



We are Survivors

by Rima Ghandour
MBA President

We think about this every day, several times a day. It creeps in during regular life interactions, when our minds are quiet, when we plan our day.

When we stay at the office late and have to walk to our garage,

we walk with keys in attack-ready mode in one hand and our cell phone in the other hand, ready to dial 911. We park right next to the elevator door.

When we meet someone new, whether at work, at a party, at a meeting, at a coffee shop, we try to assess them. Are they safe? Will they cause us harm? How can we be sure?

When we are planning a playdate for our children, we wonder and worry that someone at that house may hurt them. We try to balance being overprotective with being safe. We know the danger that lurks.

When we are with a co-worker after a meeting and we are now alone on the floor, we question how safe we are.

When that family friend we knew for years is sitting next to us on the couch and we realize they are sitting a little too close to us and we are alone, we think, "not again."

When we go out, we try to always go with someone. The buddy system is not just for eight-year-old children going on field trips.

It's for us, too. Before we leave a party, we check to make sure all our buddies are safe.

When we look at our family, partners, fathers, brothers, even knowing them as well as we do, even knowing they would never hurt our children, there is that tiny almost non-existent worry. It breaks our hearts that we cannot 100 percent trust in the people we love most. That trust was shattered by others.

There are so many examples of safety precautions and assessments we do all the time. So many, to try to keep us safe and our loved ones safe.

This is not hysteria. This is not an overactive imagination. This is our lives. Every 98 seconds, a person living in the US is sexually assaulted. On average, there are 321,500 victims (age 12 or older) of rape and sexual assault each year in the United States. To put this into perspective, in 2012, police recorded 14,827 homicides in the United States. One out of every six American women is the victim of an attempted or completed rape in her lifetime. In the US, one out of three women and one out of six men will experience some form of contact sexual violence in their lifetimes. Ninety-one percent of victims of rape and sexual assault are female, and nine percent are male. For transgender and non-binary people, the numbers are even worse. Forty-seven percent of transgender people are sexually assaulted at some point in their lifetime. If you are a person of color, the numbers are even higher. In eight out of 10 cases of rape, the survivor knew the perpetrator.

Rape, attempted rape and sexual assault are the most under-reported crimes; 63 percent of sexual assaults are not reported to police. The way we survive differs. The way we live our lives differs.

It breaks our hearts that we cannot 100 percent trust in the people we love most.

We are all individuals with different factors affecting us. Some of us report our assaults right away. Some of us don't. Some of us report it confidentially to someone close to us. Some of us try everything in our power to forget it. Some of us report it when we see that others may be in danger from the assaulter. Some of us report it when we see that the person who assaulted will have unfettered power. Some of us never report it. For some of us, the choice is taken out of our hands when someone reports it or we can't hide the assault due to our injuries.

There is something different about sexual assault and rape crimes. Unlike other crime victims, we, the survivors of sexual assault, are scrutinized, our truthfulness is questioned, our behaviors are questioned, our motives are questioned and our morality is questioned. We have been taught by society that we are somehow to blame. We did something wrong. We put ourselves in the situation. We drank too much. We were somewhere we should not have been. We were not clear enough when we said no. We are making it up. We have an ulterior motive. We did not behave like we were expected to, etc., etc., etc.

Also, society has taught us that because this crime involved sex, not just an assault, there is something about it that shames the survivor. The taint of the crime never leaves the survivor. We will forever more be known as the girl that was assaulted, the woman that was raped. No matter what we achieve in our lives, if we report the crime committed against us, that is a tagline that is associated with us because it was a crime involving sex and it is still somewhat shameful to be the survivor of that crime. That is assuming we are heard and believed.

This is our everyday life. This is our reality. We are MBA members, attorneys, judges, co-workers, clients, friends, acquaintances, strangers and family members. We are survivors.

The taint of the crime never leaves the survivor.

mba|EVENT

Bench Bar & Bagels

Tuesday, November 6
Tonkon Torp
888 SW 5th Ave., Ste. 1600, Portland
7:30-8:30 a.m.

The MBA hosts the 10th annual "Bench Bar & Bagels" event on Tuesday, November 6 at Tonkon Torp, 888 SW 5th Ave., Ste. 1600. Please join your colleagues and members of the judiciary for a light breakfast and coffee. This event is offered at no cost to MBA members and judges. Non-members: \$10.

Special thanks to our sponsor and host:



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mba|CLE

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NOVEMBER

11.6 Tuesday
Sexual Assault Claims: Issue Spotting for the General Practitioner

McKenzie Harker
Barbara Long
Ashley Vaughn

11.15 Thursday
The Uniform Prudent Investor Act: A Trustee's Duties and Potential Liability for Investment Decisions

Rob Howell
Marie Eckert

11.28 Wednesday
Mandatory Elder and Child Abuse Reporting

Mark Johnson Roberts
Amber Kinney

DECEMBER

12.5 Wednesday
Science of the Mind: How Jurors, Judges, and Clients Really Make Decisions

Judge Michael Simon
Christopher Dominic

12.6 Thursday
Ethics in Mediation: Beyond Client Confidentiality and Conflicts of Interest

Jeffrey Batchelor
Eric English
Dayna Underhill

12.18 Tuesday
Helping Clients Through the Intersection of Logic and Emotion

Devin Howington
Sam Imperati

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Court Proposes Civil Justice Improvements

by Hon. Stephen K. Bushong
Presiding Judge, Multnomah County Circuit Court

Dana L. Sullivan
Buchanan Angeli Atschul & Sullivan LLP



Hon. Stephen Bushong



Dana Sullivan

On June 20, Oregon's Civil Justice Improvements (CJI) Task Force issued a comprehensive report to then-Chief Justice Thomas A. Balmer, providing recommendations for improving Oregon's civil justice system. The 64-page report is the culmination of five years' work on civil justice reform at the state and national levels. Chief Justice Martha Walters has taken this ball and continued to run with it. This article describes the background and work of the CJI Task Force, summarizes the key recommendations in the report, and discusses the Oregon Judicial Department (OJD) actions taken and to be taken under Chief Justice Walters's leadership to implement those recommendations.

Background

In 2014, the Conference of Chief Justices, with the support of the National Center for State Courts, appointed a national Civil Justice Improvements Committee chaired by Oregon Chief Justice Thomas A. Balmer. That committee issued its report, entitled *Call to Action: Achieving Civil Justice for All*, in July 2016. The *Call to Action* was designed to serve as a roadmap for states to craft measures to improve their civil justice systems, including court processing and resolution of civil cases of all kinds (excluding family and probate). It contained 13 specific recommendations intended to reshape how courts approach civil case management.

In May 2017, Chief Justice Balmer convened an Oregon planning group to develop a strategy to implement, where appropriate, the *Call to Action* recommendations in Oregon. That planning group started by attending a three-day Western Regional Summit on civil justice presented by the National Center for State Courts. At the conclusion of that conference, the planning group recommended the formation of a task force to develop recommendations for implementing the *Call to Action* in Oregon.

Chief Justice Balmer then issued Chief Justice Order 17-046 in August 2017. That order created the CJI Task Force, appointed its members - the authors of this article were appointed to serve as co-

chairs - and defined its mission. Specifically, the CJI Task Force was directed to review the *Call to Action* recommendations and civil justice reforms from other states and make recommendations to OJD for concrete actions that could be taken to increase and improve access to civil justice; improve procedural fairness in civil cases; and reduce cost and delay. Under the Chief Justice's Order, the recommendations were to be based on existing law, though the Task Force was free to recommend statutory or rule changes where appropriate. The Order also directed the Task Force to assume that judicial, staff, and other available OJD resources would remain at current levels.

Task Force Work

The CJI Task Force first met in September 2017 in Judge Bushong's courtroom in Portland. Many Task Force members and OJD staff attended in person; other Task Force members - scattered throughout the state - attended by telephone. The Task Force included three circuit court judges and an appellate judge; nine attorneys from a variety of affected practice areas, including a representative from the Oregon Law Center; the Chief Executive Officer of the OSB; and two Trial Court Administrators. The Task Force was staffed by an OJD lawyer and other staff.

At the first meeting, the Task Force decided that it would devote its first few meetings to reviewing pertinent statistical data and discussing each of the *Call to Action* recommendations in depth. After that, the Task Force determined that it would focus on developing the statutory or rule changes and statements of "best practices" that should be adopted and implemented by the courts. The Task Force's goal was to submit a consensus report to the Chief Justice by the August 2018 deadline specified in Chief Justice Balmer's Order.

The statistical data reviewed by the Task Force revealed - consistent with national statistics gathered by the National Center for State Courts - that the vast majority of civil cases handled by our civil justice system in Oregon were high-volume debt collection, landlord/tenant, and small claims cases that often

involved one or more self-represented litigants. This was contrary to popular perception that the civil justice system is dominated by high-value tort and commercial contract cases. Oregon's data from 2016 revealed that 48.9 percent of all civil cases filed were small claims cases, and 16.2 percent were residential landlord/tenant cases. Only 6.3 percent of all civil cases filed were tort cases. Contract cases accounted for 23.8 percent of all cases filed, the vast majority of those - 86 percent - involving less than \$10,000 in dispute. Most residential landlord/tenant cases involved self-represented litigants - 85 percent of the parties in such cases proceed without counsel.

The Task Force met eight times from September 2017 through May 2018. Subgroups also met between the monthly Task Force meetings to work on specific projects. Based on the *Call to Action* and statistical data, the Task Force's work focused in part on civil cases generally, and also more particularly on small claims, small consumer debt collection cases, and landlord/tenant cases, which account for a large portion of the civil cases handled by Oregon's civil justice system. After Chief Justice Balmer announced that he would be stepping down as Chief Justice on June 30, the Task Force resolved to complete its work before that date. It succeeded: the report was issued to Chief Justice Balmer on June 20.

