



MULTNOMAH LAWYER

March 2018
Volume 64, Number 3



Update on Public Service Initiatives

by Andrew Schpak
MBA President

Back in September, I used this opportunity to discuss “What Can We Do to Help the Homeless?” I wanted to hear what MBA members and subject-matter

experts think are the most effective ways our association as a group, and our members as individuals, can improve the situation in our region.

This month, I’m writing with an update on the progress we have made so far, and to enlist your help on a few of our next steps.

Public Service Task Force

Initially, we convened a Public Service Task Force that brought together a broad array of stakeholders to identify the most important holes in the net of existing legal and social services, and brainstorm how the MBA and local lawyers can help address those areas. Based on the input received from that group, the task force identified the following action steps:

- 1) Host quarterly meetings that bring together the organizations that currently provide legal and social services to the homeless population, with the goal of encouraging participants to share their plans and ideas and identifying opportunities for collaboration and coordination.
- 2) Create a Public Service Committee within the MBA that will: (a) raise awareness of the need for public service; (b) promote legal and other public service opportunities; (c) recognize and highlight law firms and other organizations that have developed public/private partnerships and other innovative approaches to service delivery; (d) identify and recruit subject matter experts willing to act as speakers, trainers, and/or volunteer providers to community service organizations; and (e) organize and partner on “Know Your Rights” and other events designed to engage and serve the public.

Quarterly Service Provider Meetings

I am proud to report that we held our first quarterly service provider meeting on January 30. Feedback from attendees was positive, and we plan to continue with these meetings on a quarterly basis. The MBA plans to be deferential as to the agenda and discussions that take place, and will mainly assist with scheduling, meeting logistics, meeting space, and coordination with any guest speakers requested by the service providers. We’re hopeful that these meetings will maximize the reach and impact of the work that existing service providers are already doing in our community.

Public Service Committee

The newly-formed Public Service Committee met for the first time on February 13. That committee is still setting its priorities and agenda for the year, but intends to make concrete progress before the MBA programming year ends this summer.

Self-Represented Litigant Video Series

On another front, the MBA had been meeting with Judge Waller and the Multnomah County Courts to develop videos that simplify and explain the key steps in the litigation process. The idea is to make these videos available both in the courthouse and online, so that unrepresented litigants and the homeless can better understand steps in the litigation process, such as service of process and filing for a restraining order.

We created a special committee to work on this project, and soon discovered that the Oregon State Bar had undertaken a parallel project called the Self-Navigators Workgroup. The Self-Navigators Workgroup is reviewing all of the videos and written resources that exist in Oregon, including but not limited to those resources that are housed within the OSB, Legal Aid Services of Oregon, Oregon Judicial Division, or a local bar association. The OSB also has a part-time videographer who will facilitate the creation of new videos on topics that the Workgroup deems a high priority.

In light of the work of the Self-Navigators Workgroup, the MBA has decided to focus its energy on topics and videos that are specific to Multnomah County Courts, such as issues stemming from the Supplemental Local Rules and information specific to the Multnomah County Courthouse. We are excited that the OSB has made their videographer available, allowing the MBA to produce these videos with minimal cost.

Hackathon

With the new courthouse scheduled to open in less than three years and technology becoming an increasingly important resource to unrepresented litigants (including but not limited to the homeless), the MBA also plans to partner with the Technology Association of Oregon on a Hackathon this spring.

By bringing together lawyers, social service agencies, representatives of local and state government, state and local court systems, app developers, software developers, and representatives from the homeless community to engage in some friendly competition, we hope to come up with innovative new ideas for harnessing courthouse and smartphone technology and better connecting the homeless and other unrepresented litigants to the contacts, resources, forms, and other support they need.

What MBA Members Can Do

We are still seeking attorneys (and techies) interested in participating on the teams that will compete for the best idea at the Hackathon, and plan to close with a community event that is open to everyone and announces the winner of the competition. Watch for more information about the date and time of this event.

If you are interested in serving on the new Public Service Committee, please let us know, as we have a couple of spots remaining on that roster. Finally, if you have any other thoughts about what we as the MBA can and should be doing to meet this challenge, I encourage you to reach out to me directly (aschpak@barran.com, 503.276.2156). I don’t have all the answers, but I’m enjoying searching for them.

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.

MARCH

3.7 Wednesday Litigating RICO Claims in Oregon

Cliff Davidson
Harry Wilson

3.8 Thursday Spousal Support Claims at Trial

Judge Beth Allen
Judge Katherine Tennyson

3.13 Tuesday Presiding Court Update

Judge Stephen Bushong

3.14 Wednesday How to “Win” Your Next Mediation - Strategies for Effective Advocacy

Judge Jean Kerr Maurer
Richard Vangelisti

3.15 Thursday MBA Employment Law Update: A Whole New (or Old) World

Heidi Brown
Aruna Masih

3.22 Thursday Carving out a Civil Rights Practice

J. Ashlee Albies
Juan C. Chavez
Matthew C. Ellis
Shenoa L. Payne
Diane S. Sykes, moderator

APRIL

4.3 Tuesday Non-Economic and Punitive Damages

Angela Franco Lucero
Kristian Roggendorf

4.12 Thursday New Judges’ Perspectives: Views from Five New Multnomah County Judges

Judge Pat McGuire
Judge Chris Ramras
Judge Ben Souede
Judge Xiomara Torres
Judge Kate von Ter Stegge

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Multnomah Bar Association
620 SW 5th Ave
Suite 1220
Portland, Oregon 97204
503.222.3275
Fax 503.243.1881
www.mbabar.org

SAVE THE DATE!

MBA 112th Annual Meeting, Dinner & Judges Reception

Wednesday, May 2
5-8 p.m.

Portland Marriott
Downtown Waterfront
1401 SW Naito Parkway

Sponsorship opportunities available. Contact Kathy at the MBA at 503.222.3275.

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*or the preceding Friday, if on a weekend.

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Moving the Conversation



by Duane Bosworth
MBA Equity, Diversity & Inclusion Committee

Welcome to the first of what the MBA Equity, Diversity & Inclusion Committee intends as a regular source of discussion about how we could make our bar more diverse, equitable, and inclusive. (A future column might consider why that is important.)

First, some background and ground rules: (1) The purpose of this column is to raise issues and provide observations and ideas. (2) To the extent any “instruction” is offered it should arise by deduction and not by command. (3) While fierce rhetoric may in fact be more than justified, it doesn’t fit these purposes. (4) The governing metaphor for this column is “moving the conversation forward.” Columns are intended to be about gaining insight through shared observations and information.

We are looking for authors to provide monthly pieces. Proposed columns, drafted columns, ideas for columns, and recommendations for authors (including self-recommendations) should be sent to the MBA office at mba@mbabar.org. Anonymous authors are certainly welcome. Since we’re lawyers we need to add that the ideas, observations, and opinions of any author are not necessarily those of the MBA, its Board, its committees, anyone else affiliated with the MBA, or the author’s entity or employer.

Enough background. In the space left, let me describe a short thought experiment concerning systemic barriers. Here is our issue: what causes the much too large disconnect between the efforts we make in recruiting and hiring for diversity, on the one hand, and the relative lack of success we have in retaining and advancing diverse lawyers on the other? (No observation herein is universal, even if telling.) Repeatedly, our best intentions are only partially recognized. Why?

Are implicit bias and unintended micro-aggressions the problem? Certainly they are huge and serious problems and certainly there is monumental and serious work to be done to interrupt the tapes that run unbidden in our heads in order to diminish these barriers to opportunity and success. What if, however, the problems within us were not the only problem? What if equal or maybe greater barriers to opportunity and success are located in unrecognized, invisible “systems” within our legal entities? For an introductory description of systems as barriers, see Jay Smooth’s YouTube video, “Moving the Race Conversation Forward.”

Imagine for a moment that each of our legal entities has approximately 50 rules or criteria that must be followed or fulfilled by a lawyer new to an entity in order to achieve success. Imagine that about half of those rules or criteria simply aren’t articulated or identified but it is nevertheless obvious to evaluators or others with power when one or more of those rules or criteria are broken or not fulfilled. Imagine further that for a variety of reasons, some of the lawyers new to the entity have a significant head start in beginning to discern the content of those unstated rules or criteria? For one illustration of a head start, see “The Race of Life (white privilege)” on YouTube.

