



WASHINGTON COUNTY BAR ASSOCIATION

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NEWSLETTER

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THE OREGON FAMILY FAIRNESS ACT: CHARTING A NEW COURSE

By Beth S. Wolfson, *Allen² Law, LLC*

At the beginning of this millennium, Oregon had at least 9,000 lesbian or gay couples residing within its borders, many of whom were raising children.¹ In 2008, those numbers are most likely even greater and represent a significantly large number of Oregon families living without the legal protections afforded to families where the two adults are able to marry.

Last year, Oregon joined with ten other states in offering some sort of legal recognition for same-sex relationships and became one of only six states to offer legal protections that attempt to be substantively similar to marriage.² House Bill 2007, or the Oregon Family Fairness Act ("OFFA" or "the Act"), was passed by the Oregon House of Representatives on April 17, 2007 by a 34-26 vote. It was then passed by the Oregon Senate on May 2, 2007 by a 21-9 vote and subsequently signed into law by Governor Kulongoski on May 9, 2007. The law was slated to go into effect on January 1, 2008 but was delayed when a group filed a federal lawsuit and the Court issued a temporary injunction until it could more fully explore the state and federal constitutional claims in the suit. The Court ultimately lifted the temporary stay on Friday February 1, 2008 and the law went into effect the following Monday.³

WHAT IS IT, AND HOW DO YOU GET IT?

The intent of the Oregon legislature in creating and passing the OFFA

was to recognize that the institution of marriage is, in many instances, the sole source of many rights and protections under Oregon law and to recognize and affirm that all Oregon families should be afforded equal access to protections and status under the law.⁴ In attempting to "level the playing field" for heterosexual and same-sex couples, the legislature did specifically affirm that the institution of marriage itself was reserved, by Oregon's Constitution, to unions between one man and one woman and it therefore created instead a separate system of civil contract called "Registered Domestic Partnerships."⁵

In order to obtain a Registered Domestic Partnership, a couple must meet certain basic requirements:

- At least one partner must be a resident of Oregon;
- Both partners must be over the age of 18;
- Both partners must be capable of consenting to the registration;
- Both partners must be of the same sex;
- Neither party to the Registered Domestic Partnership can have a living spouse or partner at the time of entering into the Registered Domestic Partnership; and
- The partners may not be related as first cousins, or by closer kinship.⁶

Continued next page

If the above requirements are met, the partners can apply to become Registered Domestic Partners (“RDPs”) by going to county offices in any county within the State of Oregon and completing a form called a Declaration of Domestic Partnership⁷; the form must then be notarized and the partners will be required to pay a fee of approximately \$60. The county clerk will then register the Declaration in a domestic partner registry (which will then be recorded with the State Registrar of the Center for Health Statistics, similar to marriage licenses) and provide the couple with a commemorative Certificate of Domestic Partnership. For an additional fee, the clerk will also provide the couple with certified copies of the Declaration.⁸ The certified copies cost approximately \$7.75 for the first copy and \$4 for each copy thereafter, and will be the document required for legally significant purposes.

WHAT IT DOES AND DOES NOT DO (or more accurately, what it may or may not do)

As stated above, the OFFA clearly does not alter the “one man, one woman” definition of marriage under the Oregon Constitution.⁹ Neither does the law require individual religious faiths to sanctify the union; rather, the law leaves to each couple and to each religious faith the discretion to seek or offer a blessing of the relationship.¹⁰ The OFFA also does not confer any rights or protections granted to spouses under federal law.¹¹

What the OFFA does offer is equal access to all of the estimated 500 or more rights and responsibilities available to, or imposed upon, married couples under Oregon law. Broadly worded, the Act offers the following:

- (1) *Any privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.*
- (2) *Any responsibility imposed by statute, administrative or court rule, policy, common law or any other law on an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is imposed on equivalent terms, substantive and procedural, on an individual because the individual is or was in a domestic partnership or because the individual is or*

was, based on a domestic partnership, related in a specified way to another individual.

(3) *Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a partner with respect to a child of either of the partners.*

(4) *Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a former or surviving spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a former or surviving partner with respect to a child of either of the partners.*¹²

Stated more simply:

- On the state level, if you get it because you are married, you are supposed to get it because you are in a Domestic Partnership.
- If you get it on a federal level because you are married, you DO NOT get it by entering into a Domestic Partnership

It is difficult to envision the full plethora of rights and responsibilities the Act contemplates, but consider the following sampling of new possibilities for Registered Domestic Partners that were not available (or were more difficult to obtain) prior to the Act:

- Availability of tenancy by the entirety;
- Availability of evidentiary and testimonial privileges (spousal and marriage counselor privilege);
- Standing for wrongful death suits;
- Private visits or ability to share a room in long-term care facilities;
- Healthy partner is assured hospital visitation and priority standing for medical decision-making for ill partner;
- Surviving partner can receive deceased partner's unemployment benefits, or final paycheck from employer;
- Partners can be considered “authorized” drivers for rental cars.

IMPACT ON INDIVIDUAL AREAS OF LAW

In addition to the sampling of rights and responsibilities mentioned above, many specific areas of practice will

be substantially affected and may warrant a change in the nature of our practices and the services we offer, and in how practitioners analyze issues affecting our clients. Below is a discussion of potential changes, broken down by practice area, and how they may potentially impact our clients and our profession.

Family Law

One area of law that comes to mind almost immediately for many practitioners is that of family law. Consider the following likely changes in family law:

- RDPs must now go through a formal annulment or dissolution in order to dissolve the relationship, and will not be able to enter another registered domestic partnership or marriage unless they do so.
- Children conceived via artificial insemination after the date of registration will be considered the legal children of both partners; children born to or adopted by one partner prior to the date of registration will be considered to be the step-children of the other partner.
- In dissolutions, the presumption of equal contribution and equitable division of property will apply.
- In dissolutions, RDPs will now be eligible to seek spousal support awards.
- Attorney's fees will be available in dissolution cases.

