailbox" Counsel in Oregon. At the beginning of the matter, the prospective local counsel will inform out-of-district counsel that local counsel will have to "meaningfully participate" in the case. A reminder from the court that such participation is required usually occurs at the early stages of the case. The Rule 16 scheduling conference is an opportunity for local counsel to introduce out-of-district counsel to the court. At this time, the court will set the expectation that local counsel will participate to ensure that the case proceeds according to the local rules, norms, and professionalism.

If out-of-district counsel does not take steps to have its local counsel meaningfully participate, the court will "encourage" the out-of-district counsel to do so. Counsel should expect that the court will from time-to-time look to local counsel for input at hearings and at trial.

Local Means Local. Out-of-district counsel generally should not retain "local counsel" whose office or practice is outside of Oregon, even if the lawyer is licensed in Oregon and admitted to the District of Oregon. Similarly, out-of-district counsel generally should not retain as "local counsel" a lawyer or law firm whose office is in a division of the district different from the division in which the case has been filed.

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These practices defeat both the purpose and spirit of the local rule. Conventions and customs differ between the district's four divisions or within the bar that practices in those divisions, and lawyers practicing in one division are not likely to be sufficiently familiar with another division's conventions and customs.

Professionalism. Local Rule 83-7(a) requires every lawyer admitted in the District of Oregon to be "familiar and comply with the standards of professional conduct required of members of the Oregon State Bar and this Court's Statement of Professionalism." The Statement of Professionalism is on the District's website.

Cooperation. Local Rule 83-8, "Cooperation Among Counsel," proscribes certain behaviors between opposing lawyers and establishes the consequences for engaging in unprofessional behavior. Note that the rule authorizes the judge to impose sanctions against an attorney who unreasonably refuses to "accommodate the legitimate requests of opposing counsel." Here, a reasonableness standard is applied to conduct occurring outside the judge's presence.

Credibility. Although out-of-district counsel may have a preexisting relationship with the client, out-of-district counsel should remember that local counsel will likely have greater credibility with the court, judicial staff, and opposing counsel. This greater credibility primarily stems from the reality that local lawyers likely will have previously appeared before the judge on other cases. Moreover, local lawyers and judges likely will have participated together in local bar and community activities, or have been involved in cases with one another when the judge was a practicing lawyer.

United States Magistrate Judges. In the District of Oregon, when a civil case is filed, it is randomly assigned "off the wheel" to an Article III or magistrate judge. Thus, Oregon's magistrate judges have a civil caseload, both in the number of cases as well as the subject matter of cases, identical to Oregon's district judges. Through Local Rule 72-1, the District designates every magistrate judge to conduct all pretrial proceedings contemplated by the *United States Code* and the *Federal Rules of Civil Procedure* without further designation or assignment from the court. Under Local Rule 73-1, parties may consent to magistrate judges for entry of final judgment and the conduct of any court or jury trial. However, in the District of Oregon, a magistrate judge continues to preside over a case, through the dispositive motion stage, even if there is not full consent by the parties. As described in Local Rule 73-2, because magistrate judges are not assigned criminal cases, they usually are able to set earlier and firmer trial dates. Parties in the District of Oregon routinely consent to the magistrate judge if assigned.

Know Your Judge. The District's website has extensive information about each judge, including the judge's resume, chambers information, case management information, and courtroom rules.

Conferral on Motions. Local Rule 7-1(a)(1) requires that the first paragraph of every motion must certify that the parties made "a good faith effort through personal or telephone conferences to resolve the dispute" before filing any motion (except TRO motions). An exception to this rule is a certification that the "opposing party willfully refused to confer." Counsel must actually talk to one another to satisfy the local rule's conferral requirement; email conferral and phone calls made minutes before filing the motion are not conferral under the local rule. Judges in the District expect that counsel for the parties will cooperate with one another in scheduling a conferral within a reasonable time of a request to confer. Local Rule 7-1(a) is often strictly enforced, and the Court may deny any motion that fails to meet the certification requirement. Local Rule 7-1(a)(2).

Written Submissions. Out-of-district lawyers should know that the written submissions in Oregon focus on the merits and not on the personalities of the lawyers or the character of the parties. They also demonstrate a respectful tone toward counsel and the judicial officer who reads the submissions. The late Magistrate Judge Donald C. Ashmanskas used humor in his timeless article, *Creating the Persuasive Argument*, to suggest that lawyers should "attack your opponent, call him names and impugn his motives." He of course meant to convey the opposite.