Key Recommendations

The Task Force report is based on the concept of "right-sized case management" as described in the *Call to Action*. In general, the report includes specific recommendations in five areas.

First, the report recognizes that UTCR 7.020 is an existing case management tool designed to prevent civil cases from languishing in the system. Accordingly, the report recommends that courts statewide consistently apply and enforce UTCR 7.020, utilizing court staff and the eCourt system to ensure compliance.

Second, the report acknowledges that litigants and lawyers rely on the trial dates set by the court. Accordingly, the

report recommends that courts statewide adopt appropriate procedures for setting firm trial dates and adhering to those dates, absent good cause for continuing a trial date. The report recommends that a true emergency affecting the availability of lawyers, parties or witnesses could justify a continuance, but requests - even stipulated ones - for a continuance to conduct additional discovery or engage in further settlement negotiations ordinarily should not justify a continuance.

Third, the report recommends, as does *Call to Action*, that civil cases be placed on one of three identified tracks, or pathways, as they progress through the system. The Task Force determined that these pathways were already defined by existing Oregon statutes and rules. The "streamlined" pathway includes small claims cases - governed by ORS 46.405 and UTCR 15.020 - and residential forcible entry and detainer (FED) cases, governed by ORS 105.135 *et seq.* The Streamlined pathway also includes cases designated under the "Expedited Civil Jury Trial" rule, UTCR 5.150, and cases resolved through a dismissal or default judgment under UTCR 7.020(2) and (3). The "Complex" pathway includes cases designated as complex under UTCR 7.030 and cases assigned to the Oregon Complex Litigation Court under UTCR chapter 23. All other cases are assigned to the "General" pathway. The report includes recommendations for effective case management of cases within each pathway.

Fourth, the report recommends two significant UTCR changes. One involves revising current UTCR 5.150 (Expedited Civil Jury Trials). The report recommends renaming the program - Streamlined Civil Jury Trials - and eliminating features of the old rule that proved to be unpopular with litigants, to provide them with greater flexibility in handling streamlined civil cases. The goal is to encourage more attorneys and litigants to "opt in" to the Streamlined Civil Jury Trial program under the revised rule. The report also recommends

Continued on page 6

Calendar

NOVEMBER

3 Saturday

YLS Community Service Day at Children's Book Bank
RSVP to amelia.andersen@gmail.com

6 Tuesday

Bench Bar & Bagels
Details on p. 1

7 Wednesday

OSB Awards Luncheon
www.osbar.org

13 Tuesday

League of Women Voters: Immigration Panel Discussion
Details on p. 13

15 Thursday

Youth, Rights & Justice: Justice is Sweet Gala
www.bit.ly/2NADvyw

22-23 Thursday-Friday

Thanksgiving Holiday

DECEMBER

2 Sunday

YLS Community Service Day with Oregon Humane Society
Details on p. 12

25-26 Tuesday-Wednesday

Christmas Holiday



The MBA will apply for 2 hours of general OSB MCLE credit unless otherwise noted; Washington credit 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.

Sexual Assault Claims: Issue Spotting for the General Practitioner Tuesday, November 6 3-5 p.m.

World Trade Center, Mezzanine
Members \$60/Non-Members \$95

This program will provide a basic primer on several of the key issues when attorneys are faced with potential clients who have been sexually assaulted, including:

- safety planning for survivors;
- how to appropriately interview a trauma survivor;
- pros and cons of reporting to law enforcement;
- an overview of civil remedies available to survivors; and
- the effect of a sexual assault claim on a client's other legal matters.

This CLE seminar is intended as an introductory guide to help general practitioner attorneys feel more comfortable issue spotting and responding appropriately when approached by a potential client or inquiry from someone who has suffered a sexual assault. Our panelists are **McKenzie Harker**, staff attorney at Victims Rights Law Center; **Barbara C. Long**, partner at Vogt & Long PC; and **Ashley Vaughn**, attorney at the Dumas Law Group.

For more information: Contact Jovanna Patrick, Hollander Lebenbaum et al at 503.222.2408. For registration questions, contact the MBA at 503.222.3275.

The Uniform Prudent Investor Act: A Trustee's Duties and Potential Liability for Investment Decisions

Thursday, November 15 3-5 p.m.
World Trade Center, Sky Bridge
Members \$60/Non-Members \$95

Rob Howell, Senior Vice President and Director of Investments for Columbia Trust Company, and **Marie Eckert**, Litigation Partner at Miller Nash Graham & Dunn, discuss the myriad of investment responsibilities and potential pitfalls that await fiduciaries as they perform their duties under the Uniform Prudent Investor Act, and the extent to which those obligations have been clarified through litigation and judicial opinions.

For more information: Contact the MBA at 503.222.3275.

Mandatory Elder and Child Abuse Reporting

Wednesday, November 28 12-1 p.m.
World Trade Center, Mezzanine
Members \$30/Non-Members \$50

Note: One hour of abuse reporting MCLE credit will be applied for.

This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. **Amber Kinney**, Multnomah County District Attorney's Office and **Mark Johnson Roberts**, Oregon State Bar will present this lively and practical discussion:

- Recognizing elder and child abuse
- Mandatory reporting requirements
- Protecting privilege and confidentiality

Mark is Deputy General Counsel to the Oregon State Bar and a former family law practitioner. **Amber** is a Deputy District Attorney with the Multi-disciplinary Child Abuse Team at the Multnomah County District Attorney's Office.

For more information: Contact the MBA at 503.222.3275.

Science of the Mind: How Jurors, Judges, and Clients Really Make Decisions

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

In 2014, US District **Judge Michael Simon** and **Christopher Dominic**, President of Tsongas Litigation Consulting, discussed what cognitive science can teach us about how jurors, judges, and others make important decisions. Since then, even more has been learned in this developing field, now known as "Behavioral Law and Economics." Come join us on December 5 for the latest insights from this fascinating and important topic.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1000. For registration questions, contact the MBA at 503.222.3275.

Ethics in Mediation: Beyond Client Confidentiality and Conflicts of Interest

Thursday, December 6 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Note: Two hours of ethics credit will be applied for.

Ethical issues in mediation may typically be associated with confidentiality and conflicts of interest. However, there are a broader range of challenges that attorneys face, in both preparing for, and participating in mediation, which involve a much wider range of issues. Please join us at this CLE seminar geared to provide you with practical tips regarding how to navigate the myriad of ethical issues in mediation - both with your client (plaintiff or defendant) and the mediator. We are honored to have mediators **Jeffrey M. Batchelor**, Batchelor Mediation + Arbitration, and **Eric O. English**, Resolution Strategies LLP, as well as **Dayna E. Underhill**, partner at Holland & Knight LLP to serve as our panel of experts for this not to miss year-end ethics CLE.

For more information: Contact Adrian Brown, US Attorney's Office at 503.727.1000. For registration questions, contact the MBA at 503.222.3275.

Help Clients Navigate the Intersection of Logic and Emotion

Tuesday, December 18 3-5 p.m.
World Trade Center, Mezzanine
Members \$60/Non-Members \$95

Clients spin when the law and their emotions collide. Their ability to make good decisions declines and they occasionally blame their attorney for the situation. Learn practical tips, techniques, and tools from a lawyer and a social psychologist, who both have mediation experience. Learn how to counsel your clients through the uncertainty, fear and frustration experienced when they believe the likely outcome is unfair or the process is too long and expensive. Explore client risk tolerance so they can better participate in the usual settlement dance. Manage their cognitive biases to channel their energies on what is really in their best interest. Help them make better decisions with the judicious use of decision trees and decision tables. Help them understand and accept your legal advice by truly understanding their underlying values, needs and interests. Join panelists **Sam Imperati, JD** and **Devin Howington, PhD**, ICMRESOLUTIONS, who promise "no touchy-feely babble ... just straight talk for better representation."

For more information: Contact Jovanna Patrick, Hollander Lebenbaum et al at 503.222.2408. For registration questions, call the MBA at 503.222.3275.

To register for these classes, see page 4.



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


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- 12/5 Science of the Mind: How Jurors, Judges, and Clients Really Make Decisions**
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- 12/6 Ethics in Mediation: Beyond Client Confidentiality and Conflicts of Interest**
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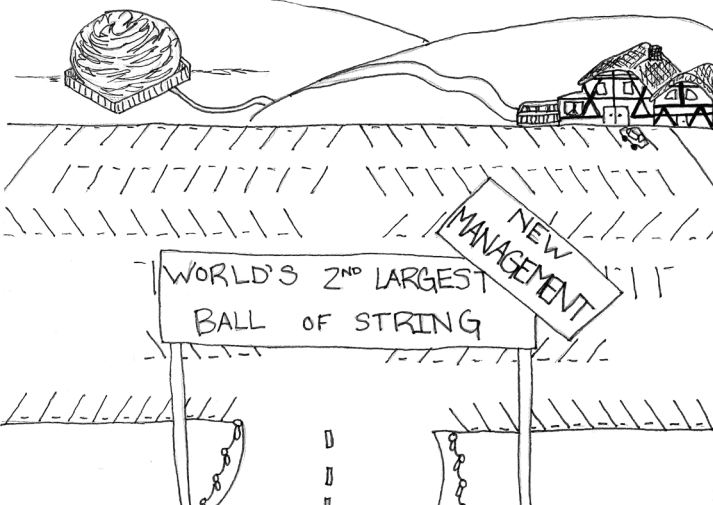
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Free CLE Webcast for MBA Members

The video webcast of the seminar "New Judges' Perspectives: Views from Five New Multnomah County Judges" is now available in the Members Center at www.mbabar.org. The seminar was accredited for two hours of general OSB MCLE credit.