An important issue to bear in mind for practitioners working with couples who have children is that under the U.S. Constitution, an adoption judgment is likely to be given full faith and credit throughout the United States¹³ whereas, pursuant to the federal Defense of Marriage Act, the legal status of a parent-child relationship that is based solely on Oregon's domestic partner law may not.¹⁴ It is highly recommended, therefore, that to avoid the legal vulnerability that will ensue once an Oregon family crosses over state lines, same-sex parents continue to petition for adoption of their children.

Another important issue for family practitioners to bear in mind is that the OFFA specifically reserves and retains the jurisdiction of Oregon courts to dissolve a registered domestic partnership even if one or both partners cease to reside in, or maintain a domicile in, Oregon.¹⁵ In such a situation, the proper venue for a dissolution action will be in the county in which either partner last resided.¹⁶ This provision is a tremendous improvement from what other states have done. For instance, in 2001, Vermont became the first state to offer civil unions and, with no residency requirement, couples traveled from all over the country to avail themselves of the ability to enter into a formal legally-recognized relationship. Vermont, however, specifi-

cally requires that at least one party to the civil union be a resident or domiciliary of the state for at least six months in order to petition to dissolve the relationship. In other words, non-resident couples who subsequently end their relationship have no legal recourse for dissolving the relationship unless one party establishes residency. There is a possibility that states with comparable civil union or domestic partnership laws in effect may accept jurisdiction and dissolve the relationship but that remains to be seen, as does the issue of whether the state that granted the union will accept the jurisdiction of another state to dissolve it. If unable to dissolve the relationship legally, the ability to enter subsequent legally-recognized relationships is unlikely.

Estate Planning

Another area of practice that will most likely see some significant changes is that of estate planning. Here are just a few of the significant changes Registered Domestic Partners may now see:

- Intestate succession – RDPs will now have protection under Oregon's intestacy law. Rather than having no claim to the partner's estate, the surviving partner will have the same rights as a surviving spouse. In other words, if decedent has a surviving RDP and either no children or joint children, the surviving RDP will receive 100% of the net estate; if decedent has a surviving RDP and non-joint children, the surviving RDP will receive 50% of the net estate.
- Testate succession / Right to elective share – RDPs now have the same protection as spouses against being disinherited; the surviving RDP can elect to take 25% of the deceased partner's net estate.
- RDPs will now have priority standing for medical decision-making, for serving as a guardian/conservator or as a personal representative for their partner, or for making decisions regarding the disposition of their partner's remains.
- The surviving RDP may remain in the deceased partner's home for one year after death.
- Inheritance tax – Oregon inheritance tax kicks in when an estate exceeds \$1 million. RDPs, like spouses, will now be able to take advantage of the special marital property exemption which allows the surviving spouse or RDP to defer any tax due until the death of the surviving spouse/RDP.

It will be important, once again, for estate practitioners to remember that Oregon RDPs will most likely not be recognized outside state boundaries, so careful attention will need to be paid to issues that will intersect with

the laws of other states (e.g. property located outside the state, one partner is not a resident of Oregon, annuities or other benefits stemming from ERISA-governed employers may not apply to the employee's partner or the partner's estate, etc).

Also, be aware that the federal inheritance tax begins when an estate exceeds \$2 million. Therefore, although RDPs may be able to avail themselves of Oregon's special marital property exemption for estates exceeding \$1 million, they will not receive the same protection from the federal tax burden once their estates exceed \$2 million.

Lastly, it is arguably true that registration will effectively revoke any existing Wills of the respective partners, the same as when a heterosexual couple marries. If the existing Wills did not contain language that contemplated registering and affirmed the testator's intent that the Will not be revoked by that circumstance, it will be necessary for the couple to take affirmative steps to revive or re-execute their Wills.

Employment Benefits

Of tremendous concern to many same-sex couples is the issue of what employment benefits are, or will be, available to their partner. Under the OFFA, all non-ERISA¹⁷ employers will be required to offer the same benefits to RDPs as they do to spouses. Some examples include:

- Health insurance (although the benefit will still be considered as imputed income for federal tax purposes);
- Spousal life insurance;
- Scholarship programs;
- Employee discounts and memberships;
- Stock option and stock purchase plans;
- Deceased employee's wages paid to the registered partner.

The general thinking right now is that although employers with ERISA-governed plan benefits are not required to offer the same benefits to RDP, there is nothing prohibiting them from doing so. Therefore, companies like Intel that often try to be egalitarian with their benefits may amend their benefit plans even though they're not required to.

Income Tax

Beginning in 2009 (Tax Year 2008), Registered Domestic Partners will be required to file income taxes in the same manner as married couples; i.e. either as "married filing jointly" or "married filing separately" (the nomenclature is yet to be determined). However, the IRS

has already made clear through private letter rulings that it is subject to the federal Defense of Marriage Act and therefore it cannot recognize the domestic partnership for tax purposes.¹⁸ RDPs, therefore, seem most likely to face the possibility of having to prepare "dummy returns" in order to determine their combined adjusted gross income, resulting in an increased expense to them. The general belief at this juncture is that the process will look like this:

1. Each partner will have to file an individual federal return to comport with federal law;
2. As a couple, the RDPs will then have to prepare a federal "dummy" return in order to determine their federal taxable income as a couple;
3. Then finally, the couple will need to prepare a joint (or "married" filing separately) state return to comport with Oregon tax laws.

The Oregon Dept of Revenue is currently working on their regulations in preparation of the first year of joint filing.

TO REGISTER, OR NOT TO REGISTER, THAT IS THE QUESTION

Despite the elation many may feel at having the opportunity for legal recognition of their relationship, there are certain situations in which it may not be advantageous for the couple to register. For instance, are one or both partners in the military? If so, registration may violate the military's "Don't ask, don't tell" policy and result in discharge. Are one or both partners receiving assistance from the state? If so, income and assets of both partners might now be considered, resulting in possible disqualification of assistance. And then there's always the possibility that one or both partners may not want all the rights and responsibilities provided now, or that may be provided in the future.

Is it Here to Stay?