What if, in addition, a number of the remaining rules or criteria are not based on what is actually valuable or needed for the success of the entity? What if instead they found their source in “that’s not how we do it,” or even “that’s not how we look when we do it.”

In sum, what if nobody in charge of or with the power to evaluate new lawyers was aware of any of the above? Extensive social research shows that systems such as the above play a significant role in causing too many objectively qualified lawyers (for example) to underperform, or seem to underperform, or simply “disidentify” with the goals of and their role in their legal entity. Regarding “disidentify” see, for example, Claude Steele’s 1992 *The Atlantic* article “Race and the Schooling of Black Americans.”

If any or all of the above were true, it might well cause us genuine sadness, as we think about the lack of equity and the unwanted results for too many lawyers we intend to have succeed.

Calendar

MARCH

9 Friday

ACLU of Oregon Liberty Dinner
www.aclu-or.org

13 Tuesday

Lewis & Clark Distinguished Visitor Lecture

MBA Solo & Small Firm Workshop

Details below

Reducing Portland’s Carbon Footprint
Details on p. 20

14 Wednesday

OMLA Lunch with OSB President

16 Friday

OWLS Roberts & Deiz Awards Dinner
www.oregonwomenlawyers.org

APRIL

12 Thursday

Justice Trivia
Details on p. 13

26 Thursday

Classroom Law Project CLE

Classroom Law Project Legal Citizen of the Year Dinner
www.classroomlaw.org

Take Your Kids to Work Day

27 Friday

OAAP/OWLS 11th Annual Women’s Retreat
www.oregonwomenlawyers.org

30 Monday

CourtCare Campaign begins
www.mbabar.org

MAY

2 Wednesday

MBA 112th Annual Dinner
www.mbabar.org

3 Thursday

Objection! Poetry Slam
www.mbabar.org

22 Tuesday

Tillicum Gathering
www.mbabar.org

23 Wednesday

PGE Diversity Summit

Solo & Small Firm Committee Workshop

HIRING EMPLOYEES WITH CONFIDENCE: COMPLIANCE AND RECORDKEEPING PRACTICES FOR SOLO AND SMALL FIRM PRACTICES

Tuesday, March 13
Workshop: 12-1:30 p.m.
Red Star Tavern Club Room
503 SW Alder, Portland

Business is good and you’re ready to add an employee to the payroll - great news! Before you place that job ad, are you prepared to meet DOL and state employment law compliance? Are you up-to-speed on recent employment law developments that changed some hiring practices? Do you know what employee records you need to maintain and for how long? Get answers to these questions and more and start your hiring experience off right. **Christine Thelen**, Director of HR Services for Trupp HR, and **Christine Meadows**, a local labor and employment attorney, will cover the ins and outs of compliant hiring and employee recordkeeping. Both presenters are experts in the field of employment law compliance. Attendees will receive a hiring checklist to help them establish compliant and efficient hiring practices.

Cost: \$20 members/\$60 non-members.

Lunch is provided.

One hour of CLE credit will be applied for.

Register at www.mbabar.org.



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.

Litigating RICO Claims in Oregon

Wednesday, March 7 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 statute.

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

Spousal Support Claims at Trial

Thursday, March 8 3-5 p.m.

World Trade Center, Plaza Conference Room

Members \$60/Non-Members \$95

Join Multnomah County Circuit Court **Judges Katherine Tennyson** and **Beth Allen** for a discussion about how to best present your spousal support cases at trial. They will discuss what evidence is most helpful for a decision about the amount and duration of support and how to effectively use experts, among other topics.

For more information: Contact Shannon Hall, Gevurtz Menashe at 503.227.1515. For registration questions, contact the MBA at 503.222.3275.

Presiding Court Update

Tuesday, March 13 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

In this session, Multnomah County **Presiding Judge Stephen K. Bushong**, the Chief Judges and court staff will present on the state of the court, review new Supplemental Local Rules, and provide tips on issues unique to practicing in Multnomah County. Judge Bushong will also give an update on the new courthouse, which is scheduled to open in 2020.

This seminar is designed for attorneys at all levels of experience and questions are strongly encouraged.

For more information: Contact Bridget Donegan, Larkins Vacura Kayser at 503.222.4424. For registration questions, contact the MBA at 503.222.3275.

How to “Win” Your Next Mediation - Strategies for Effective Advocacy

Wednesday, March 14 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Note: 1.5 hours of general MCLE credit and .5 hours of ethics credit will be applied for.

Mediation is often your client’s “day-in-court.” If this is true, then effective advocacy in mediation is critical to serving your client’s interests. The strategies required for mediation can differ from trial advocacy. Mediation issues to consider that can make or break your case include:

- Should I even mediate and, if so, when?
- What kind of mediator and process - facilitative or evaluative?
- What should be in the mediation statement?
- What information should I disclose to my opponent?
- Who should attend the mediation?
- What case evaluation should I provide to the client?
- Should I worry about biases and emotions?
- What mediation ethics to know?

Join speakers **Hon. Jean Kerr Maurer**, retired Multnomah County Circuit Court judge and **Richard Vangelisti**, Vangelisti LLC for a lively discussion of strategies for “winning” your next mediation

For more information: Contact the MBA at 503.222.3275.

MBA Employment Law Update: A Whole New (or Old) World

Thursday, March 15 3-5 p.m.

World Trade Center, Sky Bridge Room

Members \$60/Non-Members \$95

With any new administration, some level of change is expected in federal policy enforcement. In the first year of the current administration, in the labor and employment world we’ve seen an overhaul of agency leadership, White House directives to federal agencies enjoining them from enforcing their own rules, and competing federal agencies taking opposing positions in the same litigation. More change has been promised to come. And while federal enforcement may be seen as taking a step back, states have become significantly more active in stepping up employee rights including the Oregon Legislature. This past fall, the newly configured US Supreme Court considered several cases with significant labor and employment implications. This CLE seminar will review labor and employment updates in federal enforcement, new legislation passed by the Oregon State Legislature, significant new cases, and anticipated developments on the horizon. **Heidi Brown**, Portland City Attorney’s Office and **Aruna A. Masih**, Bennett, Hartman, Morris & Kaplan LLP are the panelists for this must-attend class for all employment law attorneys.

For more information: Contact Liani Reeves, Bullard Smith Jernstedt Wilson at 503.248.1134. For registration questions, contact the MBA at 503.222.3275.

Carving Out a Civil Rights Practice: How It Helps Expand Your Network, Better Serve Your Clients and Positively Impact Your Community

Thursday, March 22 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Are you interested in civil rights work but don’t know where to start? Would you like to learn how civil rights cases can expand your practice and your network? Have you considered how just one civil rights case can impact our entire community? Our nation faces bigger challenges than we have seen in decades. The most vulnerable members of our society face tremendous barriers to accessing justice. Attorneys pursuing civil rights actions are sorely needed. Come learn how you can carve out a civil rights practice in a wide range of subject matters - housing discrimination, ADA enforcement, employment discrimination, and prisoner litigation. No case is too small. Come learn how you can make a difference in the lives of your clients and our community.

Diane S. Sykes, Diane S. Sykes Attorney at Law PC, will moderate the panel made up of **J. Ashlee Albies**, Albes & Stark LLC; **Juan C. Chavez**, Attorney at Law; **Matthew C. Ellis**, Law Office of Matthew C Ellis; and **Shenoa L. Payne**, Richardson Wright LLP.

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

Non-Economic and Punitive Damages

Tuesday, April 3 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Covering non-economic and punitive damages, this CLE highlights the advantages and disadvantages of pleading punitive damage, and how to best argue for and against non-economic damages. **Kristian Roggendorf**, Roggendorf Law LLC will address the plaintiff’s perspective and **Angela Franco Lucero**, Kranovich & Lucero LLC will present the defendant’s perspective.

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.

New Judges’ Perspectives: Views from Five New Multnomah County Judges

Thursday, April 12 3-5 p.m.

World Trade Center, Plaza Conference Room

Members \$60/Non-Members \$95

Join some of the newest Multnomah County Circuit Court Judges - **Pat McGuire**, **Chris Ramras**, **Ben Souede**, **Xiomara Torres** and **Kate von Ter Stegge** - to find out how their judicial experiences have been so far. What’s it like to be a new judge? How have their experiences compared to their expectations? What are their favorite parts of the job? What are some of the challenges? Please join us for this unique opportunity and bring your questions.

