



Oregon Ethics Rule 8.4(a)(7) Moving Oregon Beyond Professionalism and Inspiring Confidence in the Justice System

by Judge Melvin Oden-Orr
Multnomah County Circuit Court

When my son was in the sixth grade, he came home and told me about a social studies unit they were studying about the Romani or Roma people. After several minutes of

listening to him, with complete and utter confidence that I was about to show my son that I know stuff, I said, "Oh, Christopher, you're talking about G_____s!" His eyes opened wide in shock and he said, "Daddy, they don't like to be called that; that is offensive to them. It is just like if someone called you the N-word." I felt worse than I did when he told me on any number of occasions that I was not "cool." This was worse because, in my son's eyes, his father - his would-be role-model - had slurred people he didn't even know, albeit unintentionally. All I could say in response was, "I'm sorry; I didn't know that term was offensive to them. That was not my intent."

I have not used that word or its shortened counterpart since that day, except to pass on the lesson my then 11-year-old taught me - something I knew in other contexts, including the example my son gave me - words have meaning and impact. And, they can have meaning and impact beyond what the speaker intends.

Misconduct Rules Change with the Times

The rules governing lawyer conduct have changed over time, to reflect changing social norms, society at large, technological innovation, and changes in the actual practice of law. For example, cannabis is now legal in several states, including Oregon. Many firms have developed practice areas around this burgeoning industry that remains illegal at the federal level and in many states. Oh, and recall the days of running to the courthouse to file papers before 5 p.m.? No more! Similarly, over the years we have seen a greater appreciation of diversity, both in our nation as a whole and within the legal profession. With these changes come more courageous conversations about the impact of prejudice and discrimination on people and our institutions. The law has changed to provide protection from such conduct, both in the criminal and civil context. One example, from the civil context, is the Civil Rights Act of 1964. Another more recent development is the passage of hate crime legislation in the criminal context. Practice areas have developed around issues of bias and harassment. And, in the last few years, the rules governing lawyer conduct have changed to reflect these changing social norms.

In 2015, the Oregon Supreme Court amended Oregon Rules of Professional Conduct, Rule 8.4 to address the issue of bias and prejudice in the justice system. The substance of Oregon's Rule 8.4 amendment adding subsection (7) provides:

"(a) It is professional misconduct for a lawyer to: *** (7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin,

religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability. *** Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein."

Nineteen other states have a similar rule. On August 8, 2016, the ABA adopted its version as Model Rule of Professional Conduct, Rule 8.4(g). The conduct contemplated by the amendment is seen as undermining confidence in the justice system; a system with a sad history of often open hostility toward minority groups. Judicial conduct reflecting such bias is also prohibited. The Oregon Judicial Code of Conduct includes a counterpart, Rule 3.3. It provides:

"A judge shall not, in the performance of judicial duties, by words or conduct, *manifest bias or prejudice, or engage in harassment*, against parties, witnesses, lawyers, or others based on attributes including but not limited to, sex, gender identity, race, national origin, ethnicity, religion, sexual orientation, marital status, disability, age, socioeconomic status, or political affiliation and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so."

Professionals Set a Higher Bar

The conduct proscribed in the ORPCs and the Oregon Judicial Code of Conduct only sets the floor for lawyers and judges. My sense is that most of us, whether we are new to the practice or pending members of the 50-Year Member Club, are not asking, "What is the floor? What can I get away with? What is the bare minimum?" We are aiming much higher; aspiring to be true professionals; looking to inspire the confidence of *the people* - all the people - in our system of justice. We want to inspire the confidence of our clients and our colleagues, and of our children, that our system of justice is a place where everyone, regardless of race, religion, sex, nation of origin, disability, age, sexual orientation, or socioeconomic status will be treated fairly, and, at the very least, will not be intimidated or discriminated against based on these characteristics. Inspiring confidence means treating people - all people - with the respect they deserve as fellow human beings.

This idea of inspiring confidence in the justice system is at the heart of the idea of Procedural Fairness that Multnomah County Circuit Court, its judges and staff, have embraced for the past few years. Many of my colleagues and I are not asking, "What is the least I can do to meet minimal due process requirements?" Instead, we are asking, "Have I done enough to make sure that the parties, especially criminal defendants and unrepresented parties, feel they have been heard?" That's what we're doing.

Opportunity for Redemption

No one is perfect. I became a judge because I wanted to inspire confidence that our system is fair. To do that, it needs to be true, or at least made *truer* each day through the continuous efforts of lawyers and judges aiming to treat all people with respect. I would love to say the lesson from my son was the last time I missed the mark; sadly, it was not.

Before becoming a judge, I was a hearings officer. On several occasions, I inadvertently misgendered parties during hearings. Each time I apologized and tried to move on, but the incident always stuck with me. I can only imagine how the person who was misgendered felt. I imagine they were humiliated having a person in authority call them Mr. or Ms. in front of a room full of strangers when that was not how they wished to be addressed. As a judge, I don't want anyone to experience that in my court. So, in my court, I encourage everyone to indicate how they wish to be addressed.

Inevitably, we all will miss the mark. The best we can hope for from our colleagues and the public is to have an earnest apology accepted, and be able to move forward with the new knowledge to do better the next time. I think my son forgave me for my ignorance so many years ago. However, I know that he still does not think I am the least bit cool.

Upcoming ORPC Rule 8.4(a)(7) CLE

On Friday, December 6, the MBA will sponsor a CLE seminar pending for three ethics credits entitled, "Oregon Ethics Rule 8.4(a)(7): Moving Oregon Beyond Professionalism and Inspiring Confidence in the

Continued on page 2

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.

NOVEMBER

11.5 Tuesday
Significant Appellate Opinions for 2018-19
Judge Katharine von Ter Stegge
Judge Scott Shorr

11.5 Tuesday
Sharpening Your Skills Through Pro Bono Practice
Judge Stacie Beckerman
Amanda Caffall
Sadie Concepción
Meg Houlihan
Robert Koch
Jill Mallery
Vanessa Triplett

11.14 Thursday
Understanding UM/UIM Claims
Michael Colbach
Simon Harding

11.19 Tuesday
Employment Law Update
Heidi Brown
Aruna Masih

11.21 Thursday
Tips From Criminal Lawyers For Civil Litigators
Kaiti Ferguson
Tyler Francis
Kevin Sali

DECEMBER

12.3 Tuesday
Annual Probate Update
Judge Patrick Henry
Judge Beth Roberts
Judge Katherine Weber
Tim McNeil

12.6 Friday
Oregon Ethics Rule 8.4(a)(7): Moving Oregon Beyond Professionalism and Inspiring Confidence in the Justice System
Judge Melvin Oden-Orr
Nik Chourey
Donna Maxey
Shain Pomeranz

In This Issue

| | |
|-------------------------------|----|
| Calendar..... | 2 |
| CLE..... | 3 |
| Announcements..... | 6 |
| Ethics Focus..... | 6 |
| Pro Bono Thanks..... | 6 |
| Around the Bar..... | 8 |
| News From the Courthouse..... | 10 |
| Tips From the Bench..... | 10 |
| YLS..... | 12 |
| Classifieds..... | 16 |
| MBA Resources..... | 16 |
| MBF..... | 20 |

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MBA Solo & Small Firm Committee Upcoming Workshops

MAKING THE TAX SYSTEM WORK FOR YOU: STRATEGIES FOR SOLO & SMALL FIRM LAWYERS

Wednesday, November 13
Workshop: 12-1:30 p.m.
Hotel Monaco
506 SW Washington St., Portland

As entrepreneurial attorneys operating a solo or small law firm, you may have overlooked the importance of effectively planning for the tax consequences of owning and operating a business. Very often small business owners, including attorneys, are surprised by unwelcome tax bills from the IRS or state and local taxing authorities. **Kimberly Pray**, Catalyst Law LLC, will explain how to make the tax system work for you, not against you, with some effort and planning. This presentation will focus on strategies to minimize the amount of tax paid, ensure funds are put aside to pay any tax due, and make your firm more profitable. All attendees will receive a complimentary download of the first five chapters of the book, *Profit First*, by Michael Michalowicz.

