

Oregon Chief Justice Enacts Rule to Keep ICE Out of Courthouses

by Victoria Bejarano Muirhead and Roberto Gutierrez



In November 2019, Oregon Supreme Court Chief Justice Martha Walters adopted a new trial court rule prohibiting Immigration and Customs Enforcement (ICE) officers from carrying out arrests without judicial warrants in state courthouses.

By enacting UTCR 3.190, Oregon became the third state in the nation to adopt such a rule, preceded by New York and New Jersey. In Massachusetts and Washington state, lawsuits are pending, challenging warrantless ICE arrests in courthouses. Oregon's Attorney General Ellen Rosenblum will soon file an amicus brief in support of the Washington litigation.

For state immigrants' rights organizations, UTCR 3.190 was a victory over two years in the making. In the materials submitted to the Chief Justice and the UTCR Committee, many advocates and attorneys emphasized that the judicial system was being undermined by allowing warrantless arrests in state facilities.

"Adopting this rule protects the integrity of the state judicial process and will allow state courts to fully hold accountable people accused of a crime," Walters said. "Arrests in courthouses have interfered with judicial proceedings and removed criminal defendants before they have been sentenced or completed their sentences. We are adopting this rule to maintain the integrity of our courts and provide access to justice - not to advance or oppose any political or policy agenda."

To understand how UTCR 3.190 is vital to preserving the integrity of the judicial process today, it is important to understand the political moment that brought about this rule.

In 2017, emboldened by anti-immigrant rhetoric and executive orders issued by the Trump Administration, ICE began to ramp up immigration enforcement - making courthouses an increasingly common location for civil arrests.

Courthouses were excluded from the list of "sensitive locations" (such as churches, schools, and hospitals) where ICE officers are generally prohibited from carrying out arrests. Legislation sponsored by Oregon congressional members to classify courthouses as sensitive locations failed to advance in Congress.

Responding to the uptick in courthouse arrests by ICE, in April 2017, then-Chief Justice Thomas Balmer requested that ICE cease carrying out arrests in Oregon's courthouses, describing the chilling effect the ICE presence had on "not only undocumented residents, but also those who are uncertain about the implications of their immigration or residency status or are close family, friends, or neighbors of undocumented residents." Balmer was one of many chief justices across the country to petition ICE.

Rather than limit courthouse immigration enforcement, in January 2018, ICE issued a directive that codified the practice, suggesting it be used as a tool to carry out arrests in jurisdictions that "refuse to cooperate with ICE." The directive also called for ICE officers to act "discreetly."

In Oregon, plainclothes officers patrolled courthouses, often declining to identify themselves to legal observers or show warrants when making arrests. In April 2019, a defense attorney recorded on camera the arrest of his client as they left a courtroom. But for the badges hanging around the officers' necks, they look like ordinary people - one is dressed in a plaid button-down shirt, the other in a blue polo. The attorney is audibly dumbfounded as courthouse security looks on, nobody intervening to verify the ICE officers had any warrant, judicial or "administrative."

A survey conducted by Causa Oregon and Innovation Law Lab, two prominent immigrants' rights organizations, found that the increased ICE presence in courthouses was resulting in individuals failing to appear at courthouses and declining to report crimes or pursue legal remedies. This is echoed in then-Chief Justice Balmer's letter to ICE in 2017 and Chief Justice Walters' letter in 2019 where they both cited the deterrent effect of ICE presence in our state courthouses.

The petition for the rule additionally offered many firsthand accounts of how these courthouse arrests were impacting Oregonians:

- A minor chose not to report a sexual assault by a neighbor or seek a civil protection order for fear her undocumented family members could be deported if they had to appear in court for any reason.
- An employee injured at work refused to pursue a legal remedy against his employer for fear that the process would expose his legal status and make him a target for arrest by ICE.
- A victim of theft who was subpoenaed as a witness against the perpetrator agonized over the decision of whether to not appear and be held in contempt of court or to testify and risk arrest by ICE.

Accounts like these form the backdrop for UTCR 3.190, which plainly states: "No person may subject an individual to civil arrest without a judicial warrant or judicial order when the individual is in a courthouse or within the environs of a courthouse." Environs include public entryways, sidewalks, driveways, and parking areas intended to serve state courthouses.

"Since the first day of the Trump administration, ICE has terrorized immigrant communities across the country, even entering into sensitive locations like courthouses and places of worship," said Representative Earl Blumenauer. "I've advanced legislation to prohibit this type of behavior and humanize immigration policy nationally. I'm pleased that the Oregon Supreme Court is leading the way by preserving the sanctity of our courthouses."

Courthouses are the very embodiment of our justice system. Whether an individual comes to court to stand trial for a crime, to support a loved one at a difficult time, or to seek a remedy for a wrong committed against them, all should feel secure in a courthouse.

The new rule is an important first step in ensuring Oregon's courthouses are open to all who seek justice. The next step will be holding ICE accountable if the rule is tested.

Victoria Bejarano Muirhead and Roberto Gutierrez are law students at Lewis & Clark. Until recently, they worked at organizations that were part of the coalition that advocated to keep ICE out of Oregon's courthouses. Victoria was Director of Strategic Initiatives at Innovation Law Lab and Roberto was Policy Director at Causa Oregon.

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Shane Swilley

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Dayna Underhill

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Miranda Summer

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Saturday, February 1

11 a.m.-2 p.m.

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Provided by Legal Northwest



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Please see the enclosed insert for this year's salary survey results for legal support staff. This information is provided as a service to MBA members.

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Calendar

FEBRUARY

11 Tuesday
Solo & Small Firm Workshop
Details on p. 4

11 Tuesday
Queen's Bench Luncheon
Speaker Series
www.owlsqueensbench.org/monthly-luncheons1.html

17 Monday
Presidents Day
MBA Office Closed

20 Thursday
CEJ Annual Awards Luncheon
www.cej-oregon.org/events

21 Friday
OHBA's 14th Annual Awards
Dinner
www.oregonhispanicbar.org/events

22 Saturday
Lewis & Clark Law School
Public Interest Law Project
Auction
bit.ly/LC_auction

27 Thursday
YLS Community Service Day:
Impact NW
Details on p. 13

29 Saturday
MBA Visits the Portland
Children's Museum
Details on p. 12

MARCH

4 Wednesday
Portland Area Bar Association
Night with the Trail Blazers
www.mbabar.org

5 Thursday
YLS Social
Details on p. 12

10 Tuesday
Queen's Bench Luncheon
Speaker Series
www.owlsqueensbench.org/monthly-luncheons1.html

13 Friday
OWLS Roberts & Deiz Awards
Dinner
www.oregonwomenlawyers.org/roberts-deiz-awards-dinner

MBA & YLS Board Elections

The MBA Bylaws provide for nominations for MBA and YLS Board positions from the membership at large. MBA members may self-nominate for the MBA Board, and YLS members for the YLS Board. MBA and YLS Board nominating petitions must be endorsed by the nominee and at least 10 other MBA or YLS members, respectively. **Petitions must be received by 5 p.m. on Friday, February 21.** New MBA and YLS Board members will be announced at the MBA Annual Meeting on Wednesday, May 13.



DON'T FORGET TO RENEW YOUR MBA MEMBERSHIP

If you have yet to renew your MBA membership for 2020, please take a few minutes to do so online at www.mbabar.org or contact the MBA office at 503.222.3275.

We look forward to serving you this year.





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.

Evidence in Motion Practice

Tuesday, February 4 12-1 p.m.
World Trade Center, Mezzanine
 Members \$30/Non-Members \$50

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

In civil litigation, there are several evidentiary considerations that arise well before the trial. In this CLE, **Patricia Pascone**, attorney at Dolan Law Group PC, and **Shane Swilley**, partner at Cosgrave Vergeer Kester LLP, will discuss considerations and best practices in offering and objecting to evidence submitted with motions and responses. Come to refresh your knowledge of evidence rules and how you can apply them in your motion practice.

For more information: Contact Angela Ferrer, Buchanan Angeli Altschul & Sullivan LLP, at 503.974.5028. For registration questions, contact the MBA at 503.222.3275.

Avoiding Unethical Billing Practices

Tuesday, February 11 3-5 p.m.
World Trade Center, Mezzanine
 Members \$60/Non-Members \$95

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

When was the last time you reviewed your billing practices (and those of your staff or employees) against the ethics opinions and rules? While time entry practices are seemingly common sense, the rules are often unexpectedly complex in our day-to-day and matter-to-matter practices. Learn how to avoid disciplinary action, and earn ethics credits, too! This presentation is for all experience levels. Join attorney **Dayna Underhill** of Holland & Knight for a detailed review of ethical, and not so ethical, time keeping practices.

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

Justice for All: Understanding and Applying Oregon's New Prohibition on Courthouse Immigration Arrests

Tuesday, February 25 12-1 p.m.
World Trade Center, Mezzanine
 Members \$30/Non-Members \$50

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

In November 2019, Chief Justice Martha Walters issued a Chief Justice Order making immediately effective UTCR 3.190, which prohibits civil immigration arrests without a judicial warrant in and around Oregon's state courthouses. The new UTCR was issued in response to the increased number of arrests made by plainclothes Immigration & Customs Enforcement (ICE) agents with administrative warrants only, and the impacts of those arrests on the ability of state courts to operate and administer justice. Join speakers **Nadia Dahab**, Stoll Berne and **Leland Baxter-Neal**, ACLU of Oregon, for this CLE program, which will involve a discussion of the scope of the UTCR, its basis in Oregon law, and potential mechanisms for enforcement.