Although considered by many to be both landmark legislation and a significant milestone in Oregon's legal history, the future of the Oregon Family Fairness Act is at the moment tenuous. On March 3, 2008, the plaintiffs in *Lemons v Bradbury* filed an appeal to the 9th Circuit and a ruling from the Court of Appeals in their favor could result in the issue of domestic partner registration making an appearance on the Oregon ballot. In addition, Oregon legislators Senator Fred Girod (R-Stayton) and Representative Sal Esquivel (R-Medford) have filed an initiative seeking to repeal the Act. The backers of the initiative have until July 3, 2008 to collect approximately 83,000 signatures. If successful, the issue will then go before the voters on the November 2008 ballot.¹⁹

In Conclusion

In light of the Act's uncertain future, its lack of interstate portability, and lack of federal recognition, it is important that same-sex couples continue to do all those things they have done until now in order to help ensure some legal protection for the couple and their families. It is likewise important that practitioners take extra care as advocates for their same-sex couple clients. Consider use of joint representation disclosures and consents; expanded your intake forms to include additional questions about children, property owned out of state, whether the partners have registered, married or entered into civil unions (with each other, or with former partners) in other jurisdictions and, if so, if and when those relationships were legally dissolved, etc.

Although the somewhat parallel universe created by OFFA will create uncertainty and provide full employment for lawyers until marriage is available on the same basis as it is for heterosexuals, it is a huge step in the right direction. It will be our job as attorneys to help gay and lesbian clients understand their rights and obligations under the law as they navigate a new course in this new universe.

Endnotes

- 1 2000 U.S. Census data. The numbers cited represent only the number of gay men and lesbians who disclosed their sexual orientation in the Census. Many people do not feel safe or comfortable disclosing that information and therefore, most likely, the number of same-sex couples residing in Oregon was even greater than the Census reflects.
- 2 Massachusetts continues to be the only state to offer marriage to same-sex couples. Vermont, Connecticut, California, New Jersey, New Hampshire and Oregon offer civil unions or formal domestic partnerships that are substantively similar to marriage. Hawaii, the District of Columbia, Maine and Washington offer some recognition but in a manner substantially less than marriage. Illinois and New York have civil union/domestic partnership legislation pending.
- 3 See *Lemons v. Bradbury*. To read Judge Mosman's Feb. 1, 2008 opinion, go to <http://ord.uscourts.gov/lemons/Judge%20Mosman's%20ruling%20in%20Lemons%20v%20Bradbury.pdf>. To read briefs and other documents from the case, see <http://www.basicrights.org/?p=120#court>.
- 4 Enrolled House Bill 2007, Page 1, Sec. 1-4.
- 5 The legislature originally used the term "civil union" but changed it to "Registered Domestic Partnership" in a later draft of the bill in order to provide some consistency with its sister states, Washington and California, who also use the term "domestic partnerships."
- 6 HOUSE BILL 2007, §§ 4, 6.
- 7 The forms may also be downloaded from the internet and completed in advance; however, the clerks are requiring that the full form be printed in its entire 8.5 x 14 format.
- 8 HOUSE BILL 2007, § 6.
- 9 HOUSE BILL 2007, § 2(7).
- 10 House Bill 2007, § 2(8).
- 11 A 2004 finding by the U.S. General Accounting Office identified 1,138 federal statutory provisions where marital status is a factor in determining access to benefits, rights and privileges which will arguably still be off-limits to same-sex couples registering as domestic partners in Oregon.

- 12 House Bill 2007, § 9.
- 13 *Finstuen v. Crutcher*, ___ F3d ___, 2007 WL 2218887 (10th Cir 2007).
- 14 The federal Defense of Marriage Act permits individual states to disregard "public acts, records or judicial proceedings of any other State...respecting a relationship between persons of the same sex that is treated as a marriage...or a right or claim arising from such relationship." 28 USC §1738C.
- 15 House Bill 2007, § 6 (4), (5)(d).
- 16 House Bill 2007, § 6 (4).
- 17 The Employee Retirement Income Security Act of 1974 (ERISA), is a federal law governing the provision and administration of employee benefit plans (e.g. pension, welfare) established and/or maintained by private employers. ERISA, generally speaking, governs private, often large, interstate employers (for instance, INTEL) but does not govern churches or government employers. The OFFA contains a provision specifically stating that it does not intend to conflict with ERISA. Therefore, state law will be preempted where ERISA-governed plan benefits are concerned.
- 18 PLR 200339001.
- 19 To see the text of the initiative, go to: http://egov.sos.state.or.us/elec/web_irr_search.main_search, scroll down to 144, click on the link to "Repeal House Bill 2007- 2007 Legislature" then click on the link to "view complete text of Initiative"

WASHINGTON COUNTY BAR ASSOCIATION

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Contact Julie Viner, our Administrative Assistant, at the above address and/or number for any correspondence or information about membership, meeting reservations or Newsletter articles or classifieds. Leave a brief message (60 sec. limit) on our answering machine and she will get back to you as soon as possible.

Letters, award and news items, and announcements are welcome. Articles by members are accepted. All submissions may be edited for length, clarity and style, are published on a space available basis, and at the editor's discretion. Views expressed in articles represent the author's opinion, not necessarily the WCBA's. The publication does not purport to offer legal advice.

PRESIDENT'S MESSAGE

By WCBA President Rebecca Mehringer

We are all busy. There is no doubt. Between work, family, a kid or two, a dog or two, our lives are hectic. But they don't have to be that way. I don't expect all of us to embrace the lifestyle of Laura Ingalls and go back to "Little House on the Prairie" days (I, myself, appreciate indoor plumbing), but there are ways to slow down and live a little. For example, I gave up my cell phone about three years ago. To be honest, my husband just gave me one (it was pink and on sale and he wanted the family gray one), so I do have one now for emergencies, but I don't use it very often. There have been a few calls home to make sure kids left for the bus, or to see if they remembered to shut the garage door, but that's it. I don't miss it and the world continues to revolve. The downside is that I don't know how to text, and am at a loss with the new text lingo, but, then again, I will probably never find myself on Jeopardy and needing that information. Speaking of Jeopardy, we don't get cable either. TV is very boring with only three channels (one blurry). You will find yourself watching much less TV and you can still get American Idol! Newspapers ... the only newspaper I read is the Hillsboro Argus. It lets me know what my neighbors are doing (weddings, funerals, arrests) and it has lots of pictures. I'm not disagreeing with the fact that national news is of interest. I do listen to some of it on the radio while driving to work (couldn't do that if I was on my cell phone), but does it really matter how much the governor of New York spent on extracurricular activities, or just that he did something wrong and there were consequences? Again, I refer back to the Jeopardy comment. E-mail is another time killer. I check my home e-mail once a day. It takes less than three minutes. E-mail at work is a different story, but a necessary evil. Okay, now that you have freed up all this time, what are you going to do with it?