MBA members receive access to a rotating selection of six different CLE seminars each year - a \$360 value.

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Noon Time Rides

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Civil Justice Improvements

Continued from page 2

adopting a new UTCR 5.180 to govern consumer debt collection cases. Key aspects of the proposed new UTCR are consistent with a new statute - codified at ORS 646A.670 - that applies to actions brought by debt buyers and their collectors. If adopted, UTCR 5.180 will apply to all consumer debt collection actions, consistent with a Resolution on Debt Collection Default Judgments recently adopted by the national Conference of Chief Justices and Conference of State Court Administrators. The Task Force concluded that the new UTCR was needed as part of its mission to improve procedural fairness in consumer debt collection cases.

Finally, the Task Force report includes many suggested "Best Practices" and other recommendations governing civil case management by the Oregon courts. These recommendations include the adoption of civil motion "consensus" statements by each court, defining procedures for handling sealed documents, identifying experts at trial, and developing in conjunction with the bar best practices for discovery. Other recommendations address effective use of court resources; judicial and staff training; transparency in trial assignment procedures; procedures for informal resolution of discovery disputes to save time and money; and recommended practices for courts and court staff to improve procedural fairness and access to justice.

All the Task Force recommendations are designed to accomplish the tasks specified in the *Call to Action* and Chief Justice Balmer's Order: improving

access to justice and procedural fairness; reducing the cost of litigating civil cases; providing for transparent and consistent statewide standards where appropriate; and actively moving civil cases to prompt resolution.

Next Steps

The UTCR Committee considered the CJI Task Force's recommended revision of UTCR 5.150 (Expedited Civil Jury Trials) and adoption of UTCR 5.180 (consumer debt collection) at its meeting on October 5. The committee approved releasing both rules for public comment. If adopted, the rules would take effect August 1, 2019.

On October 7, Chief Justice Walters and Multnomah County Presiding Judge Stephen Bushong presented the Task Force report to Oregon's Presiding Judges. At that meeting, Chief Justice Walters asked the Presiding Judges to assess the extent to which their court's practices need to be revised to fully implement the recommendations, and to develop appropriate implementation plans.

On October 9, Chief Justice Walters and Judge Bushong presented the Task Force report to all judges at the statewide Judicial Conference. The Task Force itself will meet soon to develop plans for coordinating with local bar associations, the OSB, the Oregon Trial Lawyers Association, the Oregon Association of Defense Counsel, and others, to inform stakeholders and fully implement the recommendations. By implementing the Task Force's recommendations, the courts seek to improve civil case management, procedural fairness and access to justice for all Oregonians.

The full Task Force report and an Executive Summary are available on the OJD, OSB and MBA websites.

Ethics Focus

Conflicts Counsel: A Practical Solution for a Difficult Problem

by Mark J. Fucile
Fucile & Reising LLP



As civil litigation has grown more complex, a problem that occurs with increasing frequency is the need to obtain discovery from a third-party that litigation counsel represents in unrelated matters. By the time the need for the discovery becomes apparent in ways that could not be predicted at the outset, the law firm often is deep into the case for the litigation client. The discovery involved can range from a document subpoena to a deposition. Many times the third-party client is cooperative, the discovery involved is handled through in-house counsel and there is no adversity in a conflict sense. Occasionally, however, the discovery sought is sensitive enough that the third-party client opposes the discovery outright or wishes to narrow it significantly through either negotiations or in court. In that event, the law firm has a conflict. Although the conflict would be waivable because the matters are unrelated, sometimes the third-party client is not willing to grant a waiver. In that difficult circumstance, a practical solution is to bring in an independent lawyer or firm - often referred to as "conflicts counsel" - to handle the discrete discovery work involved.

In this column, we'll look at the scope and limitations of using conflicts counsel.

Scope

The concept of conflicts counsel has been around for a long time. In fact, the ABA issued an ethics

opinion in 1992 - ABA Formal Opinion 92-367 - that discussed using conflicts counsel for taking testimony from a witness that lead counsel represented in unrelated matters. A more recent New York City Bar opinion - 2017-6 - cites the earlier ABA opinion and applies it to subpoenas. Courts have also recognized the use of conflicts counsel to address otherwise disqualifying current and former client conflicts. Examples include *In re 3DFX Interactive, Inc.*, 2008 WL 8448326 (BAP 9th Cir Feb 6, 2008) (unpublished), where conflicts counsel handled a mediation in a sub-proceeding within a broader bankruptcy case in light of lead counsel's current client conflict in the sub-proceeding, and *TQ Delta, LLC v. 2Wire, Inc.*, 2016 WL 5402180 (D Del Sept 26, 2016) (unpublished), where the court directed the retention of conflicts counsel to handle discovery from lead counsel's former client.

Oregon RPC 1.2(b), which mirrors ABA Model Rule of Professional Conduct 1.2(c), allows a law firm to limit the scope of a representation as long as the limitation is reasonable under

Courts have also recognized the use of conflicts counsel to address otherwise disqualifying current and former client conflicts.

the circumstances and the client consents. If the need for third-party discovery or the equivalent arises that involves a client the law firm represents in other unrelated matters, the firm should discuss with the litigation client the option of retaining conflicts counsel to handle that specific piece of the broader case. In effect, the law firm is limiting the scope of its representation to avoid the conflict with the third-party it represents in other unrelated matters. Although not required to be reflected in writing, prudent risk management practice suggests confirming the litigation client's authorization for the limitation and the corresponding retention of conflicts counsel in a contemporaneous document - either paper or electronic.

Limitations

There are two principal limitations to using conflicts counsel.

First, for the lead firm, it can be critical to quickly recognize the emerging conflict and to promptly associate conflicts

counsel. The risk of deferring a decision is that a court reviewing the situation in the context of a disqualification motion may determine that the lead firm waited too long and waded in too deeply. Oregon RPC 1.2(b) and its ABA Model Rule equivalent effectively address conflicts by structuring the representation to avoid them altogether. By contrast, they cannot "un-do" a conflict that already exists. In *In re Celcyte Genetic Securities Litigation*, 2008 WL 5000156 (WD Wash Nov 20, 2008) (unpublished), for example, the federal district court in Seattle disqualified a law firm that argued that if it needed

...a firm coming in as conflicts counsel should have its own separate engagement agreement with the client involved...

to cross-examine one of its other clients who might be a trial witness it could retain conflicts counsel at that time. The court found that it was already likely that the firm would be required to cross-examine the other client and had not actually retained conflicts counsel.

Second, for conflicts counsel, it can be equally important to carefully segregate its work into the specific tasks for which the firm was retained. OSB Formal Opinion 2005-120 (rev 2015) notes that disqualifying conflicts are not automatically imputed to co-counsel, citing *First Small Business Inv. Co. of California v. Intercapital Corp. of Oregon*, 108 Wn2d 324, 738 P2d 263 (1987). In *First Small Business*, the Washington Supreme Court reversed a trial court order disqualifying a law firm because there was no evidence that the firm had actual knowledge of confidential information obtained from another lawyer who briefly served as co-counsel before withdrawing in the face of a conflict. To avoid this potential trap, a firm coming in as conflicts counsel should have its own separate engagement agreement with the client involved, setting out its narrow scope of responsibilities and maintaining its own separate file. Conflicts counsel must clearly have some communications with lead counsel to understand the case generally and its particular assignment. But, those interactions should be oriented around the tasks for which it was retained rather straying into matters that might inadvertently open conflicts counsel to its own risk of imputed disqualification.

Pro Bono for the Non-Litigator

by Owen Blank
MBA Public Service Committee

Jarell Hunt
Tonkon Torp LLP



Owen Blank

The co-authors of this article were admitted to the Oregon State Bar in 1973 and 2017. One last tried a case in 1987; the other has never tried a case. In the last two months, we worked together and applied our skills as business lawyers to help two clients under the auspices of Lewis & Clark's Small Business Legal Clinic (SBLC). In doing so, the clients received services they were not able to otherwise afford, the lawyers were able to fulfill professional obligations, the younger attorney received the benefit of training and mentoring from someone who has practiced law for 45 years, and the older attorney received the benefit of working with an attorney with a recent high-quality legal education and whose skills in using 21st Century technology far surpass his own.



Jarell Hunt

The SBLC made volunteering a very user-friendly experience. We are sharing our experience to encourage your participation for the benefit of the SBLC's clientele and your own benefit, personally and professionally. Seventy-five percent of the SBLC's clients are minorities, immigrants, or women. Many are M/WSB (Minority and Women Business Enterprises) certified by the state. The connection between the lack of participation by these groups in business ownership and the ever-increasing income inequality in our nation is inescapable. Helping these businesses grow and succeed offers a way for non-litigators to enhance social justice. In doing so, you can rely on the same experience and skills you rely on in your everyday practice.

The SBLC receives self-referrals as well as referrals from community organizations that focus on small businesses, such as MicroEnterprise Services of Oregon and the Hispanic Metropolitan Chamber of Commerce. It screens the referrals (low income is one criterion), educates the potential clients and participating attorneys with respect to expectations, provides advance information to the attorney sufficient to check conflicts, and provides the office for the initial meeting between the attorney and the client. Attorneys may utilize an engagement agreement provided by the SBLC or one they prefer. The engagements are for discrete projects. Therefore, they involve discrete amounts of time. For one project, we drafted a confidentiality agreement. For another project, we drafted an independent contractor agreement. Both involved one face-to-face meeting, drafting the agreements and a telephone conference to review the drafts with the clients. Following the telephone conferences, we revised the agreements to put them into final form. Each only required a few hours of our time and provided the clients with tools to help their respective businesses grow.