For more information: Contact the MBA at 503.222.3275.

Family Law Update

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

On March 5, the MBA will hold its annual two-hour Family Law Update. Multnomah County Chief Family Court **Judge Susan Svetkey** will be joined by **Sarah Bond** of Zimmer, Bond, Fay & Overlund and **Amy Fassler** of Schulte, Anderson, Downes, Aronson & Bittner. Our speakers will provide family law practitioners with information on changes, updates, and reminders regarding Multnomah County Family Court procedures and practices, as well as valuable updates on appellate case law, including the most recent spousal support cases.

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

Identifying, Preparing and Examining Expert Witnesses

Friday, March 6 1-3 p.m.
World Trade Center, Sky Bridge Room
 Members \$60/Non-Members \$95

This CLE will review the entire process of an expert's mission, from the initial report drafting to trial cross-examination, highlighting issues and concerns of the case, the expert's professional and personal perspectives, and their independent opinions. We will discuss preparing for, conducting and defending a Daubert hearing and challenge; preparing your expert to testify at a deposition and trial, and in deposing opposition experts; and mastering direct and cross examination of experts at trial (including do's and don'ts). This CLE will be of interest to all litigators and in-house counsel. **Judge Michael Simon**, US District Court, **Judge Judith Matarazzo**, Multnomah County Circuit Court, and **Miranda Summer**, Summer Family Law, LLC, will present this CLE.

For more information: Contact Justice Brooks, Cable Huston LLP, at 503.973.0653. For registration questions, contact the MBA at 503.222.3275.

Deposing the Organization

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

John Dunbar, Dunbar Law LLC; **Beverly Pearman**, Port of Portland and **Keith Dubanevich**, Stoll Berne PC will teach you strategies for taking and defending depositions under FRCP 30(b)(6) and ORCP 39C(6). These three experts will provide plaintiff, defendant, in-house, and government perspectives.

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

Oregon Sales Taxes? The New Oregon and Portland Taxes on Gross Receipts

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

In 2019 and 2020, Portland and Oregon will impose new gross receipts taxes: the Clean Energy Surcharge (CES) and the Corporate Activity Tax (CAT), respectively. Join speakers **Nikki Dobay**, Senior Tax Counsel at Counsel On State Taxation (COST), **Dan Eller**, Shareholder at Schwabe Williamson & Wyatt, and **Valerie Sasaki**, Partner at Samuels Yoelin Kantor who will discuss how these taxes operate, some technical aspects such as tax rates, registration requirements, apportionment and exemptions, and whether Oregon is on its way to a state wide sales tax.

For more information: Contact Samuel Grosz, Attorney at Law, at 503.676.3800. For registration questions, contact the MBA at 503.222.3275.

Presiding Court Update

Thursday, April 2 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 Eryn Karpinski Hoerster, Foster Garvey PC, at 503.553.3128. For registration questions, contact the MBA at 503.222.3275.

What Kanye Can Teach Us About Litigation

Wednesday, April 15 12-1 p.m.
World Trade Center, Mezzanine
 Members \$30/Non-Members \$50

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

Over the past decade, Kanye West has run the gamut when it comes to civil lawsuits. From copyright and trademark infringement to breaches of contract to class action litigation, West has seen it all. In this presentation, **Brent Turman** analyzes Kanye's "greatest hits" in the courtroom and shares lessons other litigators can learn from his experiences. Brent is a commercial litigator with Bell Nunnally in Dallas, Texas. His practice covers a variety of matters including business disputes, breach of contract, complex arbitration, and intellectual property.

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

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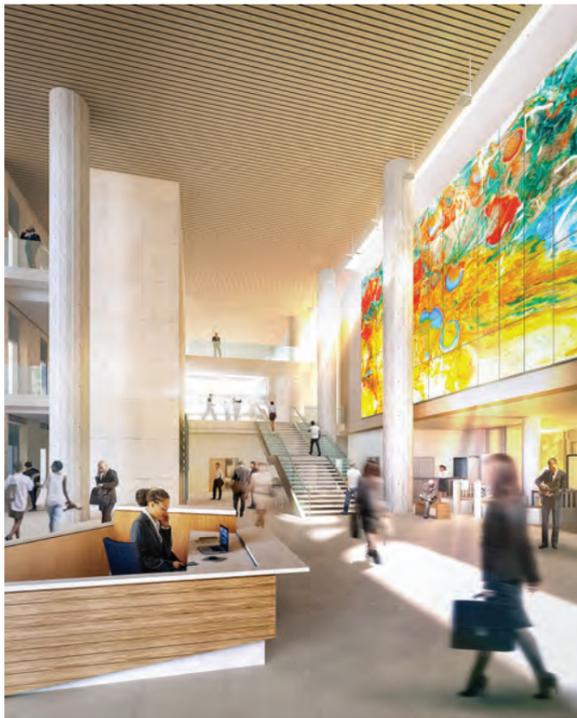


The MBF is launching a new initiative, CourtSupport, to develop and fund projects designed to assist community

members navigating courts in Multnomah County. CourtSupport's initial goal is to place a Navigator at the information desk in the new Central Courthouse lobby. The Navigator will be responsible for serving community members entering the courthouse by answering basic questions about the court and connecting individuals that need accommodations or extra assistance to services and resources within the court.

Through this and future projects, CourtSupport will work to close critical funding gaps in areas impacting access to justice and the quality and administration of the legal system. Please consider supporting the MBF with a tax-deductible, charitable contribution and help make the process of entering and navigating the courthouse and legal system a little less intimidating.

To learn more about the program, contact Pamela Hubbs (503.222.3275, pamela@mbabar.org). To view donor benefits or donate online, please visit www.mbabar.org/courtsupport.



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OFFICE SPACE: HOW TO FIND AND NEGOTIATE NEW DIGS FOR YOUR FIRM

Tuesday, February 11
Workshop: 12-1:30 p.m.
Red Star Club Room
503 SW Alder St., Portland

Are you looking for office space for your firm? Want to know the ins and outs of renting, leasing, or buying commercial office space? Join **Michael Licurse**, attorney at Wyse Kadish, and **Doug Deurwaarder**, commercial real estate broker at Cushman Wakefield as they discuss how best to negotiate commercial space for your firm.

Cost: \$30 members/\$60 non-members. Lunch is provided. The MBA will apply for one hour of CLE credit.

Register at www.mbabar.org.

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

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- 4/2 Presiding Court Update**
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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

The District of Oregon Seeking Nominations for Ninth Circuit Lawyer Representatives

Being a lawyer representative is a rare opportunity to collaborate with federal judges and plan and participate in court-sponsored activities. The court strives to create and maintain a group of lawyer representatives that reflects the experiences of all who are involved in Oregon's federal courts. Race, ethnicity, gender identity, sexual orientation, religion, disability, geographic, and practice areas are among the types of diversity sought.

Duties include assisting with planning the district's biennial conference, attending the Ninth Circuit's annual conference, and providing support and advice about the functioning of the courts within the Ninth Circuit to better the administration of justice. Representatives serve for staggered three-year terms. Those selected this year will serve from August 1, 2020 through July 31, 2023. Criteria for selection as a lawyer representative include admission to practice in the District of Oregon, regular practice in federal court, and a commitment to participating in lawyer representative activities. Details are available on the Ninth Circuit's website at this link: bit.ly/2QwZ0ov. The deadline to apply is April 30, 2020. To nominate yourself or someone else, send a short statement of interest and resume to Magistrate Judge Youlee Yim You at youlee_yim_you@ord.uscourts.gov.

Organization Seeking Board Members

Face-to-Face Portland is a new nonprofit founded to help improve trust between Portland police officers and the community. The organization's liaison family program is our biggest program focus initially, where local families are matched with new police officers. Like police departments around the country, Portland is facing a shortage of officers as the result of ongoing retirements and hundreds of new officers will be hired in the next few years. Many of the recruits come from outside the state. Face-to-face seeks to support, engage, and expand police officers' personal experience with community members.

For more information, visit www.facetofacepdx.org or contact Aaron Kirk Douglas at aaron@hfore.com.

Volunteers Needed for Moot Court Competition

Lewis & Clark Law School will once again host the Pacific Regional rounds of the JESSUP International Law Moot Court competition February 28-March 1. Attorney volunteers are needed to serve as judges at the competition - experience or knowledge of international law is not required. CLE credit available. Learn more at www.ilsa.org and contact Dagmar Butte (db@pbl.net) or Natascha Smith (nbsmith@lclark.edu) to participate.

Haggerty Scholars Program

The program offers high school students an opportunity to explore their interest in the law and civil rights by spending time with a local attorney mentor, visiting one or more law offices (such as a law firm or government prosecutor or defender's office) during a week in the summer, and invitations to law and civil rights special events during the 2020-21 school year.

The Haggerty Scholars Program is for current high school juniors (graduating in 2021) with an interest in law and civil rights. Students must be willing to spend time working with an attorney mentor, visiting legal workplaces during a summer week, and attending an awards ceremony in May or June 2020 with a parent or teacher.

Learn more and apply at oregonfederalbarassociation.org/haggerty-scholars-program.

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.

Take a Matter that Matters

Sign the MBA Pro Bono Pledge at www.mbabar.org/about/pro-bono.html and commit to taking at least one pro bono case in 2020.

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.

