



CourtCare's 15th Annual Fundraising Campaign

by Sarah Bond
MBF CourtCare Campaign Committee Co-Chair

Multnomah Bar Foundation's nationally recognized CourtCare program broadens the gates of justice by providing free, high quality, drop-in childcare for parents with court business.

Because of CourtCare, the mom seeking a restraining order does not have to take that one extra step of arranging childcare before seeking protection; the spouse of the criminal defendant can be present in the courtroom while shielding her children from the proceedings; parents facing eviction proceedings can focus on the family's crisis while their children are comfortable and safe; and divorcing parents can present their cases without the distraction of their children and without fear that their children will be exposed to adult issues.

CourtCare is a service that every court needs

Additionally, CourtCare improves the administration of justice by reducing the number of court appointments that need to be rescheduled and reducing disruptions in the courtroom by anxious children and distracted parents.

Multnomah County Chief Probate Judge Katherine Tennyson has been a vocal supporter of the program since its inception. She notes that, "with the exception of an adoption (where the children should be present) no one comes to court for something happy and nothing is served by children being present." The bottom line for Judge Tennyson is that the program: (1) allows parties to focus on their case rather than their children; (2) allows children to focus on playing rather than on adult issues; and (3) allows the court to focus on the case at hand rather than managing the children. In the words of Judge Tennyson "CourtCare is a service that every court needs."

We are one of the few jurisdictions in the country that provides this essential service.

CourtCare opened its doors in 2001 at the Multnomah County Central Courthouse and then expanded services to the East County Courthouse in 2015. Just last year, Marion County and Polk County launched a CourtCare program modeled after Multnomah CourtCare™ called Mid-Valley CourtCare. Marion County Circuit Court Judge David Leith explained that CourtCare addresses a common problem in that "[o]n a frequent basis, people with urgent business before the court - often

The program consistently receives glowing feedback from parents

related to personal safety, housing or other critical issues - arrive at the courthouse with children in tow, because they have no better option."

CourtCare serves children as young as six weeks and as old as 10 years and, since opening, has served over 16,000 families. In addition to providing high quality childcare, CourtCare makes referrals to families for basic needs, housing, food, clothing and diapers, as well as mental health services and legal aid.

The program consistently receives glowing feedback from parents. A parent in January stated that "[t]his is wonderful that there is a place right

in the courthouse that the kids can be safe and not hear what's going on, and that they get to play instead of trying to keep quiet." Another parent, in March, reported that "[w]e would have had to re-schedule court today, or just be kicked out, because our son wouldn't keep quiet upstairs. I am so grateful that the Judge sent us down here."

Parents using CourtCare report that they did not have another option for childcare while attending to court business. One parent reported that "I can't afford to pay someone to stay with my kids, and I don't have family in the area." Another said "[w]e don't have anyone to help with the kids, and no money to hire anyone."

Kids love the program, too! A parent reported that her child "couldn't wait to come back after lunch."

In total, CourtCare is a win for parents; a win for kids; and a win for the court.

Without the generous financial support of Portland's legal community, CourtCare would not be possible. **It is time to kick off the 2018 CourtCare Campaign** which runs from April 30 through May 18. This year's campaign has a goal of raising \$100,000. We need your help to meet or exceed that goal.

Please help broaden the gates of justice with your donation. We are counting on you.

Donations are made to the MBF and are tax-deductible. To learn more about CourtCare please contact me at sarah@zimmer-law.com or 503.295.6191. Also, please see the insert to make a donation by mail, or visit www.mbabar.org to make a donation online or to view a brief video about CourtCare.

On behalf of the MBF Board, thank you for your consideration and for supporting this essential, innovative, and life-changing program.

CourtCare is a win for parents, a win for kids, and a win for the court



TECHNOLOGY ASSOCIATION OF OREGON

hackathon

IMPROVING ACCESS TO JUSTICE THROUGH TECHNOLOGY

Kickoff/Networking Event

Thursday, May 17, 5-8:30 p.m.

Hackathon

Friday, May 18, 7:30 a.m. to 8 p.m.

Closing Event (open to the public)

Friday, May 18, 5-8 p.m.

RSVP to hackathon@mbabar.org

White Stag Building

70 NW Couch St, Portland

The MBA is partnering with the Technology Association of Oregon to host a hackathon focused on improving access to justice and services for self-represented litigants and the homeless.

What is a Hackathon?

A hackathon is an event at which a large number of people meet to engage in a collaborative endeavor, splitting into teams and brainstorming new solutions to existing problems.

Collaborate and Take Action

This event will take place primarily on Friday, May 18, with an introductory kickoff/networking event on the evening of Thursday, May 17. The hackathon will focus on improving accessibility and efficiency for access to homeless shelters and support services, pro bono volunteerism, and the new courthouse.

There will be four teams: (1) working with LASO to identify ways to harness technology to connect lawyers to pro bono opportunities; (2) partnering with Transition Projects, Inc. to brainstorm about how an app or website can make it easier for the homeless and people in transition to find shelter beds, meals,

and other support services; (3) working with a representative of the Multnomah County Courts to develop technology that helps self-represented litigants navigate the courthouse and legal system; and (4) partnering with a representative of the Multnomah County Courts to develop technology to assist those with limited or no financial resources in understanding where they need to be (and when) for court appearances, and assisting those individuals with transportation options and directions.

Participants Needed

If you are interested in participating on one of the teams, please send an email to hackathon@mbabar.org indicating your team of interest.

Sponsorship Opportunities Available

Thank you to event sponsors **Barran Liebman, University of Oregon and Miller Nash Graham & Dunn LLP**. Additional sponsor opportunities are available - please contact the MBA for details.

For more information, contact the MBA at 503.222.3275 or hackathon@mbabar.org.

mba|CLE

To register for a CLE, please see p. 4 or visit www.mbabar.org and log in as a member to register at the member rate.

MAY

5.9 Wednesday The Current State of Transgender Rights and Religious Accommodations under Title VII

Talia Stoessel
Herb Grey
Nora Broker, moderator

5.15 Tuesday Litigating RICO Claims in Oregon

Cliff Davidson
Harry Wilson

5.22 Tuesday Claims, Pains & Automobiles: Arbitrating and Litigating UM/UIM Cases

Ben Cox
Barry Goehler

5.30 Wednesday That Wasn't the Plan! Understanding How Estate Plans Turn into Litigation

C. Marie Eckert
Bonnie Richardson

5.31 Thursday Family Law Update

Judge Maureen McKnight
Sarah Bond
Lisa Kenn

JUNE

6.12 Tuesday Environmental Cleanup: Could an "Ability to Pay" Settlement and Insurance Trust Get Your Client Out Early?

Larry Burke
Mike Farnell
Emily Miller, moderator

6.20 Wednesday Application of New Tax Laws

Mandy Chan
Bill Manne
Jason Orme

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DEADLINE for copy: The 10th of the month*

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*or the preceding Friday, if on a weekend.

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Kidney Donation: Take a Break, Get in Shape, Save a Life

by Marshal Spector
MBA Board of Directors



In May 2007, as a healthy father of three children, I walked into Good Samaritan Hospital. Several hours later, I had successfully donated one of my kidneys to a dear friend who otherwise faced certain death. As a result of the donation, my friend was able to continue his life as the father of three children, a loving husband, and a generous and active member of the community.

Many of us donate our time, skills, and resources to worthy causes. We find ways to support worthwhile institutions, families, and individuals. We strive to serve our clients and the public interest in an effective, skillful, and dignified manner to help solve problems, achieve results, advance professionalism, and promote mutual respect.

I am proud to be part of the Portland legal community, to serve on the MBA Board of Directors, and to practice family law at Gevurtz Menashe. I write this to encourage others to consider this generous and human act.

In donating or receiving a kidney, the human body cares not about gender, sexual orientation, race, religion, economic status, nationality, or political leanings. There is no bias. Being “a match,” donating, and receiving is about the biological merging of one human to another. The club is a human club.

My kids were 16, 14, and 12 years old at the time. I involved them early in the donation process. It was essential for them to understand the significance of this gift, the risks involved, and for them to have a voice. I am proud that my children supported my desire to donate a kidney.

They each made memorable contributions in their own way - my younger son asked the transplant coordinator if, while removing my kidney, the surgeon could also remove my mobile device from me (it was a Blackberry at the time). My daughter mused about writing a book for children with a parent who either donates or receives a kidney. My older son looked at me one day while I was driving him to school and said, “Dad, if you ever need a kidney, I’ve got your back.”

I went through extensive medical testing to determine if I was a match and to ensure I was healthy enough to undergo this serious surgery. I got in shape, lost weight, and made certain that my cases were covered in my

absence (as an aside, if you ever want to guarantee getting a set-over on a case, tell the judge that you are donating a kidney). I also connected with and regularly saw a naturopath, an acupuncturist, and a mental health professional. I engaged in deeper learning from a scientific and spiritual perspective. I completed an estate plan with great intention and thought.

The surgery was successful. My “former” kidney transitioned perfectly and immediately into my friend’s body. I was told that the surgery and recovery were more complicated for the donor than the donee. I was fortunate - I was home from the hospital in a few days and was off pain killers two days later. I was walking, eating, and sleeping comfortably almost immediately. I was re-engaged at work in less than two weeks and slowly resumed other normal activities.

As attorneys, we are well aware of the potential intended and unintended consequences of our words and actions. That was true, too, with my story. Shortly after our surgery, the Lake Oswego Community Newspaper had a front page story about a woman who needed a kidney. It was apparent that she would not move up the waiting list fast enough. A neighbor and fellow churchgoer showed her the piece in the Oregonian about a guy in Portland who donated a kidney to a friend and fellow synagogue member. They spoke with their church leaders and a plea was made to the congregation. A fellow congregant stepped up and that woman’s life was saved.

