

# Esler, Stephens & Buckley

ATTORNEYS at LAW

888 SW Fifth Avenue, Suite 700  
Portland, Oregon 97204-2021  
phone (503) 223-1510  
fax (503) 294-3995

## ABOUT OUR FIRM

**Esler, Stephens & Buckley** has a diverse, multi-jurisdiction practice in the areas of:

- Complex business litigation
- Securities litigation
- Intellectual property: patent (litigation), copyright, trademark, and trade secrets
- Antitrust
- Business and nonprofit corporations
- Real estate litigation
- Public utilities
- Condemnation
- Oppression of minority shareholders
- Accounting malpractice
- ERISA litigation

The Firm's practice is sophisticated and varied, and based almost entirely on referrals from other clients and attorneys.

[Read more about our Firm](#)  
[News and achievements](#)

## OUR LAWYERS

The Firm's partners have practiced together for more than 30 years, and have the highest rating attainable from Martindale-Hubbell (A-V). All three are Oregon "Super Lawyers".

**Michael J. Esler** has written and spoken for the Oregon State Bar Continuing Legal Education program, Oregon Trial Lawyers Association, Multnomah County Bar Association, and the Northwest Securities Institute.

**John W. Stephens** is the author of numerous chapters in the Oregon State Bar books on Civil Litigation and Contract Law.

**Kim T. Buckley** has edited the 2003 Revision of Contract Law in Oregon and the 2008 Supplement, and he has written for the Oregon State Bar Civil Litigation Manual ("Motions to Limit or Compel Discovery").

The Firm's Senior Legal Assistant, **Gary Hardiman**, is a former instructor at UCLA's paralegal program and the author of "Buildings As Trademarks" for the AIA's national newsletter.

## ACHIEVEMENTS

## CONTACT US

[Michael Esler](#)[John Stephens](#)[Kim Buckley](#)Legal Assistants: [Gary Hardiman](#)

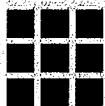
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### Michael J. Esler

Michael J. Esler was born in Chicago in 1945. He attended St. Mary of the Lake Seminary and University of Illinois (BA 1967) before obtaining his JD from the University of Chicago in 1971. He was admitted to practice before the Oregon Bar in 1971, the US Court of Appeals for the Ninth Circuit in 1972, and, in 1980, the US Supreme Court. Mike has written and spoken for the Oregon State Bar Continuing Legal Education program, the National Business Institute, Northwest Securities Administrators, Multnomah County Bar Association, Practicing Law Institute, the Oregon Trial Lawyers Association, Lewis & Clark Law School, and has served on the Oregon State Bar Disciplinary Board. He has been named to "Super Lawyers" and "Best Lawyers in America" in "Bet the Company Litigation" and Commercial Litigation. Besides his love for practicing law, he is an avid fly fisherman, skier and rafter.



Contact Mike Esler at (503) 935-5391 or e-mail [esler@eslerstephens.com](mailto:esler@eslerstephens.com)

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[John Stephens](#)

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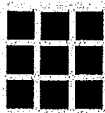
Angee Antoine and  
Christine Ortez are the  
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### John W. Stephens

John W. Stephens is a Portland native born in 1952. He attended Stanford University (AB, with Honors, 1974) before obtaining his JD from UCLA. He was a member of the UCLA Law Review from 1975 to 1977 and clerked (extern) with Judge Alfred T. Goodwin of the US Court of Appeals for the Ninth Circuit. He is the author of numerous chapters in the OSB CLE books on Civil Litigation and Contract Law. John is currently working on an article on nonobviousness in patent law. John was Chair of the Public Utility Law Section (now Energy and Telecommunications Utilities Section). For eight years, John served on the Governing Board of the Oregon State Department of Geology and Mineral Industries, and was its Chair for two years. He has been a guest lecturer (1994-2002) for a 400-level course, "Economics of Public Utility Regulation," at Portland State, and was a featured speaker, along with Greg Mowe, at The Seminar Group's 2006 Condemnation Law CLE. John also recently served as President of the U.S. District Court of Oregon Historical Society. John is admitted to practice before the courts of Oregon, the Northern District of California, the US Court of Appeals for the Ninth Circuit, and the US Court of Appeals for the Federal Circuit. He is also a member of the US District Court of Oregon Local Rules Committee. Outside of work, John helps coach Grant High School's highly successful "We the People" Constitution Team. He also enjoys skiing and metalwork.