Ethics Focus

"Illegal" Fees: How to Avoid Getting Pulled Over

by Mark J. Fucile
Fucile & Reising LLP



Most lawyers know that the "fee rule" - RPC 1.5 - prohibits unreasonable fees, which in Oregon's version is phrased as "clearly excessive." Fewer lawyers recall that RPC 1.5(a) also prohibits "illegal" fees. Despite its sinister cast, the Oregon Supreme Court has long held that any fee that, by statute or the equivalent, requires prior court approval is "illegal" if the lawyer collects without the requisite permission. Although experienced practitioners in areas such as probate are aware of the statutory requirement, "illegal" fees can be a proverbial "trap for the unwary" for lawyers who don't regularly practice in an area where approvals are necessary. For example, an environmental lawyer handling a site remediation on a property in probate may not realize that the lawyer's fee may require court approval.

In this column, we'll look at three aspects of "illegal" fees. First, we'll briefly survey the history of Oregon's approach to that term. Second, we'll look at some of the areas that may trigger prior court approval of fees. Finally, we'll discuss practical steps lawyers can take to avoid having their fee become "illegal."

History

When Oregon adopted professional rules patterned on the ABA Model Code of Professional Responsibility in 1970, one of the rules was DR 2-106(A): "A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee." In 1985, the Supreme Court disciplined

a lawyer in *In re Sassor*, 299 Or 570, 574, 704 P2d 506 (1985), for charging an "illegal" fee under DR 2-106(A) by failing to obtain prior approval as required by statute in a workers compensation proceeding. Although *Sassor* did not include a detailed discussion of "illegal" fees, two years later *In re Hockett*, 303 Or 150, 162, 734 P2d 877 (1987), interpreted another provision of the DRs using the term "illegal" as extending to conduct violating statutes generally - not just criminal laws. A series of decisions followed - most prominently *In re Altstatt*, 321 Or 324, 897 P2d 1164 (1995) - in which the Supreme Court wove together the requirement of court approval and failing to do so rendering a fee "illegal." As the Supreme Court put it in *Altstatt*, which involved a probate proceeding:

"The rule to be derived from those cases is that it is impermissible to collect attorney fees from an estate in probate without prior court approval. Any such attorney fee that is collected without approval is unlawful and, hence, an 'illegal' fee." 321 Or at 333.

When Oregon moved to professional rules based on the ABA Model Rules of Professional Conduct in 2005, DR 2-106(A) was retained in the form of RPC 1.5(a) and (unlike its ABA Model Rule counterpart) continued to include the term "illegal" fees. Given that similarity, it is not surprising that both the Supreme Court and the OSB continued to apply the new rule consistently with the old one - with *In re*

...any fee that, by statute or the equivalent, requires prior court approval is "illegal" if the lawyer collects without the requisite permission.

Lopez, 350 Or 192, 195, 252 P3d 312 (2011), an example of the former and *In re Krueger*, 29 DB Rptr 273, 279 (Or 2015), illustrating the latter.

Application

Altstatt involved one of the primary areas requiring approval of fees by a court: probate under ORS 116.183. ORS 125.095 generally requires prior court approval of fees in conservatorship proceedings and *In re Vanagas*, 27 DB Rptr 255 (Or 2013), provides an example of discipline for an "illegal" fee in this context. While not intended as a complete list,

other common areas include Social Security disability cases (*see, e.g., In re Knappenberger*, 344 Or 559, 561-65, 186 P3d 272 (2008)) and workers compensation proceedings (*see, e.g., In re Dodge*, 16 DB Rptr 278 (Or 2002)).

OSB Formal Opinions 2005-63 and 2005-171 note that a lawyer can be paid by a personal representative out of the personal representative's own funds as long as the personal representative, in turn, seeks court approval for any subsequent reimbursement from estate funds. At the same time, the Supreme Court in *Knappenberger* cautioned that a lawyer and client cannot avoid a

... "ignorance" is not a defense. It is imperative, therefore, that lawyers practicing in an area requiring court approval of fees understand and adhere to that requirement.

statutory requirement altogether by private agreement.

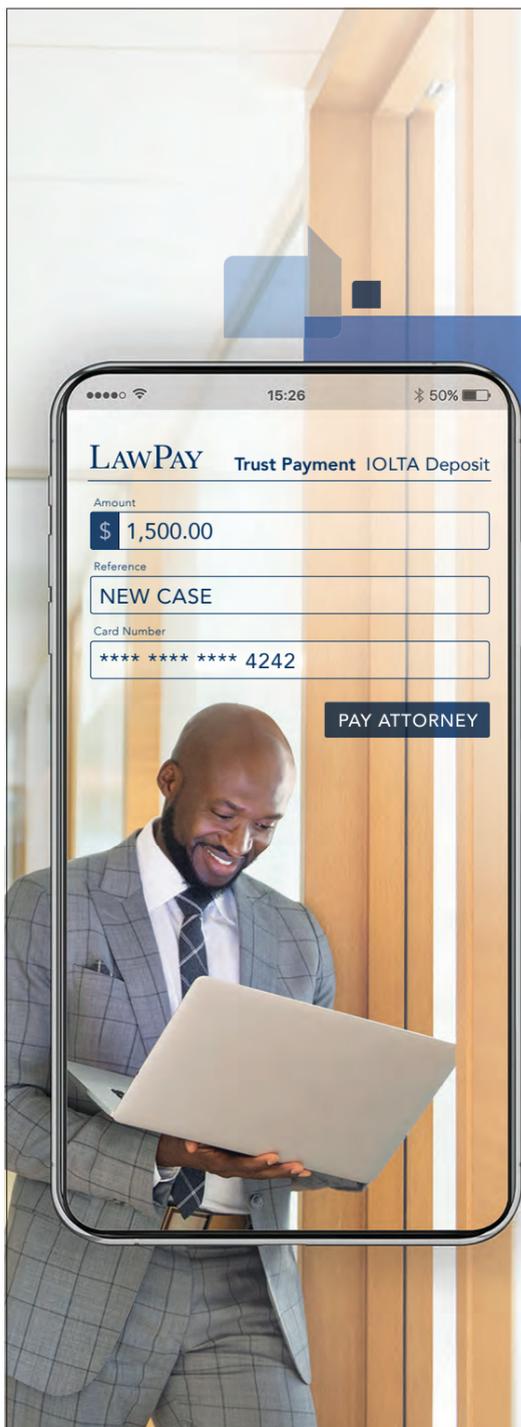
The *Krueger* case noted earlier demonstrates the risk for lawyers who don't handle a probate themselves but whose fees are subject to approval by the probate court. The lawyer in *Krueger* was handling a wrongful death claim for a personal representative and failed to obtain the probate court's approval before collecting his fee in the wrongful death case. He was disciplined for an "illegal" fee.

Lessening Risk

The Supreme Court in *Altstatt* and *In re Weidner*, 320 Or 336, 341, 883 P2d 1293 (1994), emphasized that "ignorance" is not a defense. It is imperative, therefore, that lawyers practicing in an area requiring court approval of fees understand and adhere to that requirement. The Supreme Court offered pungent advice in *Weidner*: "[T] he accused had practiced law for almost two decades. We do not credit his claim of ignorance. The pertinent statutes are plain and easy to find."

Lawyers hired by fiduciaries, in turn, for their expertise in other areas such as our opening example also need to acquaint themselves with any applicable approval requirements.

The risk in this context is not simply regulatory. In *Krueger*, the probate court disallowed the lawyer's contingent fee claim and awarded substantially less using a quantum meruit standard.



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Introducing our new Managing Shareholder
Anna Joyce



Anna's leadership skills, character, sense of humor, and vision for the future make her the natural choice to lead our firm.

Congratulations to Anna on her new position!

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Around the Bar



Jennie Bricker

Land Shore Water Legal Services LLC

Jennie Bricker announced the reopening of her law practice as Land Shore Water Legal Services, LLC (landshorewater.com) as of January 1. Bricker will also continue as of counsel attorney in the Energy & Natural Resources group at Harrang Long Gary Rudnick PC. Bricker has practiced natural resources, real estate, and environmental law since 1998.



David Brandon

Miller Nash Graham & Dunn LLP

Attorney David Brandon was recently elected to serve a two-year term on the OSB Taxation Section Executive Committee. The Taxation Section provides a forum for sharing information about federal and state tax issues, helps promote professionalism, leadership and continuing legal education and reviews and comments on new tax-related legislation and administrative rules. Executive Committee members oversee and manage the affairs of the section. Brandon is also currently serving on the Taxation Section's Laws Committee.



Darlene Pasieczny

Samuels Yoelin Kantor LLP

The firm is excited to announce that litigator Darlene Pasieczny was recently elected to the office of Treasurer for the Public Investors Arbitration Bar Association (PIABA). Pasieczny's practice includes investment loss recovery, trust and estate disputes, financial elder abuse, and FINRA securities arbitration.



Anna Sortun

Tonkon Torp LLP

The Oregon State Senate has approved Governor Kate Brown's appointment of Tonkon Torp partner Anna Sortun to serve as a Commissioner on the Oregon Government Ethics Commission (OGEC). The nine-member OGEC, established in 1974, meets every six weeks, and is charged with enforcing government ethics laws.

As co-chair of the firm's litigation department, Sortun has a wide-ranging commercial litigation practice that encompasses consumer protection matters, disputes between business owners, and complex tort cases. In her 14 years of practice, Sortun has tried more than a dozen jury trials to verdict in state and federal court and has resolved dozens more short of trial, through motions practice or settlement. She regularly counsels clients facing closely-held business disputes prior to litigation.