We know there is a desperate need for attorneys who have or are willing to learn the litigation skills necessary to represent low-income clients with respect to many important matters. At the same time, we know that there are many attorneys who can make meaningful pro bono contributions in matters that

do not involve litigation. In doing so, they help to remove barriers for full participation by groups that are historically underrepresented in business ownership.

Waiting times for SBLC's clients are growing. Join with us in shortening those times. For more information, please check out www.law.lclark.edu/centers/small_business_legal_clinic.

Jerome LaBarre Retired Circuit Court Judge



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Around the Bar



Robyn Bishop

Ater Wynne

Robyn Bishop, a 2018 magna cum laude graduate of Lewis & Clark Law School, has joined Ater Wynne's Business Group. Her practice will focus on corporate and securities law with specific emphasis on mergers and acquisitions, financing, and governance.



Joe Arellano



Peter Evalds

Garvey Schubert Barer

Joe Arellano was named chair of the Attorney-Client Relationships Committee for the American College of Trial Lawyers (ACTL) for 2018-19 - his second consecutive term. Previously, Arellano served as Vice-Chair of this Committee (2015-17) and as Chair of the Oregon State Committee (2014-16). He has been an ACTL Fellow since 2009. Arellano helps clients in complex civil litigation, including securities, commercial and professional liability defense, and in regulatory investigations by the SEC, DOJ, IRS, FBI and their state counterparts.

The firm welcomes **Peter Evalds** as an associate in the firm's Portland office where he will focus on assisting clients in matters involving tax, business transactions and real estate. His tax practice includes tax planning and tax controversy. Evalds's



Jonathan Levy



Amy Bilyeu



Jim Cavanaugh

Wyse Kadish LLP

The firm is pleased to announce that the lawyers and staff of Cavanaugh Levy Bilyeu LLP have joined the firm, forming one of the largest estate planning and administration practice groups in Oregon. **Jonathan Levy** and **Amy Bilyeu** have joined the firm as partners; **Jim Cavanaugh** joins us of counsel. Established in 1985, the lawyers of Wyse Kadish LLP look forward to continuing to serve our clients in the areas of estate planning, family law, real estate, and business law.

business practice includes entity formation, corporate compliance and governance, contract drafting and review, and mergers and acquisitions.



Wilson Jarrell



Traci Ray

Barran Liebman LLP

Barran Liebman is pleased to welcome **Wilson Jarrell** to the firm. Jarrell represents employers in a variety of employment litigation and advice matters, while serving as proactive counsel to help employers develop effective workplace policies. He earned his JD from the University of Oregon School of Law, where he graduated third in his class and was elected to Oregon Law's Order of the Coif for his outstanding commitment to academic excellence.

Traci Ray, Executive Director of Barran Liebman LLP, has assumed the role of Vice-Chair for the ABA Law Practice Division, which offers insightful publications into law firm management, technology and finance, unparalleled professional development,

and nationwide networking opportunities. She currently chairs the Strategy & Planning Committee for the division, and has been elected to serve as the MBA Delegate to the ABA House of Delegates.



Brandon Thornburg

Cosgrave Vergeer Kester LLP

The firm is pleased to announce that attorney **Brandon Thornburg** has joined the firm as an associate in their business and commercial practice group.

Thornburg's practice focuses on a variety of business matters, including: insurance defense, railroad and transportation law, and liability. He worked as a law clerk for the firm during the summer of 2017, and continued working as a paralegal while he completed law school and studied for the bar exam.



Jennie Bricker

Harrang Long Gary Rudnick PC

The firm is pleased to announce that two experienced attorneys, **Jennie Bricker** and **Lisa Hardie**, are joining the firm as Of Counsel and will lead the launch



Lisa Hardie

of HLGR's Energy & Natural Resources practice.

Bricker brings 20 years of experience as a natural resources lawyer. A graduate of Lewis & Clark Law School, she clerked for Judge Skopil on the Ninth Circuit and went on to practice real estate and natural resources law, developing expertise in waterway navigability, water rights, permitting, and property boundaries.

Hardie has approximately 20 years of experience as an energy lawyer. After graduating from the University of Texas School of Law, she worked in Texas, Washington, and Oregon, where she assisted energy clients with issues including retail deregulation, regulatory compliance, and complex energy litigation and appeals. Two years ago, she was appointed by Governor Brown as Chair of the Public Utility Commission of Oregon and served in that position until earlier this year. Hardie will assist clients with litigation, regulatory compliance, and energy policy issues.

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.



OMLA's 19th Annual Summer Social & Fundraising Auction

Many thanks to all of our donors who helped us raise \$19,986.53 to provide bar exam grants to minority law school graduates!

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Event Coordinator


LASO Identified as Fellows Program Partner

The Oregon Women Lawyers Foundation (OWLF) is pleased to announce its selection of Legal Aid Services of Oregon as its 501(c)(3) public interest organization partner in the MBA Fellows Program for 2019. This is the first year of the MBA Fellows Program, which focuses on enhancing the diversity of Multnomah County's legal community.

The OWLF mission is to educate and support women and minorities in accessing and participating in the justice system. LASO provides free civil advocacy and representation to low-income Oregonians on a variety of poverty, gender, and racial justice issues and is dedicated to eliminating barriers to access to justice for underserved populations and cultural communities.

OWLF will provide the \$10,000 stipend for one fellow's 10-week summer internship following their first year of law school. LASO has committed to providing the fellow with whom it ultimately pairs a meaningful work experience and mentorship. Next summer's fellowship with LASO will focus on working with survivors of domestic violence

with limited English proficiency. Fellows will be matched based on mutual ranking in early 2019.



OWLF 2018 Armonica Grant Recipients Announced

Congratulations to our 2018 Armonica Grant Recipients: Natalie Barringer, Lewis & Clark Law School; Cristela Delgado-Daniel, University of Oregon Law School; Carolyn Griffin, Lewis & Clark Law School; Maya Rinta, Lewis & Clark Law School; Catharine Roner-Reiter, University of Oregon Law School; and April Stone, University of Oregon Law School.

A special thanks to our 2018 Armonica Grant Mentors: Magistrate Judge Stacie Beckerman, US District Court for the District of Oregon; Judge Amy Holmes Hehn, Multnomah County Circuit Court; Judge Josephine Mooney, Lane County Circuit Court; Justice Adrienne

Nelson, Oregon Supreme Court; Judge Debra Velure, Lane County Circuit Court; and Magistrate Judge Youlee You, US District Court for the District of Oregon.

OWLF is pleased to offer this grant in honor of late Foundation Board member Armonica Gilford. The grant is available to students in their final year at one of the three Oregon law schools. Applicants must intend to practice law in Oregon and demonstrate a commitment to the foundation's goals through their personal volunteer or educational experience.


Annually, up to six recipients are selected from the Oregon law schools to receive a textbook grant in the amount of \$1,000. In addition to the monetary grant, each recipient is matched with a female judge or attorney, who serves as the student's mentor for the year. Those who identify as women and/or as members of other historically disadvantaged groups are especially encouraged to apply.

Applications must be submitted between August 1 and September 15 of the applicant's final year of law school. Learn more at owlsfoundation.org/grants/armonica-law-student-grant/armonica-grant-application/.

OWLF, the 501(c)(3) sister organization to OWLS, is proud to focus on educating and supporting women and minorities in order to further their access to and participation in the justice system. OWLF funds the Armonica Law Student Book

Grant, the Vernellia R. Randall Bar Exam Grant, the Justice Betty Roberts Leadership Conference Grant, and the Janis Hardman Medical Support Grant. To learn more, please visit www.owlsfoundation.org.

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Tips From the Bench

Take Control of Your Trial Date

by Judge Eric L. Dahlin
Multnomah County Circuit Court

A friend recently complained about how trial dates in civil cases are assigned in Multnomah County. He had no issue with the requirement that each case be tried no later than one year from the date of filing. His concern was that trial dates were set too late in the process, which sometimes creates conflicts with his other cases or family plans while trying to comply with the one-year requirement. He wanted a system where the trial date would be set early on so he could better schedule discovery and trial preparation with his other cases and family matters while still complying with the one-year deadline, but he did not feel that was an option in Multnomah County.

I explained that he could in fact request a trial date early on and that there was no need to wait until the court sent a notice scheduling a conference to pick a trial date. He questioned whether that was in fact a possibility, and then argued that even if I was correct, had I not told him about this possibility there would have been no way for him to know of this option or who to contact to select the trial date.

My friend is not alone. In my experience, there are many lawyers who seem to share his concern, or at least are not aware of the ability to pick a trial date earlier in the case. But there is an answer to this concern. And that answer is found in the Uniform Trial Court Rules.

UTCRC 7.020(6) provides that the parties have 14 days after the case is deemed at issue (the earlier of when the pleadings are complete or 91 days after the complaint is filed) to agree amongst themselves, with the consent of the presiding judge, on a trial date; otherwise, the presiding judge has the authority to set the trial date. In Multnomah County, the way the presiding judge provides consent, or exercises the authority to set the trial date if there was no request during the 14-day period after the case is at issue, is through a civil Trial Readiness Conference (TRC) during which the proposed trial date is presented and there is a discussion of other matters such as the status of discovery.