Local counsel in Oregon should review significant submissions before they are filed. Local counsel should excise words that are inconsistent with the principles summarized above. Words and statements that are "snarky" or disrespectful are unhelpful to the court.

Depositions. Counsel confer on scheduling depositions before serving a notice; depositions are not unilaterally noticed. "Speaking" or "coaching" objections are not allowed under FRCP 30(d)(1). Counsel should look to the Multnomah County Deposition Guidelines, available at https://mbabar.org/assets/depoguide2012.pdf, for guidance. If an issue arises during a deposition, a judge usually is available by telephone to immediately address the problem.

Discovery Sanctions. The District of Oregon is active in addressing dilatory or abusive discovery practices—even if the conduct is not willful. For example, FRCP 37 is entitled

"Failure to Make Disclosures or to Cooperate in Discovery; Sanctions," and subsection (a)(5)(A) of the Rule makes clear that sanctions may be awarded without a finding that a party violated a court order or engaged in willful misconduct.

Imposition of sanctions under the rule turns on a reasonableness standard, a lower measure from the intentional misconduct standard that lawyers typically assume controls their discovery-related behavior. This standard has been applied in the District of Oregon. *See, e.g., Trustees of Oregon-Washington Carpenters-Employers Trust Funds v. Van Zant Construction, Inc*., 2008 WL 2381641, *3 (D. Or. June 3, 2008). Thus, although not willful misconduct, prolonged procrastination in responding to discovery requests that forces the propounding party to file a motion to compel simply to get a response is sanctionable under Rule 37. S*ee Bilyeu v. City of Portland*, 2008 WL 4912048, *3-7 (D. Or. Nov. 10, 2008).

Protective Orders. Local Rule 26-4 governs protective orders in the District. (See the court's "Forms of Protective Order" on the District's website.) Parties may amend or supplement the form order as necessary to meet the specific needs of their case – *e.g*., to address issues regarding the Privacy Act, 5 U.S.C. § 552a.

ADR – Mediation. Local Rule 16-4 sets forth the court's ADR procedures. Local Rules 16-4(c) and (d) require counsel for the parties to (1) confer regarding the potential benefits of any private or court-sponsored ADR option within 120 days from the initiation of the suit (LR 16-4(c)); and (2) file a Joint Alternative Dispute Resolution Report within 150 days of the initiation of the suit (LR 16-4(d)). Local counsel is expected to attend and participate in settlement conferences and mediation. Some of the judges maintain "Instructions for Settlement Conferences" on their individual pages on the court's website.

Trial Court Guidelines. Trial counsel should read these detailed guidelines on the District's website, which cover numerous topics including civility, voir dire, witnesses, objections, exhibits, depositions, and jury instructions. *See* "Trial Court Guidelines," *available at* http://ord.uscourts.gov/index.php/attorneys/tutorials-and-practice-tips/trial-court-guidelines.

Additional Resources. For an annotated set of the local rules, consider ordering *2012 District of Oregon Local Rules of Civil Procedure Annotated with Forms CD* by Kathryn Mary Pratt. Counsel also should consult the *Federal Court Practice Handbook, U.S. District Court for the District of Oregon* (revised ed. 2005 with 2009 Supplement & 2010 Limited Revisions). The Handbook consists of an Index to Questions, which lists each question by number, responses from each Article III and magistrate judge currently working in the District, a quick reference compilation of some of the answers to the questions that have been asked most frequently in the course of compiling the Handbook, and a technology supplement that lays out the current state of evidence presentation technology available in the various courtrooms. To order a copy, visit http://oregonfba.org/content/federal-court-practice-handbook.

[1] The Honorable John V. Acosta is a magistrate judge of the U.S. District Court for the District of Oregon. Richard Vangelisti practices plaintiff's personal injury law in Oregon. The authors serve as members of the Oregon Bench and Bar Joint Commission on Professionalism, and each is a past chair of the Commission. The authors also have served on the Board of the Oregon Chapter of the Federal Bar Association. The authors wish to acknowledge the contributions of the judges of the District of Oregon, Dennis Rawlinson, and Paul Xochihua. Their ideas were most helpful in developing this topic.

OREGON FBA INAUGURATES EUGENE LUNCHTIME PROGRAMS

Our FBA Chapter hopes to establish a stronger presence in Eugene by boosting membership and holding regular programs for members and guests. Our April 16 program entitled "Excessive Force and the Law: Plaintiff, Defense, and Court Perspectives," set us on a great path toward achieving those goals. The event inaugurated a lunchtime series at the Wayne Morse U.S. Courthouse, which will gather attorneys, law students, law professors, and court staff for discussions about current topics in the law.