Beyond promising yourself you are going to exercise more, how about volunteering? Many people want to volunteer, but don't know where to look. Are you aware there are organizations that count birds? How about spawning fish? You can even clip fish fins for counts in the future! Do you like animals? Volunteer at your local animal shelter. Want to keep it law oriented? Speak at career days at your local school (Forest Grove and Hillsboro School Districts both have programs). Speak to your community on Law Day. Coach a high school mock trial team. Donate items for the Victim's Assistance Bar-b-q. Spend a few hours at St. Andrew's Legal Clinic or Legal Aid. Contact your State Bar Association. If you want to avoid

the thought of law after hours, teach English to someone new to the area, help prepare meals for the homeless ("Family Bridge" through your local church), plant trees at Jackson Bottom Wetlands, run a 5K for a local charity. If time really is an issue, donate your newspapers to the Boy Scouts at United Methodist Church in Hillsboro, buy Girl Scout cookies, bring in your empty cans to the local school choir for their annual trip, or just donate money to the Washington County Historical Society, The Campaign for Equal Justice, American Cancer Society, or other group that interests you. One of our local attorneys even volunteers for a local hospice. There is something for everyone. As a final thought, the President of the Multnomah Bar Association (MBA), Thom Brown, recently wrote about a mentoring program at the MBA. New lawyers are paired up with "older" lawyers. What a great idea and what a wonderful resource we have here in Washington County. Please, if you interested, either as a new lawyer, or a more experienced one willing to help, please let us know. We are going to look at setting up a program similar to the one at the MBA and would love to know if there is interest from the lawyers in our community.

Have a good month and enjoy your newly found free time!

Dorothy S. Cofield, Attorney at Law Cofield Law Office

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MATTHEW H. KEHOE, LLC Announces PATRICK G. CADIZ *formerly of Brisbee & Stockton, LLC*

has become Of Counsel to the firm. Mr. Cadiz will utilize his extensive trial experience to assist plaintiffs in recovering compensation for their injuries.

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CASE UPDATE *By Alex Libmann*

Duty to Confer

Thomas A. Anderson v. State Farm Mutual Auto Insurance Company, ___ Or App ___ (February 6, 2008). Plaintiff opposed defendant's motion to dismiss the case, in part, because defendant had not made any effort to confer with plaintiff. It was alleged the certificate of compliance that defendant submitted with its motion was false. UTCR 5.010(1) provides, in part:

(1) The court will deny any motion made pursuant to ORCP 21 and 23, except a motion to dismiss: (a) for failure to state a claim; or, (b) for lack of jurisdiction, unless the moving party, before filing the motion, makes a good faith effort to confer with the other party(ies) concerning the issues in dispute....

(3) The moving party must file a certificate of compliance with the rule at the same time the motion is filed. The certificate will be {3} sufficient if it states either that the parties conferred or contains facts showing good cause for not conferring.

The court found that "futility" does not excuse noncompliance with the requirements of UTCR 5.010(3). See *Nelson and Nelson*, 117 Ore. App 157, 161, 843 P2d 507 (1992). The court cited the following reasoning contained in *Nelson*:

Even if conferring with opposing counsel would be futile, the moving party still must file a certificate {6} of compliance that 'contains facts showing good cause for not conferring.' UTCR 5.010(3).

Read together, UTCR 5.010(2) and UTCR 5.010(3) remove the court's discretion to grant a discovery motion that is not accompanied by a certificate of compliance. Although conferring with wife's attorney may have been futile, husband did not submit a certificate of compliance that would have allowed the court to make that assessment. The court was, therefore, without authority to grant his motion to compel production.

The court concluded that a trial court could not excuse the utter failure to comply with UTCR 5.010(3). Filing a certificate of compliance does not create a hardship or injustice for the party. The trial court erred in granting defendant's motion. Reversed and remanded.

CALENDAR OF EVENTS

WCBA Newsletter Deadline is the 15th of the month.

Please submit your articles, calendar items and other news copy by the deadline to Carol Hawkins by email to wcbanews@comcast.net by the deadline.

Please submit all ads and announcements to Julie Viner, by fax to 503.693.9304, or by mail to PO Box 912, Hillsboro OR 97123.

June 2008 Issue Deadline: May 15, 2008

Schedule of Business Meetings, CLE's, Social Events

Washington County Bar Association

- ☐ CLE and Dinner Meeting – Juvenile Law CLE and "Meet the Candidates" at dinner. Staff Appreciation Night. Wednesday, April 9, 2008
Rock Creek Country Club
Begins at 5:15 p.m. Dinner at 6:30 p.m.

* All WCBA CLE programs are \$15 for those who register in advance and \$20 for those who register at the door. Charge for non-WCBA members is \$25. Please register so we know how many CLE packets we need to prepare.

Multnomah Bar Association

Upcoming Events

Visit www.mbabar.org for information or to register.

- ☐ MBA CLE – Insurance Coverage in Civil Disputes
Thursday, April 10
- ☐ MBA CLE – Wage and Hour
Wednesday, April 23
- ☐ MBA Annual Meeting
Wednesday, May 21

Newsletter Ad Rates:

Members/Non-Members

- ☐ Business card size (2"x 3 1/2")..... \$15/\$30
- ☐ 2 1/8" x 3 3/4" \$20/\$35
- ☐ 4 1/4" x 7 1/2" \$60/\$90
- ☐ Half-page (5 1/2" x 8 1/2") \$90/\$130

These ads will stand out and reach our county bar membership. Please send your ad one month prior to publication, along with payment, to:

WCBA, P.O. Box 912, Hillsboro, OR 97123.
Any questions, call 503.648.0300

LETTER TO THE EDITOR

February 27, 2008

Response to Mr. Luby's letter (1/28/08)

To the Editor:

I am compelled to respond to Mr. Luby's letter to the editor concerning courthouse security. I was a little surprised at the critical nature of his letter as a former WCBA president and member of the Court Security Committee.