Steven Wilker

Tonkon Torp presented the inaugural Don H. Marmaduke Pro Bono Service Award to attorney Steven Wilker at its 2019 annual retreat. Wilker was chosen as the first recipient of the award in recognition of the hundreds of hours he has dedicated to civil rights cases through the Oregon Chapter of the ACLU.

Wilker began doing work on ACLU matters in the early 2000s. He also served on the ACLU Board of Directors from 2009-15 and on its Executive Committee as Vice President for Litigation from 2010-15.

Over the last 15+ years, Wilker has committed over 2,200 hours of pro bono service to ACLU clients as a cooperating attorney, as well as another 800 hours in connection with his service on the ACLU of Oregon Board and Lawyers Committee. Wilker's ACLU work includes a case against the US Secret Service that he argued all the way to the US Supreme Court.

During the course of working through ACLU cases, Wilker has consistently made a point



Ron Greenman

of involving young lawyers, giving them opportunities to develop their trial skills and encouraging them to take part in the important work of protecting our civil liberties.

Partner Ron Greenman has received the 2019 James B. Castles Leadership Award from the OSB Business Law Section.

The award was established in 1998 to recognize outstanding business lawyers who have made significant contributions to the public. Greenman is the third Tonkon Torp partner to receive the award. In 2000, it was awarded to the late Brian Booth, and in 2015 it was presented to Ken Stephens.

Greenman was one of Tonkon Torp's first attorneys when he joined the firm in 1978. His practice emphasizes securities, finance, corporate acquisitions and leveraged buyouts, and counseling companies through the stages of growth. Greenman works with national and international corporations as well as family-owned operations of all sizes. He has represented such notable Oregon businesses as Franz Bakery, Columbia Distributing, Key Technology, and Endeavour Capital.

In 1991, Greenman helped found the Lawyer's Campaign for Equal Justice. He remains an active board member for the organization, which works to improve the well-being of Oregonians by supporting access to civil legal services. He has also served on the Board of Directors for the Oregon Law Foundation, the Board of Trustees for Pacific University, and the Board of Directors for the Tri-County Youth Services Consortium.



Kristin Asai

Holland & Knight

The firm is pleased to announce that Kristin Asai and Brent Berselli have been elevated to partner in its Portland office effective January 1. They were previously associates.

Asai is a member of the firm's Litigation Section. She is a trial attorney who is well versed in all stages of commercial litigation and has successfully represented clients in numerous state and federal courts, at both the trial



Brent Berselli

and appellate levels. Asai received a JD degree from Lewis & Clark Law School.

Berselli is a member of the firm's Business Section. He focuses his practice on tax planning for individuals and businesses, including corporate and estate planning for closely held and family-owned businesses. Berselli received an LLM degree in taxation and a JD degree from the University of Washington School of Law.



Lisa Vickery

Fisher Phillips

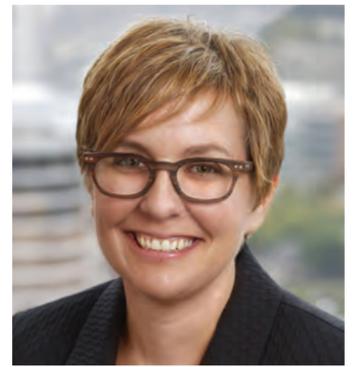
Lisa Vickery has been elected as partner at the firm, effective January 1. Vickery represents public and private sector employers in labor negotiations, labor arbitrations, and administrative hearings, and she has successfully litigated unfair labor practice charges before the National Labor Relations Board and state labor boards. Vickery is also a member of the Oregon Public Employer Labor Relations Association



Trevor Caldwell

Barran Liebman LLP

The firm is proud to announce that Trevor Caldwell has assumed the role of chair for the OSB Military and Veterans Law Section Executive Committee. In addition to previously serving on active duty as a Captain in the US Army, he has been a member of the Oregon National Guard since leaving active duty, and currently serves as an attorney in the Office of the Staff Judge Advocate (JAG). Through his work with the OSB, Caldwell looks forward to helping protect the unique legal needs of other Oregon veterans and service members.



Anna Joyce

Markowitz Herbold PC

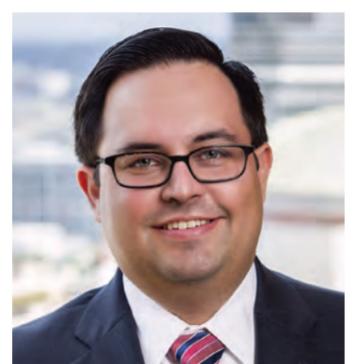
Portland litigation firm Markowitz Herbold PC has appointed Anna Joyce to serve as managing shareholder. Joyce, who joined the firm in 2015, is the former Solicitor General for Oregon and leads the firm's appellate practice.

She is the third woman and second LGBTQ attorney to take the helm since the law firm's founding in 1983. Joyce replaces Kerry Shepherd, who held the position for four years. Shepherd will continue to focus on his complex commercial litigation and government practice.

Joyce has briefed and argued hundreds of appeals before the Oregon Supreme Court and the Oregon Court of Appeals. She has also briefed cases that went before the US Supreme Court.



Molly Honoré



Stanton Gallegos

The firm is also pleased to announce that Molly Honoré and Stanton Gallegos have become shareholders with the firm.

Honoré represents business clients in complex disputes. She routinely advises and represents clients in shareholder and contract matters, business tort claims, products liability, professional negligence, and real estate litigation.

Gallegos represents businesses and nonprofits in complex litigation, including cases involving securities, shareholder disputes, breach of contract, products liability, class actions, employment discrimination claims, and other torts. He also represents clients on appeals in state and federal courts, both as parties and as amicus curiae.

Continued on page 9



**FWW Welcomes
Melissa E. Chapman
as a Shareholder**

Farleigh Wada Witt is pleased to announce that Melissa Chapman has become a shareholder of the firm. Melissa is professional, attentive, and compassionate whether she is assisting her clients with their estate plan, the probate of a loved one's estate, or a contentious dispute.

Melissa practices in a variety of areas including estate planning and administration, commercial and estate litigation, business and real estate law. She is a skilled communicator and advocate for her clients, providing sound and practical guidance at each stage of the case.

Melissa attended law school at the University of Oregon and has been selected by her peers as an Oregon Rising Star for six consecutive years (2014-2019). She currently serves on the Executive Committee and is the Chair-Elect for the Business Litigation Section of the Oregon State Bar. Melissa is also actively involved in the Campaign for Equal Justice.

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Around the Bar

Continued from page 8



Erica Menze

Alterman Law Group

The firm pleased to announce that **Erica N. Menze** has become a shareholder in the firm. Her practice focuses on business and real estate transactions, including land use matters. She also represents clients in real estate and business litigation, where her experience as a transactional attorney benefits clients in tense disputes. She is licensed to practice in Oregon and Washington.

Menze is active in Commercial Real Estate Women Portland division, and is a Fellow of the Real Property, Trusts, and Estates Section of the ABA. She joined Alterman Law Group in September 2017.

Davis Wright Tremaine LLP

Laura Warf has been promoted to Counsel at Davis Wright Tremaine LLP. Her



Laura Warf

practice focuses on providing transactional advice and strategy to food and beverage brands, restaurants, and other consumer companies, particularly through periods of transformational growth and change. Warf received her BA from Linfield College and her JD from Lewis & Clark Law School.

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.



**MEET OUR
NEWEST ASSOCIATE,
ANDREA MEYER.**

We are pleased to welcome Andrea to our litigation department. Her experience includes general commercial litigation, business disputes, and real estate litigation.

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Tips From the Bench

What to Do with Your Client's "Small" Case: Is the Small Claims Department the Answer?

by Mark A. Peterson
Multnomah County Circuit Court Referee



Your time is valuable. Ergo, litigation is expensive. What can you say to a client who has a solid but small case? One answer is to decline to conduct a full-length interview because you know that you will conclude by saying that the recovery is not large enough to justify the time that will be required for you to see the case through to completion. And that may be true, particularly if the client will be required to pay your fees. But that result may leave the client with the impression that our courts are only open in any real sense to parties who have the funds to seek justice. Or, as an alternative corollary, your client will conclude that people and businesses that treat other people in a manner that the law says is wrong can do so with impunity, so long as the monetary value of the wrongdoing is not too substantial.

First, consider whether the other party may be held responsible for your attorney fees and court costs. If the case involves a contract, many contracts contain a fee shifting provision. If the contract's language only provides for the other side to be awarded fees, ORS 21.096 makes the fee shifting clause reciprocal. Even if the contract contains no mention of attorney fees, ORS 21.082 makes attorney fees generally available if the principal and interest due at the time of the filing of the complaint is \$10,000 or less. Small torts (claims for \$10,000 or less) also have an entitlement to attorney fees under ORS 21.080. Under the small contract and small tort statutes, there is a requirement of a pre-filing demand that may bring your client the compensation they seek more promptly than he or she would have imagined. Of course, there are myriad federal and state statutes in the areas of consumer and landlord and tenant cases, and many other cases, that provide for the prevailing party to be awarded attorney fees. It's worth investigating whether your client's claim fits under such a statute. It is also worth considering whether the coercive hammer of a claim for attorney fees will encourage an early settlement and avoid prolonged litigation.