For more information: Contact Roscoe Nelson, Nelson & Nelson at 503.222.1081. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

What Every Attorney Needs to Know about Workers' Compensation

Wednesday, April 25 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

This CLE will provide a framework for understanding state workers' compensation claims and how they might affect a client's other claims. It will cover the nuts and bolts of workers' compensation claims, from filing, types of claims, availability of benefits, denials, and timelines. It will also explore the interaction between workers' compensation claims and other claims that may arise from the same incident or be ancillary to the work injury claim, for example, motor vehicle accidents (including UM/UIM considerations), personal injury claims, product liability claims, intentional torts, professional negligence, and employment and wage claims. Our panel of speakers are three attorneys from Schoenfeld & Schoenfeld PC: **Steven M. Schoenfeld, Karen Ruga Schoenfeld, and Spencer Aldrich.**

For more information: Contact Jovanna Patrick, Hollander Lebenbaum & Gannicott at 503.222.2408. 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, May 1 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.

Sexual Assault Claims: Issue Spotting for the General Practitioner

Tuesday, May 8 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

With the prevalence of the #metoo movement, more and more attorneys are faced with questions of how to handle sexual assault issues in the context of representing their clients. This CLE will provide a background and overview of sexual assault cases for the general practitioner, including how to respond appropriately to a trauma victim, logistics and considerations of reporting to law enforcement, what to expect from any criminal process, civil remedies available to victims, risks and considerations of counterclaims and who to sue, and the affect of a sexual assault claim on a client's other legal matters. 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 & Gannicott at 503.222.2408. For registration questions, contact the MBA at 503.222.3275.

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.

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.mbabar.org.

CLE Registration Form

| | | | |
|---------------|-------------|-----------|---|
| NAME _____ | | | CARD NUMBER _____ |
| FIRM _____ | | | EXPIRATION DATE AND SECURITY CODE _____ |
| ADDRESS _____ | | | SIGNATURE _____ |
| CITY _____ | STATE _____ | ZIP _____ | BILLING ADDRESS FOR CARD (if different) _____ |
| PHONE _____ | | | _____ |
| OSB# _____ | | | _____ |

Member Status:
 MBA Member
 Non-Member

Payment Options:
 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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 620 SW Fifth Ave., Suite 1220 ■ Portland, OR 97204
 503.222.3275 ■ **Fax to:** 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.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.

- 3/7 Litigating RICO Claims in Oregon**
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 Class Registration (\$60 Members/\$95 Non)\$ _____
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 - 3/14 How to "Win" Your Next Mediation - Strategies for Effective Advocacy**
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 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 3/15 MBA Employment Law Update**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 3/22 Carving Out a Civil Rights Practice**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 4/3 Non-Economic and Punitive Damages**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 4/12 New Judges' Perspectives: View from Five New Multnomah County Judges**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 4/25 What Every Attorney Needs to Know About Workers' Compensation**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 5/1 Environmental Cleanup: Could an "Ability to Pay" Settlement and Insurance Trust Get Your Client Out Early?**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$30 Members/\$50 Non) ..\$ _____
 - 5/8 Sexual Assault Claims: Issue Spotting for the General Practitioner**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
 - 5/9 The Current State of Transgender Rights and Religious Accommodations Under Title VII**
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Do You Want to Present at an MBA CLE Seminar?

The MBA CLE Committee is looking for qualified speakers to present CLEs for the 2018-19 year. The speaker submission form is available at www.mbabar.org/assets/documents/cle/speakersubmissions.pdf and is due by Friday, April 27. The MBA is committed to improving speaker diversity by all measures and strongly encourages all interested speakers to submit a form or contact committee chair Bridget Donegan for more information at 503.542.3107.

Arthur R. Miller to Give Higgins Distinguished Visitor Lecture

Leading civil procedure scholar and Emmy winner Professor Arthur R. Miller CBE will present the Higgins Distinguished Visitor Lecture at Lewis & Clark Law School on March 13 at 6 p.m. The event is free and open to the public. Contact Kerry Rowand (503.768.6912, rowand@lclark.edu) for details.

Conference Room Available for Reservation

Conveniently located downtown, the MBA conference room is available for reservation by members for client meetings, depositions and other practice-related uses. Contact the MBA for details and availability at 503.222.3275 or mba@mbabar.org.

Free CLE Webcast for MBA Members

The video webcast of the seminar "Effective and Ethical Ways to Deal with Impaired Litigants" is available in the Members Center at www.mbabar.org. The webcast is approved for one hour of general and one hour of ethics OSB MCLE credit (two hours in total).

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

Statement of Diversity Principles Available to Sign

The MBA Equity, Diversity & Inclusion Committee invites you to sign the Statement of Diversity Principles. Read and sign the diversity statement and pledge at www.mbabar.org/about-us/diversity.html.

Noon Time Rides

Short fast rides with hills. Meet at SW corner of Pioneer Courthouse Square (Yamhill & Broadway) between noon and 12:10 p.m., Monday and Thursday. Contact: Ray Thomas 503.228.5222 with questions, or meet at start.



Congratulations, Vicki!

Bodyfelt Mount congratulates our friend and partner Vicki M. Smith on becoming 2018 President of the Oregon Association of Defense Counsel. We applaud Vicki's dedication to OADC and the many other professional and community organizations she serves.

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We congratulate the Honorable Shelley D. Russell on her appointment to the Multnomah County Circuit Court.



Judge Russell is an experienced litigator who brings to the bench a level head, a steady, judicious temperament and a commitment to justice.

- | | |
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Ethics Focus

Due Process: Changes to Oregon's Lawyer Discipline System

by Mark J. Fucile
Fucile & Reising LLP



Many lawyers don't give a lot of thought to the discipline system. At the same time, statistics compiled annually by the OSB reflect that, on a per capita basis in any given year, about one in every 10 Oregon licensees is the subject of a regulatory complaint. The baseline for constitutional due process in any lawyer regulatory system under (among others) *In re Ruffalo*, 390 US 544, 550 (1968), is notice and the opportunity to be heard. Unlike the increasingly close alignment among states on the substance of lawyer conduct with the widespread adoption of professional rules patterned on the ABA Model Rules of Professional Conduct, regulatory procedure varies significantly from state to state. ORS 9.529 describes Oregon's lawyer discipline system as "sui generis" - which Black's defines as "unique or peculiar." Oregon's system was developed in simpler times and reflected the practice culture of that largely bygone era. Effective January 1, however, Oregon's system has been updated in significant respects. In this column, we'll first outline the process that led to the recent amendments and then survey the key changes.

The Review

The Bar Rules of Procedure, which govern the mechanics of lawyer discipline in Oregon, were initially adopted in 1984. Although they had been amended piecemeal over the past 30 years, the "Bar Rules" essentially reflected the practice environment of the early

1980s. At that time, there were about 7,000 members of the OSB, the OSB professional staff was small and lawyer discipline was mostly handled by volunteers on an ad hoc basis. There are now over 15,000 OSB members, the Bar's regulatory staff has grown to reflect that larger size and the number and complexity of disciplinary matters today made it increasingly difficult to rely primarily on volunteers.

In 2014, the Supreme Court invited the ABA to evaluate Oregon's disciplinary system in light of the changes both in Oregon and nationally that had taken place since the Bar Rules were adopted. The ABA provided the Supreme Court with a report later that year and the OSB then appointed a special committee to review the ABA recommendations

...the "Bar Rules" essentially reflected the practice environment of the early 1980s.

and to develop specific amendments to the Bar Rules. The review committee completed its work in late 2015 and forwarded a detailed set of proposals to the OSB Board of Governors. The Board of Governors, in turn, studied and sought input from the membership on the proposed changes. That process culminated in a set of specific amendments to the Bar Rules that were forwarded to the Supreme Court early last year. The Supreme Court adopted the amendments in May of last year and they became effective on January 1.

The Changes

It is important at the outset to stress that the basic architecture of Oregon's system has not changed. Initial complaints are still (generally) filed with the Bar's Client Assistance Office. Further investigation and formal proceedings are still handled by the Bar's Disciplinary Counsel. The State Professional Responsibility Board (SPRB) still functions as the "grand jury" for the disciplinary system by authorizing formal proceedings. The Disciplinary Board, in turn, conducts trial-level proceedings. Finally, appeals of trial panel decisions are still sent to the Supreme Court.