As background, our security system had been challenged and ultimately upheld as constitutional by the Oregon Supreme Court years ago. I would agree that our security system is not convenient. I don't know of many that are.

Mr. Luby seems to believe that the primary purpose of our security system is to protect our judges. He neglects to mention that court employees other than judges, attorneys, litigants, jurors, witnesses and members of the public also benefit from our security. He is absolutely right when he says that someone could attack a judge outside the courthouse, but the chance of a serious attack in the courthouse against any individual is greatly reduced by our security.

In 2005, courthouse security confiscated 159 chemical sprays, 113 rounds of ammunition, 4,031 knives, 40 drug pipes and 7,427 other items (box knives, Leathermans, brass knuckles, scissors, alcohol, large chains, throwing stars, etc.), for a total of 11,770.

In 2006, courthouse security confiscated 177 chemical sprays, 133 rounds of ammunition, 3,831 knives, 38 drug pipes and 7,400 other items for a total of 11,579.

In 2007, courthouse security confiscated one loaded handgun (found in a diaper bag), 162 chemical sprays, 122 rounds of ammunition, 3,450 knives, 55 drug pipes and 6,947 other items for a total of 10,737.

Over 50,000 screenings have taken place during the month of January 2008, alone. This number is for three security checkpoints on 1st and 2nd and the Juvenile entrance.

I also agree with Mr. Luby when he says that Sheriff's deputies assigned to courthouse security are extraordinarily capable. They have handled many incidents (including bomb threats) in our courthouse with the utmost professionalism, courtesy and efficiency.

Entrance security screening by private contract guards is the best and most effective way to protect judges, court staff, litigants, witnesses, jurors, attorneys and other members of the public while doing business in our courthouse.

Our system is certainly vulnerable to someone who really wants to breach it; however, from my perspective as the Presiding Judge for the Washington County Circuit Court, I am very proud of our courthouse security and very pleased with the results so far.

Very truly yours,

Tom Kohl, Presiding Judge

OUT AND ABOUT AT THE COURTHOUSE

Courthouse News

In a last-minute bid for a judiciary position, Deputy District Attorney Andrew Erwin has announced that he will oppose Judge Keith Rogers in a bid for Circuit Court Judge. Judge Rogers, former head of the Metropolitan Public Defender's Office in Hillsboro, was appointed by the Governor to fill the vacancy left by the retirement of Judge Tim Alexander. Mr. Erwin has been with the Washington County D.A.'s office since 1999 (most recently with the Child Abuse Team), but was a lawyer in private practice before that, working in the fields of Personal Injury Law, Taxation, and Maritime Law. Prior to

that, he obtained his Masters in Teaching from Willamette University and worked in Washington County for several different schools. Mr. Erwin states that he has always considered the judiciary as a career, and decided to run at this time because of his continued interest in supporting victims' rights and to help strengthen the protection of the community.

Mark your calendars for the annual Crime Victims' Assistance Week bar-b-q being held this year on April 15. Tickets for the bar-b-q are \$5 each and there will also be baskets raffled off, including a Cat Lover's basket, Sports Theme basket, Beach Weekend basket, and a Fitness basket. Last year was a huge success and, who knows, you

may get your burger flipped by a local celebrity! For more information, contact Whitney at 503.846.3437.

Washington County Sheriff's Office

According to the Washington County Sheriff's Office newsletter "Neighborhood Watch," March was "Inhalant Awareness Month" (go to www.co.washington.or.us, click on "Sheriff," "Neighborhood Watch" and "Newsletter"). The article states that inhalant use refers to "the intentional breathing of gas or vapors with the purpose of reaching a high" (huffing) and give tips on how to deal with someone

who is using and how to talk to your kids about it. Also in the March newsletter are tips on how to avoid identity theft. "Updates, a Community Newsletter" from the Washington County Department of Land Use and Transportation, can be found at the same initial website, but click on the Land Use/Transportation link. The Winter Newsletter discusses "the housing market in Washington County, the impact of Measure 49, gives a report on road maintenance performance, Adopt-a-Road expands to Adopt-a-Landscape, help for bikes and pedestrians near schools, and more.

NEWS FROM THE CRIMINAL COURT TEAM

By Judge Gayle Nachtigal

Last June, the Governor signed HB2333 the "Relief from Sex Offender Reporting Requirements." It can be found at ORS 181.830-181.833 and became effective for persons convicted or adjudicated before January 1, 2008. There is also a procedure for granting relief from the reporting requirements found in ORS 181.820 to 181,826, but that is not the subject of this article. OJD has prepared forms for individuals convicted or adjudicated in this state (Petitioner's Motion for Relief) or out of state (Petitioner's Petition for Relief). In order to deal with these new requests for relief, we have set up the following procedure to help ensure timely resolution and compliance with the statutes.

The approved forms will be available on line at our web site (www.ojd.state.or.us/washington) and forms are available on the Oregon State Police website (www.oregon.gov/OSP/SOR/index/.shtml). We will also have them available at our civil counter. These petitions are new civil cases and are not filed under the original criminal case number. A civil filing fee of \$189 will need to be paid at the time of filing or a fee deferral/ waiver obtained. The matter will receive a new civil case number ending with the letters CV. Venue is the county of conviction or adjudication if that happened in Oregon or the county of Petitioner's current residence if the conviction or adjudication happened out of state.

Once the matter is filed we will set a hearing out 90 days and send notices. The hearings will be held on Mondays and will be scheduled together in one block of time in one courtroom. The District Attorney is the Defendant in each case. The DA has 90 days to contest the request for relief and must notify the Petitioner of that determination. If the DA does not contest the relief,

they will notify the court and send to the court the order granting the requested relief. We will then take the matter off the docket and no hearing will be held. It is the Petitioner's duty to send a certified copy of the court order granting relief to the Oregon State Police, Sex Offender Registration Unit at 255 Capitol Street NE, 4th Floor, Salem OR 97310. The court will not send the Order.