Now, let's assume that either no basis for being awarded attorney fees from the other side is apparent or, while there is a basis for being awarded fees, you have a reasonable concern as to whether this seemingly meritorious case will be successful. Are you willing to spend your time on a case where getting paid depends on getting a judgment in your favor? What other options can you offer? Consider having your client file his or her case in the Small Claims Department. For claims that do not exceed \$10,000, the Small Claims Department is an option. (Some plaintiffs reduce claims that exceed \$10,000 to the jurisdictional amount to avail themselves of this forum.)

There are certain practical advantages to going the small claims route. The filing fees are lower than circuit court - \$55.00 or \$99.00 depending on the size of the claim. Pleadings are simplified - the court provides forms.

The time to get to a judgment in the Small Claims Department is also much faster than in circuit court. The defendant has only 14 days after service of the claim to file a responsive pleading. If the defendant denies the claim or files a counterclaim, the parties will be notified of a mediation to be held at the courthouse within four to eight weeks following the filing of the responsive pleading. Trained volunteer mediators assist the parties in assessing the strengths and weaknesses of their cases, understanding the other parties' view of the evidence and the law, determining what compensation or result they really want, and all of the other products that flow from a mediation session. In 2019, the mediation coordinator reports that 55.93 percent of Multnomah County cases were settled at the mediation. Further, of the 277 cases scheduled for trial, 50 of those cases settled before trial. For cases that are not resolved at mediation, trials take place within four to eight weeks. Moreover, for those parties going to trial, thanks to the mediation session, they are now equipped with a more realistic view of their case, as well as the opposing sides' view.

Small claims trials are informal. The rules of evidence are relaxed. The judge may make inquiries as necessary to achieve a "right, just and equitable determination...of the controversy." ORS 46.415(3). Attorneys may appear in the Small Claims Department only by leave of court (ORS 46.415(4)) and leave is rarely granted in an effort to keep the proceedings informal and to avoid giving one side an

Continued on page 16

News From the Courthouse



by Katie Goss
Court Liaison Committee

Presiding Judge's Report and Courthouse Update

Judicial Vacancy

Judge Gregory Silver has announced that he plans to retire and will not seek re-election when his term expires at the end of 2020. This vacancy - position 12 in the Fourth Judicial District - will be filled through an election, not through a gubernatorial appointment. The deadline for filing for the primary election is March 10.

Updates from Presiding Judge Stephen Bushong

Metropolitan Public Defender (MPD) has begun asserting challenges to the cash bail system in Oregon at arraignment and release hearings. MPD may look for an appropriate case to seek appellate review to address the challenges to the bail system. The challenges could affect the pace and other aspects of arraignment and other hearings, but the specific impact is unknown at this time. Judges will continue to address each situation on a case-by-case basis and based on the arguments presented. MPD might also pursue changes to the bail system through legislation.

The "What Works Conference" was held on January 16. This is a conference organized by leaders in the community and the court and is designed to address potential issues in the criminal justice system. The topic of this year's conference was "Rethinking the Offender and Victim Dichotomy."

Civil Cases - Practice Tips

1. Remember to check SLR 2.501 for the list of documents that must be presented conventionally and cannot be eFiled. If a document is not listed in SLR 2.051 it can and should be eFiled.
2. Under ORCP 79, a request for a temporary restraining order (TRO) may be presented *ex parte* without notice to the adverse party or the adverse party's attorney. Granting a TRO without

notice should be considered an extraordinary remedy. Practitioners should keep in mind the specific emergency justifying immediate relief and tailor the TRO as narrowly as possible to address only that emergency.

3. SLR 7.055(14) requires practitioners to send a letter to the presiding judge at least six weeks in advance of trial if the trial is expected to take five days or longer or where the parties are requesting to conduct trial on one or more Fridays. The letter should include the name of the motions judge or any other judge that has heard matters related to the case. This advance notice helps the court assign cases and ensure judge availability on the parties' desired dates. When a practitioner fails to comply with this rule, it becomes difficult for the court to make a judge available to hear the case. The best way to ensure a judge will be able to hear a case of longer duration or on a Friday is to comply with this notice requirement.
4. Practitioners should carefully consider whether a complex case designation is appropriate and whether it best suits the needs of the parties, lawyers and witnesses before making the request. When a civil case is designated "complex," the parties must coordinate trial dates with the assigned judge's calendar. Because the judges rotate to different assignments, the judge assigned to a complex case may not be available for trial on the dates preferred by the parties. If a case is not designated as complex, the presiding judge has greater flexibility to find a judge available on the trial date that works best for the parties and witnesses. Pretrial case management of complicated civil cases that are not designated "complex" will be handled by the assigned motions judge. Where possible, the presiding judge will assign the trial to

the assigned motions judge because the motions judge may be more familiar with the issues presented in the case.

Updates from Barbara Marcille, Trial Court Administrator

Remember that new SLRs went into effect February 1. The new SLRs are available on the court's website and the MBA website. A CLE seminar addressing the changes to the SLRs is anticipated for April. There are considerable changes to sections addressing juvenile and family law, largely intended to clarify and avoid redundancy within those sections.

The MBA sponsored a successful legislative breakfast on December 4. The breakfast was a good opportunity to connect with legislators and other community leaders on important updates from the court.

Interviews are underway for a referee to replace Referee Steven Todd, who retired at the end of 2019.

Joseph S. Hagedorn will be the new Juvenile Referee to fill the vacancy created when Morgan Long became a Circuit Court Judge.

The new Central Courthouse is working in conjunction with the sheriff's office to determine whether it will be necessary for attorneys to obtain new badges that will work in the new courthouse. It is likely that new badges will have to be issued, but more information should be forthcoming as the new system is finalized.

Additional Updates

Practitioners should be sure to confirm the location of hearings; one practitioner appeared at the East County Courthouse for a docket matter being held in the downtown courthouse.

The MBA Court Liaison Committee is developing a CLE seminar on technology in the new courthouse. It is anticipated the CLE will occur in the spring and will include information from the court's technology manager.

MBF Announces 2020 Officers and Directors

by Pamela Hubbs
Office and Foundation Administrator

The Multnomah Bar Foundation is pleased to announce its new officers and directors. We asked our officers for their thoughts about the MBF and its work.



Jen Wagner

Jennifer S. Wagner, Stoll Berne PC, President, about the year ahead: "It is an honor to serve on the MBF Board. This year I look forward to launching the MBF's new program, CourtSupport, which is designed to fund projects that help community members navigate the court system, particularly in areas impacting access to justice."



Mackenzie Hogan

J. Mackenzie Hogan, Harris & Bowker LLP, Vice President: "The MBF is taking a bold step with the launch of CourtSupport, and I am very excited to be a small part of that process. The launch of this new program, and the opening of the new Multnomah County Courthouse, will make 2020 a year to remember."



Victoria Blachly

Victoria D. Blachly, Samuels Yoelin Kantor LLP, Secretary Treasurer: "The opening of the new Multnomah County

Courthouse this year aligns with the MBF's goal to assist the court through its new CourtSupport program, so 2020 is shaping up to be an exciting year. I am quite honored to be part of it. I am also hopeful the MBF and our legal friends can bring innovative ideas, financial support, and possibly highly trained courthouse comfort dogs to further the important goal of access to justice. This is the year to get involved and make a difference, so stay tuned to see what MBF has in store."



Nick Kampars

Nicholas A. Kampars, Davis Wright Tremaine LLP, Immediate Past President, about his final year on the board, "With the opening of the new courthouse, 2020 promises to be an exciting year for our legal community and the MBF. I'm honored to serve one more year on the board, advancing the good work the MBF does."



Marie Eckert



Joe Franco



Elizabeth Knight



Marshal Spector

New directors are **C. Marie Eckert**, Miller Nash Graham & Dunn LLP; **Joseph L. Franco**, Holland & Knight LLP; **Elizabeth C. Knight**, Dunn Carney LLP; and **Marshal P. Spector**, Gevurtz Menashe PC.

Continuing directors are **Abby Wool Landon**, Tonkon Torp LLP; **James E. Oliver, Jr.**, Davis Wright Tremaine LLP; **Judge Xiomara Torres**, Multnomah County Circuit Court; and **Richard J. Vangelisti**, Vangelisti Mediation. **Nellie Q. Barnard**, Holland & Knight LLP, is the current MBA Board Liaison.

The Honorable Steffan Alexander Multnomah County Circuit Court Judge

*Former Prosecutor and Civil Litigator
Appointed to the Bench*

by Rebecca Cambreleng
Court Liaison Committee

Judge Alexander started his legal career at the State Attorney's Office in the Eighth Judicial Circuit in Gainesville, Florida prosecuting misdemeanor and felony crimes. After five years in criminal practice, Judge Alexander took a job as in-house litigation counsel with an energy company in Florida. In 2012, he moved to Portland, where his wife is from, to raise their children closer to family. He worked at Markowitz Herbold PC, a boutique civil litigation firm, earning partnership in 2017. In his civil litigation practice, Judge Alexander handled everything from complex business litigation to plaintiff-side personal injury cases. His experience runs the gamut from trusts and estates to employment matters, contract disputes and intellectual property issues.

Judge Alexander has spent many hours giving back to the community: as a board member of the Classroom Law Project, a mock trial coach at Jefferson High School and as a volunteer for local nonprofits. In 2019, Governor Kate Brown appointed him to the Multnomah County Circuit Court. Judge Alexander felt called to serve because he wants to make a positive difference in the lives of people who come before the court.