The amendments, nonetheless, are an important evolution in Oregon's system. They increasingly "professionalize" the system with the goal of improving the speed and the predictability of

outcomes. The amendments range from semantic to structural.

Semantics. As lawyers, we know that words matter. In an effort to better reflect the three principal stages of the process before Supreme Court review, the recent amendments adopt a new set of terms: an "inquiry" describes the initial review of allegations at the Client Assistance Office; a "grievance" describes allegations investigated in a subsequent review by the Disciplinary Counsel; and a "complaint" is the charging instrument that initiates formal proceedings approved by the SPRB. Similarly, in an effort to better reflect the burden of proof, a lawyer who has been formally charged in a complaint is now a "respondent" rather than an "accused."

Structural. Structural changes are largely in three areas. First, local professional responsibility committees (formerly known as "LPRCs") have been eliminated in an effort to streamline investigations. This amendment reflects the more recent practice of most investigations being conducted by the OSB's professional staff and retains the ability of the Disciplinary Counsel to appoint outside investigators for particular cases. Second, the authority of the Disciplinary Counsel reflects the professional

[The amendments]...are an important evolution in Oregon's system.

nature of OSB staff today by, for example, giving the Disciplinary Counsel the authority to offer diversion (rather than the SPRB) and to seek amendments to complaints based on the judgment of the Disciplinary Counsel (without necessarily having to go back to the SPRB). Third, and the most far-reaching structural change, the Disciplinary Board, which conducts disciplinary trials, is now headed by a professional "adjudicator" appointed by the Supreme Court. The adjudicator replaces the state chair of the Disciplinary Board and supervises the administrative aspects of the Disciplinary Board. More fundamentally, the adjudicator is now the presiding member of each three-person trial panel and, with the consent of both sides, can sit in the functional equivalent of a "judge alone" trial. The adjudicator also has an expanded portfolio of pretrial responsibilities, such as ruling on pretrial motions and conducting pretrial hearings.



Family Mediation: From Parenting Plans to Plans for Aging Parents

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Around the Bar



Michael G. Jacobs

Hart Wagner LLP

Portland litigation firm, Hart Wagner LLP, named **Michael G. Jacobs** as its newest partner.

Jacobs maintains a versatile practice focusing on general liability, products liability and medical malpractice defense. With a proven track record of achieving positive results for his clients, he will be a great addition to Hart Wagner's partnership. Jacobs is a 2009 graduate of Lewis & Clark Law School; he joined Hart Wagner in 2011 as an associate.



Erin Morris

Gearing, Rackner & McGrath LLP

The firm is proud to announce that associate attorney **Erin Morris** has been admitted to the Washington State Bar. Morris is a member of the MBA and has practiced in Portland as a family law litigator since 2012. She spent much of her childhood in Clark County, Washington and is excited to expand her practice to include Washington divorce and custody litigation.



Rocky Dallum

Tonkon Torp LLP

Partner **Rocky Dallum** has joined the Board of Directors for the Oregon and SW Washington Chapter of The ALS Association. The ALS Association leads the fight to treat and cure ALS through global research and nationwide advocacy.

Dallum is a partner in the firm's Government Relations & Public Policy Practice Group. He provides strategic counsel to businesses, nonprofits and trade associations on public policy issues and advocates on their



Kimberlee Stafford

behalf within the state executive and legislative branches.

Partner **Kimberlee Stafford** has been elected to The Street Trust Board of Directors. The Street Trust is a nonprofit organization that promotes community partnerships to improve public transit, walking, and bicycling conditions in Oregon.

Stafford has advocated for the integration of sustainable ideas and practices into the profession of law throughout her career. In 2015, she was presented with the OSB President's Sustainability Award. Stafford's practice focuses on a wide range of commercial real estate transactions, including purchases and sales, 1031 exchanges, commercial leases, and financing.



Dayna Underhill

Holland & Knight LLP

Partner **Dayna Underhill** has been appointed to the OSB Legal Ethics Committee.

The Legal Ethics Committee serves as a key resource to assist the OSB's general counsel and board of governors in responding to ethics inquiries. It also recommends changes to the Oregon Rules of Professional Conduct as necessary.

Underhill focuses her practice on legal ethics and risk management for law firms, lawyers and in-house corporate counsel. In addition to her practice, Underhill currently serves as co-editor of the OSB Fee Agreement Compendium, and on the Girl Scouts of America, Oregon and Southwest Washington Council and the Northwest Academy boards of directors.

Wyse Kadish

The firm is proud to announce **Meagan Robbins** has been elected to partner. Robbins joined the firm in 2012 and has since evolved into a tenacious attorney and a valued partner through tutelage from well-respected attorneys in the Portland community. Her practice focuses on all areas of family law with an emphasis on complex divorces,



Meagan Robbins

practice will focus on general civil litigation.

Prior to joining Bodyfelt Mount, Pozzi clerked for Lane County Circuit Court Presiding Judge Karsten H. Rasmussen, working mostly on complex civil litigation cases.



Michele Buck-Romero

prenuptial agreements, and collaborative practice.

Attorney **Michele Buck-Romero** has recently been elected to the OSB Estate Planning Section Executive Committee. Her practice focuses on estate planning, estate and gift tax planning, probate and trust administration, and family business planning.



Sarah Pozzi

Bodyfelt Mount LLP

Sarah Pozzi has become an associate with the firm. Pozzi's



Kristin Malone



Harry Wilson

Markowitz Herbold PC

Litigation firm Markowitz Herbold PC announced today that attorney **Kristin Malone** has joined Oregon Ballet Theatre's Board of Trustees for a three-year term.

Malone is a trial lawyer who represents high-profile corporate and individual clients across a wide range of practice areas including intellectual property, fraud, antitrust, contract disputes and employment litigation.

The firm is pleased to announce that shareholder **Harry Wilson** is the exclusive winner of the 2018 Client Choice award for Oregon litigation by the International Law Office.

Nominated by corporate counsel, the award recognizes Wilson for his excellent quality of client service. The criteria for this recognition focuses an attorney's ability to add real value to a client's business above and beyond what is required.

Wilson represents clients in complex litigation involving contracts, business torts, securities, and employment in state, federal, and international forums.



Heather Fossity

Barran Liebman LLP

The firm is proud to welcome **Heather Fossity**. With a diverse legal background representing Oregon employers and a JD, cum laude, from Lewis & Clark Law School, Barran Liebman is excited to have her join the employment litigation team.

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.

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Welcome!



Dunn Carney is pleased to welcome two attorneys to the firm's Litigation Team:

Chelsea J. Glynn is a litigator who has defended clients in negligence, products liability, personal injury, and construction claims. Before joining Dunn Carney, she served as an assistant county counsel for Washington County and in private practice.

Natalie C. Chernus has joined the firm as a member of the Litigation and Business Teams after graduating from Lewis & Clark Law School. She focuses on general business and litigation.



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Tips From the Bench

by Judge Katherine Tennyson
Multnomah County Circuit Court

From time to time, people write in to ask that certain questions be addressed in this column. Often these questions are so fact-specific that answering them would not provide useful information to the general lawyering public. In no particular order, here are a few questions asked and hopefully answered:

How do I access a Court Visitor?

ORS 125.150 through 125.170 detail the duties and obligations of a Court Visitor. Court Visitors, by statute, are a mandatory part of an adult guardianship proceeding. The court may order a visitor in conservatorship or minor guardianship and adult adoption proceedings upon the court's own motion or the motion of any party. Visitors in Multnomah County are not court employees. We have three people qualified under the Amended Presiding Judge Order dated May 18, 2015 who act as visitors. You can locate that order on the Multnomah County website. We employ a random rotation for case assignment.

Why does it seem like there is an antagonistic relationship between the court and attorneys in probate proceedings?

There are certainly a lot of misconceptions about the probate area of law and how "intractable" it is. Since becoming Chief Probate Judge in Multnomah County, it is difficult for me to tell why. We see some very outstanding work by many practitioners who submit the right documents in the correct form, are aware of and follow the statutes, UTCR and SLRs and hustle to get any missing required filings to the court, when asked. Indeed, on any given day, I sign up to 30 orders/judgments done right the



first time. When something is not correctly done or additional information is needed, we strive for a polite and professional exchange which will yield the desired results.