This relief applies only to individuals convicted or adjudicated, in this or any other state, of Rape in the Third Degree, Sodomy in the Third Degree, Sexual Abuse in the Third Degree, Contributing to the Sexual Delinquency of a Minor, Sexual Misconduct, or an attempt to commit one of the above listed offenses. It also applies to persons found guilty except for insanity of the listed offenses. A person is entitled to relief if: the person does not have a prior sex offense conviction or adjudication in this or any other jurisdiction, the person is less than five years older than the victim, the victim's lack of consent was based solely on age, and the victim was at least 14 years old at the time of the offense. In order to deny relief the court must find by preponderance of the evidence, that the Petitioner does not meet the eligibility requirements in ORS 181,830 and the burden is on the DA to prove the lack of eligibility.

If you have any questions, give me a call.

Judge Gayle A. Nachtigal, 503.846.4562

WASHINGTON COUNTY BAR NEWS

The Board would like to extend its sincerest apologies to Dorothy S. Cofield, a local Portland attorney. She was gracious enough to write our lead article for the February 2008 newsletter discussing the legal issues under Measure 49 and her name was incorrectly printed as "Beverly." Please take the time to correct your newsletter article to reflect her correct name.

Thanks to our recent CLE speakers – Beth A. Allen and Beth S. Wolfsong, who addressed changes in the law involving Domestic Partnerships. Thank you also to the Court of Appeals Justices who attended the February Meeting. The March CLE brought Justice Kistler from the Supreme Court who spoke on Search and Seizure. We then enjoyed a wonderful dinner with members of the Supreme Court, and our own local judiciary.

Welcome to our two newest Board members: Shelley L. Fuller and Janelle Factora Wipper. Shelley is originally from Wisconsin (a huge Packers' fan) and earned her undergraduate degrees at University of Wisconsin in social work and criminal justice. A change in careers had her heading west to attend Seattle University Law School and ending up in the Portland area. She has been in private practice for nine years and before that worked for Washington County Counsel. She says she has a "blast" working with attorneys John Guinn and Sara Couch and her practice focuses on a little bit of everything, but mainly criminal, juvenile, domestic relations and personal injury law. What she loves most about her job is the ability to work with people and to help work out their difficulties. Shelley volunteered to be on the Board because she wanted to get to know more people in the area. She sees the value in creating a network of colleagues and to be able to utilize a valuable resource base. Her job on the Board, for the moment, will be to write special interest stories on local bar members. So, if Shelley calls, please help us out by letting us get to know you better. Janelle is originally from Hawaii and moved here in 1987 to go to Oregon State University (Go Beavers!). Her undergraduate degree was in political science and she took a year off between undergraduate and law school to work for the Oregon Legislature. Janelle went on to graduate from Willamette Law School and worked for Clackamas County and Tillamook County District Attorney's offices before finding a home in Washington County. She has been at the Washington County D.A.'s office for almost 10 years. What Janelle likes most about her work is that it is ever changing. No two days are ever the same and she enjoys the challenges associated with that and loves going

to court! While Janelle's background is felony prosecution, the main reason she wanted to join the Board was so that she could meet people outside of the general criminal network.

Pursuant to discussions at our last Board Meeting, the Board was happy to approve the applications of Marsha Cordon and John H. Mayfield for the renewal of their appointments as Judges Pro Tem. The Board also approved the formation of a Probate Bench/Bar Committee. They join a Family Law Bench/Bar Committee already in existence and plan to meet on a regular basis, and will provide an update to members of the Bar through this newsletter.

In memoriam of Judge Albert Musick, a long-time member of the Washington County Judiciary, the Bar made a donation to the Washington County Historical Society in his honor. The Board also voted to help with the recent High School Mock Trial competition at the courthouse, by donating money for refreshments and by providing the security for the event.

The next WCBA meeting will be held on April 9, 2008. The CLE will be on Juvenile Law and presented by Judge Jim Fun, along with Mary Bruington of the MPD and Roger Wong of the D.A.'s office. During dinner, it will be a chance to meet the candidates Keith Rogers and Andrew Erwin. It is also Staff Appreciation Night, so please invite all those people who do so much for each of us!

May 14 is our annual business meeting and yearly elections. If you are interested in getting involved at the State Bar level, Region 4 has several vacancies for the House of Delegates. If you are interested, please contact Ann Fisher (or Board of Governor's representative) at 503.721.0181.

ASSOCIATE ATTORNEY

Brindle McCaslin & Lee, P.C., an established 18-attorney, two-office law firm seeks an associate attorney with emphasis in bankruptcy, business transactions, employment, or family law in its downtown Portland office. Experienced attorney with a current book of business preferred. We offer a collegial work environment and are dedicated to quality representation. Please send cover letter and resume to:

Mike McCaslin
101 SW Main St., Suite 950,
Portland OR 97206

NEWS FROM THE FAMILY COURT TEAM

By The Honorable Keith R. Raines

March, 2008

1. We have a new Family Law Supervisor, Tammy Thompson, who will supervise the clerks in family law, probate and juvenile. This is a new position which will allow for greater training for and service by our clerks.
2. Duplicative Filings. Too often, both Husband and Wife file dissolution petitions within days of each other. In that case, the judge with the earlier filing will set a status conference in order to dismiss the later filing and advise the parties. The petitioner in the later filing does not get a refund but the Court will waive the first appearance fee in the earlier filing. There is an exception if the first filing has had no activity and the second filing appears to be the more active case. Please let the judge's staff know to schedule that status conference.
3. Appeals from Admin Support Hearings. These will be docketed as if they were modifications, based on the case number. Don't hesitate to contact staff if something appears to have been incorrectly docketed.
4. Prejudgment emergency temporary custody orders. The bench announced in the last newsletter that post judgment temporary custody orders would expire on the date of the underlying show cause hearing. We have still seen some prejudgment TCOs floating around even though a case has been dismissed for non-prosecution; we have had one presented to a foreign jurisdiction with an enforcement request. So now, prejudgment TCOs will have a six month expiration date. The case should either be to a pendente lite order or finished within six months. If not, the holder of the TCO can request an extension.
5. New arrivals at Conciliation Services. Wendy Hull, the director, is the proud parent of Ethan; Amy Baker is the proud parent of Sophie. The office is open despite the maternity leaves.
6. Consolidated FAPA & Dom Rel cases. FAPAs and associated dom rel cases are consolidated by operation of law but we are happy to sign a proposed order just to assure that the cases are consolidated. Please file your dom rel documents only in the dom rel file unless there is an order affecting the FAPA order (such as custody/parenting time).
7. E-mail Judge Letourneau. Judge Letourneau is experimenting with substituting e-mail for telephone contact. Please email his JA, at chantil.r.rose@ojd.state.or.us.
8. Lawyers for Kids. If you would like to be on an appointment list to represent children, please contact Judge Kirsten Thompson. Sometimes you get paid, sometimes not. It's important work.