Judge Alexander's unique perspective - as a criminal prosecutor, in-house counsel, and private practice civil litigator - affords him the opportunity



Hon. Steffan Alexander

to make a daily impact on those who appear in his courtroom. He strives to give litigants a fair chance to be heard, treat them with dignity and see their humanity. He values professionalism and preparation from attorneys, and also listens attentively to the individuals appearing pro se. As a member of the bench, Judge Alexander knows that he is in a privileged position to give back to the community and contribute to ongoing efforts to make the justice system more accessible and effective for all the people it serves.

If you asked Judge Alexander, he would say that becoming a member of the Multnomah County Circuit Court was the best way for him to give back to his community. It's not a job where you can just go through the motions - it takes dedication, long hours, and a drive to help others. As a judge, it's a challenge he happily faces every day.

MBA 2020 Mentor Program Kicks Off

The MBA Mentor Program, administered by the MBA Professionalism Committee, kicked off the year with a reception on January 13. Twenty-one mentor-mentee pairs are participating in this year's program, which matches YLS members with esteemed and experienced MBA members for a six-month period. The mentors and mentees attended a brief

welcome event and heard words of wisdom from Bonnie Richardson, the 2016 MBA Professionalism Award recipient. Thank you to all who are participating!

The MBA CLE Committee offers a two-for-one registration at MBA CLE classes for mentor pairs. Mentors who sign up for an MBA CLE can bring their mentee for free. Contact the MBA for more information.



Brittany Berkey and Rena Fox



Tony Kullen and Sunny Kakwani



Sarah Ewing, Amanda Bowers, Traci Ray and Cassandra Blake

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'm a new lawyer and wondering about CLEs. Where can I take classes and how much do they cost? Is it difficult to meet the required number of hours?

All lawyers are required to complete a minimum of continuing legal education (MCLE) credit hours in order to remain licensed with the OSB. For a first-time reporter, you are required to complete 15 credit hours in your first year of practice. Thereafter, a lawyer is subject to a three-year reporting cycle, in which they are required to complete 45 credit hours. The MCLE requirements include general and practice skill credits, as well as specific subjects like ethics, access to justice, and child/elder abuse reporting. In 2019, the OSB added a new credit for mental health and substance abuse. This credit must be completed by a new lawyer in their initial 15 credit hour minimum and then once in every three-year reporting cycle thereafter.

The MCLE requirements are not terribly onerous, but it can be a challenge to complete if you procrastinate. Plan ahead and take advantage of the many free or discounted CLEs that are offered in the area. Find topics related to your practice area or CLEs offered in a format that works for you and your schedule. Many CLEs are available by webcast or audio. This can make it easier to fit into your busy schedule. If you learn better in person, there are CLEs that are offered conveniently during the lunch hour, at the end of the day, and even on the weekends.

Many of the specialty bars also have retreats that include a CLE component. This is a great way to get a lot of credits at once and expand your network!

Many organizations offer free or discounted CLEs to newer attorneys, solo practitioners, or attorneys working in the public sector. As an MBA member, for example, you can access over 60 hours of MCLE-accredited video webcasts at www.mbabar.org/freecle. Other organizations, such as the Professional Liability Fund, also have free CLE content.

For young lawyers, the YLS CLE Committee hosts three CLE series and several standalone CLEs each year that are specifically targeted towards new attorneys on a variety of subject matter. The upcoming spring series is Estate Planning, which runs from April 9 to June 4 and meets from noon-1 p.m. on Thursdays at the Standard Insurance Center downtown. This brand new series walks a young lawyer through various estate planning issues starting with the basics on Wills & Trusts 101. Attendees earn eight practice skills credits and one ethics credit. In addition, the next standalone seminar entitled "Planning, Prosecuting, Panicking: Addressing Debtor-Creditor Issues" is scheduled for Thursday, March 19 at the Lucky Labrador Beer Hall. Please see the enclosed flyers for details on both of these opportunities.

However you choose to get your credits, start early and attend often! CLEs can be a great way to hone your legal skills and build your professional network.

Lillian Watson Pro Bono Spotlight

by Erin O'Riley
Gresham Family and Bankruptcy Law

This month's spotlight is on Lillian Watson, owner of Gresham Family and Bankruptcy Law. Lillian's first career was in mortgage lending. She then attended Lewis & Clark Law School, graduating in 2001 and going on to establish the firm she now owns.

Over the life of her career, Lillian has acted as a volunteer pro bono attorney for several different organizations. She volunteered at St. Andrew Legal Clinic; the Unlawful Practice of Law Committee with the OSB; the Domestic Violence Project at Legal Aid Services of Oregon; and the Senior Law Project at Oregon Law Center. Now, her pro bono focus is as an attorney for children in domestic relations cases.

Oregon law provides for the appointment of an attorney to represent a child's interests in a domestic relations case by motion of a party to the case or by motion of the court, and by the child asking for an attorney for themselves. If one of the parties in a case asks for an attorney for a child, the court has the discretion to appoint

one; however, if the child asks, the court must appoint one. Reasonable fees for the attorney's work are available, but the cost for the attorney cannot be paid by funds earmarked for public defense services. Because money for attorney's fees is often an issue for parties in domestic relations cases, the majority of attorneys that are appointed for children work pro bono.

The role of the attorney representing a child is to give a voice to that child in the proceedings because the parents may disagree on what is best for the child. Attorneys for children represent only the child's interests and are not on either parent's side. They also must advocate for a child's wishes when that child is old enough to give input into the case.

Lillian had a few difficult cases representing children but is quick to point out that she does it to give back to the community; not for recognition or accolades. She believes that she has been blessed in her life and legal career, and feels that it is only right that she returns



Lillian Watson

some of those blessings to her community: "I've been lucky," she says simply. "There but for the grace of God go I."

Lillian also emphasizes that pro bono work is not an all-or-nothing proposition. She says that there have been some years during her 19-year career where doing a lot of pro bono work was not possible, and that one who does pro bono work shouldn't feel pressure to take a lot of difficult cases, or devote a huge portion of their practice to it. She believes that if each attorney who practices family law did some pro bono work, it would add up to a lot: "Maybe some years you only take one or two cases. Sometimes life gets in the way. But think about it: if everyone just took one or two cases, what a difference that would make. You don't have to be a rockstar."

UPCOMING YLS EVENT

MBA Visits the Portland Children's Museum
Saturday, February 29
5:30-7 p.m.
4015 SW Canyon Road, Portland



Join us in celebrating Leap Day at the Portland Children's Museum. Families will have free reign to explore the museum and create crafts in the Maker's Studio at this private networking event. Complimentary refreshments will be provided. Admission is free.

Please register early as space is limited. **Submit your party's RSVP list to lauren@mbabar.org.**

Thank you to our sponsors!



mba yls | EVENT

YLS Social
Thursday, March 5
5-7 p.m.



Troutman Sanders LLP
100 SW Main St., Ste. 1000, Portland

MBA members are invited to Troutman Sanders LLP to catch up with friends and make new acquaintances.

In addition, Multnomah Bar Foundation President Jen Wagner and other Foundation leaders will be on hand to share details about CourtSupport, the MBF's latest project.

This is a free event, with food and beverages provided.

Thank you to Troutman Sanders LLP for sponsoring and hosting this event.

RSVP to mba@mbabar.org.

Sidney Villanueva YLS Member Spotlight

by Jason Pierson
YLS Board

Sidney Villanueva is an associate at Troutman Sanders, LLP, and a fierce advocate for both clients and policy in the energy law sector. Sidney began her energy career as a database administrator for the Western Energy Institute while she was attending Lewis & Clark Law School, and has since been instrumental in advocating for policy changes to improve public utility and energy law in Oregon. Sidney has also had the opportunity to represent clients in administrative rulemaking proceedings, and used her expertise to assist the legislature in making statutory changes to benefit Oregonians.

Sidney is unique in that she went to law school knowing that she wanted to work in energy and transmission. After spending much of her childhood in the Pacific Northwest, Sidney attended college in Missouri, and eventually made it back to Portland. Sidney began her career wearing many administrative hats at an intellectual property law firm following completion of her undergraduate degree. After considering it for several years, Sidney made the decision to attend law school after discussing her passions with a partner at the intellectual property firm, and leaned into his advice to shape her legal career based upon classes that she enjoyed. Sidney took an energy law class at Lewis & Clark and never looked back.

Sidney sees both sides of the legal issues concerning energy, and acknowledges that this is a difficult and interesting time to work in energy law. Sidney feels passionately about helping clients and the public to find a safe and fair way to move toward more renewables and helping to reshape the current energy landscape. While Sidney supports the push for more renewable energy, she also supports making the current energy systems in place work better. The field is changing so quickly that a lot of the necessary regulatory landscape does not even exist yet, allowing Sidney to take issues to the legislature and help to determine regulatory models and incentives for the state.

Sidney's goal is to continue to gain a better understanding of all the issues going on in the market, and to learn from the vast experience of other local attorneys in the specialized energy law field. Much of the Oregon utility and energy industry, such as Bonneville Power, is very unique to the Northwest, and Sidney feels lucky to have so many experienced attorneys willing to lend their expertise regarding energy issues in our area.