Magistrate Judge Thomas Coffin, Elden Rosenthal (Rosenthal Greene & Devlin, PC), and Jim Rice (Portland City Attorney's Office) led a colorful and wide-ranging discussion about excessive force law. In addition to discussing what level of police force qualifies as "excessive," the panelists exchanged views on qualified immunity, punitive damages, and the differences in litigating such claims in federal and state court. About 50 members of the legal community attended the panel discussion, including members of the Lane County Bar Association and University of Oregon School of Law faculty and students.

We hope to continue to offer programs in this format and welcome suggestions for future topics. Please contact Paul Bruch (Paul_Bruch@ord.uscourts.gov) or Melissa Aubin (Melissa_Aubin@ord.uscourts.gov) with your suggestions. FBA thanks the Attorney Admissions Fund Committee for supporting this event.

THE INTEGRAL ROLE OF LOCAL COUNSEL IN THE DISTRICT OF OREGON: A JUDGE'S PERSPECTIVE

By: The Honorable John V. Acosta

Local counsel plays a key role in the District of Oregon by ensuring that cases are conducted consistently with the practices and courtesies expected of lawyers in this district. Lawyers who practice primarily in federal court and the judges who serve in this district are accustomed to cases being conducted efficiently, reasonably, and with a high level of professionalism. Out-of-district lawyers whose written or oral practice styles or techniques do not conform to these norms quickly distinguish themselves as having failed to consult with their Oregon counsel. The comments that follow reflect this judge's view of local counsel's importance to successfully representing litigants before the judges of the District of Oregon.[2]

"Meaningfully participate": This is one of two questions on which other judges of the district were asked to opine. It yielded a spectrum of responses but also this common theme: local counsel should participate fully in the case at least until it is clear that out-of-district counsel knows how we do things in this district. Local counsel should ensure that out-of-district counsel is familiar with and follow the district's local rules, that they know how to "speak the local language" on paper and in oral argument, and that they comply with local practices. Once that point is reached, judges differ on the extent to which local counsel must remain involved. For some judges, local counsel's participation can diminish to nominal levels. For other judges, local counsel is expected to continue to be fully familiar with the legal and factual issues in the case, be current on the case's procedural posture, and be capable of handling any proceeding at any stage in the case in the absence of out-of-district counsel. No matter which approach a particular judge subscribes to, there is general acknowledgement that local counsel's participation should be efficient and cost-effective.

Professionalism and Cooperation: Judges in this district expect a high level of professionalism in written submissions and oral presentations to the court, and in dealing with lawyers and other participants in cases. "Civility is the key to behavior in this district – that includes everyone: the judge, staff, lawyers and witnesses." *See* "Trial Court Guidelines," *available at* http://ord.uscourts.gov/index.php/attorneys/tutorials-and-practice-tips/trial-court-guidelines. The district's expectations also are set out in its "Statement of Professionalism and Notice of Rule 83-6," located at http://ord.uscourts.gov/index.php/court-policies-517/statement-of-professionalism. In relevant part, the Statement provides, "Professionalism includes integrity, courtesy, honesty, and willing compliance with the highest ethical standards. Professionalism goes beyond observing the legal profession's ethical rules by sensitively and fairly serving the best interest of clients and the public. Professionalism fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, simplifies transactions, and makes the practice of law more enjoyable and satisfying." Note particularly the last sentence and the words "respect," "trust," and "enjoyable." Those concepts have real meaning in this district and practitioners using contrary styles or tactics risk alienating court and opposing counsel alike. When that happens, the lawyer's credibility with the court is damaged and his or her effectiveness as an advocate is diminished.

Cooperation is an indispensable component of professionalism. Routine matters – deposition scheduling, extensions of time, agreeing on discovery timing – should be handled routinely by the lawyers in the case and should not give rise to epic struggles. Asking the court to resolve a dispute which at bottom is more about the lawyers' desire to prove their toughness to each other than it is to advance legitimate discovery in the case is unlikely to secure the court's gratitude or regard. The words of Justice Felix Frankfurter from his majority opinion in *City of Indianapolis v. Chase Nat. Bank of City of New York*, 314 U.S. 63, 69 (1941), are instructive: "Litigation is the pursuit of practical ends, not a game of chess."