Topics to be discussed include:

- Choice of entity – differences between Sole Proprietorship, Limited Liability Company, or Professional Corporation
- Federal Tax Compliance
- State of Oregon – business activity tax
- Multnomah County/ City of Portland – business taxes depending on principal place of business, job location
- Profit First – A cash management system that will assist any business – of any size, in any industry, no matter how much debt it carries or how many years it has been operating— to become permanently profitable. Catalyst implemented the Profit First system in January 2017, which helped the firm double revenue in 2018 and put the firm on track to double revenue again in 2019.

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

Lunch is provided.

The MBA will apply for one hour of CLE credit.

HELP WANTED:

EMPLOYMENT CONSIDERATIONS IN HIRING CONTRACT ATTORNEYS, PARALEGALS, LAW CLERKS, INTERNS & TEMPORARY WORKERS

Tuesday, December 3
Workshop: 12-1:30 p.m.
Red Star Tavern Club Room
503 SW Alder St., Portland

Are you flooded with work in your solo practice or small firm? Want to hire temporary help for your firm but are not quite ready to take the plunge of hiring a full-time associate?

Please join us for this lunchtime workshop with employment attorney **Amy Angel**. Amy is a Partner at Barran Liebman LLP, where her practice focuses on representing employers of all sizes. Amy frequently advises employers on a full range of employment issues and also defends employers in all stages of employment litigation, including before administrative agencies and in state and federal courts. Amy is a frequent speaker for a wide range of businesses and trade organizations regarding cutting-edge issues for employers.

This workshop will focus on pertinent employment laws and regulations related to the hiring and retention of contract attorneys, law clerks, interns, and other temporary legal support staff. Topics will include contractor versus employee classifications, overtime compensation, sick leave, family leave, workers' compensation issues, hiring and firing considerations, workplace harassment and discrimination policies, and a range of other issues related to this increasingly important subject matter for today's solo practitioner or small law firm.

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

Lunch is provided.

The MBA will apply for one hour of CLE credit.

Register at www.mbabar.org.

Calendar

NOVEMBER

5 Tuesday
New Admittee Social
www.mbabar.org

7 Thursday
US District Court Historical Society Annual Dinner
www.usdchs.org/2019-annual-dinner-and-lsa-presentation

7 Thursday
Youth, Rights & Justice: Justice is Sweet Gala
www.youthrightsjustice.org/events

13 Wednesday
Bench, Bar & Bagels
Details below

13 Wednesday
MBA Solo & Small Firm Workshop
Details on this page

15 Friday
OSB Awards Luncheon
www.osbar.org/osbevents

24 Sunday
YLS Community Service Day
Details on p. 12

DECEMBER

3 Tuesday
MBA Solo & Small Firm Workshop
Details on this page

3 Tuesday
YLS Giving Tuesday Social and Toy Drive
Details on p. 12

6 Friday
OC-NBA Ebony & Ivory
www.ocnba.org/events

13 Friday
Court, Coffee & Conversation
www.mbabar.org

mba | EVENT

Bench Bar & Bagels

Wednesday, November 13
Tonkon Torp
888 SW 5th Ave., Ste. 1600, Portland
7:30-8:30 a.m.

The MBA hosts the 11th annual “Bench Bar & Bagels” on Wednesday, November 13. 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:



Please RSVP to Kathy Modie,
kathy@mbabar.org.

Oregon Ethics Rule

Continued from page 1

Justice System.” The CLE will be presented in cooperation with RACE TALKS, an organization that has supported interracial and cross-cultural communications and relationships through the development of sensitivity and understanding since 2011. After a presentation on Rule 8.4 by OSB Deputy General Counsel Nik Chourey, through a combination of group and facilitated discussions, participants will

identify words and terms likely to intimidate or harass when used in conversation, explore why we choose them, and the impacts of those choices, *intended or not*. Attendees are advised that the CLE planners believe it is important that “those words” be used during the program in a way that promotes courageous conversations, with an eye towards creating a brave space. Please visit www.mbabar.org to learn more about this thought-provoking program.



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.

Significant Appellate Opinions for 2018-19

Tuesday, November 5 Noon-1 p.m.

World Trade Center, Mezzanine

Members \$30/Non-Members \$50

Note: One hour of general credit will be applied for.

Please join the MBA for an update on Oregon appellate decisions for civil law practitioners. Multnomah County Circuit Court **Judge Katharine von Ter Stegge** and Oregon Court of Appeals **Judge Scott Shorr** will present an overview of some key civil law decisions from the Oregon Court of Appeals and Oregon Supreme Court from 2018-19. These esteemed speakers will touch on issues relevant to nearly all practitioners. An absolute “must-see” to wrap up 2019 and prepare for a new year.

For more information: Contact the MBA at 503.222.3275.

For the Public Good: Sharpening Your Skills Through Pro Bono Practice

Tuesday, November 5 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

The term “pro bono” comes from the Latin phrase “pro bono publico,” which means “for the public good.” While we all share a professional commitment to pro bono practice, taking on a pro bono case can also sharpen your litigation and advocacy skills, which benefits your practice overall. This CLE is for civil litigators of all experience levels. It will cover how lawyers can get involved in pro bono work; the variety of opportunities available; and how to balance pro bono work with your existing practice. Our esteemed panel of speakers includes; **Robert Koch**, Appellate Practice Group Chair, Tonkon Torp LLP; **Meg Houlihan** and **Sadie Concepcion**, CLiF Project at Tonkon Torp LLP; **Vanessa Triplett**, Associate, Miller Nash Graham & Dunn LLP; **Jill Mallery**, Pro Bono Coordinator, Legal Aid Services of Oregon; and **Amanda Caffall**, Executive Director, The Commons Law Center. The **Honorable Stacie F. Beckerman**, US District Magistrate Judge, will moderate our panel of experts.

For more information: Contact Adrian Brown, US Attorney’s Office at 503.727.1003. For registration questions, contact the MBA at 503.222.3275.

Understanding UM/UIM Claims

Thursday, November 14 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

This CLE is for any practitioner who wants to learn more about UM (uninsured) and UIM (underinsured) motorist claims. Come hear from practitioners on both sides about the ins and outs of these types of claims.

Topics will include:

- Coverage considerations;
- Claim requirements and procedures;
- Damages and attorney fees;
- Arbitration.

Our speakers are **Michael A. Colbach**, a Portland personal injury attorney and **Simon J. Harding**, a shareholder at Schulte, Anderson, Downes, Aronson & Bittner, P.C. who focuses on personal injury defense, automotive liability and general liability defense.

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

MBA Employment Law Update: Oregon on the Cutting Edge

Tuesday, November 19 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

At the same time that federal agencies are taking a more conservative stance and the US Supreme Court is set to hear argument on significant cases in the arena of LGBTQ rights, Oregon adopted several pro-employee protections, including the Paid Family & Medical Leave Law, prohibition of certain nondisclosure agreements, extension of the statutes of limitation for employment discrimination or sexual harassment claims, and amendments to public sector labor law. 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, Attorneys at Law, LLP are the panelists for this must-attend class for all employment law attorneys.

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

Tips From Criminal Lawyers for Civil Litigators

Thursday, November 21 3-5 p.m.

World Trade Center, Mezzanine

Members \$60/Non-Members \$95

Join our panel of experienced criminal practitioners (some now in civil litigation practice) as they provide advice gleaned from years of courtroom experience defending those accused of crimes. The panel will include **Kaiti Ferguson**, attorney at Hart and Wagner, and former indigent defender with Metropolitan Public Defender, **Kevin Sali**, principal at Sali Law, and former civil litigator at Perkins Coie and **Tyler Francis**, attorney at Angeli Law Group, and former state prosecutor in Virginia. How do we best present an unsympathetic client to a jury or judge? How can we argue persuasively over the meaning of seemingly damning evidence. Defending criminal clients requires both creativity and the preservation of credibility: these talented lawyers will provide civil litigators with advice about how to do both. (Also: what do you do when your civil client has been arrested and calls you for help? Get the answers!)

For more information: Contact Judge Benjamin Souede, Multnomah County Circuit Court at 503.988.3972. For registration questions, contact the MBA at 503.222.3275.

Annual Probate Update

Tuesday, December 3 3-5 p.m.