No doubt, it is indeed frustrating to get documents back from the court. It is especially frustrating when the return is interpreted as the probate judge's attempt to second-guess the legal advice of the practitioner. Here is a tip, though: when a judge calls you directly for information instead of rejecting your documents out of hand, it's probably not a good idea to be snippy to that judge. While the request for additional information may sound like a challenge, as Judge Rita Batz Cobb is fond of saying: "sometimes a question is just a question." When we all remember that the court has certain responsibilities which may be different from a lawyer's responsibilities, frustrations seem to resolve more quickly.

How do we get an assigned judge for a probate case?

All cases within the probate area are docketed through a central system within the Family Law Department. If the case you are working on will take one judicial day or more of trial, you need to get an assigned judge. Call the probate department and ask to appear on the Short Matters Docket. At that time, all parties will receive the assigned judge. All scheduling will then occur with that judge.



News from the Courthouse

by Rima Ghandour
Court Liaison Committee

Court Update - Judge Stephen Bushong and Barbara Marcille, Trial Court Administrator

Judge Bushong thanked the MBA for hosting Judge Waller's reception. It was well attended and Judge Waller was very appreciative.

There are a number of new judges at the courthouse: Judge Andrew Lavin, Judge Melvin Oden-Orr, and Judge Shelley Russell, as well as two new hearings referees, Shelley Keller and Mark Peterson.

There is also new judicial leadership: The Chief Civil Judge is Judge John Wittmayer, the Chief Criminal Judge is Judge Cheryl Albrecht, and Judge Maureen McKnight will continue as Chief Family Judge for the short term.

These changes have resulted in changes to courtroom assignments with 28 judges moving courtrooms.

Budget

The legislative short session has begun. The last session saw a \$21.6 million reduction in the judicial branch's budget. Chief Justice Thomas Balmer is asking the

legislature for a partial restoration of the budget cut. The request is for a \$5.3 million restoration from the \$21.6 million cut. This won't return the judicial branch to current service levels, but it will help courts throughout the state avoid laying off staff. The Chief Justice has re-convened a subcommittee of the Court Reengineering and Efficiency Workgroup (CREW) to strategize regarding the budget. If MBA members have any influence with any legislators, it would be good to talk to them. To discuss with the legislature: the court is not an agency; per the Constitution, the court is the third branch of government and has constitutional obligations (for example: the right to a jury trial). Judge Bushong encourages the legal community to refer to the court as the Judicial Branch, not Judicial Department. It is also important to keep in mind that there is very little that the court does optionally - almost all of the work of the court is required by the Constitution and statutes. Many of the services the court provides that are discretionary, like treatment courts, are functions the legislature wants the courts to continue because they provide significant benefits to the public.

A Busy Start to the New Year

This year is off to a busy start. In January, on the first Friday there were 10 trials sent out at trial assignment (aka "Call"), six of which were civil; the second Friday saw seven trials sent out, four of which were civil; the third week, there were eight trials - five of which were civil. These do not include specially assigned and misdemeanor trials. For reference, in 2017 there were 102 civil jury trials that were sent out; eight of those settled between call and jury selection. Some did not go to verdict. Attorneys saw jurors in 94 trials. Between 2001 and 2011, there were about 100-130 civil jury trials every year according to OJIN. The court holds roughly 150-200 felony jury trials annually, plus several hundred misdemeanor trials. January, February, March and June were the busiest months for jury trials in 2017; April and December had the lowest number of civil jury trials. In civil cases, 21 different judges presided over jury trials; three of those judges are now retired and two are now on the appellate courts.

Limited Judicial Availability April 9-10

There is a Circuit Court Judges conference on April 9 and 10. Judicial availability will be extremely limited on those two days. Call will be on Friday for trials that will start the following Wednesday.

WinterSmash Raises \$16,000 for Multnomah CourtCare

by Kathy Modie
Director, Events & Programs

What better way to raise money for a good cause than with an afternoon of family fun, bowling, raffle prizes and a best bowling shirt competition? On Saturday, February 10, over 200 MBA members and their families participated in the MBA's 16th Annual WinterSmash fundraiser at KingPins in Portland.

In the spirit of fun, teams gathered to vie for prizes based on their scores and outfits.

Best team score and the coveted bowling trophy went to the Bodyfelt Mount team, with their top three individual scores combined at 497.

Bodyfelt Mount crushed the competition and won the best shirt prize with their Bon Jovi "Livin' on a Spare" shirts.

The prize winner for highest individual score went to Taylor Weld from the Alterman Law Group team, with a score of 184.

The recipient of the Big Lebowski award - the team with the most players this year - was Bodyfelt Mount, with 41 bowlers signed up. Wyse Kadish had more than 25 bowlers, one of whom won the prize for the low score.

WinterSmash benefited Multnomah CourtCare, the free drop-in childcare program for children of parents who have no

other alternative than to take their children with them to court.

Thank you to Bodyfelt Mount for sponsoring the food and beverages this year, and to all our sponsors and participants. Thank you also to the Events Committee, chaired by Kevin Parks, for planning such a great event. Thank you, Rebecca Cambreleng, Tony Kullen, Kevin Parks and Mindy Stannard for volunteering at the event.

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Continued on page 11

WinterSmash

Continued from page 10

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See WinterSmash photos at www.mbabar.org/Membership/WinterSmash2018.html.



Wyse Kadish team



Buchanan Angeli Altschul & Sullivan team



Gearing Rackner & McGrath team



Eaton Family Law & Mediation team

The Honorable Robyn Ridler Aoyagi, Oregon Court of Appeals Judge

Former Portland Attorney Appointed to Appellate Court

by Hillary A. Taylor
Court Liaison Committee

She is smart, enthusiastic, and up to the challenge. Judge Robyn Ridler Aoyagi was appointed in June 2017 to fill the vacancy created by the retirement of Judge Tim Sercombe from the Court of Appeals. Judge Aoyagi, formerly a partner at Tonkon Torp, was exclusively an appellate attorney for the past decade and a trial and appellate litigator for the seven years before that. Judge Aoyagi grew up in Roswell, New Mexico. She attended Tufts University where she excelled in academics. After college she was encouraged by her grandmother to apply to Harvard Law School. She did, never expecting to get in, and was accepted. Judge Aoyagi graduated *cum laude* from Harvard in 1999. She spent her first year as a lawyer clerking for the Honorable John Steadman on the District of Columbia Court of Appeals. After her clerkship, she moved to Oregon and began her career at Tonkon Torp in Portland.

Prior to her judicial appointment, Judge Aoyagi was active in bar organizations. As an example, she served on the OSB Appellate Practice Section Executive Committee for six years, including as the chair in 2015. She was a Region 5 delegate to the OSB House of Delegates. She was elected twice to the executive board of the ABA's Council of Appellate Lawyers. She has also been engaged in community activities outside of the law. From growing up in Roswell, where her first exposure to the law was working with the New Mexico Public Defender's Office while she was still in high school, Judge Aoyagi brings an understanding of the importance of public service and the role it plays in our system of government.

Judge Aoyagi joins the Court of Appeals during a period of transition. In the last half-dozen years there have been many retirements from both Oregon

appellate courts, which has resulted in an influx of new judges on the appellate bench. Her investiture provided a glimpse of how highly Judge Aoyagi is regarded by her new and former colleagues alike and her goals for her new position.

Judicial investitures vary as widely in message and sentiment as the women and men who are honored by them. At her investiture, Judge Aoyagi's former colleagues spoke to a packed courtroom of her hard work and humility. For example, when she came to work wearing on her clothes the evidence that she had spent the wee hours of the morning working on a home improvement project and yet she still managed to arrive early for a long day. They spoke of her determination to put her client's interests first, even if that meant staying in a less desirable hotel when out of town or walking in the scorching Texas heat instead of renting a car. Judge Aoyagi was praised for her seemingly easy way of making people feel comfortable in her presence and also for her "ferocious intellectual integrity."