Magistrate Judges: Local counsel are especially useful resources to out-of-district counsel because of their familiarity with the District of Oregon's expansive use of magistrate judges. The district's website notes, "In 1984, Oregon was the first federal district court to assign the full range of civil cases directly to magistrate judges upon filing. Because of our success, many other district courts have followed in our footsteps." *See* "Role of Magistrate Judges in the District of Oregon," *available at* http://ord.uscourts.gov/index.php/court-policies-517/role-of-magistrate-judges-in-the-district-of-oregon; *see also* Standing Order No. 07-mc-9207, *available at* http://ord.uscourts.gov/index.php/court-policies-517/standing-orders (reaffirming "the long-standing policy of this court" to authorize magistrate judges to perform all duties and functions authorized under 28 U.S.C. § 636 and the rules of procedure). Oregon's magistrate judges carry a civil caseload equal in volume and subject matter to district judges' caseloads, regularly preside over trial of cases assigned to them, and author judicial decisions as frequently in civil cases as Oregon's district judges.

Out-of-district counsel should be aware that the District of

Oregon uses its magistrate judges differently from most other federal districts and that practices that are observed in other districts do not exist here. For example, there is no local rule authorizing the filing of a motion to reassign a case from a magistrate judge to a district judge simply because the party has exercised its prerogative to not consent to jurisdiction by magistrate judge. Also, magistrate judges are not "assigned" to district judges, formally or informally. And, magistrate judges are not designated to handle only certain types of cases (such as social security benefit appeals, habeas corpus petitions, or patent infringement or employment discrimination cases) as are magistrate judges in some of the other federal districts. Local counsel experienced in federal practice likely will be familiar with these and other practices, as well as with the district's tradition of using magistrate judges, and thus can be a valuable resource to out-of-district counsel in this area.

Conferral on motions: This is the other question on which other judges of the district were asked to opine and which yielded both a spectrum of responses and a common theme: "conferral" means something more than merely sending an email or making an eve-of-filing telephone call to opposing counsel. "Real-time" conferral is the intent of the rule, whether that occurs in-person or by phone. Providing written explanations by letter or email is appropriate to supplement or facilitate, not supplant, real-time discussions. And, the conferral must occur sufficiently in advance of the anticipated filing date that the conferral process has an opportunity to produce resolution of disputes, in whole or in part.

Judges' opinions vary on whether a failure to confer will, by itself, justify denying a motion. But again, common themes emerged. A lawyer who demonstrates having made good-faith efforts to confer but whose efforts go unacknowledged or unanswered probably will be deemed to have satisfied the conferral requirement. On the other hand, a lawyer who files a motion without making any effort to confer and without a justification for that failure can expect denial of the motion.

Written submissions: The content of briefs, letters and emails to the court, emails between counsel, and other documents should be free of hyperbole, personal attacks against other lawyers or parties, and sarcasm. Sentences such as "Plaintiff's counsel has over-litigated this case, starting with [the] largely frivolous . . . complaint," and phrases such as "hide the ball" and "fishing expedition" do nothing to assist the judge's evaluation of the merits. Instead, such language undermines the writer's credibility with the judge and the judge's law clerks. Credibility is the currency of the courtroom and, just as with a savings account, it is well built through hard effort over time and can be lost by a single ill-conceived act. You might feel smug or satisfied by firing off comments at an opposing lawyer or party, but such comments are distracting and even annoying to judges and law clerks grappling with substantial workloads and who must be able to readily grasp the point of and support for your argument. Local counsel should make sure that briefs and other submissions to the court do not contain such language.

Deposition practice: Depositions in this district are scheduled by mutual agreement and usually conducted in a collegial manner. *See* Local Rule 30-2; Local Rule 30-3 ("Counsel present at a deposition will not engage in any conduct that would not otherwise be allowed in the presence of a judge."). Judges in this district are usually available to take calls from lawyers to resolve disputes arising during depositions. *See* Local Rule 26-3(f). Instructions not to answer for reasons other than privilege, a privacy right, or a protective order are not appropriate (*see* Local Rules 30-4, 30-5), nor are speaking objections (*see* Local Rule 30-4) or coaching witnesses (*see* Local Rule 30-2).