World Trade Center, Auditorium

Members \$60/Non-Members \$95

The MBA presents the 2019 Annual Probate Update, featuring **Judge Patrick Henry**, Multnomah County; **Judge Beth Roberts**, Washington County; **Judge Katherine Weber**, Clackamas County; and **Tim McNeil**, Davis Pagnano McNeil & Vigna LLP who will provide an update of recent case law and legislation. The judges will discuss current practices and procedures in the metro area, highlighting each court’s unique procedures and processes. This CLE seminar is a must for all probate practitioners and their staff in the tri-county area.

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

Oregon Ethics Rule 8.4(a)(7): Moving Oregon Beyond Professionalism and Inspiring Confidence in the Justice System

Friday, December 6 9 a.m. - Noon

Standard Insurance Building, 900 SW 5th Ave., Atrium Room

Members \$80/Non-Members \$125

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

Oregon Rule of Professional Conduct 8.4(a)(7), makes it professional misconduct for a lawyer to intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability. But what does that mean? Be prepared to engage with each other; this is no “talking head” presentation. Through a combination of group and facilitated discussions, participants will identify words and terms likely to intimidate or harass when we engage in conversation. Participants will also explore why we choose such words and the impacts of those choices, whether intended or not. The presenters believe it is important that such words be used during the program in a way that promotes courageous conversations, with an eye towards creating a brave space.

Learning Objectives:

- Learn about the relevance of Oregon Rules of Professional Conduct to intimidation or harassment based on race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.
- Through group discussion, learn to identify words that intimidate, harass and dehumanize people based on race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.
- Explore the impact on people and society when such words are used in our practice, chambers, and courts.
- Explore the role we as lawyers and judges play in either enabling or interrupting the intimidation, harassment and dehumanization of people in our offices, practices, in the courts, the justice system and society.

The esteemed facilitators and presenters for this interactive ethics CLE are: The **Honorable Melvin Oden-Orr**, Multnomah County Circuit Court; **Donna Maxey**, Founder, Race Talks; **Shaina Pomeranz**, Chief Operating Officer, Race Talks; and **Nik Chourey**, Deputy General Counsel, OSB. Race Talks is a local organization that has supported interracial and cross-cultural communications and relationships through the development of sensitivity and understanding since 2011.

For more information: Contact Adrian L. Brown, Chair, CLE Committee, 503.727.1003. For registration questions, contact the MBA at 503.222.3275.

To register for these classes, see page 4.

Top Five (Un)Ethical Reasons Lawyers Find Themselves In Trouble

Tuesday, December 17 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

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

Please join the MBA for a presentation on the top five pitfalls that get lawyers in trouble with the Office of Disciplinary Counsel - and how you can successfully avoid them. In this CLE, relevant to lawyers in all areas of practice, you will hear from OSB Assistant Disciplinary Counsel **Courtney Dippel**, and Holland & Knight legal ethics defense attorney **Calon Russell**. Come and learn what you need to know to avoid common ethical mistakes, and to refresh your knowledge of the rules of professional conduct.

For more information: Contact Garrett Garfield, Holland & Knight at 503.517.2931. For registration questions, contact the MBA at 503.222.3275.

Mandatory Mental Health and Substance Abuse

Wednesday, December 18 Noon-1 p.m.
World Trade Center, Sky Bridge
 Members \$30/Non-Members \$50

Note: One hour of mental health and substance abuse credit will be applied for.

A landmark 2016 ABA/Hazelden Betty Ford Foundation national study found that attorneys are nearly twice as likely as the general population to experience problematic alcohol use, and younger attorneys (under 30) are approximately three times as likely. Reported levels of depression, anxiety and stress were also significantly elevated among attorneys according to the study. Given these realities, the Oregon Supreme Court approved amendments to the MCLE rules requiring mental health, substance abuse, and cognitive impairment education. The speakers in this CLE will talk about the causes and consequences of lawyer distress, when to ask for help for yourself and for colleagues, how to recognize when someone needs help, and what practical tools are available to enhance well-being. You will also hear a personal story of recovery. This CLE will be presented by **Judge Gregory Silver**, Multnomah County Circuit Court, **Michelle Ryan**, Attorney at Law, and **Jared D. Hager**, Assistant United States Attorney.

For more information: Contact Ian Christy, Miller Nash Graham & Dunn at 503.205.2416. For registration questions, contact the MBA at 503.222.3275.



and it's time to renew your MBA membership.

Here are just a few reasons to join now for 2020:

- **NEW FOR 2020 MEMBERS:** Free online access to the entire catalog of video webcasts recorded during the Fall 2018-Spring 2019 program year. This amounts to 60+ hours of MCLE-accredited programming, available anytime. See www.mbabar.org/freecleoffer for details.
- Socials, volunteer outings and other professional and networking opportunities.
- Comprehensive member benefits from business partners Clio Case and Practice Management, LawPay, Columbia Bank, Ruby Receptionists, and more.
- Access to the MBA group health insurance plan for members with at least one W2 employee in addition to the attorney.

As an added benefit, renew before January 1, 2020 and receive a \$60 coupon good toward any upcoming CLE seminar, in-person or online.

Please renew your membership today at www.mbabar.org

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CLE Registration Form

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| PHONE | |
| OSB# | |

Member Status:
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 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

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.

- 11/5 Significant Appellate Opinions for 2018-19**
 Class Registration (\$30 Members/\$50 Non)\$ _____
 CD-ROM & Written Materials (\$30 Members/\$50 Non) ..\$ _____
- 11/5 For the Public Good: Sharpening Your Skills Through Pro Bono Practice**
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- 11/14 Understanding UM/UIM Claims**
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- 11/21 Tips From Criminal Lawyers for Civil Litigators**
 Class Registration (\$60 Members/\$95 Non)\$ _____
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- 12/3 Annual Probate Update**
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 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 12/6 Oregon Ethics Rule 8.4(a)(7): Moving Oregon Beyond Professionalism and Inspiring Confidence in the Justice System**
 Class Registration (\$80 Members/\$125 Non)\$ _____
 CD-ROM & Written Materials (\$80 Members/\$125 Non) ..\$ _____
- 12/17 Top Five (Un)Ethical Reasons Lawyers Find Themselves In Trouble**
 Class Registration (\$60 Members/\$95 Non)\$ _____
 CD-ROM & Written Materials (\$60 Members/\$95 Non) ..\$ _____
- 12/18 Mandatory Mental Health and Substance Abuse?**
 Class Registration (\$30 Members/\$50 Non)\$ _____
 CD-ROM & Written Materials (\$30 Members/\$50 Non) ..\$ _____

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

mba | ANNOUNCEMENTS

Oregon Paralegal Association 40th Annual Business Meeting and Convention

The convention will take place at Chinook Winds & Casino Resort in Lincoln City on November 8-9. For more information or to register, visit www.oregonparalegals.org/Convention.

Conference Room Available to MBA Members

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 "Copyright and the Internet" is now available in the Members Center at www.mbabar.org. The seminar was accredited for two hours of practice skills OSB MCLE credit.

2019 MBA members receive access to a rotating selection of six different CLE seminars each year - a \$360 value.

Commitment to Professionalism

The MBA Professionalism Statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free Professionalism Statement at www.mbabar.org/assets/documents/profcertorder.pdf.

Noontime 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.

Pro Bono Volunteers

Thank you to the following lawyers who recently donated their pro bono services at either the Volunteer Lawyers Project at Legal Aid Services of Oregon or the Children's Representation Project.

Visit www.mbabar.org/probono to discover pro bono opportunities in Multnomah County.

Jacqueline Alarcón
Matthew Arbaugh
Jordan Barbeau
Kathryn Bourn
Barrett Cortez
Tiffany Davidson
Natasha Dobrioglo
Jennifer Eadie
Amy Edwards
Jon Fritzler
Anne Furniss
Kendall Gourley-Paterson
John Haub
Dona Hippert
David Hull
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Lillian Watson
Beate Weiss-Krull
Peter Willcox-Jones
Anthony Wilson
Bronwen Wright
Lee Wyatt
Michael Yates
Lee Wyatt

Ethics Focus

"The File" What It Is and What It's Not

by Mark J. Fucile
Fucile & Reising LLP



The file that a lawyer maintains during the course of a matter for a client has always been at the heart of most representations. In recent years, the form of "the file" has changed radically - with paper documents largely being replaced by their electronic counterparts. Despite that change, "the file" still occupies its central role in law practice.