Normally, the court sets the TRC within 240 days from the date the case was filed (the 240-day period is the result of a policy decision based on a number of factors not relevant to this article). If, however, the parties wish to select their trial date earlier, they can do so by requesting an expedited TRC. To make this request the parties can either appear with a motion and order at *ex parte*, or e-file



a stipulated motion and order (remember the motion and order must be e-filed as separate electronic documents, but in the same electronic envelope, pursuant to UTCRC 21.040(2)(a)). If the parties choose to submit the stipulated motion and order electronically, the court will set the TRC to occur roughly four weeks from the date the order is signed; if the parties appear in person at *ex parte* they will be advised of the TRC date at that time. TRC appearances can be in person or over the phone. The hearing will be relatively short - often five minutes or less - assuming the parties have fully conferred on trial dates and discovery issues.

As a practical matter, few lawyers take advantage of the option of requesting an early assignment of a trial date. Rather, most lawyers wait until after receiving notice that the court has scheduled a TRC to even discuss potential trial dates. At that point, finding a date within one year of filing that works for the packed schedules of the lawyers, their clients and key witnesses can be a challenge. To make matters worse, some lawyers use the notice setting the TRC to start doing meaningful work on the case in terms of depositions and other discovery, meaning that often the first several months of the lawsuit had very little action.

The best practice is for plaintiff's counsel to initiate discussions about a trial date as soon as counsel learns who is representing the defendant. And if the plaintiff's counsel does not broach the subject, defense counsel should. This is especially important in multi-party and/or lengthy cases where the challenge is not getting the case ready to try within a year but where the challenge is finding workable time in everyone's busy schedules to hold the trial.

When you are requesting a trial date, please keep the following in mind: As long as you are requesting a start date within one year of filing and are starting trial on a Monday, you can almost be assured that you will be given your requested trial date unless you are asking for a date near a holiday, during spring break, or during the annual judicial conference which takes place for three days in early-October each year.

The one-year deadline is the rule, not the exception. There are some cases that cannot reasonably be tried within a year

Continued on page 15

News From the Courthouse



by Patrick Angel
Court Liaison Committee

Presiding Judge's Report - Judge Stephen Bushong

The Multnomah County District Attorney has made a policy change and will be taking felony cases to grand jury instead of conducting preliminary hearings. This will drive more docket adjustments for the court, and we will be looking at how to use Justice Center courtrooms one and two (JC1 and JC2) efficiently.

There is a new Juvenile Referee, Sandra Vallejo, who replaces David Knofler, who has retired.

Juvenile Justice Reinvestment Program

The Multnomah County District Attorney issued a report last year discussing the outcomes and performance of this program which was enacted in 2014. The program seeks to reduce incarceration rates and the expenditure of associated financial resources for youth offenders charged with Ballot Measure 11, Tier II offenses (BM11 Tier II). This program is intended to reduce spending on incarceration, reinvest the savings into evidence-based strategies to decrease crime, and provide a continuum of community-based services and sanctions.

The Multnomah District Attorney reports great success as of 2017. Prior to the Juvenile Reinvestment Program, 69% of Oregon youth convicted of BM11 Tier II crimes during reporting years 2012-13 were placed in custody with the Oregon Youth Authority, a youth correctional facility. Since enacting the program, from 2014 to the present, 75% of those youth are placed on intense-supervision probation in Multnomah County. The report is available on the Multnomah District Attorney's website: mcda.us/wp-content/uploads/2018/05/JJRP-Report-FINAL.pdf.

Misdemeanor Domestic Violence Cases

These cases have historically been handled in Multnomah County by Circuit Court judges in the Family Law judicial department. Recently, a recommendation was made by the Court's Executive Committee Task Force after carefully reviewing the workload

of the Family Court department to move misdemeanor domestic violence matters to the general docket effective January 1. Judges who will be handling these matters are scheduled to receive additional training in domestic violence legal matters and procedures.

The Multnomah County Attorney Reference Manual

Keep a lookout for the updated Attorney Reference Manual, which has been both edited and streamlined. It is expected to be finalized and published in the coming weeks.

Civil Court Report - Judge John Wittmayer

Multnomah County Motion Judges Consensus Statement

The new Civil Consensus Statement has been published and is available on the Multnomah County Circuit Court's website. The consensus statement is offered by the Court as a guideline and does not have the force of law or a binding effect on any judge. However, the consensus statement can assist practitioners in deciding when or whether to file a motion for relief in Multnomah County based on prior ruling on some distinct issues.

UTCRC 5.010—Conferral Means to Talk

As a reminder, practitioners are urged to understand and follow the requirements of UTCRC 5.010 and its conferral requirement. Where a motion requires conferral, the parties must speak either in person or on the telephone, and the moving party must certify in the motion that the requirement was met.

The language that a moving party has "made a good faith effort to confer" alone will likely be considered insufficient because such a representation is a legal conclusion the determination of which belongs to the Court. Rather, the moving party is required to state facts which can establish that a good faith effort to confer was exhausted.

UTCRC 7.020 Dismissal for Want of Prosecution

When a case is dismissed by the Court pursuant to Rule 7 either because proof of service has not been filed, or if filed a defendant has not appeared within the time

period allowed, a party must request relief from judgment by showing good cause under ORCP 71. The former practice of moving Presiding Court to "reinstate the case" (a *Motion for Reinstatement*) is not the correct mechanism after entry of judgment.

Trial Readiness Conference

Prior to the date set for a trial readiness conference, the parties must confer to discuss trial dates that work for the attorneys and parties involved but also for any critical witnesses - including expert witnesses - a party intends to present. This means that before a trial readiness conference, the parties should contact witnesses to ensure availability. Too often the parties have not discussed agreeable trial dates before the readiness conference nor contacted witnesses.

Trial Materials Delivered to Court by Noon

UTCRC 6.050 and Supplemental Rule 6.015(4) (Multnomah County) require parties to submit jury instructions, verdict forms, trial memorandums, motions in limine, and similar materials to the assigned judge by noon on the day of assignment. These rules are too often overlooked but benefit the parties as well as the Court. Submitting proposed special jury instructions early gives the Court sufficient time to consider the requests before the morning of trial. Compliance with the rules also gives the parties an opportunity to discuss and agree on preliminary jury instructions to be given to the jury before opening statements. This might not be possible if trial materials are not submitted by the afternoon before the trial date.

Pro Tem Judges and MSJs

In Multnomah County, experienced lawyers acting as Pro Tem Judges hear the majority of the Summary Judgment Motions filed in civil cases. This practice historically has been invaluable to Multnomah County Circuit Court in handling all the work of the court. Practitioners may request an elected or appointed judge (a "sitting judge") to hear dispositive motions by appearing

Continued on page 15

Judges Lead Legislative Tour of the New Central Courthouse

On October 3, Presiding Judge Stephen Bushong, Judge Nan Waller and Project Manager JD Deschamps guided legislators, judges and others on a tour of the new Central Courthouse. Donning hard hats and safety vests, guests were able to tour several floors.

A reception followed, hosted at the firm of Chernoff Vilhauer with refreshments provided by the MBA. The assembled guests learned more about the buildout of the courthouse, how the new space benefits the community, and how aspects of the design and function of the courthouse will physically embody the tenets of procedural fairness.

The final phase of funding requested from the legislature



Presiding Judge Bushong, Trial Court Administrator Barb Marcille and guests ride the construction elevator

will be used primarily for furniture and technology. Construction continues to progress with a completion date of Spring 2020. A final beam will be hoisted to the top of the courthouse in a "Topping Out" ceremony on November 9.



The public spaces will enjoy a spectacular view of the Hawthorne Bridge and Willamette River



Judge Bushong and guests learn about seismic and structural aspects of the new courthouse

The Honorable Shelley Russell Multnomah County Circuit Court Judge

by Jennifer Truzzolino
Court Liaison Committee

Judge Shelley Russell is the newest judge at the Multnomah County Courthouse, having been appointed to the bench in January. Judge Russell filled the vacancy created by the elevation of Judge Adrienne C. Nelson to the Oregon Supreme Court.

Judge Russell, a lifelong Oregonian, grew up in Clackamas. She went to Pomona College, and graduated in 1989 with a degree in international relations. Prior to attending law school, she wanted to practice medicine. However that changed when she reflected on the stories her uncle, a local lawyer, told about his law practice and how he helped injured people. In addition, her great aunt, the daughter of Greek immigrants, was one of the first women to serve as a municipal judge in Dallas, Texas. Both provided inspiration to Judge Russell, who changed her career path and went to law school at Lewis & Clark Law School, graduating in 1993.

Prior to her appointment to the bench, Judge Russell worked as a civil litigator with Hoevet, Snyder & Miller from 1994-98, and Crispin Employment Lawyers from 1998 until her appointment. While with Crispin, she specialized in employment law as well as handling some personal injury matters. She felt that practicing in employment law and personal injury was a good fit for her, given she found it fascinating, liked to help people, and worked hard to reach the right resolution

In addition to her private practice, Judge Russell was also involved in the legal community, which included serving as president of the Oregon Trial Lawyers Association (OTLA) in 2014 and 2015. She also served on OTLA's Board of Governors and Executive Committee. Judge Russell has authored a number of OTLA articles, assisted in co-revising the chapter on jury instructions and verdicts for Federal Court, and has been a speaker at MBA, FBA and OTLA presentations. She has served on several OSB committees as well. Judge Russell's practice was primarily in Federal Court, which led her to get involved in the Federal Bar Association's Oregon Chapter for a period of time. Not only is Judge Russell admitted to the Oregon State and Federal bars, but she is also admitted to the Ninth Circuit Court of Appeals and the United States Supreme Court. Judge Russell was previously admitted to the Washington State and District Courts, but voluntarily resigned those admissions when appointed to the Oregon bench.