Repeated calls during a single deposition or over the course of multiple depositions could result in the court ordering the deposition recessed and reconvened in the judge's courtroom to allow the judge to observe the lawyers' conduct. Alternatively, the judge might order the deposition limited in time or scope. Deposition abuses can result in the judge imposing costs and fees "on any person responsible for unreasonable or bad faith deposition techniques or behavior." *See* Local Rule 30-6(c). Local counsel will be familiar with the deposition conventions in this district and are a critical resource to out-of-district counsel for the deposition practices expected in this district.

Sanctions and discovery sanctions: Sanctions motions, whether pursuant to Rule 11, Rule 37, or some other source, are a serious business and should be filed only when a lawyer has sound support in the record warranting imposition of sanctions. Using sanctions motions or the threat of sanctions motions as a litigation tactic is strongly disfavored in this district. Discovery sanctions can be appropriate, however, without a finding of willfulness; Rule 37 allows sanctions for failure to make discovery, whether that failure is intentional or the product of procrastination. *See, e.g., Bilyeu v. City of Portland*, Case No. 06-1299-AC, 2008 WL 4912048, *3-7 (D. Or. Nov. 10, 2008). Local counsel should help out-of-district counsel ensure that discovery in cases filed in this district is conducted in a manner calculated to advance the merits of the claims and defenses in the particular case and not to harass, burden, or impose excess expense on another party.

[2] These comments supplement those appearing in the main article and, except where noted, represent only this coauthor's perspective on the role of local counsel.

JOB SEARCH ADVICE FROM A RECENT GRADUATE

By: Mary Anne Nash, Associate, Dunn Carney

I graduated from law school in 2010, one of the worst years for law graduates in recent memory. I had completed two summer internships with excellent firms, but neither of those firms was able to hire students from my class. I started my job search process the spring before I graduated law school, and I was fortunate enough to find a contract attorney position within a month of passing the bar. Nine months later, I was able to move into a full-time associate position at Dunn Carney. During that time, I learned a number of valuable lessons about creating value – value that will not only increase your odds of success in your job search, but also enable you to hit the ground running when you finally land your first position as an associate.

The best advice I received while looking for a job in the legal field was from a friend of mine who worked in marketing and sales for nearly a decade before going to law school. From the start of my job search, he told me to focus on building value so that I could create value for firms. What does that mean? First, it means building a skillset that will make you the most attractive candidate you can be for a firm. Next, it means marketing that skillset to those who may have a job for you or hear of a position you're perfect for.

How do you build a skillset as a new attorney? Experience. Get as much experience as possible in your chosen field of practice. I wanted to do environmental and natural resources law, particularly environmental and natural resources litigation. While I had a good background in substantive environmental and natural resources law, I did not have strong litigation skills coming out of law school. Through my contract position, I began to get some experience doing environmental litigation – drafting subpoenas, reviewing documents, working on sections of briefs. These skills made me a much more attractive candidate when I was looking for a full-time associate position. If I had it to do over again, I would also have volunteered at the domestic violence clinic or with legal aid to get some actual courtroom experience and have the experience of writing motions and briefs by myself.

Put simply, get experience however you can. If you have a full-time job where you are not building legal skills, volunteer when you can to begin building your legal resume outside of law school. If you are fortunate enough to be getting legal experience, look for opportunities to build new skills and volunteer with outside organizations that can give you any skills you are missing through your current work. If you are looking to build substantive expertise in an area of law, ask your contacts if they are working on any articles or presentations you could help with so that you continue to learn more about that area of law. Follow blogs that cover developments in that area, and offer to write articles for bar organizations (like the FBA) on new developments in your chosen field.

Now that you are building your skillset, how do you market it? Focused meetings with the key players in your field. In other words, lots of networking. The biggest mistake I see new graduates make is treating networking like a casual pastime. Everyone knows they should network, but few know how to network effectively. I have received emails with spelling errors, had coffee meetings where the job seeker appeared disengaged or disinterested, and met with students who clearly had no idea what they hoped to get from the meeting. While none of these are terrible offenses, in a competitive job market, each can be detrimental to an attorney's perception of the job seeker.

Do not just network for networking's sake. Know what you hope to get out of the meeting. Most of the time, you just hope that the attorney knows who you are and will keep you in mind if he or she hears of an opening. While this sounds simple, making a good first impression can be difficult.

First, carefully proofread your introductory e-mail prior to sending it. Better yet, have an attorney mentor or your school's career services office proofread a "form" e-mail that you can then tailor to each attorney. The e-mail should state how you heard about the attorney, acknowledge an interest in the work that they do, and state a little bit about yourself. If you have an impressive resume, you can even attach the resume for additional background on yourself. Above all, make sure your e-mail is professional, even if the attorney is young or new to the profession. If you plan to call a prospective contact, make sure you rehearse your conversation with a friend or mentor.