Continued on page 5

Calendar

MAY

3 Thursday
Objection! Poetry Slam

9 Wednesday
YLS Judges’ Reception
Details on p. 13

10 Thursday
This is Innocence - Oregon Innocence Project Event
www.oregoninnocence.org

The Coaching Mindset
www.mbabar.org
Details on p. 4

11 Friday
Hands-On Voir Dire Workshop
www.mbabar.org

16 Wednesday
City Club “Next Century” 100th Anniversary Celebration
www.pdxcityclub.org

17 Thursday
MBA Hackathon Kick-Off Event
Details on p. 1

18 Friday
MBA Hackathon Event
Details on p. 1

MBA CourtCare Campaign ends

23 Wednesday
Solo & Small Firm Committee Workshop
Details on p. 13

24 Thursday
OR Supreme Court Reception Honoring Justice Betty Roberts

Federal Bar Association Annual Dinner
www.oregonfederalbarassociation.wordpress.com

JUNE

7 Thursday
TopGolf Social
See insert

14 Thursday
Solo & Small Firm Social
Details on p. 6

27 Wednesday
YLS Summer Social at Thorns FC Match

JULY

12 Thursday
Oregon Women Lawyers Foundation Summer Event
www.oregonwomenlawyers.org

19 Thursday
MBA Family-Friendly Golf Event
See insert

26 Thursday
OMLA Summer Social and Auction
www.oregonminoritylawyers.org

AUGUST

2 Thursday
OWLS Dress for Success Fundraiser and Fashion Show
www.oregonwomenlawyers.org

9 Thursday
Battle of the Lawyer Bands

16 Thursday
YLS Pro Bono Pour

30 Thursday
OAPABA Annual Dinner
www.oapaba.org

The 18th Annual Race for Justice



Presented by
Davis Wright Tremaine LLP

June 16, 2018 Register to Run: www.bit.ly/Race-2018

Madeleine Parish and School | 3123 NE 24th Ave., Portland, OR 97212

9:00 AM – Packet Pickup Begins 10:00 AM – 5k Run / Walk Begins

9:30 AM – Kids Fun Run Begins 11:00 AM – Food & Celebration Begins!

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The MBA will apply for 2 hours of general OSB MCLE credits unless otherwise noted; Washington credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

The Current State of Transgender Rights and Religious Accommodations Under Title VII

Wednesday, May 9 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

The employment rights of transgender individuals and long-standing religious accommodations under Title VII are timely and important issues in light of current US Government policy and enforcement and recent developments in case law. This program will address President Trump's May 2017 Executive Order and Attorney General Jeff Sessions' October 2017 memorandum relating to transgender rights and continuing existing religious accommodations under Title VII and other federal laws. Join us to hear from a moderated panel of experienced practitioners in transgender and religious rights about how to address the past and current state of federal and state laws, and case law relating to protection of these rights. Join **Talia Stoessel**, labor and employment attorney at Bennett, Hartman, Morris, and Kaplan LLP and **Herb Grey**, solo practitioner in Beaverton with a general civil practice that includes extensive experience in litigation of constitutional and civil rights claims with an emphasis on religious liberty and conscience matters. **Nora Broker** will moderate and is a labor and employment attorney at Bennett, Hartman, Morris & Kaplan LLP.

For more information: Contact Nicole Elgin, Barran Liebman at 503.276.2109. For registration questions, contact the MBA at 503.222.3275.

Litigating RICO Claims in Oregon

Tuesday, May 15 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Harry Wilson, a shareholder at Markowitz Herbold PC, and **Cliff Davidson**, a partner at Sussman Shank LLP, will present on RICO litigation in Oregon, with a focus on the defense side. Harry has frequently litigated racketeering claims in Oregon courts, and, in 2017, Cliff litigated civil RICO claims in both state and federal court, including one related to the growth of cannabis. Among other things, they will address differences between the state and federal RICO statutes.

For more information: Contact Kristen Hilton, Sussman Shank LLP at 503.227.1111. For registration questions, contact the MBA at 503.222.3275.

Claims, Pains & Automobiles: Arbitrating and Litigating UM/UIM Cases

Tuesday, May 22 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Join **Barry Goehler**, Goehler & Associates, and **Ben Cox**, Attorney at Law, for a discussion about Uninsured/Underinsured Motorist (UM/UIM) claims, from both plaintiff and defense perspectives. The presenters will cover basic strategy and coverage issues, how to determine proper reductions and offsets, as well as the best practices for investigating and resolving UM/UIM claims, whether the claims are litigated or arbitrated.

For more information: Contact Kyle Dukelow, Law Office of Kyle B. Dukelow at 503.288.1992. For registration questions, contact the MBA at 503.222.3275.

That Wasn't the Plan! Understanding How Estate Plans Turn Into Litigation

Wednesday, May 30 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

C. Marie Eckert of Miller Nash Graham & Dunn LLP and **Bonnie Richardson** of Richardson Wright LLP will discuss how common estate planning provisions can result in unintended consequences and how to spot and navigate difficult conflict issues that arise in representing settlors and beneficiaries. This program will provide guidance to estate planners in crafting estate plans to reflect the client's wishes while being mindful of the potential for disputes among family members. These experienced litigators will use real life examples and actual cases to help prepare you and your clients. The program will guide not only estate planners but those involved in estate and trust administration - fiduciaries, trustees, personal representatives, and litigators.

For more information: Contact the MBA at 503.222.3275.

Family Law Update

Thursday, May 31 3-5 p.m.
World Trade Center, Auditorium
 Members \$60/Non-Members \$95

On May 31, the MBA will hold its annual two-hour Family Law Update. Multnomah County **Chief Family Court Judge Maureen McKnight** will be joined by **Sarah Bond** of Zimmer, Bond, Fay & Overlund and **Lisa Kenn** of Kramer & Associates.

Our speakers will provide family law practitioners with information on changes, updates, and reminders regarding Multnomah County Family Court procedures and practices, as well as valuable updates on appellate case law, including the most recent spousal support cases.

For more information: Contact Terry Wright, Willamette College of Law Director of Externships at 503.375.5431. For registration questions, contact the MBA at 503.222.3275.

Environmental Cleanup: Could an "Ability to Pay" Settlement and Insurance Trust Get Your Client Out Early?

Tuesday, June 12 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Please join **Larry Burke** of Davis Wright Tremaine LLP and **Michael Farnell** of Parsons Farnell & Grein LLP as they evaluate how to determine whether "ability to pay" settlements and insurance trusts may be a potential means to obtain early protection from regulatory bodies and other PRPs in environmental matters. This CLE is designed to benefit any attorney who represents clients in environmental matters. This two-hour deep dive will be moderated by **Emily Miller** of Parsons Farnell & Grein LLP.

For more information: Contact Emily Miller, Parsons Farnell & Grein LLP at 503.222.1812. For registration questions, contact the MBA at 503.222.3275.

Application of New Tax Laws

Wednesday, June 20 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

Please join Miller Nash Graham & Dunn LLP tax partner **Bill Manne**, and **Talbot Korvola** & Warwick Certified Public Accountants and tax practitioners **Jason Orme** and **Mandy Chan** as they review the impact of federal tax changes implemented by the 2017 Tax Act on for-profit business entities, nonprofit organizations and individuals.

For more information: Contact Cody Elliott, Miller Nash Graham & Dunn LLP at 503.205.2465. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

mba|EVENT

The Coaching Mindset: Improve Work Performance with the Power of Questions

Thursday, May 10
3-5 p.m.
Naegeli Deposition and Trial
111 SW 5th Ave. Ste. 2020, Portland

*“There are managers who coach and managers who don’t. Leaders in the latter category are not necessarily bad managers, but they are neglecting an effective tool to develop talent.”**

By adopting a coaching mindset, lawyers can use the power of questions to help employees, colleagues, and even themselves improve performance, productivity, and find more satisfaction in their work.

In this interactive workshop, learn and practice coaching techniques for lawyers to improve:

- Productivity
- Communication
- Retention
- Profitability

This workshop will be facilitated by three lawyer-coaches: Career Coach **Susanne Aronowitz**, Business Management Coach **Heather Decker**, and Writing Coach **Lora Keenan**.

**Joseph R. Weintraub and James M. Hunt, “4 Reasons Managers Should Spend More Time on Coaching” (Harvard Business Review, May 29, 2015).*

Cost: \$15
 The MBA will apply for 1.5 hours of MCLE credit.

Register at www.mbar.org.

Your Support for VLP Golf Events Supports Access to Justice

When you sponsor an event, put together a team, or contribute a raffle item, you’re supporting the Volunteer Lawyers Project (VLP) at the Portland Regional Office of Legal Aid Services of Oregon. Your participation will help the MBA meet its goal of raising \$15,000 for the VLP. See Andrew Evenson’s article on page 11 and the insert in this issue for more information.

Topgolf Social
Thursday, June 7, 5-8 p.m.
Topgolf, Hillsboro

Enjoy friendly, competitive golf games, network and socialize. Bring your clients, colleagues, family and friends. You’ll play in climate-controlled bays in teams of up to six. Registration includes two games, hosted appetizers and a cash bar. Sponsorship opportunities are available and include complimentary tickets. Adults only.

A New Family-Friendly Event
Thursday, July 19
Tee Times Begin at 2 p.m.
Sah-Hah-Lee, Clackamas

Join us for a fun afternoon that offers both nine holes of par-3 golf and miniature golf. All are welcome. Registration includes golf and a barbecue buffet. Sponsorship opportunities are available and include complimentary tickets. Appropriate for children 5 and up. No strollers or babes in arms.

MBA 21st Annual Golf Championship
Monday, October 8, 1-7 p.m.
Willamette Valley Country Club, Canby

This event offers excellent opportunities for visibility, sponsorship and time with clients or colleagues away from the office. Registration includes golf, cart, range, lunch, dinner, contests and door prizes. Some sponsor levels include complimentary entry. Contact Pamela Hubbs for more information (503.222.3275, pamela@mbabar.org) or visit www.mbar.org.



OSB Professional Liability Fund



Free Conference Room Space in Downtown Portland

The Professional Liability Fund is offering Oregon lawyers free use of a conference room located at 520 SW Yamhill Street, Suite 1025, Portland, Oregon. To reserve this space and learn more details about this free conference room space, go to the PLF website, www.osbplf.org, and click on Practice Management, then Oregon Lawyers’ Conference Room.

Special thanks to the law firms of Jaqua & Wheatley and Perkins Coie for their donations of books for the OLCR library wall.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Self-study materials from past CLE classes may be downloaded at www.mbar.org.