Contact John Stephens at (503) 935-5393 or e-mail [stephens@eslerstephens.com](mailto:stephens@eslerstephens.com)



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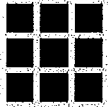
Angee Antoine and  
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### Kim T. Buckley

Kim T. Buckley was born in Seattle in 1948. He attended the University of Washington, obtaining a BA in 1970 and a BS in 1974, before obtaining his JD in 1978. He was a member of the Board of Editors of the Washington Law Review and the author of "State Sovereignty as an Implied Limitation on the Commerce Clause" 52 Wash. L.Rev. 747 (1977). He, too, has written for the Oregon State Bar Civil Litigation Manual ("Motions to Limit or Compel Discovery") and the Oregon State Bar book "Contract Law in Oregon" ("Remedies for Breach"). He is the editor for the 1999 Supplement, the 2003 Revision, and the 2008 Supplement. In 1978, he was admitted to practice before the Oregon courts, the US District Court for the District of Oregon, and the US Court of Appeals for the Ninth Circuit; in 1979, he was admitted to practice before the US Claims Court; in 1982, he was admitted to practice before the courts of Washington; in 1983, he was admitted to practice before the US District Court for the Western District of Washington; in 1986, he was admitted to practice for the US Court of Appeals for the Seventh Circuit; and in 1988, he was admitted to practice before the US Supreme Court. He is one of Oregon's "Super Lawyers" in Securities Litigation.



Contact Kim Buckley at (503) 935-5392 or e-mail [buckley@eslerstephens.com](mailto:buckley@eslerstephens.com)

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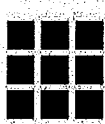
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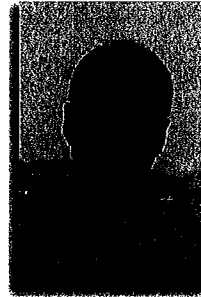
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### Gary N. Hardiman

Gary N. Hardiman has been the Firm's Senior Legal Assistant since 1986. Gary graduated with honors from UCLA's graduate-level paralegal program in 1977, and went on to become an instructor there. He has been a supervising paralegal for a large law firm in Los Angeles as well as the manager of a large, international nonprofit corporation's legal department. He is an NASD and NYSE (collectively now "FINRA") Arbitrator. He is the author of "Buildings As Trademarks" for the American Institute of Architects' national newsletter, and administers the Firm's client trademark portfolio. In his spare time, Gary enjoys hanging out with his family, basketball and guitar (check out his YouTube channel, "garysescapes").

Contact Gary Hardiman at (503) 935-5390 or e-mail [hardiman@eslerstephens.com](mailto:hardiman@eslerstephens.com)



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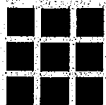
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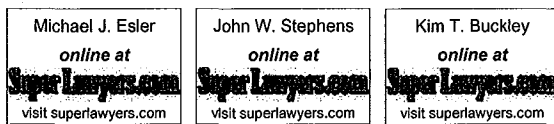
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Michael Esler  
John Stephens  
Kim Buckley

## Super Lawyers

Esler, Stephens & Buckley lawyers have the highest rating attainable from Martindale-Hubbell (A-V). All three of our Firm's partners – Michael Esler, John Stephens, and Kim Buckley – have been named by Super Lawyers magazine as top attorneys in Oregon. Only five percent of the lawyers in the state are named by Super Lawyers. Mike Esler has been selected for inclusion in the 2011 edition of "The Best Lawyers in America" in "Bet the Company Litigation" and Commercial Litigation.