Next, be prepared for your meeting. This means dressing professionally (business casual is usually appropriate), being on time, and having some questions prepared in case the conversation lags. Most importantly, treat each meeting like a job interview; make sure you know about the person's background and practice, and be engaging. Note any organizations they are a part of that you may be interested in joining. Show an interest in who they are and how they got to be where they are. If the attorney seems shy or less talkative, have questions prepared to help keep the conversation flowing. If you are nervous or have trouble talking to new people, it is OK to say something – it will often help break the ice. Most importantly, follow up with the attorney, thanking them for taking the time to meet with you and following up on any organizations they wanted to introduce you to or any other job leads they may have.

The job search can be a long and tiring process. However, if you treat it like you would treat any other marketing activity you will do as an attorney and create value for yourself and your prospective employer, (and don't get discouraged!) you will eventually land in a great position. Until then keep your chin up and keep pushing forward.

TRAILBLAZING IN THE MODERN LEGAL ERA:

A TRIBUTE TO JUDGE HELEN FRYE

By: Amber Kinney and Rachel Rose, Staff Attorneys, U.S. District Court of Oregon

On April 5, 2013, the University of Oregon School of Law, in partnership with Lane County Women Lawyers and the Women's Law Forum, hosted the inaugural symposium event, "Trailblazing in the Modern Legal Era," as a tribute to the Honorable Helen Frye, who was the first woman appointed to both the state and federal bench in Oregon. Born and raised in rural Oregon during the Great Depression, Judge Frye received an English degree from the University of Oregon in 1953 and thereafter began her public-school teaching career. She went on to earn a Masters in Education from the University of Oregon in 1960. After twice being terminated for pregnancy, Judge Frye switched career paths; she graduated with honors from the University of Oregon School of Law in 1966. In 1971, Judge Frye was appointed to the Oregon Circuit Court, and in 1980 she was appointed to the U.S. District Court of Oregon. Judge Frye served as the only female judge on the federal bench until 1998. She continues to be an inspiration for professional women throughout the Pacific Northwest.

The symposium event, sponsored by the Oregon Chapter of the Federal Bar Association and the U.S. District Court of Oregon, included four components: a keynote address, a panel discussion, a luncheon, and a Q&A session. After a welcome and introductions by Professor Rebekah Hanley, Assistant Dean of Career Services at the University of Oregon School of Law, Professor Renee Newman Knake delivered a keynote address entitled "Entrepreneurship, Technology, and Innovation as Trailblazing Tools for Lawyers in the Practice of Law." Professor Knake is an Associate Professor at the Michigan State University School of Law. She is also the cofounder and codirector of ReInvent Law, a project sponsored by Michigan State University and the Ewing Marion Kauffman Foundation. Professor Knake's keynote address focused on "(Law) ntrepreneurship," the discipline of introducing innovation into legal services wherein lawyers act as entrepreneurs as opposed to advisors. She described her "law laboratory" as a set of classes and experiments devoted to the incorporation of digital-age technology into the practice of law that rests on a simple principle: "Lawyers can change the world, but to change the world we must first change ourselves. It is time to ReInvent."

Following Professor Knake's address, a panel of distinguished legal professionals shared their trailblazing journeys. Sitting on the panel were the Honorable Marco Hernandez, the Honorable Leslie Kobayashi, Nicole Nehama Auerbach, Dr. Yvette Alex-Assensoh, and Melissa Aubin. Judge Hernandez, from the U.S. District Court of Oregon, described his nontraditional passageway to the federal bench. He encouraged students to stray from the status quo, strike their own paths, and achieve their own senses of justice, all of which were pivotal to his career trajectory. Judge Kobayashi, from the U.S. District Court of Hawaii, discussed the challenges she faced as a young Japanese woman starting out in the male-dominated legal field. She stated that "experiencing disappointment" fed her ambition and was critical to her success. Judge Kobayashi challenged students to view the many disappointments they would face as new attorneys as opportunities to learn and grow.