CLE Registration Form

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PHONE _____	_____
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 Non-Member

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 Check VISA MasterCard
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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:
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 503.222.3275 ■ Fax to: 503.243.1881

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

Seminar Selection:

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

5/9 The Current State of Transgender Rights and Religious Accommodations Under Title VII
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 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

5/15 Litigating RICO Claims in Oregon
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

5/22 Claims, Pains & Automobiles: Arbitrating and Litigating UM/UIM Cases
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

5/30 That Wasn’t the Plan! Understanding How Estate Plans Turn Into Litigation
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____

5/31 Family Law Update
 Class Registration (\$60 Members/\$95 Non)\$ _____
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6/12 Environmental Cleanup: Could an “Ability to Pay” Settlement and Insurance Trust Get Your Client Out Early?
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6/20 Application of New Tax Laws
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Kidney Donation

Continued from page 2

Acts of goodwill can uplift individuals and a community. Following the surgery, people were generous in offering help to me, my kids, and my friend's family - driving the kids, bringing meals, etc. Several charities benefitted, as people made contributions in our honor. I tell my story to groups and to high school students and hope that it makes a lasting impact on those groups and increases the likelihood that others will consider donating.

Unfortunately, lives are sometimes lost and stories do not always end happily. The mother of one of my colleagues needed a kidney, he was not a match, no other donors were identified, and she lost her life waiting for a donor. In my case, my friend lived for seven and a half years after our surgery before succumbing to cancer.

So, I now have one kidney. What did I give up? Advil and whitewater kayaking. I see a nephrologist twice a year to be sure my insides are functioning properly and there are no warning signs.

I write this to encourage people to consider joining this club. I am

available and willing to connect with anyone who is interested in exploring kidney donation. Close to 100,000 people nationwide and 663 people in Oregon are waiting for a kidney. If you are interested in learning more, please visit the Donate Life Northwest website for more information:
www.donatelifenw.org

Following the surgery, our rabbi wrote a piece in the synagogue bulletin, which often comes to mind as I move through the blessings and challenges of my life. His message was that while my donation added days to my friend's life, it would add life to my days. It has.

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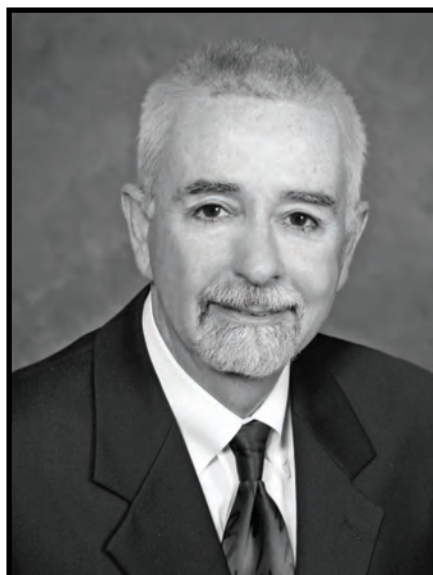
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Ethics Focus

Home Remedies: Making a Bad Situation Worse

by Mark J. Fucile
Fucile & Reising LLP



We've all got favorite family "home remedies" for various maladies. Some lawyers occasionally try practice variants of "home remedies" in an effort to extricate themselves from difficult situations. Often, however, these "home remedies" make a bad situation even worse. In this column, we'll look at three. Each is based on the same fact scenario:

Lawyer and Client have seen happier days. Client owes Lawyer a substantial receivable on a continuing case. When Lawyer reminds Client about the increasing amount owed, Client threatens Lawyer with a malpractice claim, a bar

...some lawyers occasionally try practice variants of "home remedies" in an effort to extricate themselves from difficult situations.

complaint or both. Lawyer would like out and is willing to compromise on the receivable. In return, though, Lawyer wants Client to agree to: (a) limit Lawyer's liability for malpractice for the remainder of the case; (b) waive any potential claims that may have already accrued; and (c) forego a bar complaint. Client is not separately represented and

Lawyer doesn't suggest that Client talk to another lawyer.

Before we get to each of these "home remedies," two general considerations warrant comment.

First, although routine negotiations with a client over payment of the client's bill ordinarily do not trigger a conflict, a conflict between the interests of a lawyer and a client under RPC 1.7(a)(2) - which governs "material limitation" conflicts - moves front and center if the client has accused the lawyer of malpractice or is threatening a bar complaint. OSB Formal Opinions 2005-61 and 2009-182 address conflicts under RPC 1.7(a)(2) in the respective contexts of malpractice claims and bar complaints.

Second, the "home remedies" discussed do not just increase the risk of regulatory discipline. In analogous circumstances, Oregon courts have refused to enforce contract provisions that violate the professional rules on public policy grounds (*see, e.g., Gray v. Martin*, 63 Or App 173, 181-82, 663 P2d 1285 (1983), and *Hagen v. O'Connell, Goyak & Ball, P.C.*, 68 Or App 700, 703-04, 683 P2d 563 (1984)).

Limitations on Liability

RPC 1.8(h)(1) prohibits a lawyer from entering into "an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement[.]" Unlike conflict waivers, which simply require a lawyer to recommend that a client seek independent counsel, RPC 1.8(h)(1) mandates that the client actually be represented by independent counsel. Lawyers in *In re Bowman*, 24 DB Rptr 144 (2010), and *In re Smith*, 9 DB Rptr 79 (1995), were disciplined under, respectively, RPC 1.8(h)(1) and its similar predecessor for including limitations on liability in agreements with clients when the clients involved were not separately represented.

Settling Claims

RPC 1.8(h)(2) prohibits a lawyer from settling "a claim or potential claim for such liability [i.e., for malpractice] with an unrepresented client or former

client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith[.]" As this passage implies, an "unrepresented client" is one who does not have separate representation. OSB Formal Opinion 2005-61 discusses in detail the difficult issues involved in trying to settle a malpractice claim with a client in an ongoing matter.

Foregoing Bar Complaints

RPC 1.8(h)(4) prohibits a lawyer from making "an agreement with a client or former client limiting or purporting to limit the right of the

The PLF is a ready resource for malpractice issues...

client or former client to file or to pursue any complaint before the Oregon State Bar." RPC 1.8(h)(4) did not have a predecessor under the former DRs. It is, however, consistent with prior case law illustrated by *In re Boothe*, 303 Or 643, 653-54, 740 P2d 785 (1987), where a lawyer was disciplined for "conduct prejudicial to the administration of justice" for attempting to extract an agreement not to cooperate with the Bar in connection with the settlement of a civil suit. Bar complainants are also granted "absolute" immunity from civil liability by ORS 9.537(1).

Summing Up

Lawyer in all three of our scenarios took a bad situation and made it worse. Lawyer's "home remedies" exposed Lawyer to regulatory discipline in addition to whatever asserted negligence or professional misconduct led to Client's threats. Moreover, from a contract law perspective, the "home remedies" are likely unenforceable.

Instances where a client has threatened a malpractice claim or a bar complaint outright usually counsel withdrawal. As OSB Formal Opinions 2005-61 and 2009-182 discuss, however, there may be circumstances where - with an appropriate conflict waiver - a lawyer may stay on the matter involved. The Professional Liability Fund, in turn, has a template conflict waiver for the malpractice setting and it can be modified to address the same considerations in the bar complaint context.

With both, however, lawyers usually benefit from talking the situation through with someone other than themselves. The PLF is a ready resource for malpractice issues and, if a client has accused a lawyer of malpractice, that may trigger a contractual duty of notice for the lawyer to the PLF in any event. A client who has accused a lawyer of professional misconduct can present an even more difficult personal dynamic and should be discussed with the firm's in-house general counsel (to preserve privilege) if available or a trusted colleague (mindful of privilege considerations) if not. Wise counsel will ordinarily lessen the risk of a lawyer making a bad situation even worse through "home remedies."

mba | EVENT

Solo & Small Firm Social

Thursday, June 14
5-6:30 p.m.
Multnomah Athletic Club
1849 SW Salmon St., Portland

The MBA Solo and Small Firm Committee invites you to a free social for solo and small firm practitioners.

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See, e.g., Barrett v. Union Pacific R.R. Co., 361 Or 115 (2017); Dowell v. Oregon Mutual Ins. Co., 361 Or 62 (2017); West Hills Development Co. v. Chartis Claims, Inc., 360 Or 650 (2016); MT & M Gaming v. City of Portland, 360 Or 544 (2016); Turner v. Dept. of Transportation, 359 Or 644 (2016); Rains v. Stayton Builders Mart, 359 Or 610 (2016); Deckard v. Bunch, 358 Or 754 (2016); PIH Beaverton LLC v. Red Shield Ins. Co., 289 Or App 788 (2018); Security Natl. Ins. Co. v. Sunset Presbyterian Church, 289 Or App 193 (2017); Cooksley v. Lofland, 289 Or App 103 (2017); Ray Klein Inc. v. Wade, 287 Or App 888 (2017); Johnson v. Gheen, 287 Or App 696 (2017); Oregon Wild v. Port of Portland, 286 Or App 447 (2017); Certain Underwriters v. Mass. Bonding and Ins. Co., 287 Or App 279 (2017); Marandas Family Trust v. Pauley, 286 Or App 381 (2017); Huntsinger v. BNSF Railway Co., 286 Or App 84 (2017); Alsaedi v. Conroy, 285 Or App 953 (2017); Higgins v. State Farm Fire & Cas. Co., 284 Or App 791 (2017); McClain v. Safeco Ins. Co., 284 Or App 410 (2017); West Hills Development Co. v. Chartis Claims, Inc., 284 Or App 133 (2017); John L. V. Platt, D.C., P.C. v. Snellgrove, 282 Or App 369 (2016); Hoddenpyl v. Fiskum, 281 Or App 42 (2016); LDS Development, LLC v. City of Eugene, 280 Or App 611 (2016), rev den, 361 Or 100 (2017); Stonecrest Properties, LLC v. City of Eugene, 280 Or App 550 (2016); Clardy v. Nike, Inc., 279 Or App 811 (2016), rev den, 361 Or 238, cert den, 137 S Ct 2278 (2017); Market Transportation Ltd. v. Employment Dept., 279 Or App 515 (2016); Wells Fargo Bank, NA v. Haas, 279 Or App 393 (2016); Wingett v. Silbernagel, 279 Or App 245, rev den, 360 Or 697 (2016); Village at North Pointe Condominiums Assn. v. Bloedel Construction, 278 Or App 354, on recons, 281 Or App 322 (2016); Currier v. Washman, LLC, 276 Or App 93 (2016).

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Around the Bar



Taylor Lewis

Hart Wagner LLP

The firm welcomes **Taylor Lewis** as the newest associate in the Portland office.

Lewis' practice will focus on commercial litigation, employment litigation, general tort liability litigation, and medical and legal malpractice defense.

Lewis joins Hart Wagner after working for an employment defense firm representing insurers and employers in workers' compensation, OSHA, and employment matters. Lewis also served as a Special Prosecutor for the Multnomah County District Attorney's Office where he represented the State of Oregon in various criminal trials and hearings.