## In the news:

[ESB settles Pac Equities suit](#) (PDF file)  
[\(Read online at OregonLive.com\)](#)

[AI Architect: Buildings As Trademarks](#) (PDF file)

[Update on M-DAC Farms Wetland Restoration: Rare Wildlife Species Flock to Restored Habitat](#), Cascade Pacific Annual Report for Fiscal Year 2008 (PDF file)

## Significant reported cases:

**Ainslie v. Spolyar**, 144 OrApp 134, 983 P.2d 533 (1996) (securities case decided in favor of clients).

**Ainslie v. First Interstate Bank of Oregon**, 148 Or App 162, 939 P.2d 125 (1997) (securities case in which plaintiffs received a jury verdict, including ORICO treble damages and punitive damages, of more than \$10.8 million, all affirmed on appeal except for ORICO damages).

**Anderson v. Carden**, 146 Or App 675, 934 P.2d 562 (1997)(successful securities fraud prosecution).

**Burns Bros., Inc. v. Pewag, Inc.**, 53 Fed Appx 77 (Fed. Cir. 2002) (affirming judgment of noninfringement).

**Citizen's Utility Board v. Public Utility Commission of Oregon**, 154 Or App 702, 962 P.2d 744 (1998) (obtained reversal of a PUC decision that would have allowed PGE to charge ratepayers for lost profits on the Trojan nuclear plant; estimated to save PGE customers \$21 million per year).

**City of Bend v. Juniper** (on appeal now) Following three months of trial in late 2005, the condemnee was awarded about 25% of what it sought from our client, the City of Bend. The Judge commented that the case presented the best lawyering he had ever seen.

**Employers' Fire Ins. v. Love It Ice Cream**, 64 Or App 784, 670 P.2d 160 (1983) (insurance carrier liability based on bad faith refusal to settle).

**FTC v. Francis Ford, Inc.**, 673 F.2d 1008, cert denied, 459 US 999 (1982) (abusive use of adjudicatory hearing to create an industry rule).

**Freeman v. Duffy**, 328 Or564, 983 P.2d 533 (1999) (personal jurisdiction issue decided in favor of client).

**Hallco Mfg. Co. v. Foster**, 256 F.3d 129 (Fed. Cir. 2001) (patent; one of several before the Federal Circuit on behalf of Hallco).

**Harris v. Dyer**, 292 Or 233, 637 P.2d 918 (1981)(client's right to attorney fees incurred in arbitration successfully defended).

**Harris v. Warren Family Properties, LLC**, 207 Or App 732, 143 P.3d 548 (2006)(won reversal of judgment for landlord in lease interpretation case).

**Hayden v. Shin-Etsu Handotai America**, 80 F. Supp.2d 1119 (D. Or 1999) (successful personal jurisdiction and patent infringement prosecution).

**Hayes v. Olmsted**, 173 Or App 259, 21 P.3d 178 (2001) (minority shareholder squeeze-out/freeze-out case in which client shareholder recovered about three times the highest offer of the company).

**Mainland Industries, Inc. v. Timberland Machine and Engineering Corp.**, 58 Or App 585, 649 P.2d 613 (1982) (fiduciary duties of a corporate officer and ownership of patent, trade secrets, and unfair competition) **Freeman v. Duffy**, 328 Or 564, 983 P.2d 533 (1999) (successful breach of contract claim) **Ainslie v. Spolyar**, 144 Or. App. 134, 926 P.2d 822 (1996).

**Mackey v. TKCC, Inc.**, 134 Or App 121, 894 P.2d 1200 (1995)(client's right to proceed against contractor and landlord successfully defended).

**Northwest Climate Conditioning Assn. v. Lobdell**, 77 Or. App. 325, 713 P.2d 612, on reconsideration, 79 Or. App. 560, 720 P.2d 1281 (1986) (public utility and trade regulation).