In this column, we'll look at what does - and what does not - constitute "the file." In doing so, we'll focus on the most common scenario where the definition comes into play and occasionally into dispute: when lawyers and clients go their separate ways short of the completion of the matter involved and the client asks the lawyer for "the file." The OSB addressed this setting in Formal Opinion 2017-192. The opinion notes that there is no definition of "the file" in the Oregon RPCs and that the principal rules governing the transition of representation - including RPCs 1.16(d) on withdrawal and 1.15-1(d) on "safekeeping" - use the older terms "papers" and "property."

What It Is

The OSB in Formal Opinion 2017-192 took an expansive view of what constitutes "the file" and also provided historical perspective for its definition:

"The term *client file* is not defined in the Oregon Rules of Professional Conduct (RPCs) and that term is only used in Oregon RPC 1.17(b), relating to the sale of a law practice. Historically, lawyers maintained documents or information needed to represent each client in a paper client file, which

was typically stored in a single physical location. Information technology has radically altered the form and location of what now may constitute a client file. It is nevertheless useful to think of a client file, regardless of form or location, as the sum total of all documents, records, or information (either in paper or electronic form) that the lawyer maintained in the exercise of professional judgment for use in representing the client.

"...the file" has changed radically - with paper documents largely being replaced by their electronic counterparts.

"Therefore, as a general proposition, and absent viable attorney liens, a lawyer is obligated to deliver the entire client file to the former client or forward it to the client's new counsel upon receiving client consent. *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). In most instances, the entire client file will include documents and property that the client provided to the lawyer; litigation materials, including pleadings, memoranda, and discovery materials; all correspondence; all items that the lawyer has obtained from others, including expert opinions, medical or business records, and witness statements. The client file also includes all electronic documents, records, and information that the lawyer maintained for use in the specific client matter, such as email, word-processing documents on a server, audio files, digital photographs and even text messages. Subject to the exceptions discussed below, the entire file includes the lawyer's notes or internal memoranda that may constitute 'attorney work-product.'"

Id. at 2-3 (emphasis in original; footnotes omitted).

The OSB's approach in Opinion 2017-192 is similar to approaches that it took in two predecessor opinions that have since been withdrawn and superseded - OSB Formal Opinions 2005-125 and 1991-125. It is also broadly consistent with two related opinions addressing electronic files generally (Formal Opinion 2016-191) and cloud-based file storage (Formal Opinion 2011-188).

What It's Not

Formal Opinion 2017-192 also addresses what is not included in its definition of "the file." The

opinion addresses five broad categories of material that are excluded and counsels that it is not necessarily an exclusive list.

First, the client may not be entitled to some items - such as a legal research memo prepared for another client that the lawyer simply placed in another file for the lawyer's convenience because it discussed a common legal issue.

Second, the file may include items that go to the business relationship between the firm and the client - such as collection notes - or material that is covered by the firm's own internal attorney-client privilege - such as a consultation with the firm's general counsel regarding an ethics or risk management issue. On this last point, the Oregon Supreme Court recognized internal law firm privilege in *Crimson Trace Corp. v. Davis Wright Tremaine LLP*, 355 Or 476, 326 P3d 1181 (2014). To qualify for internal privilege protection, however, the client should generally not be billed for the consultation. Billing the client may, in effect, turn any resulting notes, emails or other memoranda into the client's work product.

...a client might reasonably ask for an electronic copy of a will that the client paid for - but not the proprietary template...

Third, the file may include internal firm administrative items such as work assignments or conflicts review that don't go to the legal services provided.

Fourth, Formal Opinion 2017-192 excludes "electronic documents or information that could be construed as computer metadata, or which would otherwise be too burdensome and expensive to identify, locate, and produce in a readable or accessible format." Electronic templates or proprietary software that does not include client-specific information would ordinarily not be included in the definition of "the file." In other words, a client might reasonably ask for an electronic copy of a will that the client paid for - but not the proprietary template the firm developed to create such documents.

Finally, substantive legal constraints - such as protective orders - may restrict delivery of some documents directly to clients.

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FWW Welcomes
Megan L. Oshiro

Farleigh Wada Witt is pleased to announce that Megan Oshiro has joined the firm as an Associate. Her practice emphasizes financial services, business, real estate and estate and succession planning. Megan’s internship at Willamette’s Business Law Clinic, Oregon DOJ in the Financial Fraud and Consumer Protection Section, and externship with the Adidas in-house counsel in Portland bring excellent skills and working knowledge to her practice.

Megan attended law school at Willamette University College of Law. She earned her B.A. in Rhetoric & Media Studies, with a Psychology Minor from Willamette University. Prior to joining Farleigh Wada Witt, Megan was a Judicial Clerk for The Honorable Stephen K. Bushong, Multnomah County Circuit Court.

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Around the Bar



Kevin Mapes

Bateman Seidel Miner Blomgren Chellis & Gram PC

The firm is pleased to announce **Kevin S. Mapes** has joined the firm. Mapes brings with him 25 years of experience in state and federal courts in Oregon, Washington, and California. He represents plaintiffs and defendants in a wide variety of business disputes involving commercial lending, partnership disputes, general contract matters, construction disputes and commercial real estate disputes, as well as environmental litigation. At Bateman Seidel, Mapes will also continue to represent policyholders in insurance coverage disputes.

Prior to joining Bateman Seidel, Mapes practiced for 18 years at Ball Janik where he was co-chair of the firm's insurance recovery practice.



Robert Koch

Tonkon Torp

Attorney **Robert Koch** has joined the Board of Directors for the Pioneer Courthouse Historical Society as its Membership Director. The society is an organization of judges, court staff, lawyers, historians, architects, and exhibit designers who work to preserve and provide to the public the history of Portland's Pioneer Courthouse.

Koch chairs Tonkon Torp's Appellate Practice Group and handles cases in state and federal courts of appeals. Prior to joining the firm, he served in the US Department of Justice's Civil Rights Division in Washington, DC, where he worked on both civil and criminal matters in the US Supreme Court and in federal courts of appeals across the country.

Miller Nash Graham & Dunn

The firm is excited to announce that partner **P.K. Runkles-Pearson** has been elected to serve as chair of the Oregon Law Commission. The Legislative Assembly created



P.K. Runkles-Pearson

the commission in 1997 to undertake law-revision projects that require a long-term commitment and an impartial approach. Housed at the University of Oregon, the 15-member commission includes lawyers, legislators, law professors and judges. It recommends proposed laws and prepares detailed reports that assist the legislature in policy review and provide important legislative history for judicial interpretation. Runkles-Pearson is the commission's second chair since its founding.

Runkles-Pearson is a partner in the firm's Portland office, where she helps colleges, universities and other mission-driven and nonprofit clients with litigation and advice in employment law, education law and Oregon and federal constitutional law.



Iván Resendiz Gutierrez

Attorney **Iván Resendiz Gutierrez** was recently elected to serve on the board of the Oregon Chapter of the Federal Bar Association (FBA). The local chapter of the FBA is a vital source of educational programming and an important connection with the federal bench in Oregon. Board members help produce the chapter newsletter, design relevant educational programs and create valuable networking opportunities for chapter members. Resendiz Gutierrez is also an active member on the FBA's Diversity & Inclusion Committee, which aims to expand and foster a diverse and inclusive legal community.

Cosgrave Vergeer Kester LLP

Josephine Kovacs has joined Cosgrave Vergeer Kester LLP as an associate attorney. Her practice focuses on all aspects of civil litigation, including product liability, legal malpractice claims, and personal injury defense. Prior to joining the firm, Kovacs worked as a student attorney at the Harvard Prison Legal Assistance Project, representing prisoners



Josephine Kovacs

in administrative hearings. She also worked as a 2018 summer associate for Cosgrave.



Harry Wilson

Markowitz Herbold PC

Portland litigation firm Markowitz Herbold PC is pleased to announce that shareholder **Harry Wilson** has been recognized as the 2019 Samuel C. Wheeler Freedom Award winner by De Paul Treatment Centers.