Wenyi Jia, D.D.S., M.S.

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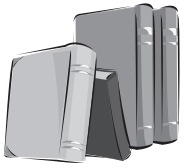
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\$275/night. Online calendar is up to date. Call Linda at 503.646.9438 to reserve.

ADVERTISE

WCBA Newsletter Contact: Julie Viner
Phone : 503.648.0300/Fax : 503.693.9304
P.O Box 912, Hillsboro, OR 97123



WHAT'S NEW AT THE WASHINGTON COUNTY LAW LIBRARY

By Laura Orr, Law Librarian

NEW BOOKS

- *Annotated Model Rules of Professional Conduct*, 6th ed., ABA, 2007.
- *Business Valuation: A Primer for the Legal Professional*, by Jeffrey M. Risius, ABA, 2007
- *Condo Owner's Answer Book*, by Beth Grimm, Sphinx Publishing, 2008.
- *The Family Limited Partnership Deskbook: Forming and Funding FLPs and Other Closely Held Business Entities*, 2nd ed., by David T. Lewis and Andrea C. Chomakos, ABA 2007.
- *The Lease Manual: A Practical Guide to Negotiating Office, Retail, and Industrial Leases*, by Rodney J. Dillman, ABA, 2007.
- *Legal Malpractice*, by Ronald Mallen & Jeffrey Smith, Thomson West, 2006 (donation).
- *The Little Green Book of Golf Law: The Real Rules of the Game of Golf*, by John H. Minan, ABA, 2007.
- *Oregon Legal Research*, 2nd ed., by Suzanne Rowe, Carolina Academic Press, 2007.
- *A Practical Guide to Oregon Criminal Procedure and Practice*, by Paul DeMuniz, Templeton Press, 2008.
- *Solo by Choice: How to Be the Lawyer You Always Wanted to Be*, by Carolyn Elefant, Decision Books, 2008
- *Street Legal: A Guide To Pre-Trial Criminal Procedure For Police, Prosecutors, And Defenders*, ABA, 2007
- *Writing for the Legal Audience*, by Wayne Schiess, Carolina Academic Press, 2003.
- *The Yale Book of Quotations*, Fred R. Shapiro, editor, Yale University Press, 2006

NEW CLEs

We expect a new shipment of OSB and OLI CLE course books and CDs in early April, so stay tuned.

The Law Library purchases OSB and OLI CLE course books that you may borrow and use for credit toward your MCLE requirements. You may check out up to three course books at a time. CLEs may be checked out only by OSB-member attorneys.

TECHNOLOGY NEWS

Blogging For Lawyers

The Portland metro area is second only to Austin (Texas) when you count bloggers, but lawyer bloggers (aka blawgers) in Oregon are thin on the ground.

I've been writing the *Oregon Legal Research* blog (<http://oregonlegalresearch.blogspot.com/>) since October 2005 and am asked, not infrequently, "would you talk with me/us about blogging?" I'd be glad to, but you might also want to read some of the blogs written by your fellow Oregon lawyers, linked on my blog.

Oregon Business Codes Update

On April 1, 2008, the State will adopt three new versions of the residential, electrical and plumbing specialty codes:

1. The 2008 Oregon Residential Specialty Code (ORSC) based on the 2006 International Residential Code;
2. The 2008 Oregon Electrical Specialty Code based on the 2008 National Electrical Code; and
3. The 2008 Oregon Plumbing Specialty Code based on the 2006 Uniform Plumbing Code.

Find more information and direct links to official notices, view the March 5, 2008, posting on *Building Codes* at the Oregon Legal Research blog (<http://oregonlegalresearch.blogspot.com/>).

Future of Your Law Library

This year the Law Library staff and the Washington County Bar Association Law Library Board will be talking about the future of the Law Library.

Lawyers still use the Law Library, but their reasons are different from those of the past. Lawyers can find cases and statutes online, but they don't have at their fingertips materials not available without a legal research database subscription or those research materials that aren't online at all.

The Law Library has less walk-in business than in the past, but more email and telephone reference requests and more use of its web page, blog, and online databases. Law Library users include both attorney and non-attorney library patrons.

If you'd like to weigh in on this *Future of the Law Library* discussion, let members of the Washington County Bar Association Law Library Committee know or contact me directly.

The Law Library and the Public Library

Did you know that the public library is often the first place many people visit to find legal information? Public librarians, however, do not have the resources or the training to respond correctly to many legal questions they are asked; county law library staff do.

Washington County Law Library staff members work with the 16 Washington County Cooperative Library Services (WCCLS) member libraries to expand and improve their legal research and reference services. The Law Librarian provides them with legal research support, serves on the public library reference list serve, posts frequently-asked legal questions (and answers) to the Oregon Legal Research blog, and offers training on how to answer (and how not to answer!) legal research questions asked by non-attorneys.

HIGH SCHOOL STUDENTS GO TO COURT

The case is fiction, but the enthusiasm is real. Students from seven area high schools tried this year's mock trial case on Saturday, March 1, in courtrooms at the Washington County Courthouse. The schools are competing to represent Washington County at 22nd annual Oregon High School Mock Trial Competition. Participants include approximately 150 students representing ten teams from seven schools.

Students assumed the roles of attorneys and witnesses. Students know only minutes before the trial begins whether they will be arguing for the prosecution or the

defense. Each team argued the case three times throughout the course of the day. The two winning teams this year are Catlin Gable and Jesuit. They will go on to the State Competition held March 14th and 15th in Portland. The State winning team will travel to Delaware in May to represent Oregon at the National Mock Trial Championship.