Ms. Auerbach, founding member of the Valorem Law Group, one of the nation's preeminent alternative-fee litigation firms, addressed the importance of "getting away from the billable hour." She remarked upon the paradox intrinsic in the current law firm structure – *i.e.*, attorneys that are the slowest or most inefficient are the ones billing the most hours – and emphasized the need for change, noting that providing services with alternative-fee arrangements can create better lawyers and more satisfied clients. Dr. Alex-Assensoh, who enrolled in law school in 2006, thirteen years after receiving a doctorate in political science, and who now serves as the Vice President for Equity and Inclusion at the University of Oregon, shared her unique perspective as a social scientist and attorney. Her story emphasized the importance of patience, hard work, and passion in achieving personal and professional satisfaction. Lastly, Ms. Aubin, Attorney Advisor to the U.S. District Court of Oregon and Adjunct Professor at the University of Oregon School of Law, discussed how to trailblaze from within a preexisting institution. Specifically, she spoke about the U.S. District Court of Oregon's groundbreaking Reentry Court program, which Ms. Aubin was instrumental in developing and which employs evidence-based practices to change criminal thinking and reduce recidivism in high-risk offenders.

The luncheon followed. With 170 guests in attendance, both the main floor commons and the mezzanine of the law school were packed with judges, attorneys, law students, and family and friends of Judge Frye. Tables were decorated with bright tulips and candy; guests were also served a gourmet chocolate, caramel, and peanut dessert in honor of Judge Frye's afternoon Snickers bar treat. The Honorable Ann Aiken, Chief Judge for the U.S. District Court of Oregon, who was the second woman appointed to the federal bench in Oregon and with whom Judge

Frye shared a special friendship and mentorship, provided the introductory and closing remarks. Personal stories and memories were shared by professional colleague and friend Art Johnson, former long-time law clerk Patricia Wlodarczyk, and son Eric Frye. In addition, Louise "Molly" Westling, Professor of English at the University of Oregon, paid tribute to Judge Frye's passion for teaching. The luncheon concluded with the unveiling of Judge Frye's portrait, which will hang in the law school's career services office.

The final component of the event consisted of an informal Q&A session. Law students had the opportunity to engage in a casual and personalized discussion with the panelists, as well as the law professors and judges in attendance, about their individual challenges and experiences. The Q&A ended on a positive note, with many students expressing excitement about the prospect of blazing their own trails as legal professionals.

U.S. DISTRICT COURT OF OREGON HOSTS SECOND ANNUAL PRO BONO PANEL APPRECIATION LUNCHEON AND AWARDS CEREMONY

The U.S. District Court for the District of Oregon hosted the Second Annual Pro Bono Panel Appreciation Luncheon and Awards Ceremony on June 6, 2013, in the Mark O. Hatfield Federal Courthouse in Portland, Oregon, to recognize the dedication and selflessness of the panel members listed below who together donated over 3266 hours of volunteer time in calendar year 2012.

Attorneys
Abts, Matthew
Ard, Marlin
Beach, Eric
Beal, Brian
Billin, Rich
Bledsoe, Ryan
Braun, Anna
Bruce, Gavin
Cady, Diane
Cahn, Bruce
Christiansen, Joel W.
Crooks, Sara
Davis, Kenneth
Deatherage, William
DeJong, Timothy
Dickey, Jeff
Edmonds, James
Fuller, Michael
Galloway, Stephen H.
Garner, Daryl
Glass, Foster
Goldstein, Daniel T.
Hardwick, Krista N.
Harnden, Edwin A.
Healy, Jeremy
Healy, Melissa J.
Hoerster, Erin
Hunsaker, Danielle
Huttl, John
Jennings, James
Johnson, David T.
Johnson, Dexter
Joncus, Stephen
Keating, Reilley D.

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In keeping with the court's commitment to personally recognize those that have donated their time, energy, and skils to the program, the luncheon featured a wide variety of food and beverages from local eateries and businesses. Keynote speakers included Chief U.S. District Judge Ann Aiken and U.S. Magistrate Judge and Pro Bono Program Advisor Janice M. Stewart. All individual panel members and firms listed above were awarded a Certificate of Appreciation signed by Chief Judge Ann Aiken and Clerk of Court Mary Moran, and all luncheon attendees received a custom U.S. District Court of Oregon Pro Bono Panel thumb drive.