**Oil Heat Institute of Oregon v. Northwest Natural Gas**, 123 FRD 640 (D. Or 1988) (successful false advertising prosecution).

**Pac Equities, Inc.** (US v. Rich). Represented numerous investors and the Receiver in securities fraud claims against attorneys who assisted Pac Equities in the formation and sale of fraudulent securities. Case settled for policy limits (over \$6,000,000) after opening arguments of what would have been a six-week trial. Won affirmance of judgment approving settlement and claims bar. 317 Fed. Appx. 63D, 2008 WL 4946310 (CA9) (unpublished).

**In Re Portland General Electric Co.**, 86 PUR 4th 463 (Or. PUC 1987) (ratemaking proceeding in which the Commission said this of our work on behalf of Citizen's Utility Board: "The Commission wishes to compliment the parties on the quality of the advocacy before the Commission. This proceeding has been extremely controversial. However, the quality of counsel and the presentations by the witnesses have been exceptional. \*\*\*\* The Citizens' Utility Board's efforts in this proceeding require special mention. Although limited by lack of funds, CUB presented thought-provoking and incisive testimony. In addition, CUB's opening brief is remarkable in its historical scope and authoritativeness. The Commission looks forward to CUB's participation in the future proceedings.")

**QSIndustries, Inc. v. Mike's Train House, Inc.**, 230 F. Supp.2d 1240 (D.Or. 2002) (patent litigation on behalf of model train electronics company).

**Rosekrans v. Class Harbor Association**, 228 Or App 621, 209 P3d 411 (2009)(client's rights successfully defended against action by majority of members of non-profit association).

**SEC v. Capital Consultants, Inc.**, 185 Fed Appx 705, 2006 WL 1932 989 (9th Cir 2006) (won reversal of denial of clients' ability to elect tracing option to recover from receiver of failed investment company). The collapse of Capital Consultants has been described as "the biggest fraud by a pension fund manager in US history." The Firm was lauded for its overall contribution to the case by all plaintiffs.

**Topinka v. ITC Corp.** [1987-88 Transfer Binder] Blue Sky L. Rep. 72, 615 (D. Or. 1987) (securities).

**TriMet v. AT&T** (on appeal now) Won favorable interpretation of easement and related documents for TriMet over claims by telecommunications companies that TriMet should pay for relocating fiber optic lines. Case written up in 11/30/06 issue of Mass Transit Lawyer.

**Widmer Brewing Co. v. Rolph**, 128 Or App 666, 877 P.2d 112 (1994) (unfair competition/bid-rigging judgment affirmed in favor of client).

#### **Other recent or significant cases:**

**Akerman et al. v. Bean et al.** Represented investors in a Las Vegas real estate project on securities fraud and other claims. Case settled favorably in third week of trial.

**Gross v. Eckankar** (successful defense of religion against claims by its former leader to enforce a "lifetime" contract and seeking to invalidate trademarks).

**Sunwest Management, Inc.** Currently represent 300 investors in largest securities fraud of its kind on West Coast.

**Trademarks.** Obtained registration of mark for the famous San Francisco restaurant, STARS, in what we believe was the first time the USPTO recognized a distinction between fast food and gourmet restaurants in a likelihood of confusion analysis. Obtained registration of Eckankar's Ziggurat temple headquarters in what we believe was the first registration in the U.S. of a religious building design.

The Firm steps outside its business practice on occasion to take on cases that interest its lawyers or have compelling circumstances, e.g., the Firm represented an African-American cab driver beaten by security guards and falsely accused of trespass. The Firm was counsel to a Willamette Valley landowner/farmer and helped in qualifying a 580 acre parcel for the Wetlands Restoration Program sponsored by USDA and obtaining support and grants from several agencies and organizations. It was the largest private land wetlands restoration to date in the Willamette Valley.

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