Michael O'Connor

Epiq

Michael O'Connor has been promoted to Vice President at Epiq and is now based out of the company's Washington, DC office. O'Connor continues to oversee client relationship development and strategic client communications, managing many of Epiq's most complex class action, mass tort and government regulatory engagements. In April, O'Connor will speak at the Academy of Court Appointed Masters annual conference in New Orleans, his fourth national speaking engagement on claims administration best practices.

Holland & Knight

Partner **Joshua Husbands** is the 2018 Oregon state chair-elect for the American College of Trust and Estate Counsel (ACTEC). His three-year term as chair will begin in March 2019. He has been an ACTEC Fellow since 2012 and currently serves as chair of the New Fellow Steering Committee.

Husbands is a member of Holland & Knight's Private Wealth Services Group. He often serves as outside general counsel for private companies and their owners, representing clients in an array of business, tax, business succession and estate planning matters, including business



Joshua Husbands



Dayna Underhill

reorganizations, acquisitions and divestitures.

Holland & Knight partner **Dayna E. Underhill** has been appointed as a member of the Girl Scouts of Oregon and Southwest Washington Board of Directors. Her two-year term will run through April 2020.

Underhill is an established state and federal court employment and complex commercial litigation and legal ethics attorney. She successfully acts as outside counsel to clients in a variety of industries providing ongoing business, risk management, and employment advice and counsel.



Tony Kullen

Wright, Finlay & Zak LLP

Tony Kullen joined Wright, Finlay & Zak as Managing Attorney for its Oregon office in January. Kullen focuses his practice on creditors' rights issues, real estate litigation, including lender and servicer liability defense, wrongful foreclosure defense, fair debt collection practices defense, title disputes, and general business transactions. Kullen is an active member of the OSB Debtor-Creditor Section's Public Education and Legislative Committees, and the Credit Union National Association; is a volunteer coach for the We the People Constitutional Law debate program for a local high school; and serves as Chair of the Supervisory Committee of Rivermark Community Credit Union. Kullen is also licensed to practice in Washington and New York.



Tracy Hooper



Abby Miller

Hodgkinson Street Mephram LLC

The firm is proud to announce that **Tracy A. Hooper** and **Abby K. Miller** have been named as its two newest partners.

Hooper and Miller focus their practice on defense of physicians, medical providers, clinics, and hospitals in medical malpractice lawsuits as well as representing medical professionals before their licensing boards. Miller also defends real estate professionals, architects, engineers, and



Jeffrey Street

construction professionals against negligence claims. Miller and Hooper are both graduates of Lewis & Clark Law School.

Co-managing partner **Jeffrey Street** was recently inducted as a Fellow in the American College of Trial Lawyers. Street has specialized in the defense of physicians and healthcare professionals in medical malpractice litigation in Oregon and Washington for over 30 years. He is also an Advocate Member of the American Board of Trial Advocates and was named as Best Lawyers Medical Malpractice Defense Lawyer of the Year in 2016.

Barran Liebman

We are pleased to welcome **Josh Goldberg** to the firm. Goldberg represents employers and management in employment law litigation, and provides advice on a full range of employment law matters. Josh earned his JD from Lewis & Clark Law



Josh Goldberg

School, externed with the Honorable Ann Aiken, and served as a Judicial Clerk to the Honorable Jerome LaBarre and the Honorable Andrew Lavin. Prior to law school, he served as a Policy Assistant for Governor Kate Brown, during her tenure as our Oregon Secretary of State.

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

Moving the Conversation

Chasing the Rainbow

by Hon. *Mustafa T. Kasubhai*
Lane County Circuit Court



Who I think I am - and who others think I am - defines me. Whether I like it or not. Among the many facets of who I am, being a person of color is the one that has most informed my dedication to listening to all voices, especially those who are marginalized. I am the first generation of my family born in this country. My parents emigrated from India in 1965. I was raised in a cultural and ethnic milieu I describe as American-Muslim.

In Oregon I do not fit neatly into any traditional identity group, and so it has been a challenge to settle into any community on the basis of my racial and cultural identity. This dissonance is in some ways a blessing, albeit one that comes with a price. It affords me the opportunity to open my eyes to the struggles not only facing people of color, but also the challenges people experience at the intersection of the many facets of their identities. For example, it is one thing (and an important

thing) to have a conversation about African-American oppression in our country. It is quite another thing to listen to and validate the difficulties facing a transgender Asian man vis-a-vis the white straight world.

It is at these intersections where much of the needed work of diversity, equity and inclusion is found. The really challenging part about this work is that the more we might understand diversity - both past and present - then the more diversity evolves and morphs as our conversation continues. For example, the civil rights movement has been critiqued historically for subverting the discussion of sexism within its struggle against racism. Eventually black women's voices claimed agency and the civil rights struggles evolved to confront the intersection of race and gender. The women's rights movements of the 20th century were dominated primarily by white, straight women from higher socio-economic stratifications. Through struggle, these movements, too, evolved to confront the intersection of gender, race, sexual identity and class. Like these two examples, all of diversity work involves pinning down a moving and fluid target. The task of diversity work is like chasing a rainbow: the closer we think we are getting, the more elusive (or complex) it necessarily becomes.

All of our personal commitments to understand and

celebrate diversity are absolutely required. But diversity's fluid reality has led me to the conclusion that the pursuit of equity (and not diversity alone) is the "boots on the ground" objective with which we can do something very tangible every day. While it is important to celebrate diversity in the legal profession, it is far more empowering for our legal profession to bring more voices to the table - especially voices that do not sound like our own. This is what it means to pursue equity.

Measures such as increasing the numbers of non-traditional students in law school, recruiting a diverse pool of applicants, and hiring non-traditional lawyers are necessary but insufficient for achieving equity. Four things need to happen to bring more voices to the table for the long-term.

First, the non-traditional lawyer must be able to visualize her own capacity to lead. This can be accomplished through mentoring students and new professionals. It must be the kind of mentoring that not only helps her see how successful you are, and how you became successful, but also helps her chart her own personal path to leadership. Spend the time to describe how humanly possible it is to become a judge, a partner, or the attorney general.

Second, the community at large must be able to visualize that non-traditional lawyers are capable of serving in positions of leadership and authority. A simple way this can be accomplished is through public speaking in the community. We, as current legal leaders, must make extra efforts to tap newer lawyers for public speaking engagements that might

Continued on page 14

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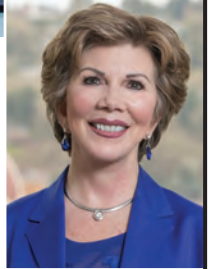


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Coni Rathbone has extensive experience in real estate, construction finance, real estate securities, and corporate general business. Prior to starting her own firm in 2010, she was a partner with Davis Wright Tremaine. George Dingeldein, a 2014 graduate of Lewis and Clark Law School, has experience in real estate, construction finance, real estate securities and corporate general business.

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Tips From the Bench

Safety and Justice Challenge Grant Seeks Reduced Jail Use



by Hon. Cheryl Albrecht
Multnomah County Circuit Court

“Unfair, ineffective and inefficient justice systems do not increase public safety or the well-being of individuals or their communities. They are inconsistent with American ideals.”

Julia Stasch, President of the MacArthur Foundation

In 2015, the MacArthur Foundation threw out a \$100 million gauntlet called the “Safety and Justice Challenge” to encourage local governments to rethink when, why and how people should be placed in jail. Multnomah County joined other jurisdictions around the country responding to the call. The county, via the Local Public Safety Coordinating Council, won a \$150,000 “planning grant” in 2015 and used it to formulate 12 data-driven strategies to reduce unnecessary incarceration while maintaining community safety. That groundwork helped to secure a larger \$2 million grant in October 2017 to implement those strategies. Success translates into not only cost savings and reduced emergency population “matrix” releases, but also reduction of the negative impact jail has on an individual’s housing, employment, relationships and overall well-being.

Over the last 18 years, Multnomah County worked to limit unnecessary incarceration by reducing the use of jail beds by 42 percent while the county’s population grew 17 percent, but there was still more work to be done to identify and resolve the drivers of jail population. One issue identified with the assistance of the planning grant was the significant over-representation of individuals with mental and behavioral health. Another was the disproportionate toll of sentencing on communities of color.

After getting an early start, some of the strategies are in progress or complete, such as reducing the amount of time from arraignment to hearing for probation violations, reducing the amount of time waiting for aid and assist evaluations, and having the Department of Community Justice (DCJ) trim sanction days imposed in administrative probation violations. The larger grant will allow expansion of those and other efforts by providing not only financial assistance but also expert technical support in the form of research-based solutions, data analysis, and performance measurement. Each initiative aims to decrease the average daily

population of jail beds devoted to that particular category. If all initiatives succeeded in full, it could result in a new average daily population totaling 956 beds. By comparison, the current maximum jail beds available is 1,192 and matrix releases begin at 95 percent of that number.

A list of the strategies and their projected jail bed savings can be found at bit.ly/2ETQU0m. In essence, the efforts include a greater reliance on risk-need-responsivity assessments by DCJ and treatment courts to pin down appropriate sanctions; new diversion programs such as the Treatment First program for drug possession charges; improved mental health intervention in jail; measures to reduce racial and ethnic overrepresentation; and reviewing best practices for sentencing, supervision and sanctions in misdemeanors and bench probations. About \$750,000 of the grant is devoted to establishing the Wade-Simpson House in East County, which later this year will provide transitional housing and trauma-informed and culturally sensitive programs for justice-involved women with mental health challenges to help reduce overrepresentation of this group.

What can practitioners do? More than you might think. Some ideas provided by both defense attorneys and deputy district attorneys include:

- Know and use evidence-based practices to recommend, negotiate and advocate for appropriate number of jail days or treatment court sanctions to avoid over-sanctioning.
- Suggest trading jail days for other conditions such as community service or electronic monitoring.
- Request in appropriate cases for the judge to impose “weekends,” which when done on weekend days don’t use up jail beds and provide greater flexibility for defendants.
- Understand how 936 credits work and how credit for time served is calculated to determine the precise sentence that will be recommended to the court.
- As an alternative to automatic warrants or increased warrant amounts, suggest a new date for appearance or bench warrant or a cite in lieu.
- Avoid case churning and unnecessary court appearances that contribute to failures to appear.