The award is given to those who help battle the stigma of addiction by sharing their story of recovery and giving back to the community in meaningful ways. Wilson is a prominent member of the recovery community and a fierce advocate for De Paul Treatment Centers. Wilson served as the board chair for the past four years and has played an integral role in De Paul's growth and success.

Wilson is a trial lawyer who represents clients in complex litigation involving contracts, business torts, securities, and employment in state, federal, and international forums. He has worked on cases before the US Supreme Court, the Ninth Circuit Court of Appeals, an international tribunal in Kenya, and state and federal trial courts throughout the country. He is involved in some of the largest litigation in the Pacific Northwest, and smaller pre-litigation disputes and arbitrations. Wilson's clients include businesses, individuals, startups, governments, and nonprofit organizations.



Tyler Bellis

McEwen Gisvold

Tyler J. Bellis has become a partner in the firm. Bellis has been practicing law since 2008 and joined the firm as



Sunny S. Kakwani

an associate in 2010 before becoming a partner in January 2019. Bellis represents individual and institutional clients in civil litigation with an emphasis on real estate and business disputes.

The firm is pleased to announce that **Sunny S. Kakwani** joined the firm in 2018 as an associate. Kakwani graduated from George Washington University and received his JD from Suffolk University in 2008. He is a member of the firm's real estate, transactional and corporate groups, and is admitted to practice in Oregon, New York and New Jersey.



Alysha Van Zante

The firm also welcomed **Alysha Van Zante** to the firm in 2018 as an associate. Van Zante graduated from the University of Idaho and received her JD from Lewis & Clark Law School. She represents individuals and institutional clients in a variety of civil litigation matters.

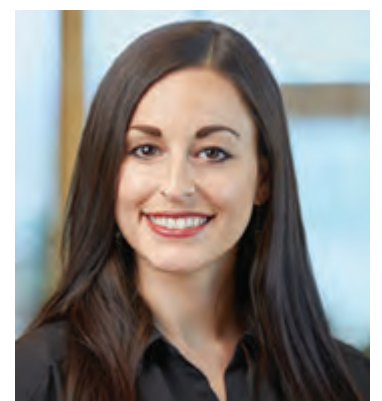


Emily Busse

Tomasi Salyer Martin

The firm is pleased to announce that **Emily Busse** has joined the firm as an associate. Busse focuses her practice on land use, loan documentation and real estate transactions. Her broad experience includes assisting with litigation involving government contracts, business disputes, and employment discrimination.

Busse previously worked in private practice at a boutique New York land use and real estate firm, and as an independent attorney handling a variety of land use, real estate and litigation matters for firms across Oregon. Busse is also an entrepreneur who co-founded



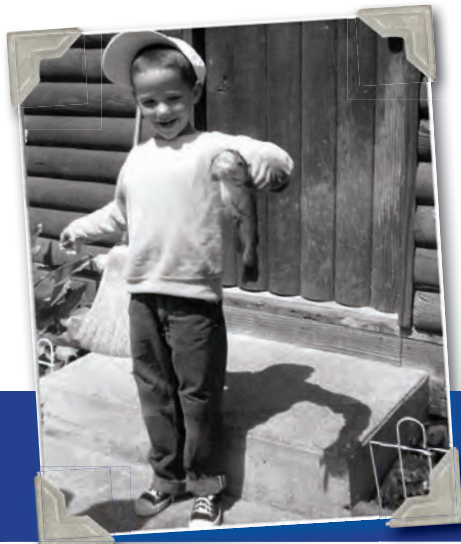
Christina Andreoni

a patient advocacy business, connecting low-income patients with funding sources for their prescription medication.

The firm is pleased to welcome **Christina Andreoni** as its newest associate with a primary focus on representing financial institutions in loan documentation, commercial real estate transactions and foreclosures. She also handles real estate, land use and corporate formation issues for a variety of clients.

Prior to joining Tomasi Salyer Martin, Andreoni worked as an associate for a national firm, where she primarily represented large-scale financial institutions in residential foreclosures and real estate matters. Andreoni is active in both the theatre community and the Italian community here in Portland and has joined the boards of the Portland Area Theatre Alliance and Portland Bologna Sister City Association. She also volunteers regularly at the OSHU Pediatric Acute Care Center.

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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Tips From the Bench

2019 Probate Legislative Update

by Hon. Patrick W. Henry
Chief Probate Judge
Multnomah County Circuit Court



The 2019 legislature enacted a number of new provisions relating to protective proceedings and estates. There is not enough room here to discuss all the bills, so I encourage you to go the legislature's web page to read the very helpful summaries, or better yet the full text, of the bills listed at the bottom of this article.

The following are some bills of significant interest and are effective January 1, 2020:

HB 2601

This bill limits a guardian's authority to limit a protected person's preferred associations with third parties. It permits interested persons, including the protected person or a third party whose contact with the protected person is being limited, to move court to review a guardian's power to limit a protected person's associations and requires the court to conduct a hearing. It authorizes the court to remove guardians for unreasonably limiting protected persons' associations or failing to perform certain duties.

The other significant provisions in HB 2601 codify the substituted judgment standard. It provides that the guardian will promote the self-determination of the protected person and to encourage the protected person to participate in decisions.

SB 376

This bill directs guardians to deliver notice of the order of appointment to all the people who were required to receive notice of the filing of the petition. Among other things, the notice must contain contact information for both the guardian and protected person, a description of the guardian's authority and any limitations, and a statement regarding the protected person's right to seek removal of the guardian.

SB 376 also directs court to order guardian to file a motion to terminate the protective proceeding or supplement the guardian's report if guardian indicates the guardianship should not continue or fails to provide adequate information on the continuing need for guardianship.

HB 3006

HB 3006 creates procedures for the probate of an estate with no known assets. Among other things, it waives the bond requirement, removes the notice requirement

via newspaper, requires the PR to file an inventory stating that there are no assets, removes the requirement to make diligent efforts to search for claims against the estate, removes the duty to allow or disallow claims presented, and allows the PR to close the estate four months after the deliver of required notices. The bill also provides that the PR will follow standard practices if estate assets are discovered or become known.

In addition, HB 3006 allows a personal representative to file a statement in lieu of certain required annual accountings if the distributees of the estate consent in writing. The statement must include basic information, such the value of estate assets, a list of all unpaid claims, and a statement as to why the estate is not ready to close. A copy of the statement must be sent to all unpaid creditors. Creditors then have 30 days in which to require that the PR file a full accounting.

HB 3007

House Bill 3007 contains numerous modifications to Oregon law relating to small estates. Among other things, this bill specifies that the date that fair market value of the estate is measured, prohibits the use of an affidavit if the affiant is prohibited from serving as a PR, provides that if the affidavit is amended to add additional property which increases the value of the estate above small estate limitations, the authority of the affiant is terminated and a personal representative must be appointed. The bill contains new provisions relating to attorney fees and liability for the affiant.

HB 3008

This bill requires probate court approval of personal injury and wrongful death claim settlements, and that attorneys provide a detailed statement regarding the settlement. This is the current practice in Multnomah County pursuant to SLR 9.055.

The bill details the requirements of a petition for the appointment of a personal representative (PR) for the sole purpose of pursuing a wrongful death claim and requires PRs to give notice to beneficiaries, DHS, and OHA within 30 days, and provides what the notice must contain.

The bill waives the following requirements when the sole purpose of the petition is to pursue a wrongful death claim: Information to heirs, devisees, and interested persons, publication, bond, proof of compliance of search for creditors, and inventory.

Other Bills of Interest

In addition to the above bills, I recommend that probate practitioners review the following: SB 35, SB 454, and SB 474.

News From the Courthouse



by Cynthia Newton
Court Liaison Committee

Presiding Judge's Report and Courthouse Update

Judicial Appointments

Morgan Wren Long and F.G. "Jamie" Troy II have been appointed as family law judges to the Multnomah County Circuit Court. They both started on October 28.

Update on the New Courthouse

In the new courthouse, courtrooms are not directly connected to the judges' chambers. Each judge will have chambers on the same floor as their courtroom, and judicial staff will be assigned to work stations in secure common areas on the same floor. Floors nine through 17 will have four courtrooms and five judicial chambers on each floor, allowing room for an additional judge if approved by the legislature in the future. This format should ensure that someone from the court staff will be present in each of the judicial chamber areas even if a particular judge's assistant is unavailable. The fifth judicial chambers on each floor will be used as a conference room until the space is needed by additional judges. Each judge has now selected their courtroom and chambers; their locations in the new courthouse will be announced soon.