Since her appointment to the bench, Judge Russell has been able to preside over both civil and criminal trials. In discussing the cases, it is clear she has an enthusiasm for her role as judge. While presiding over trials, she has enjoyed working with juries, learning their process and answering the rather insightful questions they often have. She noted how hard the juries work



Hon. Shelley Russell

and how concerned they are about getting to the right end result. In addition to presiding over trials, Judge Russell particularly enjoys conducting judicial settlement conferences, and hopes to participate in more as she continues on the bench. She has a temperament that allows her to listen well and make informed decisions in a neutral role.

Judge Russell's transition to the bench has been particularly smooth given the support among her colleagues at the courthouse. She remarked how other judges have been very helpful in providing guidance as she settles in. Judge Russell appreciates the professionalism among the bar when they appear in her courtroom, and hopes to see the collegial atmosphere we enjoy in Oregon continue.

Judge Russell has a broad spectrum of interests. She likes to spend time with her family, including her two children. This past summer she visited her daughter in Colorado, who was working as a wrangler on a ranch. They were able to go on a trail ride on horseback. She also enjoys the many activities the Pacific Northwest has to offer, including wine tasting in Dundee and camping. Judge Russell's interests also extend to travel and she is known to speak French. Please be sure to stop by and say hello to Judge Russell the next time you are at the courthouse.

MBA Mentor Program Frequently Asked Questions

Is the MBA Mentor Program compatible with the OSB New Lawyer Mentoring Program (NLMP)?

Yes, it is possible to participate in both programs either with the same mentor or a different mentor.

Who can participate as a mentee in the MBA Mentor Program?

Any MBA YLS member, whether or not they are signed up for the NLMP, may participate as a mentee.

Who can participate as a mentor in the MBA Mentor Program?

OSB members in good standing, with reputations for competence and for conducting themselves ethically and professionally, and with at least seven years of practice, may participate as mentors.

Is there a fee to participate?

The MBA Mentor Program is free for all participants.

If I am participating in the NLMP, will I be assigned the same mentor for the MBA Mentor Programs?

That's up to you. Let us know your wishes on the MBA sign-up form and we'll match you appropriately.

If I am participating in the NLMP why would I also sign up for the MBA Mentor Program?

The MBA program offers additional opportunities for mentoring outside the OSB structure, including networking, and obtaining free CLE credit available exclusively to people participating in the MBA program.

How are mentors and mentees matched?

Mentors are matched with mentees by MBA Professionalism Committee members based on the responses given on the sign-up form. Let us know if you would like the same mentor you have in the NLMP. If you're not signed up for the NLMP, let us know what's important to you in a mentor - practice area, firm size, gender, etc. We'll do our best to match you appropriately.

How do I sign up?

Complete and return the sign-up form available at www.mbar.org. Forms are due to the MBA by November 30.

Learn more about the OSB NLMP at www.osbar.org/nlmp.

If you have questions about the MBA Mentor Program, please contact Kathy Modie at the MBA at 503.222.3275.

mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, comprised of 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

Revise Yourself to Greatness

Dear Expert,

I have been having nightmares about red ink lately. The partner I primarily work for is always marking up my work product no matter how much I try. I will even make the revisions and then the partner will mark up whatever I am working on again. Help!

-Newbie drowning in red ink

Dear Newbie,

You are not the first associate to experience this. You will also not be the last. Take heart. Many parts of writing come down to style. Unfortunately, the legal profession does not recognize a common style. Even most courts have their own unique style guides in their local rules, which have their own unique local rules. Every lawyer has their own style as well. Every client has their own views on what they would like to see. It is a learning process to understand the style preferences that your partner has until you can master their style. You should think hard on what you want your style to

be and work toward that for your own professional development.

The advice I would give you is to revise yourself to greatness. Not all of us are born Hemingways when it comes to writing. Better writing comes with time and dedication to the craft. But above all else, it comes with revision. When we put our thoughts onto paper (or the screen) we are just in the early process of what we are thinking or how best to say it. A good brief may take four or five drafts. It does not mean that the initial work was not good, but that it can be better. Seeing the big picture and thinking on the best way to make your point takes a lot of thought. If you have time, put down the work and come back to it with fresh eyes later (even better if it is the next day). Undoubtedly, you will see work product from that same partner that you could revise. Make your own red ink ocean and do not worry about the paper waste. I cannot guarantee that you will see less red ink from your partner, but if you wrap yourself in your own red ink then at least you can say you thought about your words and can justify your position.

Oregon Immigrant Rights Four Ways to Support Pro Bono Impact Litigation

by Alicia LeDuc
YLS Pro Bono Committee



Impact litigation promoting immigrant rights has been at the forefront of Oregon's pro bono scene this year. The transfer of over 120 immigrants to the federal detention facility in Sheridan, Oregon case drew unprecedented support for access to legal representation for asylum seekers detained. The ACLU filed FOIA cases compelling disclosure of ICE's activities targeting people in Oregon courthouses and airports. And, the Innovation Law Lab and Oregon Law Center filed suit on behalf of Oregon residents regarding local law enforcement collaboration with federal immigration enforcement at the NORCOR facility. So how can the advocates who care about immigrant rights get involved in promoting access to justice in immigration matters, particularly when time, resources, and specialized knowledge are limited?

Here are four ways MBA members can engage in pro bono representation as well as build a more rights-positive immigration ecosystem in Oregon:

1. Get Engaged Locally to Develop the Rights Framework

Changes in immigration rights and policies can only be achieved through litigation if advocates can identify and frame problems as rights or policy violations, which requires the existence of a legal framework that recognizes those rights and standards. While many may think of immigration law as being primarily a matter of federal policy, "right now the battles are around public-private, federal-local relationships and what our local jails, prisons, and law enforcements officers are doing. This nexus is where much of the work and policy change around the local impacts of immigration policy currently lies," says Erin Pettigrew of the Innovation Law Lab.

For example, Oregon's decades-old sanctuary law has limited the cooperation of local law enforcement with ICE to a large extent, but the November ballot initiative Measure 105 seeks to repeal that sanctuary state law - a measure supported by 16 Oregon sheriffs. Attorneys are uniquely positioned to effectively respond to challenges to the immigration rights legal framework. "Educating public agencies about ICE's role in our community, working with regulators to develop

local compliance strategies and standards to be more protective of immigrant rights, advocating for an independent immigration judiciary - all are policy-oriented activities for which lawyers are uniquely well trained to engage," says Pettigrew.

Oregon Ready, a coalition of strategic partners seeking stronger immigrant rights infrastructure, is implementing the local Immigrant Inclusion Plan for Oregon. Deployment activities include community-based organizing, immigrant defense work, immigrant rights policy development, and public discourse on immigrants in Oregon to create inclusion throughout the state. Leading organizations include Causa, Catholic Charities, ACLU of Oregon, Voz, Center for Intercultural Organizing, Pineros y Campesinos Unidos del Noroeste, Northwest Workers Justice Project and Innovation Law Lab, among many others. All provide opportunities and resources for attorneys seeking pro bono engagement promoting and defending immigration rights. Visit www.CAUSAOregon.org/get-involved/.

2. Help Educate and Strengthen the Immigration Judiciary

No matter how powerful a rights framework may be, its efficacy requires judges to enforce rights when confronted with a problem framed as a rights violation. Judges are empowered to do so when presented with compelling, well-researched arguments regarding current law. Immigration law changes rapidly, and pro bono support in staying apprised is useful and appreciated.

"We are in a rapidly changing atmosphere where the law is changing every day for immigrants" says Pettigrew. As a result, "it no longer takes big 'impact cases' to make a change in the law - individual's cases are making their way to the federal appellate courts to address issues of first impression and test interpretations of new policies. Having experienced appellate litigators who are willing to take on all or part of that critical briefing or oral argument is phenomenal," stated Pettigrew.

Leland Baxter-Neal, an immigration law specialist who recently joined the ACLU of Oregon, agrees: "Pro bono attorney involvement in immigration representation is particularly important now in Oregon, where recent judicial retirements have reduced the experience and institutional knowledge on the bench and increased the workload for current immigration judges." Attorneys who are unavailable to take on an entire immigration case can still support judges in making informed, just decisions through pro bono amicus curiae and appellate briefs on issues of developing immigration law. Both

the Innovation Law Lab and ACLU have need for pro bono attorney contribution and can be reached at Stephen@innovationlawlab.org and LBaxter-Neal@aclu-or.org, respectively.

3. Take on a Pro Bono Case - or Discrete, Limited Aspects of One

Handling an immigration or asylum case pro bono is needed - Baxter-Neal noted that approximately 35 percent of immigrants in Portland removal proceedings are unrepresented. Through organizations such as Catholic Charities and other members of the Oregon Ready coalition, attorneys can find resources, training opportunities and be assigned individual immigration or asylum cases. Visit www.catholiccharitiesoregon.org/justiceforimmigrants/.