Continued on page 19



News from the Courthouse

by Shayda Le
Court Liaison Committee

Presiding Judge’s Report - Judge Stephen Bushong

The Presiding Court CLE seminar was held on March 13. A question was asked during the presentation about the composition of civil cases going to trial. The Chief Civil Judge went back to evaluate and discovered that, of the 31 civil jury trials from January 1 through March, 20 were personal injury/auto cases. The court has data regarding the number of civil jury trials during the period 2001-11 and 2017 to the present, but there is a gap in the available data during the period 2011-17 while the court system was transitioning to eCourt.

Community Conversations Follow Listening Sessions

The court held a “Community Conversation” at Portland Community College on March 14, which was a follow-up to the listening sessions that took place over the past year and a half. Judge Waller took the lead in organizing this. The March event was more of a conversation than just a listening session, as there was a panel presentation about how programs fit within the criminal justice system, and then they took questions from the audience and responded. The event focused on youth in the justice system: police and arrests, community programs, courts, juvenile detention and the Oregon Youth Authority system, and an individual who had been through the system as a youth offender and turned his life around. The court is now in the planning phase of the next steps. The focus of these continuing conversations will be on educating the community and addressing community frustrations (about issues such as Measure 11, racial inequities in the justice system, etc.).

Spring Break Week

The number of available judges was significantly reduced and there was some concern that there wouldn’t be enough judges available for the trials scheduled that week. The court had to cover by asking a judge not to take spring break and pulling a judge off a misdemeanor trial to handle a felony trial. The delay in the

misdemeanor trial was difficult for the victim. The message to the bar in relation to spring break: please do not schedule civil trials during the week of spring break if at all possible. In addition, it would be helpful to the court if lawyers could notify the court in advance if they expect to need extra jurors so the court can increase the number of summons sent out.

Ex Parte Civil Cases

Reminder: Some lawyers are appearing ex parte to ask the court to “reinstate” a civil case after the case has been dismissed for want of prosecution under UTCR 7.020(3). The court cannot simply “reinstate” a case after a judgment of dismissal has been entered. Instead, the lawyer must seek relief from judgment under ORCP 71 and submit an affidavit specifying the factual basis justifying relief from judgment. For example, if the lawyer contends that the failure to take action in response to the UTCR 7.020 notice of dismissal that the court sends before dismissing the case was the result of “excusable neglect” - one of the grounds for relief specified in ORCP 71- the lawyer must demonstrate both that there was “neglect” and that the neglect was “excusable.” Also, lawyers should act promptly to seek relief from judgment, and explain the reasons for any delay in their supporting affidavit.

Temporary Restraining Orders

A reminder that lawyers coming in ex parte to seek a Temporary Restraining Order (TRO) should attempt to notify the other side if at all possible in advance of the ex parte appearance. If there is a legitimate reason not to provide notice to the other side, it is important that it is explained in the affidavit. Also, to the extent lawyers can get their paperwork to the court in advance of the ex parte hearing, even just an hour in advance, it is helpful. Otherwise, there will be very little time for the court to review the documents. Show cause hearings, with or without a TRO, are normally held on Fridays, so the order setting the hearing should specify a “call” date on a Thursday for a Friday show cause hearing. Trials are ordinarily held Monday through Thursday,

so more judges are available on Fridays for show cause and other motion hearings. The court can accommodate requests for show cause hearings on days other than Fridays, but judicial availability is more limited. Under ORCP 79 B(2)(a), a TRO expires in 10 days, unless it is extended by stipulation or for good cause. As a result, show cause hearings should be set within 10 days if a TRO is granted, unless the parties stipulate to allow the TRO to remain in effect for a longer period. If lawyers want more than 10 days to brief the issues and prepare for a show cause hearing, they should consider working out an agreed TRO and briefing schedule with opposing counsel.

Changes in Processes

Starting April 13, the Treatment First docket which was previously handled by the Criminal Procedures Court will be handled by the STOP Court judges, Judge Kelly Skye and Judge Karin Immergut.

Courthouse Update - Barbara Marcille, Trial Court Administrator

The fifth floor of the new courthouse has been poured and the construction is progressing well.

The Regional Arts and Culture Council has made some artist selection decisions, including for the large piece of artwork at the entrance of the courthouse.

King Middle School was selected to have students in their contemporary art program build a work of art for the sidewalk along Madison leading toward the Hawthorne Bridge. The focus of their work will be juries and jury service. The students will create a mural that demonstrates the faces they think represent the community.

Conversations are in progress with the finalists who will create artwork for the metal grates that cover the sally port and windows. Part of the City of Portland’s permitting process included a pleasant pedestrian experience, making the courthouse visually pleasing from the outside while maintaining security.

Judicial Investitures

Investitures were held in March for Justice Adrienne Nelson, Judge Melvin Oden-Orr and Judge Andrew Lavin.

New MBA Board Directors and Officers

New directors for the three-year terms which begin June 1 are:



Caroline Harris Crowne

Caroline Harris Crowne is a partner at Tonkon Torp LLP. Her litigation practice focuses on disputes over business transactions and relationships. She regularly represents clients in federal and state courts, in arbitration, and in administrative proceedings. Caroline currently serves on the Court Liaison Committee. Her service with the MBA includes chairing the CLE Committee. She currently serves on the board of governors of City Club of Portland.



Seth Row

Seth Row is a partner at Miller Nash Graham & Dunn LLP. His practice areas include insurance recovery, business and environmental litigation and data security. Seth currently serves on the Equity Diversity & Inclusion Committee and previously chaired the CLE Committee. He also currently serves as co-chair of the content management committee of the ABA Section of Litigation.



Richard Spier

Richard Spier opened his full-time practice as arbitrator and mediator in 1992 after practicing at the Bullivant Houser Bailey and Sussman Shank firms. He now limits his neutral practice to mediation. Rich served as OSB president in 2015. He has served as a member of the OSB Disciplinary Trial Board, as chair of the OSB Committee on Federal Practice and Procedure, as Chair of the OSB Alternative Dispute Resolution Section, and as a member of the Oregon Board of Bar Examiners.



Jovita Wang

Jovita Wang is an attorney at Richardson Wright LLP. Her areas of practice include business litigation as well as civil rights, insurance coverage, legal malpractice and trusts and estate litigation. Jovita currently serves on the Equity Diversity & Inclusion Committee and previously served on the YLS Board of Directors. She also serves as an OSB YLD delegate to the ABA House of Delegates and serves on the ABA Standing Committee for Pro Bono and Public Service.

The Officers for the 2018-19 year are:

Rima Ghandour, Ghandour Law LLC, will serve as President. Rima said, "Service and leadership at the MBA allows me to work on the critical need for diversity and inclusion in the legal profession, access to justice, and amplifying the voices of the marginalized in our community."

Elizabeth Welch, Attorney at Law, has been elected Treasurer. Regarding her service on the MBA Board, Elizabeth said: "I believe good minds must help others. Lawyers have the brains and the hearts to do hard work on behalf of the public. I have really enjoyed my time on the MBA Board, and I have grown a true appreciation for all the MBA does to help lawyers do their best work. I am proud to be amongst such innovation and care for others, and I'm excited to continue my involvement with the MBA."

Sarah Radcliffe has been elected Secretary. She is the managing attorney for the Mental Health Rights Project at Disability Rights Oregon. Regarding her service on the MBA Board, Sarah said: "My legal career has focused on achieving justice for people who are disenfranchised in our legal and political systems. Through my service to the MBA, I have found that there are lots of opportunities for the MBA to expand access to justice, and that there is broad support for access to justice in our local legal community. I'm excited about continuing to be a part of these efforts."

Also continuing on the board are: **Andrew Schpak**, Barran Liebman LLP, who will remain on the board as Past President; **Steve Larson**, Stoll Berne PC; **Honorable Ulanda Watkins**, Clackamas County Circuit Court; **Valerie Colas**, Office of Public Defense Services; **Adina Matasar**, Matasar Law PC; **Emilee Preble**, Professional Liability Fund; and **Krista Shipsey**, Law Office of Krista Shipsey. New to the board this year is MBA Young Lawyers Section President **Shayda Le**, Barran Liebman LLP.

The MBA VLP Golf Committee

An intersection of charitable fundraising, social and business networking, and, of course, golf

by Andrew Evenson
VLP Golf Committee Chair



I have a confession: I love golf. I love that golf gets me outside on a summer day. I love a golf course's tranquility. I love that, despite (what feels like) my body's increasingly fragile physical state, golf gives my competitive impulses much-needed stimulation with limited risk of blowing out an extremity. I love that, the moment I start to feel unjustifiably confident in my skillset, golf slaps me with a heavy dose of reality. I love the challenges of golf's simplicity. I could go on ad nauseum and, frankly, I imagine many of you share the same affection. I have long been passionate about golf.

I have another confession: I am amazingly fortunate to have encountered a great deal of opportunity in my lifetime, and I am not so naïve to think that every stage of my life has not been shaped in some capacity by that opportunity. I imagine many of you reading this share that with me as well. Like golf, I have long been passionate about giving back to those that do not, and/or have not, had the same opportunities as me.

I was invited to join the MBA VLP (named for the Volunteer Lawyers Project at Legal Aid Services of Oregon) Golf Committee in 2015, one year after being sworn in as an

attorney in Oregon. At the time of my invitation, I knew nothing of the committee or its mission, but the mention of golf was enough to garner my attention. Since many of you likely know little or nothing about the MBA VLP Golf Committee, let me tell you a little bit about us:

The MBA VLP Golf Committee's primary mission is to raise funds and awareness for the Volunteer Lawyers Project (VLP) at Legal Aid Services of Oregon. The VLP is dedicated to providing free legal help to thousands of low-income and elderly clients each year in matters relating to their physical safety, access to food and shelter, and other critical legal needs. Every year, the VLP Golf Committee hosts multiple golf events, each with a unique theme and flair. Last year, the committee raised \$14,600 for the VLP (and it has raised over \$100,000 for the VLP in the last seven years!). This year, the committee has the goal of raising over \$15,000, and it is hosting three events to do so:

- **Topgolf - Thursday, June 7** - This event is the VLP Golf Committee's business networking and happy hour social. The event will incorporate numerous climate-controlled playing "bays," similar to bowling lanes, an impressive array of food and drink options, HDTVs to watch the big game, and a wide music selection, creating a festive atmosphere to golf, socialize, and network, and it accommodates golfers of all abilities. In the past, the event has been attended by 75-100 attorneys, bankers, CPAs, and other area professionals. Compete against yourself,

a group, and/or against the assigned pro!