In her remarks, Judge Aoyagi discussed how she seems to strive toward, rather than away from, stress and change. A good thing perhaps as she is embarking in a new role where she will be met with both. She mentioned her appreciation for colleague Judge Darleen Ortega's recommendation to "embrace doubt." As she takes the bench where she must learn new subjects and areas of law every day in order to make reasoned decisions, embracing doubt makes perfect sense. It is impossible to know the right answers if you do not first know what you do not know. Judge Aoyagi heralded courts as "the last bulwark against chaos," and stressed the courts as institutions of continuity and legitimacy. All are powerful sentiments that are as true now as



Judge Robyn Ridler Aoyagi

they have ever been. Throughout our history the courts have often been the branch of government that provided a needed check on expansions of power elsewhere by the government. In the ideal judiciary, courts mindfully perform that obligation in an effort every day to "try to get it right." If her investiture is any indication, Judge Aoyagi is well-informed about the institution she is now a part of and well-suited to carry out its role in our separate but balanced system of government.

Since taking the bench six months ago, Judge Aoyagi remains appreciative that she is fortunate both to have attained her dream job and to actually enjoy it as much as she thought she would. She has no complaints and is energetic about the work required of her. As a practitioner she loved oral argument, and litigants can be certain she will be just as engaged from the bench. It is unlikely Judge Aoyagi will forget any time soon what it feels like to stand at the podium. She argued many appeals in her career as a practitioner and will bring the same high expectations for those who appear before her court as she had for herself.

As Judge Aoyagi is diving into the work of the Court of Appeals, with the diversity of cases and variety of legal issues that only exist at an intermediate appellate court, she remains committed to the bigger picture. The legitimacy of the courts depends on transparency, candor, and public regard for the institution. Judge Aoyagi is mindful of this. She also has a specific goal to write opinions in a way that makes them accessible to the parties, the bar and other judges, and also the public generally. An admirable goal and one that reflects respect for the institution Judge Aoyagi now serves.



Alterman Law Group team

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,
My boss asked me to write up a motion. After explaining how the law and facts “should be” (to wit: favorable to our client), he confidently told me to go write it up and win. The problem is, I don’t think he’s right. How do I approach this without creating a problem with my boss?*

*Sincerely,
Adrift Advocate*

Dear Adrift,
Many medical schools teach new doctors how to break life-altering bad news; law schools generally don’t. In fact, most law school courses offer little insight into the decidedly less bookish parts of practicing law, like filing papers, justifying bills to clients, and managing superiors’ expectations.

It may be useful to get to the deeper issue here. You’re afraid that your boss will blame you for not getting to *his* right answer. One way or another, you have to make sure that you’re serving your client’s best interests. Filing a motion that leaves you or your boss looking foolish to the court could be much worse than not filing it in the first place. Here are a few pointers your Expert has picked up along the way.

Your instinct for self-preservation is black-letter lawyerly. Flatly telling your boss he’s wrong will make him either resent you, feel defensive, or both. He will see you as a threat rather than as someone who is watching out for his and the client’s best interests.

Instead, start by asking artful follow-up questions. When set free on the vast expanses of the law, young lawyers can get caught on the horns of a dilemma: *does my boss know more than I do by virtue of experience, or do I know that he’s missed something because I just researched it?* Asking your boss a question that starts with “Have you considered...” is a great way to re-start the dialog about the task at hand without making

you look uninformed. If you have caught on to something he never considered, your boss may even recognize the error in his thinking and come around on his own to the conclusion you have already reached. If there is indeed a gap in your reasoning, a question gives him the opportunity to school another lawyer, which, I assure you, will make him focus on how good he feels rather than doubting your judgment. A renewed dialog will also allow you to gather information about the true objectives of the exercise. Perhaps the motion has more to do with informing the court of certain facts than winning an individual ruling.

This brings up a precursor issue: make sure your research is up to snuff. What landed you in this situation in the first place is an apparent lack of understanding or preparation on your boss’s part. By arriving at what you believe to be the right answer before approaching him, you will be prepared to answer probing questions and illustrate your superb preparation and raw legal talent.

If you’re confident that you know the correct answer, focus on the workaround. Good lawyers don’t drop a problem in someone else’s lap without suggesting an alternative; great lawyers develop the best workaround, get it ready to go, and then explain their quick thinking right after explaining why the original plan wasn’t going to work. It may take some time, but it also makes you look really good.

The messaging described here doesn’t have to remain within the confines of your firm. With minor variations, these skills can help you manage client relationships and persuade judges and opposing counsel of your position. Being a lawyer is as much about good diplomacy as it is about the law itself. Keeping these tips in mind will help you maintain important relationships and get you closer to the next big steps in your career.

Pro Se Assistance Project Pro Bono Spotlight

*by Wilson Ta
YLS Pro Bono Committee*

Imagine trying to complete complex pro se divorce forms on your own with no legal training. For many people in Oregon, that is the reality they face. In approximately 80 percent of family law cases, one or both parties are represented pro se. Now, imagine trying to complete those forms in a language you don’t speak, read, or write. Navigating a dissolution, determining custody, or filing a petition are some of the matters pro se litigants attempt to handle on their own. This gap in legal services is a gap in access to justice. To bridge this gap, Legal Aid Services of Oregon (LASO) Volunteer Lawyers Project created the Pro Se Assistance Project (PROSAP) and the PROSAP Facilitation Clinic. Whether you are a new or seasoned attorney, volunteering for the PROSAP Facilitation Clinic is a great way to give back to the community, to gain experience, or to follow through on a New Year’s resolution.

At the PROSAP Facilitation Clinic, attorneys, including those with little to no family law experience, can volunteer their time to assist clients in completing their pro se family law documents (paper or electronic). The clinic is held on Wednesdays from 2-4 p.m. at the Portland Legal Aid office. LASO provides translators and malpractice insurance if needed. Many of these cases involve clients who have experienced domestic violence - a particularly vulnerable population. Something as small as assistance with proper paperwork can provide the momentum these clients need for a long road ahead. Once clients complete their pro se documents at the PROSAP Facilitation Clinic, they can meet with experienced family law attorneys with the PROSAP Clinic. The PROSAP Clinic allows volunteer attorneys to provide limited assistance with discrete legal advice or document review. This clinic is held on Tuesdays and

Thursdays from 2:30-5 p.m. at the Portland Legal Aid office. There is no expectation to provide ongoing representation and LASO provides a retainer agreement detailing the limited scope of the attorney-client relationship.

For both non-English speakers and English speakers, the legal waters of family law can be difficult to navigate, especially if you are doing it alone. Volunteering for the PROSAP Facilitation Clinic allows our legal community to inch closer to providing complete access to justice. In 2016, LASO’s PROSAP volunteers donated more than 100 hours of pro bono service to assist approximately 70 clients, but there are still many more needing assistance. We hope new volunteers will say, “Challenge accepted!” and sign up to volunteer. Please contact Jill Mallery or Erin White at 503.224.4086 if you are interested. New LASO volunteers must be active members of the OSB and attend one of the monthly New Volunteer Orientations, for which they will receive one access to justice CLE credit. Providing access to justice can take on many forms and volunteering for the PROSAP Facilitation Clinic is one of those.

ABA Young Lawyers Division Midyear Conference Highlights

*by Shayda Zaerpoor Le
YLS Board President-Elect*



As the MBA Young Lawyers Section Delegate to the ABA, I attended the young lawyer programming at this year’s ABA Midyear Meeting, which took place in Vancouver, British Columbia. This meeting focused heavily on business and governance.

The Young Lawyers Division (“YLD”) Council met for an update on the status of the division; the YLD’s membership includes 100,000 lawyer members and 110,000 law student members. The meeting included guest speakers such as the Legislative Counsel for the ABA Governmental Affairs Office, the Chair of the Section of State & Local Government Law, the Chief Counsel for the Uniform Law Commission, the Chair of the Section of Civil Rights and Social Justice, as well as presentations about the ABA Fund for Justice and Education and the American

Bar Foundation (“ABF”). The ABF is currently engaged in a study on mobility within the legal profession, which has tracked 5,000 lawyers since graduation in the year 2000, long-term career tracks for female lawyers, and projects on access to justice. The YLD’s Public Service Team is focused on projects addressing different types of home violence through education, outreach, and advocacy, and the Disaster Legal Services Team is continuing to hold trainings in connection with providing legal services to victims of FEMA-declared disasters in various areas of the country.