Attorneys with limited time and immigration law background can also perform representations of discrete aspects of immigration and asylum cases, even if they cannot commit to taking on an entire case. The Innovation Law Lab has developed the LawLab, a digital platform complete with web-based tutorials and links to legal resources that allows attorneys to engage in short-term, limited representations in ongoing immigration cases, on their own schedule. The platform leverages existing tools, briefing, and forms to make legal representation easier for immigrant rights attorneys and, ultimately, to assess the merits of individual cases based on aggregated data from past outcomes. Pro bono attorneys can sign up through the Immigration Law Lab to perform short-term engagements such as interviewing asylum seekers detained in Oregon facilities, preparing a single declaration or motion, or aggregating supporting documentation for an immigration petition, all through the LawLab platform. This information is then organized and instantly available for the next pro bono attorney assisting with the case to seamlessly step in, providing significant opportunity to leverage the power of crowd-based pro bono representation. Visit www.innovationlawlab.org.

4. Strategize with an Immigration Attorney on Litigation Issues

Like the barrier general practitioners face in seeking to provide pro bono representation outside their practice area, not all immigration attorneys have significant litigation experience. When their cases do end up in federal court, having a litigator friend to call on is both useful and rewarding.

Anaiah Palmer, an immigration attorney with Parker, Butte & Lane PC and secretary of AILA Oregon, notes that for young immigration attorneys, "finding ways for people who are in court every day or have experience litigating to share skills with immigration attorneys is incredibly useful. So few immigration or asylum cases move beyond immigration court into federal court, and when they do, federal litigation issues, particularly procedural matters, aren't in our everyday playbook. The practice

Continued on page 13

mba yls | EVENT

YLS Community Service Day

Sunday, December 2

1-3 p.m.

Oregon Humane Society

1067 NE Columbia Blvd., Portland

Please join the YLS Service to the Public Committee at the Oregon Humane Society on Sunday, December 2 from 1-3 p.m. All MBA members, family, friends, and children over the age of 12 are welcome to participate. Our volunteer sessions will give the animals the attention they need and the social skills to help them find new homes.

To sign up or for more information, please email Nicole Elgin, nelgin@barran.com.

Alysa Castro YLS Member Spotlight

by Holly Hayman
YLS President-Elect

As legal professionals, we have the ability to help our communities change and improve in significant and meaningful ways. Sometimes it can be difficult to identify situations where certain legal services are needed, but not for Alysa Castro. Alysa has a skill for identifying opportunities for advocates and community groups that need basic legal services to partner with legal professionals who can provide such services. Alysa understands that the connection between the legal profession and the larger community is essential for everyone's overall benefit. Her ambition to build bridges between community advocates and legal professionals has already resulted in adventures and great successes. It also spurred her to relocate to Portland, where she now contributes to our active and engaged legal community.

Alysa grew up in a small town in northern California, in a household that prioritized community involvement. Encouraged by her familial examples, she was active in student groups and leadership roles throughout high school. It was no surprise that her involvement continued when she attended the University of Oregon in Eugene for her undergraduate education.

At the University of Oregon, Alysa's pattern of community involvement blossomed into a passion for public interest work. While she completed her degree as an English major, she also began volunteering with a number of public interest/public service groups. As Alysa donated her time and energy she began to recognize the importance of legal services and advocacy in community activism. Community volunteers and advocates provide important services to marginalized populations, but the public interest organizations themselves need to be able to access tools and resources to ensure their continued success.

While finishing her undergraduate degree, Alysa worked for a local nonprofit that helped secure employment for individuals with disabilities. In that position, Alysa saw professionals, including lawyers, volunteer their time to assist clients with creative alternatives to mainstream employment. For example, two of her clients operated a successful, but untraditional, bagel delivery service. An attorney volunteered to assist them by forming a business entity and providing limited business guidance. The simple act of providing legal legitimacy to a two-person bagel delivery service was life-changing. Alysa was impressed by the direct positive impact pro bono services had on her clients.

The importance of creating bridges to connect community advocates and professional institutions stayed with Alysa as she pursued her master's degree in English at the University of Toronto. While in Toronto, she continued to volunteer with community nonprofit organizations to address the needs of marginalized communities. After receiving her master's degree, Alysa returned to the United States to attend law school at Rutgers Law School in Camden, New Jersey. An experienced student, Alysa excelled academically while at Rutgers, and again became involved with public interest groups both within the law school and in the greater community.

While Alysa was in law school, the community in Camden was working to combat serious shortages of fresh fruits, vegetables, meats and dairy products. Camden was - and still is - considered a food desert, where the community's access to fresh produce, meat and dairy is severely limited. For example, in 2010-11, Camden had a population of about 77,000, but only had one or two major grocery stores where fresh produce was available. Activists began community garden



Alysa Castro

programs to address the shortage, but these programs were often disconnected and seriously lacked resources. Alysa and other law students from her class identified the community garden effort as an area that needed professional assistance and helped connect activists and the legal profession. She co-founded a nonprofit, the Camden Agricultural Coalition, with the mission of bringing the patchwork of community garden groups together to share resources. The Coalition connected professionals to community leaders to secure leases and land grants. These efforts granted legal legitimacy to community groups, empowered advocates, and ensured permanence for neighborhood gardens.

After law school, Alysa clerked for Justice Ariel Rodriguez with the Supreme Court of New Jersey. While in Camden and Philadelphia, Alysa continued to be a leader in her local community and active with her neighborhood garden. But after about a decade away, she was ready to return to the West Coast. She admits that Portland was very attractive to her because she knew the community was also very public service-oriented. Alysa and her family settled in Portland in 2016.

Alysa is an associate attorney with Buchanan Angeli Altschul & Sullivan LLP and a member of the MBA YLS Service to the Public Committee. Alysa is excited to continue her work bridging gaps between advocates and legal professionals as a member the Portland community and the MBA. We are excited to have her!

YLS CLE Preview

by Nyika Corbett
YLS CLE Committee Chair



My name is Nyika Corbett, and it is my pleasure to serve as chair of this year's YLS CLE Committee. We are extremely excited to share the programming we have lined up for 2018-19. Our Fall Employment Law Series is currently wrapping up, but it isn't too late to catch the last speaker and earn an ethics credit on Friday, November 9. In addition, we are beginning to organize our Winter Series: "Young Litigators Forum," a new and exciting Spring Series, as well as several stand-alone seminars and an Intellectual Property mini-series. We welcome your feedback and any ideas you have for future

CLE topics and speakers. Our committee strives to present quality programming for newer attorneys at affordable prices and convenient times. We aim to provide young lawyers with the nuts and bolts of a variety of law practice areas, allow seasoned attorneys to share their knowledge and war stories, and create a forum where young attorneys can meet one another and begin building professional relationships in the Portland area.

Over the past few years, the YLS CLE Committee has made efforts to expand and diversify our pool of speakers, to provide innovative programming, and to listen to feedback from the MBA Board, our speakers, and CLE attendees when selecting topics for future series and stand-alone CLEs. If you have suggestions for topics that you want more information on or wish you had access to in your first years of practice, topics you think every young lawyer should learn, or an interest in becoming a speaker, please contact me at acorbett@schwabe.com.

Oregon Immigrant Rights

Continued from page 12

could benefit from a lot more collaboration in that area."

MBA members can connect with Oregon immigration attorneys and foster such relationships through networking or volunteering with AILA Oregon, the local chapter of the American Immigration Lawyers Association (www.AILAOregon.com/leadership). AILA Oregon also hosts naturalization workshops and community events offering pro bono opportunities.

There is a need and opportunity for pro bono attorneys to engage at every point throughout the immigration law process - from educating immigrants and asylum seekers on knowing their rights, to conducting witness interviews, to developing amicus briefs, or even trying a case in immigration or federal court. With almost as many ways to engage as there are immigration attorneys ready to loop you in, all any MBA member needs to do is ask to find an opportunity that is a good fit and workable scope of commitment. All of the attorneys and organizations cited in this article are ready to accept your call or email.

CIVIC EDUCATION PROGRAMS

Presented by the League of Women
Voters of Portland

Immigration: How Does a Nation of Immigrants Welcome Newcomers?

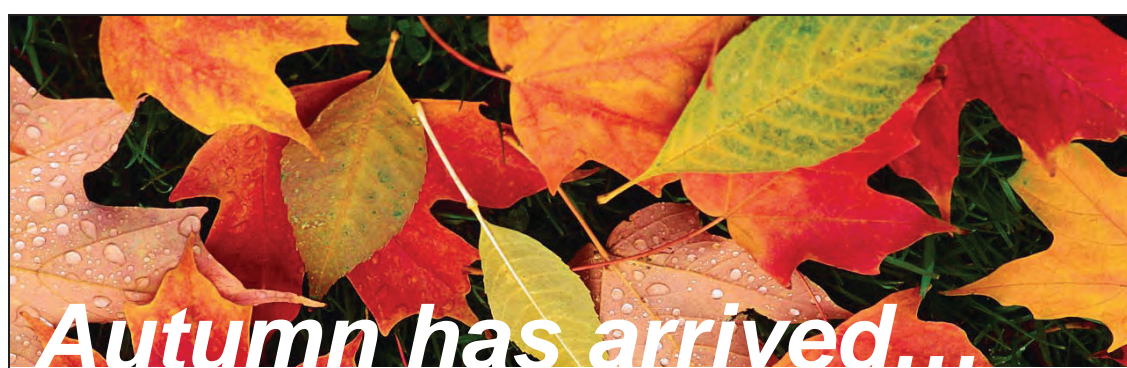
Tuesday, November 13

Panelists include **Polo Catalani**, City of Portland's New Portlander Programs, **Leland Baxter-Neal**, ACLU of Oregon, and **Chanpone Sinlapasai**, Immigration attorney with Marandas & Sinlapasai Immigration Law Office. The audience will be invited to reflect upon their own immigrant roots and stories, and panelists will give an overview of the challenges facing today's immigrants. The discussion will include information about the scope and scale of immigration in Oregon, economic impacts of immigration, and stories of community members who have made the transition from new immigrant to citizen.