The legislature has approved funding for moving costs, equipment, and new furniture designed to fit the new courthouse. Many equipment decisions have been made and the court is now in the process of testing alternatives for the counsel tables in courtrooms. The goal is for the tables to be ADA compliant, functional, durable, and comfortable. They were made available for attorneys to try in Judge Waller's current courtroom last month and are now being tested for functionality in the new courthouse.

Presiding Judge's Clerks

Both presiding clerks have taken new positions, and Judge Bushong now has two new clerks who are getting up to

speed as quickly as possible. Lawyers and staff often call the presiding judge's clerks with questions. The answers to many of these questions may be found in the Attorney Reference Manual. Lawyers and their staff are encouraged to check the manual before calling with questions, and to have some patience with the new presiding clerks as they learn this very difficult job. Link to the Attorney Reference Manual: www.courts.oregon.gov/courts/multnomah/go/Documents/2018ARM.pdf.

East County Courthouse

The East County Courthouse will be returning to a five-day-a-week docket soon. The county has committed to maintaining security at the building during business hours five days per week at least through June 2020. Judge Bushong will resume setting civil trials at the East County Courthouse during the first full week of each month.

Budget Cuts Impacting the Multnomah County Justice Reinvestment Program (MCJRP)

MCJRP established a process to assess offenders and provide a continuum of community-based sanctions, services, and programs that are designed to reduce recidivism and decrease the county's utilization of imprisonment in DOC institutions while protecting public safety and holding offenders accountable. Funding for MCJRP began July 1, 2014. The effectiveness of the program has been tracked and rigorously evaluated by a team of data analysts under the direction of the MCJRP Steering Committee.

MCJRP-eligible defendants are facing presumptive prison sentences if convicted. Under the program, each eligible defendant's risks and needs are assessed. That information is used in a judicial settlement conference to determine the appropriate sentence, and, for probationary sentences, to craft the terms of probation that will increase the chances of success. The program has been successful in reducing prison usage without increasing recidivism. The original plan was to expand

the program if it proved to be successful. Unfortunately, budget cuts to MCJRP funding from the Criminal Justice Commission have forced the MCJRP Steering Committee to reduce eligibility for the program. Under current funding, the number of eligible participants will be reduced from approximately 1,200 participants this year to about 950. Deciding which offenders would no longer be eligible was difficult and painstaking because the program has been so successful. Efforts are planned for the next legislative session to restore funding. Read more and watch a video about the program here: multco.us/lpscc/mcjrjrp.

Grant from the MacArthur Foundation Safety and Justice Challenge

Multnomah County is applying for a MacArthur grant to study and improve the pretrial release program, with the goal of reducing jail usage in appropriate cases. The grant awards are expected by the end of the year.

Reminder to Civil Practitioners

SLR 7.055(14) requires attorneys handling a case expected to last five days or longer to send a letter to presiding court six weeks before trial so that the court can specially assign the case to an available judge before call. The presiding judge uses these letters to effectively manage the trial calendar and ensure that judges are available to handle the trials. Please send the letter as required by the rule; do not wait until morning call and report "ready" for a trial lasting five days or longer. There are no adverse consequences from sending the letter even if the case resolves before trial, but there are adverse consequences if attorneys refrain from sending the letter, expecting the case to settle. If that happens and the case does not settle, the court may not be able to find an available trial judge. On the other hand, if attorneys send the letter and the case then settles, the court can simply reassign other matters to the assigned trial judge. Section I (A) of the Attorney Reference Manual describes the procedure.

MBA Golf Championship Raises \$9,700 for Legal Aid

More than 80 golfers hit the links at Pumpkin Ridge Golf Club in September for the 22nd Annual MBA Golf Championship. The event raised \$9,700 for the Campaign for Equal Justice to benefit the Volunteers Lawyers Project at Legal Aid Services of Oregon.

Thank you to our terrific sponsors for their generous support, and a special thank you to those who came out to the course and made the day even more enjoyable for the golfers. Our sponsors and prize donors are listed below.

Special thanks to Sarah Radcliffe, MBA President; Tony Kullen, Emcee/Events Committee Chair; Danielle Ramos, Pro Bono Coordinator at LASO; and Anneke Haslett, photographer, Legal Northwest.

Golf Results GROSS AND NET BEST BALL

OPEN TEAM FLIGHT

First Place, Low Gross

Chris Acosta, Mike Alter, Todd Rocha, Brian Thomas

Second Place, Low Gross

Steve Larson, Tom Melville, Josh Stellmon, Mike Tooley

First Place, Low Net

Carey Caldwell, Eric DeWeese, Mike Glickman, Taylor Lewis

Second Place, Low Net

Zach Allen, Tim Crippen, Brian Jolly, Tyler Volm

LAW FIRM TEAM FLIGHT

First Place, Low Gross

Wallace, Klor, Mann et al: Jeff Capener, Lawrence Mann, Jayson Obermuller, Sky Wallace

Second Place, Low Gross

Miller Nash Graham & Dunn: Kimball Ferris, Eric Robertson, Andrew Salgado, (blind draw)

First Place, Low Net

Wallace, Klor, Mann et al: Chris Bishop, Milt Crafton, Brad Garber, Kelly O'Halloran

Second Place, Low Net

Pickett Dummigan McCall LLP: William Dart, Brendan Dummigan, Coyle Dummigan, Kimberly Weingart

CONTESTS

Individual Low Gross

Chris Acosta

Individual Low Net

Tim Crippen

KP Men

John Berg

Long Drive Men

Jonathan Wood

Long Drive Women

Gwen Ozaki

SCRAMBLE

First Place

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More event photos:
www.mbabar.org/calendar/2019-09-19/22nd-annual-mba-golf-championship-to-benefit-the-campai.html

To learn more about the Volunteer Lawyers Project, visit lasoregon.org/getinvolved/item.5774-Portland_Metro_Pro_Bono_Opportunities.



Jonathan Wood, Jamison McCune and Tony Kordosky



Sarie Crothers, Michael Licurse, Tiffany Jensen and David Bean



AJ Prasad, Steve Seguin, Quinn Kuranz and Joe Connors

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.mbabar.org. Forms are due to the MBA by November 29.

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

Dear Expert, I've been assigned to handle an issue in a case that no one in my firm has dealt with before. I'm excited about the increased responsibility and opportunity to appear in court, but I'm not sure if I need to file a motion, what type of motion to file, or if I can just appear at ex parte. I don't want to make a rookie mistake, what do I do?

It can be daunting to be assigned to handle a legal issue you're unfamiliar with, especially if it's an issue that others in your firm aren't exactly sure how to deal with either. The best way to prepare is to do your research beforehand and consider it an opportunity to become your firm's resident expert on this issue. Don't just show up to ex parte and hope for the best. Instead, the best way to avoid making an obvious mistake and looking unprofessional is to take the time to research and follow the proper procedures.

First, read the rules. This should go without saying, but checking the ORCP, UTCR, and SLR should be your first step when you have a question regarding motion practice and court procedure. You might find that the answer to your question is already spelled out in the rules. If it isn't, see if you can at least narrow down your inquiry. Can you appear at ex parte for this issue? Do you need to file a motion? What type of conferral or notice requirements must you follow? Odds are, the rules will at least point you in the right direction. Even if you're making a more routine court appearance, always check the SLR for the county you're appearing in, it's easy to forget that different counties have different rules about appearances, especially ex parte. Also, check the court's website. You may find that rules

for motion practice for particular divisions (family, civil, criminal, etc.), and other guidelines are posted there.

Next, check resources like treatises, practice manuals, and BarBooks. These might help you with the nuts and bolts of your motion, how to ask for the type of relief you are seeking, and direct you toward case law that supports your position. Don't overlook the forms in these resources (or in the UTCR and SLR); these can help you figure out how to format your motion and what factual and legal support you will need to include.