When she is not busy affecting policy changes to benefit the power and utility structure and assisting clients with transactional matters and compliance, Sidney remains busy in her community. As a board member of the Serendipity Center, a local



Sidney Villanueva

therapeutic school for at-risk students, Sidney serves as an advocate in the community for this crucial program. Sidney's passion for the welfare of children mirrors her passion for assisting Oregon's energy industry with resource planning and compliance to benefit the health of our community. Sidney was drawn to the Serendipity Center by their mission, and also by the healing garden on site that offers the opportunity for kids with different needs to learn practical skills in an interactive way.

Sidney is a cabinet member with the Oregon Historical Society (OHS). Sidney explained that the mission of the OHS is really groundbreaking, and she appreciates the transparency of the society's honest and sometimes harsh history of Oregon. Sidney feels that is has never been more important to have transparency regarding history, especially concerning race and culture, and she appreciates the OHS' frank exhibits and outreach efforts that endeavor to tell the whole story. Sidney is also a member of the YLS Membership Committee, and a mentor through Lewis & Clark Law School.

Self-Represented Litigant Interactions

by Elyse Lopez
YLS CLE Committee



Navigating the ethical boundaries of communicating with a self-represented litigant is hard enough for an experienced attorney, let alone a young lawyer. You have to walk a fine line between advocating for your client and making it clear you cannot advise the self-represented individual. Over the past several months, I've had the opportunity to interact with more and more self-represented litigants. Here's what I've learned so far:

Being Polite Goes a Long Way

This harkens back to the golden rule: "treat others like you would want to be treated." It can be frustrating to work with someone who is not well versed in the legal system. However, coming across as hostile or impatient with a self-represented person can backfire. They will be less likely to want to negotiate with you and may double down on moving forward in litigating the matter.

Telephone Communications are the Least Likely Method to be Misconstrued

It is incredibly easy to send an email or a letter to someone. Email is instantaneous and you do not have to do anything further until the person replies. But what if they do not reply? What if the letter you sent gets returned in the mail? Of course phones can be disconnected and they are not 100 percent foolproof. However, picking up the phone and talking to someone helps establish a rapport *and* you can be clear and direct in your communications. It also helps humanize the process and may allow the self-represented litigant to feel heard when they otherwise did not before.

Know When to Involve Your Superior

Being a young lawyer can be a difficult task. There is a reason we have mentors and supervising attorneys. It is perfectly acceptable to ask these individuals for advice on dealing with difficult self-represented litigants. It is also appropriate to tag them in when you feel like you are not getting through to the person or you are concerned about ethical boundaries.

As with most things, the more you practice you have interacting with self-represented litigants, the better you will become at communicating and negotiating with them.

YLS Community Service Day Recap

by Chris Thomas
YLS Service to the Public Committee

On January 13, a group of MBA volunteers visited the Community Cycling Center in Northeast Portland and assembled bicycles for children in need. Sarra Yamin, Chris Thomas, Seamus O'Connor, Michael Jeter, Mark Maricle, and Will Stinman together assembled six bikes donated to the CCC by Thomas, Coon, Newton & Frost.

The CCC was established nearly 25 years ago to improve community access to bicycling. Their programs include a retail bike shop, weekly volunteer nights, bicycle camps for kids, and an annual holiday bike drive, where this year over 400 kids received free bikes and helmets.

Additional volunteer and support opportunities can be found at www.communitycyclingcenter.org.



mba yls | EVENT

YLS Community Service Day
Thursday, February 27
6-8 p.m.
Ex Novo Brewing Upper Loft
2326 North Flint Avenue, Portland

Impact NW is a nonprofit that works to prevent homelessness by partnering with people as they navigate their journey to stability and opportunity.

Volunteers are needed to bring toilet paper, paper towels, socks, blankets, puzzle books and/or grocery gift cards that will be used to fill donation boxes, which we will assemble together at the event. Volunteers who are unable to donate goods are still encouraged to attend to help decorate and fill the boxes with donated goods. This is a kid-friendly event in a fun space with great food and beer. All are welcome to stay and network after the event, as well.

For those who wish to donate any of the needed items prior to the event, you may do so by dropping them off at the MBA office.



To sign up, or for more information, contact Veronica Rodriguez, veronica@gnsllawgroup.com



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If you have yet to renew your MBA membership for 2020, please take a few minutes to do so online at www.mbabar.org or contact the MBA office at 503.222.3275.

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The MBA Pro Bono Pledge: Be a Civil Legal Aid Hero in 2020!

When it comes to pro bono service, the Multnomah Bar Association has a lot to be proud of. More than 100 law firms and individual attorneys have signed the MBA's annual Pro Bono Pledge (see the list at www.mbabar.org/about/pro-bono-pledge-signers.html). Because of the generosity of those attorneys and firms, thousands of hours of free legal services will be available this year to low-income Oregonians who otherwise would be unable to protect their legal rights on their own.

Handling a case pro bono means a domestic violence victim and her children can be protected from further abuse. A low-income family can be protected from needless eviction. A temporarily unemployed worker will get the help they need to appeal a wrongful denial of unemployment benefits. These are but a few of the many crucial scenarios faced by low-income clients in need of your help.

The MBA 2020 Pro Bono Pledge for Individual Lawyers is simple and to the point:

"In recognition of my responsibility to increase access to the justice system, I pledge to provide representation in at least one legal matter during 2020 without fee or expectation of a fee to:

- person(s) of limited means; or
- an organization serving the needs of persons of limited means, such as charitable, religious, civic, community, governmental or educational organizations.

I further pledge to contribute financially to organizations that support or provide legal services for persons of limited means."

The Pro Bono Pledge for Law Firms adds a commitment that the firm will adopt a written pro bono policy to encourage

and support the firm's lawyers in fulfilling their individual pledges. Firm-wide pro bono policies often include some provision for giving a certain level of billable hour credit for individual attorneys who handle pro bono matters. Both versions of the pledge can be submitted online through the MBA website at: www.mbabar.org/probonopledge. For law firms, the OSB also offers an online "Pro Bono Policy Toolkit" at www.osbar.org/probono/policy. The toolkit includes a model law firm policy and a worksheet to help customize the policy to fit the firm's circumstances.

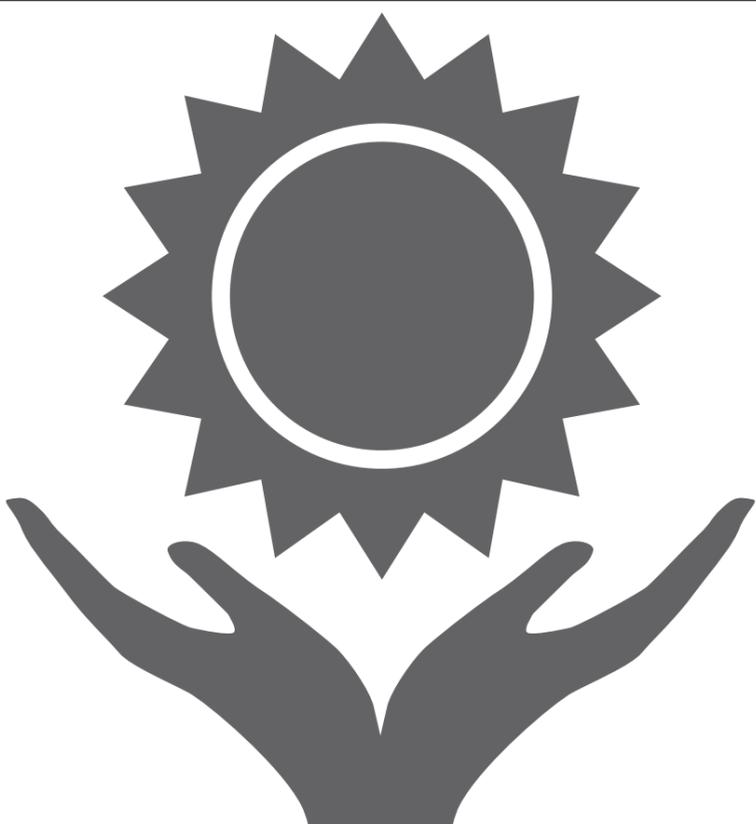
The good news is that whether you are a member of the largest firm in the state or whether you are a solo practitioner, there are a multitude of ways for you to be involved. The state's legal aid provider agencies have set up a website, www.OregonAdvocates.org to offer pro bono opportunities, online training, and other resources to help pro bono volunteers succeed.

Beginning this year, the Oregon Advocates website also will offer a new way to volunteer to help legal aid clients from around the state. The ProBonoOregon system (www.oregonadvocates.org/probonooregon) will post easy-to-use, mobile-friendly info boxes which will allow volunteers to easily indicate their interest in available pro bono cases and projects without need for passwords or pre-registration. Additional pro bono opportunities can be found on the MBA website at www.mbabar.org/probono.

Pro bono service is a unique professional responsibility for members of the bar. But pro bono also is a rewarding opportunity to use your skills and experiences on behalf of Oregonians who desperately need your help. Whether you have only a few hours to spare, or whether you want to join the 311 Oregon attorneys on last year's State Bar Pro Bono Honor Roll by contributing 40 or more hours of pro bono service, the MBA and Oregon's legal aid provider agencies want to make it as easy as possible for you to fulfill the Pro Bono Pledge.

Last but not least, whether or not you are able to contribute your time, there is still another very important way you can be part of Oregon's generous pro bono community - your financial support is also needed. According to a 2018 Civil Legal Needs Study, Oregon's legal aid provider agencies only have enough resources to meet about 15 percent of the need. Please see the Campaign for Equal Justice website at www.cej-oregon.org for more information about how you can help. Every dollar donated will be put to good use!