In addition, amongst hundreds of young lawyer affiliates throughout the country, the Multnomah Bar Association YLS was recognized as an Affiliate Star of the Quarter for its Young Litigators Forum.

The YLD Assembly included almost 200 certified delegates from across the country. The delegates voted on four resolutions: Resolution 18-3YL concerned the adoption of a parental leave policy which would allow continuances for parental leave where the moving party is lead council, the request is timely made, and there is no substantial prejudice to the other side; Resolution 18-5YL concerned for-profit law schools and imposing requirements for transition plans for students in

the event of closure; Resolution 18-8YL urged requiring financial disclosures by major party presidential candidates in order to expose potential conflicts of interest and increase public confidence in the integrity of the presidential system; Resolution 108E, which was also considered by the ABA House of Delegates at this same conference, urged the Executive Branch to rescind its decision to end DACA. The YLD Assembly voted to pass all four of these resolutions.

The Assembly included a presentation from ABA President Hilarie Bass, who commended the work of the YLD’s Disaster Legal Services Team, and shared information about the work of the ABA Commission on the Future of Legal Education. The Assembly also heard from ABA President-Elect Robert Carlson, who noted the importance and power of both local bar organizations and national organizations like the ABA, in the services they provide to their members, and in protecting and defending the rule of law and the accessibility of our justice system.

There were also opportunities for additional engagement, including some CLE programming co-sponsored with other ABA entities, a public service project with a local animal shelter, joint receptions, and the traditional Fellows Debate.

The next ABA YLD conference will be in Louisville, Kentucky from May 10-12 and registration will soon be open on the ABA website.

Jury Trial Experience Program Offers Valuable Opportunity to Interested Litigators

by Christine Sargent
YLS CLE Committee



It is no secret that the prevalence of civil jury trials has been continually decreasing in recent years. This decline has been discussed in law review articles, research studies, and judicial opinions. New attorneys, particularly those who practice primarily in the civil world, have fewer and fewer opportunities to gain the experience they need to become the trial attorneys they often seek to become.

Civil and criminal attorneys practicing in Multnomah County need not lament this current trend, however. Both the Multnomah County District Attorney's Office (MCDA) and the Metropolitan Public Defender's Office (MPD) offer highly valuable programs that allow Oregon-licensed attorneys to gain real-world, practical jury trial experience while working as deputy district attorneys (DDAs) and public defenders. We recently had the opportunity to speak with Jenna Plank, one of the supervising attorneys at the MCDA who assists with the Jury Trial Experience Program, and Ed Carlson, a former participant of the program.

Multnomah County DDA, Jenna Plank, is a strong believer in the program. "Judges like to see civil attorneys who want to be good litigators. Understanding how the courtroom works and where the judge is coming from is really beneficial." The MCDA is one of the few opportunities to develop that understanding. For four weeks, with a minimum of 32 hours per week, participants work at the MCDA as DDAs. Participants generally work in the misdemeanor unit on cases that include assault, harassment, hit and run, trespass, failure to register as a sex offender, and interfering with a peace officer, among many other types of cases.

DDA Plank says, "If nothing else, any civil attorney is going to have a much greater familiarity with the bench here. That alone

goes a long way. Just having a familiarity with the judge is going to make the attorney way more comfortable. You get tons of facetime with the bench, which is sort of an invaluable x factor." This "x-factor" is highly valued in almost every field of litigation.

Ed Carlson, who recently completed the four-week program, highly recommends the Jury Trial Experience Project to anyone interested in getting into the courtroom. Carlson's typical practice outside of the MCDA's program includes commercial litigation, environmental litigation, and general business counseling. He had no previous criminal law experience. Carlson speaks highly of the MCDA's program. "It was busy; it was exhilarating; it was exhausting; and it was a lot of fun." He found that the attorneys were helpful and worked hard to ensure that he had a variety of cases. DDAs would provide helpful hints on strategy and tactics, including developing trial themes, managing witnesses, and providing guidance on proving up the elements of a crime, particularly the required mental state, and he says he had no bad experiences during his tenure.

To participate, applicants must be licensed to practice law in Oregon. Interested participants should consult the MCDA website and will need to submit a cover letter and resume. Applicants are also required to undergo a background check and drug test. Carlson suggests that interested attorneys should gain a decent working knowledge of the evidence code, since participants are likely to be handed a jury trial early on. Carlson says, "Be prepared to work hard, take the initiative, and make mistakes. Not all the cases you prepare go to trial, so that can result in an adrenaline crash."

Despite the diminishing number of cases that actually go to trial, obtaining the necessary skills and experience to try a case successfully are undeniably valuable. Among other advantages, a competent trial attorney can often generate better evidence prior to trial, and the threat of strong litigation skills significantly reduces settlement values. The MCDA's Jury Trial Experience Program is one available course of action that both experienced and newer attorneys can pursue to acquire these needed skills.

YLS Director Nominees

Two three-year positions start July 1. In the event of a contested election, a ballot will be sent to members. Only YLS members may vote for YLS Directors.



Nicole Watson Abercrombie earned her JD from Notre Dame Law School and was admitted to practice in Oregon in 2014 and Washington in 2015. She is an associate at Cable Huston LLP

where she practices commercial litigation.

Nikki first became active within the YLS when she joined the CLE Committee in 2015, and was appointed as committee chair for the current 2017-18 programming year. She is also a member of the OSB MCLE Committee, serves on the OWLS Working Parents Subcommittee and is a member of the Gus J. Solomon Inns of Court.

Nikki enjoys spending time with her husband and daughter while exploring Oregon and the Pacific Northwest.

Jason Pierson is a graduate of the University of Oregon School of Law and was admitted to the OSB in 2015. He practices family and custody-related law at his firm, Pierson Family Law.

Jason is no stranger to the board, having served as a 3L Law School Representative on the



2013-14 YLS Board of Directors. He went on to join the YLS Pro Bono Committee, and presently serves as the committee's chair. He also participates in the YLS Imprint Program.

Outside of the MBA, Jason volunteers with the Children's Representation Project and is a member of the Clackamas County Bar Association. He is a proud husband, father, and step-father and enjoys spending his free time with his family.

YLS Community Service Day

by Kimberly Fisher
YLS Service to the Public Committee

On January 27, the YLS Service to the Public Committee organized volunteers for litter cleanup with SOLVE's 4th Saturday Cleanup in Northwest Portland. SOLVE is a nonprofit organization that brings Oregonians together to improve the environment and build a legacy of stewardship. SOLVE mobilizes one of Oregon's largest volunteer networks to clean up our beaches, parks, neighborhoods, and other natural spaces through litter cleanups, invasive plant removal, planting native trees and shrubs, and other environmental projects. To learn more about SOLVE or to volunteer, please visit www.solveoregon.org.



Nalani Hennessey, Paul Judd, James Fisher, Kimberly Fisher, Jacob Goldberg, Noam Amir-Brownstein, and McKinley Fisher helped clean up the streets of Northwest Portland.

mba yls|EVENT

Justice Trivia, Presented by the Campaign for Equal Justice and the MBA YLS

Thursday, April 12

5:30-7:30 p.m.

Kells Irish Restaurant & Pub
112 SW 2nd Ave., Portland



Help support Oregon's legal aid programs by participating in this fun fundraising event. Christi Taylor of Miller Nash Graham & Dunn and Noam Amir-Brownstein of Vial Fotheringham, both from the CEJ Associates Committee, will be the co-hosts. Heather Weigler, who works at the Oregon DOJ and has won the Laf-Off Comedy Competition twice, will be the Trivia Jockey.

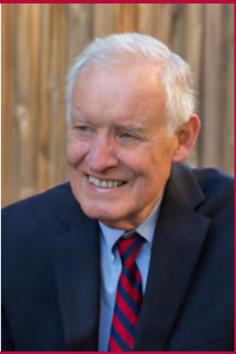
The suggested donation is \$10 to participate, or \$5 for law students and unemployed or legal aid attorneys. Pre-registration will be available soon at www.cej-oregon.org.

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The Corner Office PROFESSIONALISM

In 2016, the ABA and the Hazelden Betty Ford Foundation released the findings of the first national study on attorney substance use and mental health concerns. The study population consisted of almost 13,000 working lawyers across the country. The results were shocking: Over 20 percent of the study population were classified as problem drinkers or alcoholic; and 28 percent struggle with some level of depression. These percentages are more than double the rates found in the general population of the United States. It appears that these conditions will continue to impact our profession in the future. The study showed that lawyers with less than 10 years of practice had higher levels of depression and drinking problems than the rest of the study group.