If you've checked the rules and resources but you still have questions, consider calling a clerk. If you are assigned to a particular judge, call the judge's clerk, if not, call the clerk for the department or division your case is in. Clerks are an invaluable resource, with a wealth of knowledge about court rules, procedures, and the judge's preferences. The clerk can probably answer your question, point you in the right direction, or confirm that your understanding of the procedure for this issue is correct.

Remember to be courteous and gracious, clerks are busy and the judge won't appreciate hearing that you treated a clerk unprofessionally.

If you still have questions, utilize a listerv you belong to or reach out to other attorneys in your network who might have experience with this issue. Also, see if there are any CLEs that apply to your issue and keep an eye out for future CLEs concerning court procedures and motion practice. It will help you feel confident that you know what to do for this appearance and future appearances, as well as keep you apprised of updates and changes going forward.

Emily Reber
YLS Member Spotlight

by Nikki Abercrombie
YLS Board

Emily Reber did not know much about the Portland legal community when she moved to Portland in the summer of 2018 with her beloved golden retriever, Bonnie. But by immersing herself in various networking events for young lawyers, Emily no longer feels like an "outsider."

Although she is originally from Oregon, Emily has spent most of her life in the Midwest. When she was in the seventh grade, her family moved from Eugene to Cincinnati. She received her bachelor's degree from St. Louis University in 2012, where she studied history, international studies, and French. Following a gap year in Rome, Emily attended Notre Dame Law School. She then returned to Cincinnati for two years to practice general litigation at a boutique firm. Despite all her time in the Midwest, she has always had family roots in Oregon. Emily fondly remembers spending holidays in Portland visiting aunts, uncles, and cousins. So, when her parents moved to Portland in 2018, Emily decided to go west, too.

Emily works at the Portland branch of Troutman Sanders LLP, where she practices commercial litigation with an employment law focus. While Troutman Sanders has a large national presence, the Portland office is

relatively new by comparison and only has nine attorneys. Emily likes having the smaller firm feel but with the resources of a big firm. And, as the only litigation associate in the Portland office, Emily has been fortunate to receive fantastic mentoring and professional development opportunities from more experienced attorneys. She hopes she can pay this forward in the future.

Outside the office, Emily has made professional connections by attending networking events hosted by the MBA and other local bar associations. Emily says that by attending events that focus on young lawyers networking with one another (in addition to practice-area specific events) she has been able to meet people with whom she otherwise would not cross paths. Emily has been very impressed with how supportive the Portland legal community is of young lawyers - and particularly with its support of law students. She has also been impressed with the number of minority bar associations and the Portland legal community's commitment to diversity and inclusion. Emily says the widespread commitment to diversity and inclusion is something that makes Portland a truly special place to practice law.

While the Midwest will always hold a special place in



Emily Reber

her heart, Emily and Bonnie are happy to call Portland their home now. She loves how conducive Portland is for a young professional wanting to meet new people. When she is not busy practicing law, Emily volunteers for the Oregon Humane Society and the Portland Japanese Garden. She also enjoys skiing and loves how close she is to Mt. Hood. The proximity to so many outdoor activities was another impetus in her decision to move to Oregon. She is also an avid Notre Dame Football fan and can regularly be found at game watches hosted by the Notre Dame Club of Portland cheering on the Fighting Irish.

On November 7, Emily will co-present a CLE seminar titled "The Corporate Designee Deposition: Avoiding Traps & Pitfalls" as part of the YLS Advanced Pre-Trial Litigation Series, along with Román Hernández, also of Troutman Sanders. The CLE will be held in the Standard Insurance Auditorium from 12-1 p.m. Details and registration can be found at www.mbabar.org.

UPCOMING YLS EVENTS

YLS Community Service Day
Sunday, November 24
9:30-11:30 a.m.
Children's Book Bank
1915 NE 7th Ave., Portland

The YLS Service to the Public Committee invites you to volunteer at the Children's Book Bank, a nonprofit that seeks to improve the literacy skills of low-income children by collecting, repairing and distributing used books to families in need.

Volunteers will primarily be cleaning and sprucing up donated books. Children ages six and up are invited to participate, though parents are expected to volunteer alongside their children.

To sign up or for more information, contact Steven Mastanduno at smastand@gmail.com.

YLS Giving Tuesday Social and Toy Drive
Tuesday, December 3
4:45-6:45 p.m.
Raven & Rose
1331 SW Broadway, Portland

Please join the YLS for a Giving Tuesday networking event at Raven & Rose to kick off our toy drive to benefit CourtCare. Appetizers will be hosted.

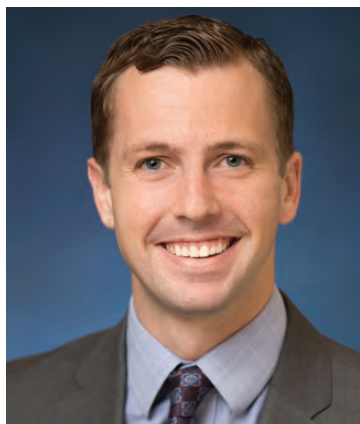
Stay tuned for our toy drive hosted via Amazon wishlist to help you easily order and send the items kids really need. Participating in a toy drive has never been easier!



Learn more about these events or register to attend today at www.mbabar.org.

Working In and Transitioning From a JD-Advantage Position

by Tom Marshall
YLS CLE Committee



One of the toughest parts of starting a legal career is finding your first job. And for people without lawyers in their family or those who have never worked in the legal field, finding a job that fits can be very challenging. While there are many great options out there, one option that I feel is not discussed as often as others, is entering into a JD-advantage position. Typically, a JD-advantage position is a job where an employee with a JD is preferred, but where the job itself does not require bar admission. As a person who went the JD-advantage route, I asked if I could write an article directed towards others who might be taking or considering that path, where I could discuss some of the lessons I picked up as I transitioned from law school.

For background, like many new lawyers, I graduated law school and passed the bar exam without a job lined up. Eventually, I was lucky enough to have a company offer me a temporary position, with the caveat that it would be a JD-advantage position, not as an attorney, but as a contracts specialist. That presented me with a tough choice. After all, many (if not most) of us, had gone to law school with the idea that we wanted to be lawyers. But at the end of the day, I needed a job, and I liked the company and the people that I would work with, so I accepted. This was hands-down one of the best decisions I have ever made. Over the next two years I received what amounted to a crash-course in an industry that I had never worked in before. And when I decided to try and find a position in the legal world, it was that exact experience that brought me to, and got me accepted into, my current job at a law firm. During my time at the company, and in my past year at a law firm, I learned quite a bit, and hopefully some of the below will be helpful to those in a similar position.

First off, do not fear JD-advantage positions! I know first-hand how difficult it can be to go from being in law school, with a focus on becoming a lawyer, to making the decision to not immediately work in the legal field. But in general, JD-advantage positions can be great

for training and learning an industry, and with your JD, you are able to immediately add real value to the business. Further, simply accepting and working as a non-lawyer does not mean that you cannot ever move to become a lawyer later. JD-advantage positions can be a springboard to give you the industry experience that law firms want. And they can also give you direct experience working alongside in-house counsel, many of whom likely have years of experience and who can be great resources, both as mentors and connections.

Then, if you decide to make a move to a position as an attorney, transitioning to a law firm can be a stressful time. There is always some stress in starting a new job, which is amplified by the fact that law firms are very different animals from most non-professional companies. You will need to deal with the ever-present and delightful concept of "billable hours," where you need to track your work multiple times an hour. And you will need to learn all the lingo and tribal knowledge that every law firm has. For all of these things, the best way to learn, as is the case for most things in life, is to communicate and ask questions. Other associates, paralegals, and legal assistants are all great resources to go to with your questions, and the chances are pretty good that they have either dealt with what you are wondering about or have helped someone else with it.

Finally, and I cannot recommend this enough, it is a great idea to forge connections at the legal organizations in your geographical area or field of practice. The people I met through the Multnomah Bar Association were tremendous resources when I made the decision to move into the legal field, and I can honestly say that I would not have my current job without the assistance of those connections. There are many fantastic organizations within Multnomah County and the entire Portland metropolitan area; joining and being active within them can signal to the world at large that you are serious about working as a lawyer in your community.

There is no one correct path to becoming a lawyer. Although there are more traditional routes, it is becoming more and more common for young lawyers, looking for jobs in a competitive industry, to come to their jobs through non-traditional routes. It's really just about finding the right fit and not being afraid to take a chance if the non-traditional route is the right route for you.