- **Sah-Hah-Lee - Thursday, July 19** - This new event is the VLP Golf Committee's family affair. It is open to players of all abilities and there will be fun for all ages, including a short Par-3 course, putt-putt, and a catered BBQ lunch!
- **MBA Golf Championship at the Willamette Valley Country Club - Monday, October 8** - This event is the VLP Golf Committee's big fundraiser. Sponsorship funds from the event are the primary source of our donations to the VLP. The host course changes from year to year, and in 2018 we are lucky to be at the Willamette Valley Country Club in Canby. While the event is open to players of all abilities, it traditionally draws between 60-100 players, most of whom are serious golfers. You may register as an individual or as a group, and you can compete in a scramble or in an open format.

Since joining as a committee member, and now as the committee chair, the MBA VLP Golf Committee has allowed me to play and talk more golf; it has allowed me to give back to Oregon's community members currently in need; and its events have helped me grow my social and business networks.

I encourage you to attend one or all of the MBA's 2018 golf events. Each will provide you the occasion to golf, the satisfaction of helping the VLP, and the opportunity to develop your social and business relationships. If you cannot attend one of the above, please consider donating sponsorship money (or raffle prizes) to an MBA golf event, the revenue from which all goes to the VLP, or donating your time and/or money directly to the VLP.

Please see the flyer enclosed in this month's newsletter, and please do not hesitate to contact me (503.595.6109, aevenson@sbhlegal.com) or Pamela Hubbs (503.222.3275, pamelahubbs@mbabar.org) if you have any questions or wish to help out.

Thank you in advance for your support of the VLP!

Instructors Needed for Court-Mandated Guardianship Program

by Madeleine Brown
Development Coordinator, Guardian Partners

Guardian Partners is looking for instructors! We are a nonprofit organization that trains and monitors guardians as mandated by the court in several Oregon counties. Training classes for new, non-professional guardians, conservators and personal representatives offer a brief overview of fiduciary responsibilities to the protected person and the court.

Guardian Partners is currently seeking additional trainers for Guardianship, Conservatorship and Personal Representative

classes for new fiduciaries. These classes are given at the Guardian Partners Office at 10814 NE Halsey St., Portland.

Interested trainers should be currently certified through CGC or be retired and previously certified. Trainers use the Guardian Partners PowerPoint presentations and printed materials to complete the class within the time allotted. They should have sufficient background in guardianship and conservatorship and probate law to answer or redirect questions about services and court requirements.



Instructor Cathryn Ruckle

Specifically, we are looking for instructors for our Personal Representatives course and our Guardians of Minors course.

The Personal Representatives course requires an individual who is well-versed in Probate Court, specifically in closing estates, able to translate legal terminology to lay persons, comfortable with public speaking and managing

Continued on page 16

mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, which includes any MBA member in practice less than six years or under the age of 36. The YLS provides leadership, networking, professional development and service opportunities. And we have fun!

Ask the Expert

*Dear Expert,
As a newer attorney, how do I know what to ask of the professional staff in my firm?
Sincerely,
Cautious Supervisor*

Dear Cautious,
Whatever size firm you end up in, chances are that at some point in your career you will have the good fortune to work with professional staff, including paralegals, legal assistants, bookkeepers, and others. There are several things to keep in mind when working with any staff.

The most important of course is the golden rule. If you are unpleasant to your staff, it WILL come back to haunt you. Your lack of empathy or just plain rudeness to staff will not only damage your reputation with other attorneys, but will also cause you to lose the support of other staff at the firm, and you will need as much support as you can get. Try your best to make every person at your firm feel like the valued member of the team that they are, rather than like your inferior.

Even if you are not intentionally mean, misunderstandings or frustration can lead to the same harmful results. The best thing you can do to avoid ugly situations is to be clear from the beginning about your expectations, and listen to what your staff and other attorneys at your firm expect from you. If it is not clear to you who should be doing something, ask. Make sure you know who is comfortable doing what. Use your brain, especially your emotional intelligence and common sense, and know that some people may do things for you without question even though it may cause them internal discomfort or resentment.

Be aware of power differentials, but also do not be afraid to ask for help from seasoned staff, even as a newbie lawyer. Humility and mutual respect and understanding are the name of the game.

Here are some other general guidelines, but of course everything depends on context and what both parties agree upon:

1. Staff are not your personal assistants. Keep things work-related. Do not ask your staff to shop for you unless it is very clearly part of their job description.
2. Never throw staff under the bus. You are responsible for everything that happens in your legal work. Judges WILL publicly humiliate you if you even hint at errors being due to staff.
3. Keep proper boundaries. Take time to learn about power differentials, forms of harassment and the #metoo movement.
4. Finally, especially as a newer attorney, don't be afraid to do work you may consider "below" you. I made a firm change that required me to take a more hands-on role. I learned a lot and am now a lot more self-reliant. It also made me a better delegator because I now know the ins and outs of tasks I hadn't fully understood before.

This all may seem like common sense, but it is amazing how many stories we hear at socials, ex parte, on listservs, etc., about lawyers who have violated these basic rules. It's important to continually reexamine yourself and your actions throughout your career so you won't slip up, like others have, as they gain fame and fortune.

Jesse Jacobs
YLS Member Spotlight

*by Jamison McCune
YLS Board of Directors*

Jesse Jacobs practices plaintiff-side personal injury law on both sides of the Columbia River. As part of his practice, he is an active member of both the MBA and the Clark County Bar Association (CCBA). For those familiar with Jesse's background, the fact that his practice traverses borders is not surprising.

Jesse graduated from Washington State University in 2007 with a Bachelor of Arts in Business Administration with a focus on international business. A fluent speaker of Mandarin, he then spent the next three years lecturing at Nantong University in the Chinese coastal province of Jiangsu. He taught a variety of subjects to undergraduate, graduate, and postgraduate students.

Jesse returned to the United States in 2010 to attend law school at Seattle University of Law. While there, he continued to cultivate his

interest in China and Chinese law. In his second year, Jesse studied abroad for a semester and obtained a certificate in comprehensive Chinese law from the East China University of Political Science and Law in Shanghai.

After graduating from law school with honors in 2013, Jesse worked as a solo practitioner for a year in Seattle. He then joined the NW Injury Law Center in December 2014 in Vancouver, Washington. There, he practices alongside his father, Don Jacobs, and handles a wide array of plaintiff's personal injury cases, including motor vehicle accidents, premises cases, and product defect claims in Oregon and Washington.

Jesse is currently in his second year as a member of the YLS Membership Committee. He has earned a reputation for attending almost all YLS membership events and for his willingness



Jesse Jacobs

to plan events or to help out on any project. Perhaps even more impressive, Jesse balances his committee duties along with his active participation in the CCBA, the Oregon Trial Lawyers Association, and the Washington State Association of Justice.

Despite all these professional commitments, Jesse finds time to follow updates in Chinese law. Traversing borders is nothing new to Jesse, and it is reflected in his hard work and dedication to the YLS, and to his clients in Oregon and Washington.

Wills for Heroes Clinic Recap

*by Trevor Caldwell
YLS Pro Bono Committee*

On Saturday, April 7, members of the YLS Pro Bono Committee hosted a Wills for Heroes clinic at the OSB offices in Tigard. Under the auspices of the national Wills for Heroes Foundation (www.willsforheroes.org), committee members and volunteer estate planning attorneys provided counseling and production of wills, powers of attorney, and advance directives for a number of first responders and their spouses from around the Portland Metro Area.

In the span of about an hour, attendees at the clinic were able to speak with an estate planning attorney to tailor documents to their specific needs and life circumstances, and have the document produced, reviewed, and executed. The first responders who participated came away with essential estate planning documents, while all of the volunteers greatly enjoyed the opportunity to interact with and provide a much needed service to those who serve the community.

The committee plans to host additional Wills for Heroes legal clinics in the future, and hopes to see new faces among the volunteers - contact Ryan Mosier (ryan@mbabar.org, 503.222.3275) to get involved.



Estate planning attorney volunteers (L to R) David Malcolm, Emily Pringle and David DeBlasio (not pictured: Sandra Stone)



YLS Pro Bono Committee members Jessica Gordon and Peter Nguyen



YLS Pro Bono Committee members Trevor Caldwell and Florence Mao

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Chris Martin and the Children's Representation Project

YLS Pro Bono Spotlight

by Florence Z. Mao
YLS Pro Bono Committee

Since 2016, Chris Martin has served as a staff attorney for St. Andrew Legal Clinic, where she assists low-income families with their family law needs. Prior to joining St. Andrew Legal Clinic, Chris served for two years as a judicial law clerk for the Multnomah County Circuit Court's Family Law Department. Chris learned of the Children's Representation Project (CRP) during her clerkship and has been volunteering with the program for the past year.

Initiated in 2001 and administered by Judge Susan M. Svetkey, the CRP was developed as a volunteer program to help children caught between two parents in high-conflict divorce and child custody cases. The main purpose of the CRP is to provide children with a voice during this turbulent time and to represent their legal interests. Through the project, attorneys are appointed to represent over 100 children annually in child custody and parenting time disputes. The CRP's volunteer list currently includes 150 lawyers.

Under Oregon law, when a child requests an attorney the court must appoint one to represent the child's legal interests. The court may also appoint an attorney for the child on its own motion or based on a request from the parents. Through the CRP, Judge Svetkey's staff contacts volunteer

attorneys about their availability based on the status of the case and possible conflicts of interest. Most often, volunteer attorneys are appointed after the initial pleading stage, when the issues of custody and parenting time are in dispute. "The CRP serves a very important purpose in our court system because it keeps children out of the courtroom," Chris says. "The child's attorney is expected to investigate, negotiate, and assist the parties in settling cases, and the court appreciates having the child's perspective when making a determination about the child's best interests."

When Chris is appointed to represent a child, she first reads the pleadings in the case to gain an understanding of the parents' legal positions and the child's best interests. She then contacts counsel for the parents (or the parents themselves when they are unrepresented) to understand their perspectives and the points of conflict. Chris also schedules a time to meet the parents to learn about the child. When parents are unrepresented, Chris must also ensure that they understand she represents only their child's interests.