The Oregon Rules of Professional Conduct (RPC) do not have a specific rule restricting the active alcoholic or currently depressed lawyer from practicing law. The closest rule to address this issue is RPC 1.16(a)(2), which provides “a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if... (2) the lawyer’s physical or mental condition materially impairs the

lawyer’s ability to represent the client.” Unfortunately, by the time the clients, courts or regulatory authorities realize that the lawyer has a problem, numerous clients may have already suffered the effects of impaired representation.

For RPC 1.16(a)(2) to have the effect of preventing harm to clients and the legal system, lawyers must self-diagnose their alcoholism or depression and then take the difficult step of withdrawing from active billable files and declining future work until their health issues are addressed. This is an unworkable model because it’s challenging to diagnose the problem in the midst of experiencing symptoms. Even if they could self-diagnose, many lawyers would not seek help because they fear that entering treatment will ruin their reputation or position among their colleagues. Ironically, most recoveries begin with an emotional bottom brought about by serious damage to the lawyer’s clients, reputation and business. Damage that could have been entirely avoided with early intervention.

A cultural change is required to address a problem of this magnitude. A culture that not only helps lawyers feel accepted when they self-report, but one that encourages lawyers to support one

another if they are concerned that a colleague may have a problem with alcohol or depression. Since alcoholism and depression are treatable conditions, we already have the tools we need to make lasting changes to our profession. Workplace culture should value employee well-being, and recognize that overwork and work-related stress exacerbate conditions that can lead to bad outcomes for staff and clients. If these cultural changes can take hold, we are almost assured success. After all, a lawyer whose addiction or depression is being treated is capable of providing the same level of services and professionalism as one who does not experience these conditions.

Oregon is way ahead of other states in the care it provides through the Oregon Attorney Assistance Program (OAAP). The OAAP was formed in 1982 and was one of the first programs of its kind. It is sponsored by the Professional Liability Fund. While the OAAP does an outstanding job of helping Oregon’s lawyers who are willing to address their addictions and mental health issues, their primary sources of identifying potential clients comes from colleagues or the affected lawyer. Based on the study’s findings, we can estimate

that approximately 3,000 Oregon lawyers are alcoholic or problem drinkers. Approximately 4,200 experience some level of depression. In Multnomah County, these numbers amount to 1,136 and 1,591, respectively. These numbers far exceed the present number of lawyers being referred to the OAAP for help.

We need to create a culture where it is considered the highest level of professionalism to call the OAAP when we see signs of alcoholism or depression. Our profession has a history of looking the other way when a colleague makes a fool of themselves because they “over-did-it” at an office party or social function. Likewise, a partner or adverse counsel who cannot meet practice deadlines or misses important meetings might be exhibiting signs of addiction or depression. Lawyers or judges aware of these incidents should feel professionally obligated to call OAAP and ask them to reach out to the affected lawyer. We should also speak frankly about these issues in workplace settings and identify ourselves as an available support person to our colleagues.

A call to the OAAP helpline (503.226.1057) is completely confidential. The OAAP will not disclose the names of people who contact them without first receiving permission from the contacting party. Additionally, a lawyer utilizing the OAAP’s programs and services is assured that any information conveyed to

the OAAP will not be shared with the OSB or any other organization. When a lawyer notifies the OAAP of concerns about another lawyer, the OAAP will reach out to the possibly impaired lawyer and offer their services. This is done in a non-combative fashion. Ultimately, it is up to the lawyer whether to accept help from the OAAP. You can find out more about the OAAP at www.oaap.org.

The stress related to legal career paths and workplace environments is linked to a higher incidence of depression and addiction. This isn’t good for lawyers, our clients, or our profession as a whole. We can all play a role in reducing the stigma associated with depression and addiction, and in ensuring that our workplaces support lawyers in creating healthy, balanced lifestyles. When these preventative measure fail, we should encourage our colleagues to seek help or reach out on their behalf.

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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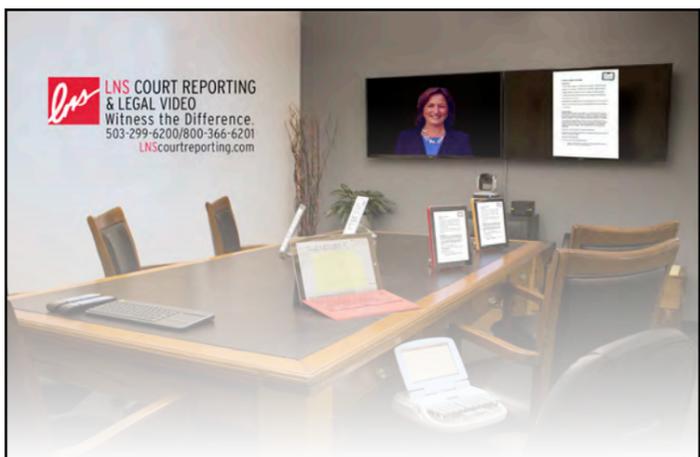


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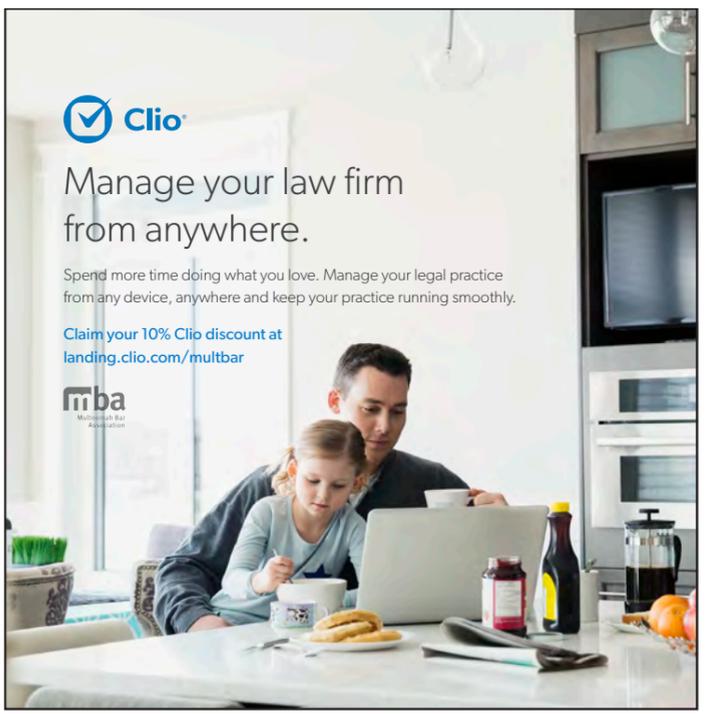
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Reducing Portland's Carbon Footprint League of Women Voters of Portland Civic Education Program Tuesday, March 13

Did you know that the City of Portland and Multnomah County have a Climate Action Plan that provides a roadmap for cutting our carbon emissions? If successful, by 2050 we will cut our carbon emissions by 80 percent. There is a role for everyone: government, businesses, and individuals.

The League of Women Voters (LWV) of Portland will present an educational panel discussion to explore how Portland is working to reduce its carbon footprint. The Bureau of Planning and Sustainability will give an overview of the plan, including the goals and our progress so far. The Northwest Earth Institute will explain what individuals can do to lower their personal carbon footprint, and will offer opportunities for involvement in Earth Day activities and beyond. Local businesses will discuss what they are doing to thrive and grow while lowering the carbon footprint of their businesses.

If you are interested in what our city is doing to reduce our carbon footprint and what this will mean to you, please join this panel discussion. The event is free and open to the public.

**Multnomah County Building
501 SE Hawthorne, Portland
7 p.m. (doors open at 6:30)**

The program is funded in part by a grant from the MBF. It will be recorded by MetroEast Community Media for rebroadcast, and available on the LWV website (www.lwvpx.org). For more information,



contact Marion McNamara,
Civic Education Chair, at
civiced@lwvpx.org.



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McKinley Irvin is pleased to announce that **Peter Diamond** has joined our firm as partner. Peter is known for his relentless pursuit of successful results, whether representing individuals in high asset divorce litigation or negotiating complex custody matters.

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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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