U.S. SUPREME COURT HOLDS ONE TYPE OF HOUSEBOAT NOT TO BE A VESSEL

By: Carl R. Neil

The U.S. Supreme Court on January 15, 2013, decided a case of great significance to those who own, operate, regulate, or otherwise deal with houseboats. In *Lozman v. City of Riviera Beach*, 133 S. Ct. 735, 184 L. Ed. 2d 604 (2013), the Court held that at least the type of houseboat involved in that case is not a vessel within the meaning of the Rules of Construction Act, 1 U.S.C. § 3. The effect of that interpretation is to exempt such floating structures from U.S. Coast Guard regulation and subject them to regulation by state and local government bodies. Seven of the U.S. Supreme Court Justices concurred in the majority opinion by Justice Breyer, and Justices Kennedy and Sotomayor dissented.

The floating structure involved in this case was a rather unusual type of houseboat. It measured 60 feet by 12 feet, was a plywood residential structure having French doors and shoreside electrical power, and sat on a floating base which drew ten inches of water. The City of Riviera Beach, Florida regarded the floating home as a vessel and sued in U.S. District Court in admiralty to enforce an alleged maritime lien for dockage and trespass damages. The District Court found the floating home to be a vessel within the definition of 1 U.S.C. § 3 and awarded $3039 for dockage and $1 of nominal damages for trespass. The Eleventh Circuit affirmed.

Section 3 of the Rules of Construction Act defines a "vessel" as including "every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The Supreme Court's primary interest was in interpreting the phrase "capable of being used as a means of transportation by water." The Court concluded that a particular floating structure does not fall within the quoted phrase "unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water."

The Court then held the houseboat in this case not to be a vessel, noting that it lacked a rudder or steering mechanism, had a rectangular (*i.e.*, not a raked) bottom, drew only ten inches of water, received electrical power from a shoreside connection, and was not self-propelled. The Court noted that the U.S. Coast Guard's definition of a vessel for regulatory purposes as "a motorized vessel." The two dissenting Justices Sotomayor and Kennedy objected to the "reasonable observer" standard and would have remanded the case to lower courts for further fact finding.

It seems clear that the majority opinion wanted to minimize federal regulation of typical houseboats and to allow regulation by state and local governments. The decision seems to accomplish that intent.

Meanwhile, by no doubt unintended coincidence, HB 2233 was introduced in the Oregon legislature the day before the *Lozman* opinion was issued to authorize or expand existing authority for state and local governments to deal with abandoned and derelict vessels. The Bill defines "vessel" as "a boat, a boathouse as defined in ORS 830.700, a floating home as defined in ORS 830.700, or any other floating structure that is normally secured to a pier or pilings." The Bill was signed into law on July 8.

ANNOUNCEMENTS

Save the Date—FBA District Conference

September 20, 2013 – Please join the FBA for the District of Oregon Conference on September 20, 2013, at the Oregon Museum of Science and Industry (OMSI). The theme of this year's conference is "Innovations in the Law: Science & Technology,"and it will focus on technology and the future of the practice of law, both in the District and nationally.

Save the Date—Annual Picnic

August 4, 2013 – Please join the U.S. District Court of Oregon Historical Society at its Annual Picnic honoring Oregon's Criminal Law Practioners. The event will feature an old-fashioned barbecue from 1:00pm to 3:00pm, introduction of guests at 2:30pm, and games at 3:00pm. There will also be live music, pony rides, inflatable jumps, tractor rides, and a craft table all afternoon.

FBA Luncheons

The FBA monthly lunches take place on the third Thursday of each month at the University Club, 1225 SW Sixth Avenue, Portland, Oregon.

Cost is $22 for FBA members and $24 for non-members. Please make reservations for either a vegetarian or meat lunch entrée by emailing Connie.VanCleave@MillerNash.com. The RSVP deadline is the Tuesday before each lunch.

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And thank you to the following outgoing directors, who are moving on to new adventures:

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Missing Electronic Notices?

Change of Address? We have been sending the electronic notices via our listserv. Although we have made every effort to obtain our members' email addresses, we need your help to keep our list accurate and current. For those members without email, we are providing the electronic notices by fax. If you have an email address or fax number and have *not* been receiving electronic notices, or if your email address changes, please contact our listmaster at anelson@barran.com. For a change in physical address, please notify **Mary Anne Nash**, mnash@dunncarney.com, to ensure you continue to receive mailings from the Oregon Chapter of the Federal Bar Association. All address changes will be forwarded to the national Federal Bar Association.

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Call for Submissions/Publication Schedule

For the District of Oregon **welcomes submissions from everyone. The deadlines are September 15, 2013 and December 15, 2013. We ask only that you inform us in advance if you are preparing a submission. Please direct inquiries to Mary Anne Nash at 503-242-9615 or mnash@dunncarney.com**