Free and open to the public, these events are funded in part by the Multnomah Bar Foundation.

Multnomah County Board Room
501 SE Hawthorne Blvd.
Portland
7-8:30 p.m.

Archived video of this event and additional resources may be found at www.lwvpx.org.



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Tips From the Bench

Continued from page 10

of filing, but the vast majority of the cases filed in this county can and should be tried within that period. It is much easier to comply with the deadline if you pick a trial date early and also start discovery earlier in the process.

Read (and Re-Read) the Rules

On a separate but related topic, the importance of reading the rules cannot be overstated. Whether you are a first-year lawyer, a 30+ year lawyer or even a judge, it's always a good idea to read the rules to see if there is a rule that addresses a particular concern you might have, as opposed to just going off memory or belief. It is also important to make a concerted effort to periodically re-read the rules - the rules of evidence, the rules of civil procedure, the uniform trial court rules, the supplementary local rules, and any other rules that might affect your practice - at least on an annual basis. You might be surprised to learn that things have changed since you last read the rules, that your memory of the rules doesn't conform with the rules, or that you didn't even realize that a particular rule existed.

News From the Court

Continued from page 10

at *ex parte*. If requested, the sitting judge assigned to hear an MSJ may or may not be the motions judge previously assigned in the case.

Civil Jury Trials

Multnomah County Circuit Court is currently on track to match the number of civil jury trials heard in recent years. As of September 25, there have been 65 civil jury trials presented in Multnomah County Circuit Court with an estimated total of 105 to be completed by year's end.

Disability Access to Courts

The Court is interested in participating in ongoing efforts by community stakeholders to evaluate the issue of disability access to Multnomah County courthouses. The MBA and the Court Liaison Committee continue to work towards ensuring that Oregon courts not only offer convenient physical access to the courts by disabled persons, but also the humane and dignified treatment by court staff, including security personnel, of disabled persons.

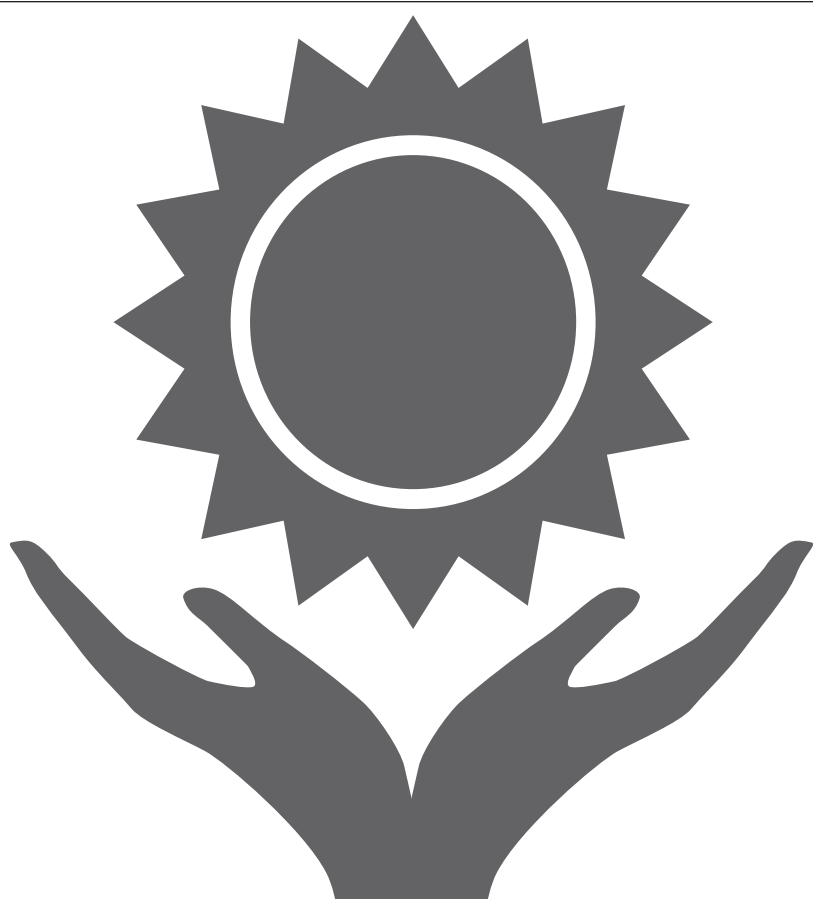
OSB Professional Liability Fund



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.



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Pro Bono Volunteers

Thank you to the following lawyers and law students who recently donated their pro bono services via the Volunteer Lawyers Project, the Senior Law Project, law firm clinics, the Oregon Law Center, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark Small Business Legal Clinic, Children's Representation Project, and Changing Lives Forever Project. To learn more about pro bono opportunities in Multnomah County, go to www.mbabar.org and click on "About Us" and "Pro Bono."

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Positions

Experienced Family Law Attorney, Portland

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Qualified applicants should submit a resume and cover letter to Trisa Kays, tmk@wysekadish.com, Wyse Kadish LLP, 900 SW Fifth Ave., Suite 2000, Portland, OR 97204.

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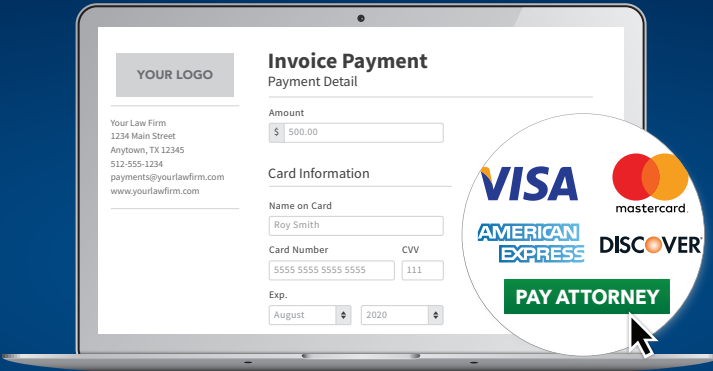
- Typical cases requires six hours of time.
- Highly flexible—can be scheduled on your time at your convenience.
- Operating in Multnomah, Clackamas, Marion and Lane counties. More counties anticipated soon.
- The difference you make in a Protected Person's life can be profound!



I would love to schedule time to chat with you, your professional group, social group or faith group about our volunteer program. Let's talk!

Contact:
Marc Kochanski, Community Relations Manager
marc@guardian-partners.org | 971-409-1358

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CONGRATULATIONS TO OUR NEW PARTNER, KRISTEN HILTON.

We are pleased to announce that Kristen Hilton has been named a Partner. Kristen is a Certified Information Privacy Professional for the United States (CIPP/US). Kristen's practice is focused on privacy and data security matters, complex commercial litigation, and employment law.


kilton@sussmanshank.com
503.243.1654

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is pleased to announce that the lawyers and staff of Cavanaugh Levy Bilyeu LLP have joined the firm, forming one of the largest estate planning and administration practice groups in Oregon.

Jonathan Levy and **Amy Bilyeu** join the firm as partners;
Jim Cavanaugh joins of counsel.

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Stoll Berne

Welcome to our newest attorney,

Lydia Anderson-Dana!

Lydia joins Stoll Berne's litigation group as an associate, focusing on securities and class action litigation.

She previously served as a law clerk for the U.S. Court of Appeals for the Ninth Circuit as well as the District of Oregon.

Prior to law school, Lydia worked for the International Committee of the Red Cross and DCS Congressional in Washington, D.C.

Originally from Portland, we are excited to have Lydia join our team!

209 SW Oak Street, Suite 500, Portland, OR 97204 • 503.227.1600 • stollberne.com

MBA Golf Raises Over \$8,000 for Legal Aid

The annual MBA Golf Championship was held at Willamette Valley Country Club in October and raised \$8,700 to help support operations for the Volunteers Lawyers Project at Legal Aid Services of Oregon.

Results

Open Team Low Gross

1st Place: Jeff Capener, Evan Wallace, Schuyler Wallace, Sky Wallace
2nd Place: Bennett Dalton, Tom Melville, Josh Stellmon, Mike Tooley

Open Team Low Net

1st Place: Michael Alter, Brian Thomas, Tyler Volm, Jason Olson (scorecard playoff)
2nd Place: John Berg, Mark Bockius, Andrew Schpak & Blind Draw (Brian Jolly)

Law Firm Team Low Gross

1st Place: Miller Nash Graham & Dunn LLP - John Clarke, Paul Havel, Justin Sawyer, Tom Sand

Law Firm Team Low Net

1st Place: Wallace Klor Mann Capener & Bishop, P.C. - Chris Bishop, John Klor, Lawrence Mann, Brad Garber

Winning Scramble Team

Tom Diffely, Neil Evans, Carter Mann, Milo Petranovich

Individual Contests

Low Gross: Tom Melville (scorecard playoff)
Low Net: Roscoe Nelson
Long Drive Men: Brian Thomas
Long Drive Women: Zeta Rennie
KP Men: Jason Olson

Traveling trophies are awarded to the First Place Firm teams and First Place Open low net team. Congratulations, all!

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Tom Melville, Josh Stellmon, Bennett Dalton and Mike Tooley



Evan Wallace, Sky Wallace, Schuyler Wallace and Jeff Capener



Doug Chiapuzio, Chip Gazzola, Zeta Rennie and Brian Jolly



Tom Sand with law firm trophy



Milo Petranovich, Carter Mann, Neil Evans and Tom Diffely



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