YLS Events Recap

Blackbird Wine and Atomic Cheese Shop Event - September 26

by Kit Taylor
YLS Membership Committee

Owner Andy Diaz is passionate about wine, and this annual event, which he has hosted so many times that he has lost count. His stylish and welcoming NE Fremont & 44th shop provided the perfect backdrop for attorneys, CPAs, financial advisors, and insurance professionals to connect while enjoying a thoughtfully curated selection of wine and cheese. In addition to mingling with a full room of colleagues from varied sectors, attendees listened attentively as Andy generously shared some of his vast knowledge about the wines poured, and took home some excellent raffle prizes.



Blackbird Wine and Atomic Cheese Shop Event on September 26

YLS and ONLD Drop-in Social - October 9

by Michael Karas
YLS Membership Committee

Lovely Rita, a quaint bar on the ground floor of the Hoxton Hotel was the venue for a joint ONLD and YLS drop-in social. This event brought in all types of attendees, from law students finishing up their last year of school to younger attorneys who have been in practice for several years. The event offered younger members of the Oregon bar and aspiring attorneys a chance to connect with peers and exercise work-life balance.



YLS and ONLD Drop-In Social on October 9

YLS Community Service Day at Dress for Success - October 20

by Margaret Davis
YLS Service to the Public Committee

YLS volunteers made a big showing at the semiannual Dress for Success Closet Sale on October 20. Volunteers from the YLS had a fun time organizing clothing, checking out shoppers, assisting at the dressing room and finding interesting styles in the racks. The proceeds from the closet sale go directly toward job training for local women. Dress for Success provided job counseling and training to 1,500 area women last year, 600 of whom secured positions.



YLS volunteer Lori Hymowitz (left) at Dress for Success on October 20

Legal Empowerment Accelerator Program (LEAP) at Clackamas Women's Services

LEAP provides newer solo attorneys a launching pad to start their careers by connecting with Clackamas Women's Services participants who need representation for a contested restraining order petition. CWS participants are also able to have some of their civil legal needs met by the LEAP attorneys who agree to represent participants on a sliding scale basis (\$50-150 per hour).

The goal of the LEAP program is to ensure CWS participants get representation but to also fill the access to justice gap for those who fall between 125-400% of the Federal Poverty Level.

For details, Contact Marlisha Childs at marlishac@cwsor.org, 503.557.5802.

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Today's discussion is about the receipt of inadvertently sent documents and, in particular, whether a professional lawyer may simply "send them back" as so many of us were instructed by our mentors to do. The typical scenario at hand involves privileged material being produced by the opposing attorney in discovery. Even recalling their mentor's advice, an ethical lawyer should recognize this situation as complex and approach it with candor both to client and to opposing counsel.

The ethical rule that governs this situation is the picture of simplicity: A lawyer receiving an inadvertently sent document shall notify the sender. Oregon RPC 4.4(b). Formal opinion 2005-150 (OSB 2015 rev) confirms that, so long as the document is inadvertently sent, the recipient's ethical duty under this particular rule begins

and ends with the providing of notice. But see formal op 2011-186 (OSB 2015 rev) (regarding documents sent without authority). Larger questions about what the receiving lawyer might and might not do with an inadvertently sent document have been left to the application of other ethical rules, to laws outside the RPCs and to concepts of professionalism.

Rule 4.4(b) reassures the reader without elaborating the complexities that arise from other ethical rules that require adherence to court orders and rules, which may impose very different and more sweeping obligations than does 4.4(b) itself. Under the MBA Commitment to Professionalism, our obligations include "support[ing] the effectiveness and efficiency of the legal system" and "seeking to resolve matters with a minimum of legal expense to all involved." In

view of the legal battle that may follow our decision to try to use the accidentally sent materials, a client may be well advised to follow the time-honored rule passed down by our elders.

And therein lies the key. This decision - what to do with inadvertently sent documents - may lie with the client and not with counsel. Recall that clients decide the objectives of representation, and their lawyers decide the means (Oregon RPC 1.2). If the contents of the documents are of a nature that they might change the objectives of the representation, then the decision of what to do with them, by all rights, belongs to the client. But, if the document is subject to a protective order, your ability even to describe it to the client may be limited.

And so, a protocol emerges. First, read the local, state-level and federal rules that apply to your case, as well as any

applicable protective or other court orders. Be sure you are following them all. Second, call your opposing counsel. Tell them you have received what appears to be an inadvertently-sent document and offer to send them a copy. Confirm that they understand the complexities: that you have given them their 4.4(b) notice, that the responsibility to take action lies with them and not with you, but that you are doing what you can to limit both parties' legal costs in the meantime. Try to determine whether they are notifying their insurance carrier; your client won't have insurance coverage for this.

Finally, call your client. Confirm this conversation and get confirmation in writing from them as you deem necessary or appropriate. Discuss the situation with candor, which I always find is my best friend in these types of circumstances. Tell them it may be possible to use this document (if that's your judgment), but the cost may be very high both in

terms of expense and in terms of lost credibility with the court and with the other side. Tell them that there may be an insurance company covering the other side's fees. If the document is relatively meaningless, explain that to them and tell them that it's your decision what to do and you're sending the document back.

If the document really is one that potentially changes the objectives of representation, then let the client make the decision, as it is their right to do. But advise them - if you think it's true - that the battle is not worth waging in terms of the damage it will do to relationships, and an uncertain outcome. And advise them - again, if it's true - that their decision may lead to the need to find a new lawyer if you can't go forward. It's a good time to remind your client and yourself that you don't have to continue representation of a client whose choices embarrass you or make you uncomfortable.

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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The Oregon State Bar is looking for someone to provide leadership and oversight for the OSB's initiatives and programs to advance diversity and inclusion within the legal profession.

Visit www.osbar.org/osbcenter/openings.html for job details. Equal Opportunity Employer

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Youth, Rights & Justice is seeking a Development Director. This position is responsible for supporting the development efforts of YRJ, and for implementing effective strategies to grow the private sector fundraising efforts of the organization, including cultivating and soliciting individual and corporate donations/sponsorships, as well as researching and writing grants for foundation gifts. The Development Director will create the strategy for, and develop and maintain, a comprehensive fund development plan, working closely with the Executive Director and Board of Directors. In addition, the Development Director will

work cross-collaboratively with the management team of YRJ attorneys in effectively representing the mission of the organization as it relates to resource development initiatives.

The majority of YRJ's \$2.9 million budget comes from government contracts (approximately 80 percent) for the YRJ court-appointed attorneys to represent children in foster care, parents in the child dependency system, and youth in the juvenile court system. The other portion of the budget (approximately 20 percent) is the private sector funding that helps support the YRJ SchoolWorks and policy programs, and is the responsibility of the YRJ Development Director. To see the full job announcement, please visit www.youthrightsjustice.org/employment.

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Schantz Lang PC, a Washington County-based firm, is seeking an associate attorney with at least three years of family law experience to join our team. We're looking for someone who enjoys working in a fast-paced, team-focused environment. Please email your cover letter and resume to annalise@schantzfamilylaw.com. All submissions are strictly confidential.

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The MBF is working to broaden its outreach and expand the list of community groups that might have an interest in hosting a CourtConnect presentation. CourtConnect pairs a Multnomah County Circuit Court Judge and a lawyer to visit community and youth groups to make a brief civic education presentation.



Current and planned outreach efforts include these organizations

- Catholic Charities
- El Programa Hispano Católico
- Lao Buddhist Center Northwest
- Latino Network
- Lutheran Community Services Northwest
- Muslim Educational Trust
- Portland Opportunities Industrialization Center + Rosemary Anderson High School (POIC + RAHS)
- Somali American Council of Oregon
- Sponsors Organized to Assist Refugees (SOAR)
- Urban League of Portland
- Neighborhood organizations

If you know of an organization that might benefit from a presentation on the justice system, the rule of law, or the courts, please contact Pamela Hubbs (503.222.3275, pamela@mbabar.org).



Judge Melvin Oden-Orr (center) and attorney Jodie Bureta (back row, second from left) present to a SOAR citizenship class

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Contact:
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