The Washington County Bar Association helped sponsor the competition, and several WCBA members participated as volunteer Judges. Special thanks to Ken McNeil, Shelley Fuller, Doug Gordon, Jack Lundeen, and Charles Edelson for their kind participation.

METRO PUBLIC DEFENDER ANNOUNCES NEW WASHINGTON COUNTY DIRECTOR AND BOARD MEMBER

Metropolitan Public Defender Services, Inc. (MPD) has announced Gregory B. Scholl as the new Director for the Washington County office. Greg has over 13 years' experience with MPD and has been a Chief Attorney there since 1998. His entire career has been with the Washington County office of MPD. "Poor people charged with crimes need more help than ever before," says Scholl. "I am both happy and proud to continue to work on their behalf with MPD staff in both counties and beyond." Scholl received his Doctor of Jurisprudence from Lewis and Clark Law School in May 1995. His background experience includes representing clients' interests beginning as a certified law student at MPD right out of law school. Greg's interests include free jazz, camping, biking and music. He is a trombone player and performs in the Columbia and Vancouver Symphonies, as well as other local groups.

Scholl replaces Keith Rogers who left in January when he was appointed judge in Washington County Circuit Court.

The MPD Board of Trustees appointed its newest member, Antonio J. Gonzalez in January. He is currently an attorney working at St. Andrew Legal Clinic (SALC) in Hillsboro. Gonzalez graduated from Lewis & Clark School of Law in 2006 and was admitted into practice in the state of Oregon the same year.

Antonio Gonzalez is a fairly new attorney, but he has an especially strong connection to the Latino community, along with an interesting background. Antonio states that his work at the Oregon Law Center in the Farm Work Program gave him more contact with aspects of the Latino community and indigenous languages and people. "I see how isolated they are from the rest of the community. People make assumptions about what their needs are and I see some of the difficulties of that when dealing with the court system." He said one of the reasons why he works at St. Andrew, and not a federally funded legal aid clinic, is because the government does not allow programs and

services to people without legal citizenship documents.

The MPD Board is the policy-setting group responsible for the oversight of both county offices. The Board recently decided to expand its membership from five members to seven. The members are appointed as follows: one position by the Chief Justice, one position by the President of the Oregon State Bar, two positions by the two chairs of the Multnomah County and Washington County Commissions, and one selected by the other four. The Board's aim was to expand by two more attorneys whose practices would bring a different perspective to the Board.

Antonio Gonzalez has a strong association with the Hispanic community in Washington County and provides family legal services and abuse prevention for low-income people.

THE HOHBACH LAW FIRM LLC is proud to announce the addition of Mandi Philpott (formerly Mandi Logelin) as an associate attorney. Practice areas include victims rights, family law and now all levels of criminal law

Referrals welcome:

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503.697.7755

ST. ANDREW LEGAL CLINIC'S 8th Annual

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Saturday, June 21, 2008

9 a.m. start at The Madeline Parish
5k Run/Walk, Kids' Fun Run & Post-Event Party

www.salcgroup.org/events/home/cfm

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At 4975 SW Watson Street, Beaverton, Oregon. 2,211 Sq. Ft. with 7 parking spaces, 7 offices, reception area, conference room, file storage, work room and kitchen area. Asking \$3150 per/mo NNN. Contact Mele, Taylor & Westerdahl Real Estate at 503.223.2588 or online at www.mtwre.com.

□ HILLSBORO, NEW OFFICE BUILDING

Newly constructed building with space for lease in City Center near Courthouse with off street parking. 3 Levels, up to 5,977sf each. Lease rate is \$18/Sq. Ft. Full Service. Will improve to suit; improvements negotiable. Contact David Green at 503.201.5837.

□ LARGE OFFICE ON 2ND STREET

Available immediately. \$450.00/mo includes office, telephone (except for long distance charges), staff area, use of conference room, kitchen, shower, on-site file storage, DSL, internet connection, copier, scanner, and fax. Contact Ray Bassel at 503.693.8725 or ray@bassellaw.com.

□ BEAVERTON

For rent: spacious 12'x16' office with large windows, plus secretarial space. Building has 8 total offices occupied by a congenial group of solo practitioners of various legal backgrounds. Shared copy machine, fax machine, DSL, law library and conference room. Free parking. Easy access to Hwy 26 and 217. Call Charlie Ringo at 503.643.7500. \$700/mo.

Lilian Bier is pleased to announce the opening of her new practice, Bier Family Law, located in Peterkort Centre. The firm specializes in domestic relations law, including adoption, divorce, custody, support issues, restraining orders and pre-marital agreements. Ms. Bier welcomes new clients in her offices at:

Bier Family Law
9755 SW Barnes Road,
Portland, OR 97225.

She may be contacted by phone at 503.595.4141, by email at lbier@bierfamilylaw.com and by FAX at 503.228.5950.

Ms. Bier thanks Beth Mason for all the years she was privileged to work with Ms. Mason at Mason & Associates.

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Office hours are 9 a.m.-5 p.m.
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WASHINGTON COUNTY BAR ASSOCIATION, JANUARY – DECEMBER 2008 MEMBERSHIP APPLICATION/DUES FORM

The WCBA is a local association of lawyers serving Washington County practitioners. It provides a forum for the exchange of ideas and for local bar members to voice their views on matters of importance to their everyday practice. Consider the benefits of low-cost membership:

- \$ You will receive the WCBA Newsletter, which keeps you informed (and sometimes entertained) on updated information from Washington County Judges, various bar committees, monthly CLE Programs, social dinners and activities, the law library, etc. The Newsletter is also an excellent and inexpensive place for advertising and classifieds.
- \$ Discount on monthly CLE programs and materials.
- \$ Discount on monthly dinner meetings with speakers or opportunities to express your views and become informed directly from local practitioners.
- \$ Events and committees for relaxation, networking and socializing with your colleagues.
- \$ Leadership opportunities and community service.

Membership Dues: \$60 per year (January to December 2008)
(Note: new members have this fee waived for the first year!)

Payable to:
Washington County Bar Association
P.O. Box 912
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Name: _____ OSB # _____

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One application per attorney, please.

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