Chris then meets with the child to explain the purpose of her representation. If the child is struggling with mental health issues, Chris meets with his or her counselor as well. When



Chris Martin

appropriate, Chris gathers information to assess the child's behavior and performance at school. Once the initial fact gathering is complete, Chris can advocate for the child's best interests at various proceedings, including settlement conferences, mediations, hearings, and trials. Based on the child's age and maturity level, the volunteer attorney has to determine whether to represent the child's express wishes or whether to recommend to the court what the attorney believes is in the child's best interest. Each case can take between 10 to 50 hours and can last several months to a year. To succeed as a volunteer attorney, Chris recommends having substantive family law experience and some trial experience.

"Volunteering through the CRP can be emotionally taxing, but it is extremely rewarding," Chris says. "As a parent, I am sympathetic to these children who often get lost in the mix and need to feel heard. As volunteer attorneys, we are providing crucial services to an underserved population."

Anyone interested in volunteering for the CRP should contact Rachel Finn, Judicial Assistant to Judge Svetkey, at rachel.a.finn@ojd.state.or.us, 503.988.3060.

Children's Representation Project Volunteers

Thank you to the following lawyers who donated their pro bono services via CRP between October 2017 and February 2018.

Jacqueline Alarcón • Sibylle Baer • William Ball • Lauren Barnes • Brett Bender • Christopher Bergstrom • Brittany Berkey • Jonathan Berman • Adam Brittle • Chris Burnett • Tiffany Davidson • Sarah Denner • Jennifer Eadie • Ben Evans • Sandy Faber • Anna Friedhoff • David Gearing • Joel Geelan • Katie Goss • Nathan Holtey • Laurel Hook • David Hull • Erin Jansen • Michelle Johansson • Allison Kamilos • Lissa Kaufman • James Keddis • Lisa Kenn • Logan Krochalis • Scott Leibenguth • Robert Kim Lusk • Carrie Majors-Stabb • Daniel Margolin • Christine Martin • Shelly Matthys • Michael McCaslin • Thomas McElroy • Mike McGrath • Andrew McLain • Brad Miller • Erin Morris • Ksen Murry • Lisa Naglins • Andrew Newsom • Ruth Pekelder • Lake Perriguy • Jason Pierson • Laurie Raymond • Suzanne Revelle • Michael Riedel • Judith Rosenberg • Cathryn Ruckle • Robin Runstein • Robert Scherzer • David Shannon • Annelisa Smith • Greg Soriano • Jaye Taylor • Patricia Thompson • Mary Tollefson • Gloria Trainor • Lee Ogden Tyler • Nicole Warren • Lillian Watson • Todd Worthley • Theresa Wright

Solo & Small Firm Committee Workshop and Social

DON'T BE AFRAID! TECHNOLOGY CAN MAKE YOUR PRACTICE MORE EFFICIENT, PRODUCTIVE, AND PROFITABLE

Wednesday, May 23
Workshop: 3-4:30 p.m.
Social: 4:30-5:30 p.m.
Red Star Tavern Club Room
503 SW Alder, Portland

Do phrases like "going paperless," "cloud-based," and "convert to PDF" make you cringe? Don't be afraid! Instead, please join us for this technology panel. Following the presentation, stick around for a networking social and further discussion of technology tips and tricks.

Our panelists are **Neal Weingart**, a sole practitioner focusing on criminal defense and plaintiff-side civil matters; **Robert Meyer**, a sole practitioner specializing in plaintiff-side employment litigation, and **Ashley Vaughn**, a lawyer with a small firm primarily representing crime victims in criminal and civil litigation. Our moderator will be **Drew Baumchen**, a sole practitioner handling mostly criminal and regulatory matters, insurance law, and civil litigation.

This panel will discuss the pros and cons of several popular law-practice management software suites, including:

- Clio
- Rocket Matter
- MyCase
- Alternatives to using all-in-one practice management software

The panel will also discuss:

- Other software and applications that can help streamline your practice, including cloud-based data storage, security/encryption, and document-handling applications
- Small-office hardware and integration
- Going paperless: how much works for you and your practice?

While this workshop is intended to be presented in a collaborative, Q & A format, time constraints will prevent this from being a how-to session or addressing what if-type questions. We hope that the informal social to follow will present a better opportunity for discussion of more specific problems and issues. Our goal is to make other lawyers aware of some of the various types of technology and approaches for a modern small law practice.

Cost: \$20 members/\$60 non-members.
Light hors d'oeuvres will be provided.

One and one-half hours of CLE credit will be applied for.

Register at www.mbabar.org.

mba yls | EVENT

Judges' Reception

Wednesday, May 9

5:30-7 p.m.

Schwabe, Williamson & Wyatt

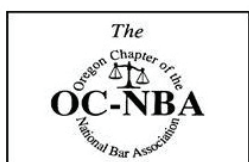
1211 SW Fifth Avenue, Suite 1900, Portland

The Oregon Chapter of the National Bar Association, Federal Bar Association and MBA YLS invite you to join us in recognizing the professional achievements and accomplishments of Oregon's newest judges. This event provides lawyers the opportunity to socialize with members of the bench in a cordial and informal environment.

Hors d'oeuvres and beverages will be provided.

Thank you to Schwabe, Williamson & Wyatt for hosting and sponsoring the event.

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Attendance is free, but space is limited - RSVP via email to Ryan Mosier at ryan@mbabar.org or contact the MBA at 503.222.3275. For more information, contact Iván Resendiz Gutierrez at ivan.resendiz@millernash.com or Jordan Schoonover at jordan@mrg-law.com.

Crimmigration Where Immigration Law and Criminal Law Meet

by Erin McKee and Joseph Justin Rollin
Co-Directors and Attorneys, Immigrant Rights Project,
Oregon Justice Resource Center



Erin McKee

Studies show that immigrants in the United States commit crimes at lower rates than native-born citizens, and that violent crime rates in metropolitan areas fall as the immigrant population increases. Despite this, popular opinion and the media often reflect a darker view of immigrants, one where they are supposed to bring more crime to our communities. This demonization of immigrants contributes to a legal system where even minor offenses can have disastrous consequences for a person's immigration status. This intersection of criminal law and immigration law has been aptly dubbed "crimmigration law."

What is "crimmigration?"

In a broad sense, crimmigration includes the criminalization of migration; increased immigration detention and use of private prisons; the prison-to-deportation pipeline; and a deportation process that has been described by prominent Immigration Judge Dana Leigh Marks as being like conducting death-penalty cases in traffic court.

In the narrow sense, crimmigration refers to the immediate and long-term immigration consequences of criminal convictions.

Examples of minor crimes that can have serious immigration consequences include simple drug possession, shoplifting, and even the most technical violation of a restraining order. Certain offenses called "aggravated felonies" preclude virtually all relief from deportation.

What are the risks for non-citizens facing criminal charges?

It depends. Twin brothers confronting the same criminal charges could face completely different risks depending on when they entered the US, if they ever travel outside the US, or the ages of their children.

All non-citizens can find themselves arrested by Immigration and Customs Enforcement (ICE), detained, deported, barred from re-entering the US, or denied lawful status or citizenship because of their criminal history, even for misdemeanor convictions that happened decades in the past.

For legal residents, a criminal record might make them ineligible for citizenship, prevent



Joseph Justin Rollin

them from safely returning to the US after travel abroad (i.e., without the risk of being placed into deportation proceedings), or cause them to be deported.

For someone who is undocumented, any negative contact with law enforcement could trigger detention and deportation proceedings, even if no crime is ultimately charged. This is because local law enforcement agencies automatically share information with the federal government, including ICE, through a myriad of interconnected databases. Under the 2017 Executive Order "Enhancing Public Safety in the Interior of the United States," virtually everyone who is undocumented is a priority for deportation regardless of their criminal history.

What protections are available for the immigration status of non-citizens facing criminal charges?

Even if someone is found deportable or inadmissible to the US, there may be waivers and other forms of relief available to those who can prove they are eligible and warrant favorable discretion. Relief generally depends on the person's immigration status, length of presence in the US, family ties, and the ability to show that US citizen or permanent resident family members will suffer significant hardship if their mother, father, spouse, or child is deported.

What duty does a criminal defense attorney owe to non-citizen clients?

In *Padilla v. Kentucky*, 555 U.S. 1169 (2010), the Supreme Court found that non-citizens have a Sixth Amendment right to be informed of the immigration consequences of a plea or conviction. A district court in Iowa described the scope of the *Padilla* duty best:

"the specific statutory consequences need to be explained with reasonable clarity so a full and measured decision to plead guilty can be made...including removal, exclusion, bars to relief from removal, immigration

Continued on page 16

Chasing the Rainbow

Continued from page 8

otherwise automatically come to us. Why is this important? Being seen (and heard) normalizes the physical presence of non-traditional lawyers in the public sphere. To the extent audience members hold stereotypes of non-traditional lawyers, then public speaking engagements can create a healthy dissonance in the audience that dissembles the stereotypes that frustratingly impinge on leadership growth for non-traditional professionals.

Third, those who exercise the power - the legal community leaders - must be able to visualize that someone who does not resemble them is nevertheless capable of exercising the very authority they wield. It is axiomatic

that authority desires to reproduce itself. It is alluring to believe that we who have had success in life are unique, and that those like us (however that might be variously defined by race, gender, sexual identity or class) are most capable of inheriting the reins of power. We have to resist this mindset, however unconscious it might be. This is accomplished by continuously challenging personal stereotypes and deconstructing our own implicit biases. There is some amazing work in this field now, and it is frequently available for CLE credit. If you think you do not need it, then I highly recommend it.

Fourth, current leaders need to make room for others to lead. If you commit to working on the first three projects above, this last flows naturally. Leaders need to

make rigorous efforts to recruit, hire, retain and empower legal professionals from all backgrounds. And then actively seek ways to empower them as described above. Are you the kind of leader that commands the room all of the time, or the kind of leader that is self-confident enough to stand aside to hear other voices without feeling diminished? The latter is what is needed for equity to thrive. And for the next generation of leaders - are you capable of doing the same?

Moving the Conversation is a recurring feature of the Multnomah Lawyer and is intended to raise issues and provide observations and ideas in regard to equity, diversity and inclusion topics. Please send your columns, ideas for columns, or recommendations for authors to the MBA office at mba@mbabar.org.

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The Corner Office PROFESSIONALISM

As lawyers, we are professionals and a good part of our stock and trade is our ability to communicate. Much of the communication that we engage in is written. It could be said that we are professional writers. I look at some of the letters, memoranda, and pleadings that come my way and I wonder what message the author is endeavoring to send. Work product that contains misspellings, obvious grammar errors, and sentences and paragraphs that do not track, much less support an argument or theme, does send a message. That message can be understood to be that: 1) the author is not too smart or at least does not know how to write; 2) the author is too busy to clean up what should have been a draft; or 3) the author simply does not care how he or she is represented by the

words just written. In litigation, our writing is usually intended to convey a position to an opponent and, often, to persuade a judge. In transactional work, we are also staking out our respective positions and drafting documents that clearly and efficiently memorialize the agreement while protecting our clients' differing interests.

Unless there is a reason not to, copies of letters, motions and pleadings filed in court, and contracts and other transactional documents should be copied to our clients. Indeed, ORPC 1.4 (a) and (b) require that a lawyer must keep his or her client reasonably informed so that the client can meaningfully make decisions with respect to the objectives of the representation (see ORPC 1.2 (a)) and to enable the lawyer to fulfill ORPC 2.1's duty to serve as an advisor to the client. If the letter or other

document is poorly thought out or poorly written, it clearly will not inspire a client's confidence in the lawyer's abilities.

While at one time lawyers' written work product was more heavily weighted in more formal letters, memoranda, contracts, and briefs, increasingly we find that we are expressing ourselves in less formal and more expedient forms, especially email. This presents at least two dangers. First, as the medium of communication is informal, we may slip into a less rigorous thought process and use less care in the quality of our writing. Second, the pace, with communication expected and in fact sent and received at all hours of the day and night, can overtake any natural instincts to be thoughtful and deliberate.

I have heard that a former district attorney admonished his staff that they should treat

their writing as if it will make its way to the front page of the New York Times. That seems a bit extreme. How about this: how would you feel if the email or letter that you hastily wrote were to be attached as an exhibit to an affidavit or declaration of a party opponent? What should we avoid? Obviously, any failure to communicate clearly and accurately will reflect poorly on an author. Humor can be dangerous. What is meant as an inside joke or a little jab may be taken literally or otherwise leave the author struggling to explain what was meant. This is especially true for sarcasm or any attempt to demean a party's opponent or that party's counsel. The MBA's Commitment to Professionalism in its preamble states "we believe that lawyers should solve problems, not create them." That document further states that, "We will treat all persons with courtesy, fairness, and respect," especially (but not exclusively) persons whose gender, race, and other personal distinguishing characteristics are different from our own. Finally, the document admonishes lawyers to seek "to resolve matters with a minimum of legal expense to all involved." When words expand the differences between the parties, harden positions, and increase any enmity that already exists, it can safely be said that those words are not in the spirit of the MBA's Commitment to Professionalism.

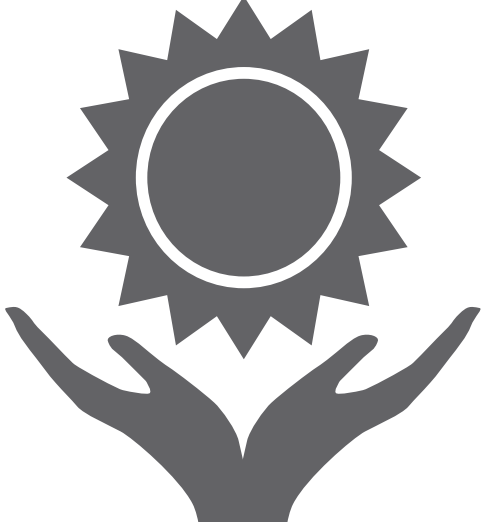
The same can be said with regard to the OSB's Statement of Professionalism. Of specific relevance to this subject is the lawyer's duty to "not employ tactics that are intended to delay, harass, or drain the financial resources of any party" and to "be courteous and respectful to my clients, to adverse litigants and counsel, and to the court." The adoption of aspirational professionalism goals by the MBA and OSB is consistent with

the duties imposed on lawyers by the ORPC; e.g., Rule 4.4 (a) requires that "a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person."

It is worth singling out ill-considered accusations of unethical behavior on the part of opposing counsel or judges. Unethical behavior is a serious matter, not an expedient weapon to be lobbed at an opponent or the courts. A respectful question to clarify a concern about potentially unethical behavior or to allow an opponent or the court to step back and examine an issue is appropriate. But, accusations of unethical behavior are serious, so serious that, if one believes that another lawyer has committed a violation of the ORPC "that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer," there is an obligation to inform the OSB's Client Assistance Office. See ORPC 8.3(a).

We live in a time when poorly written, inaccurate, demeaning, and bullying tweets are a part of the national discourse. Such behavior is undignified and lowers the level of that discourse. This should not alter the standard to which our profession aspires.

The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer your question. Questions may be submitted anonymously.




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Guardianship

Continued from page 11

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Interested instructors should contact Julian Alexander, at julian@guardian-partners.org or 971.409.1358.

Crimmigration

Continued from page 14

detention, denial of citizenship, and adverse consequences to client's immediate family."

Morales Diaz v. State,
896 N.W. 2d 723 (2017).

Immigration law is complex and hyper-technical. One court compared it to King Minos' labyrinth and cited the Immigration and Nationality Act as an example of "Congress' ingenuity in passing statutes certain to accelerate the aging process of judges." *Lok v. INS*, 681 F.2d 107 (2nd Cir. 1982).

Much of crimmigration law runs contrary to common sense: for immigration law purposes, a state misdemeanor may be an "aggravated felony," expunged and diverted crimes are still "convictions," and a plea to felony burglary may be safer for immigration purposes than a petty theft. Therefore, it is critical to get competent advice from an

experienced immigration lawyer.

At the Oregon Justice Resource Center, a nonprofit based in Portland, we have recently begun an Immigrant Rights Project (IRP) supported by Oregon Public Defense Services. IRP was created in recognition of the need for public defense providers to provide the most complete and useful advice possible to their immigrant clients of the immigration consequences of criminal pleas and convictions. At no cost, we help public defense providers meet their constitutional duty by providing as much clarity as possible regarding the immigration consequences of crimes. As a result, the client can make informed decisions about their criminal case and the next steps in their immigration journey. While there is justified cause for concern for non-citizens facing criminal charges, the situation is not necessarily beyond repair. Timely, individual, and thoughtful immigration legal advice can offer guidance and reassurance so clients can make the best decisions for themselves and their families.

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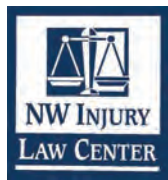


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Tips From the Bench

Continued from page 10

- For deputy district attorneys, maintain early contact with victims to avoid having to set cases over when a case is otherwise ready to resolve.
 - Although the court is still in process implementing this practice, defense attorneys can ask for a release decision on probation violations at the time of first appearance. If the arraignment judge defers to the probation judge, contact the probation judge to request a hearing or convey reasons the defendant is appropriate for pre-hearing release.
 - Set release hearings as timely as possible. Work with your client or the victim as applicable to get information to PRS or Close Street Supervision.
 - Avoid setting over sentencing hearings, or if unavoidable, decrease the duration of the continuance.
 - Work with case workers, treatment agencies, drug and alcohol evaluators, etc. to facilitate a defendant's transition from jail to inpatient or outpatient treatment.
 - Ensure the defendant has an adequate understanding of probation obligations at the time of sentencing to help reduce non-compliance.
- Most importantly, all in the courtroom should work to learn about the individual subject to the justice being meted. Public safety and personal rehabilitation are best realized with an understanding of how the person's trauma experiences, mental health needs and addiction, criminogenic needs, and life and family circumstances led them to this point and how they can create a path out of justice involvement.



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Davis Wright Tremaine Outside In Legal Clinic

by John Devlin
MBA Public Services Committee

For more than a decade, attorneys at Davis Wright Tremaine have staffed a legal clinic housed at Outside In, a local nonprofit. The mission of Outside In is to help homeless youth and other marginalized people move towards improved health and self-sufficiency.

One or two Davis Wright Tremaine attorneys spend about two hours at the Outside In office every two weeks. The clinic is set up as a limited engagement, with no ongoing attorney-client relationship. The main goal of the clinic is to help identify problems and suggest resources that might be available to address those problems. The attorneys typically see between one and three clients per session, so they are able to spend a significant amount of time with the clients.

Merissa Moeller, an associate at the firm who volunteers regularly at the clinic, explained that the clients are empowered when an attorney listens to their story and explains the options on how to proceed. Alan Galloway, who is counsel at the firm and coordinates the clinic, echoed this sentiment: "While they are there they are clients, and we treat them like clients. We're there to serve their goals."

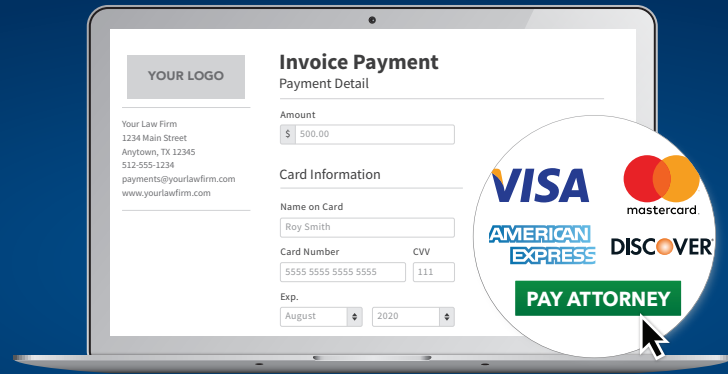
Working in the legal clinic provides valuable experience for associates. Because the attorneys never know who is going to show up at the clinic, they have to be flexible and think on their feet. They get to have the experience of

figuring out what a client needs and the satisfaction of answering the client's questions.

Christopher Weathers, who graduated law school in 2016, summarized his experience working in the clinic:

The Outside In legal clinic serves a diverse community with diverse legal needs. Although our primary mission is to serve homeless youth, marginalized people from all walks of life come to the clinic. There is no typical day at the clinic and we have no advance notice of how many participants will arrive or what legal issues will be presented. I find that work at the clinic is both taxing and rewarding. So many of our clients have endured severe hardship, poverty, abuse, or have significant mental or emotional health issues. When a client lacks a cognizable legal claim, I feel like the only help I'm able to provide is to be an attentive and empathetic listener. Other times I'm presented with issues for which I can provide concrete assistance.

The clinic is one part of a firm-wide commitment by Davis Wright Tremaine to encourage pro bono work and public service. From October 2016 through September 2017, attorneys at all of the firm's offices devoted 23,308 hours to pro bono legal representation and worked with 304 partner organizations.



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