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

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Downtown Offices Available 4/1/2020 For Two-Year Lease

Crown Plaza Building (near new Multnomah County Courthouse); three exterior offices (one with Mount Hood view), two additional separate workstations for support staff; monthly parking available; potential to continue beyond 2022.

Contact Phil Lebenbaum: phil@hollanderlaw.com, 503.222.2408.

Tips From the Bench

Continued from page 10

undue advantage over the other. Judgments are generally issued from the bench and they are not appealable. Judgments for \$3,000 or more create a judgment lien when entered. For judgments of \$10 or more but less than \$3,000, a fee must be paid to create a judgment lien.

It may be appropriate to offer legal services to your client if the client decides to pursue their case in the Small Claims Department. Attorneys are not allowed to appear in the case but there is nothing to suggest that some unbundled legal services cannot be provided that will greatly increase the likelihood that the client will prevail and will achieve a judgment that is commensurate with the harm that is the basis of the action. Lawyers and judges have a way of viewing, analyzing, and processing information that is decidedly different than the mental processes of ordinary humans who have not been subjected to three years of law school. Providing assistance in identifying the elements of the claim; what testimony or documents will provide evidence of the necessary elements; the proper chronology of the case's story, stripped of irrelevant and confusing information; and foreseeable arguments, defenses, and counterclaims will be invaluable to most clients if they elect to pursue their small claims remedy. Your client will not generally recover for such legal fees so it is important to consider how much help your client needs and the degree to which your legal guidance will reasonably improve the outcome.

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Working with Interpreters

by Aurora Levinson
 MBA Public Service Committee



I used to be an interpreter, and I loved it. Interpreting is a meticulous, multi-layered art form that is difficult to master. It involves not only the ability to speak two different languages back-to-back, but also conveying the correct words, tone, affect, and purpose. Interpreting is an involved and exhausting process, and one that attorneys do not necessarily understand. The purpose of this article is to help lawyers understand the interpreting process, its role in court, and the best practices for working with interpreters.

According to the Oregon Judicial Department, about 10 percent of people in Multnomah County are Limited English Speakers (LEP). Throughout Oregon, the most requested language interpreters are for Spanish, American Sign Language, Russian, and Vietnamese. It is not uncommon for lawyers to have a case where one or both parties are LEPs, and it is important for lawyers and clients to know how to work with an interpreter.

What exactly is the role of an interpreter in legal proceedings? An interpreter is a neutral party who takes an oath to interpret everything that is said faithfully and accurately. She is there to ensure effective communication between the parties. The interpreter cannot give legal advice or insert her thoughts or prejudices into what she translates.

An interpreter cannot answer a question directly. For example, if a witness says, "I don't understand the question," the interpreter cannot then reframe the question. She must translate the witness' statement and allow the attorney to do it. An attorney should ask to stop the proceedings if at any point there is a back and forth between interpreter and witness. I once saw an interpreter give legal advice to a witness on how to properly answer a question. Since I spoke the translated language, I knew exactly what was going on and requested that the judge remind the interpreter that he was there to interpret, not give legal advice.

At other times, I've realized that my witness wasn't really answering the question I was asking. If that happens, re-frame your question - some things can get lost in translation, especially if the interpreter is not privy to the case's background.

On that note, try to provide a short brief with the case background or special terminology to the interpreter. You can do this for depositions or in-office meetings. This allows the interpreter to better translate specific terms that might not be

common in a prompt manner. In Multnomah County, interpreters have access to the court record prior to a hearing.

Attorneys should also brief their witnesses on how to interact with the interpreter. The best practices for both attorneys and witnesses are to:

- Use short sentences;
- Speak in plain English;
- Allow some time for the interpreter to finish interpreting - some languages may require more time than others;
- Do not talk over another person - an interpreter can only interpret one person at a time.

Another important rule is to give the interpreter a break. As I said at the beginning, interpreting can be exhausting. Therefore, it is recommended that interpreters take short breaks every 20-30 minutes. Whenever possible, you should consider having two interpreters if you have a lengthy hearing or deposition.

Give the court as much notice as possible of your interpreter needs. There are a limited number of certified interpreters, and the court must juggle that with the ever-growing caseload. For languages that are not common in your region, provide the court with information such as the witness' country of origin, dialect, or even geographic region. In that vein, let the court know if your interpreter needs change - every now and then interpreters have to be flown in from other parts of the country. Letting the court know as soon as possible that you will no longer need an interpreter is vital.

And last but not least: remember that the interpreter is a professional, just like you.

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Lawrence P. Blunck

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larry@bluncklaw.com

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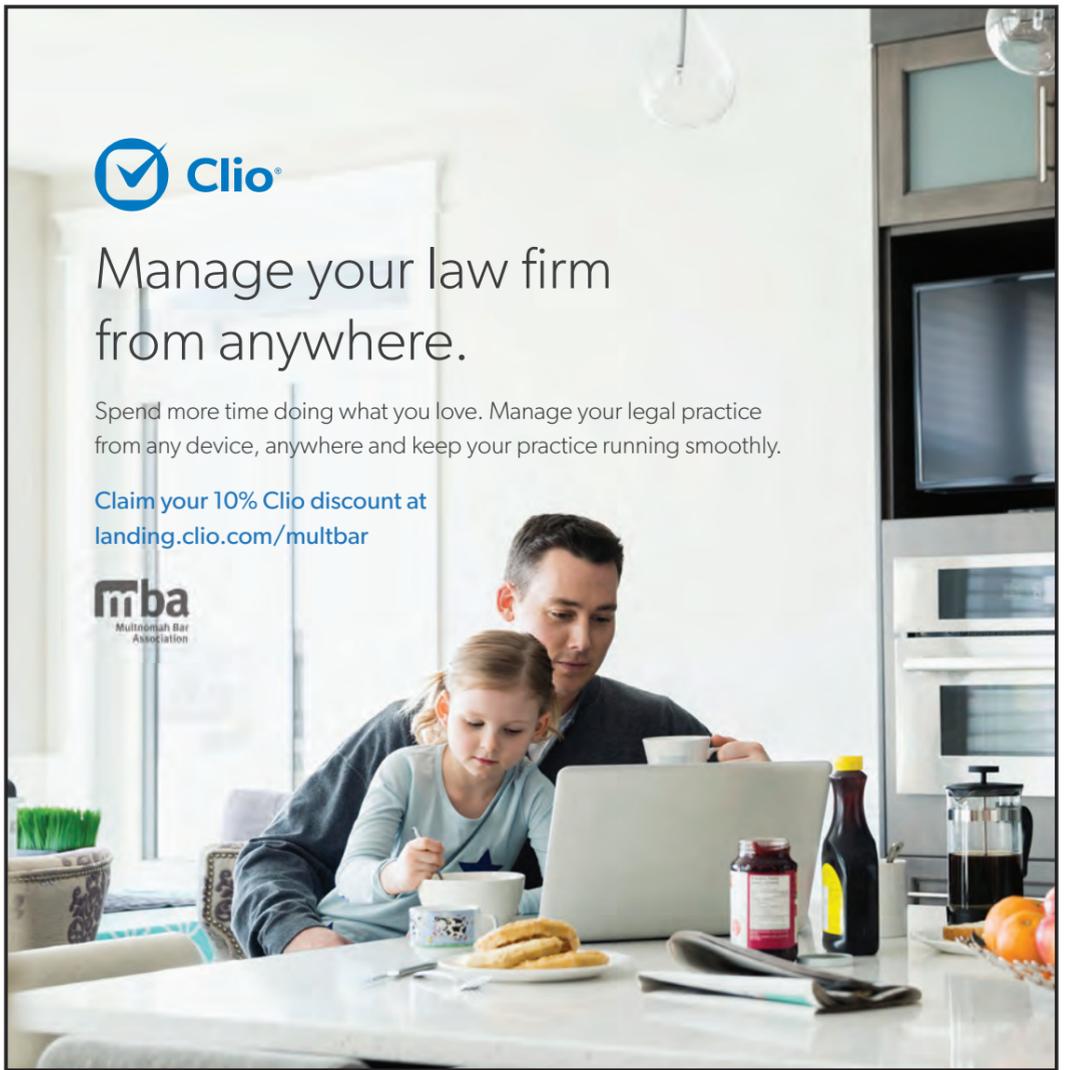
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MBA Bar Fellows Program is Growing, and the Class of 2020 is Off to a Great Start!

by Emily Teplin Fox, Jollee Patterson, and Adele Ridenour

The MBA Bar Fellows Program - an innovative opportunity designed to diversify the Oregon bar and increase access to justice - has launched its second class of impressive law students. With the support of the University of Oregon, Lewis & Clark, and a great group of summer sponsors, the program has grown to support eight first-year law students in the 2020 class: four from the University of Oregon and four from Lewis & Clark. Each Fellow brings strong skills and a deep commitment to the law, and will increase the diversity of the bar.

Diversifying the legal profession is a critical goal for the MBA. The MBA Bar Fellows Program furthers this goal by recruiting and supporting diverse law students who plan to practice in Oregon. Each Fellow receives

(1) a tuition scholarship of up to \$60,000 from the University of Oregon or Lewis & Clark, (2) a 10-week paid summer fellowship at a firm or in-house law department, (3) a judicial mentor, and (4) other targeted opportunities.

The 2020 summer sponsors are Ball Janik, Dunn Carney, Foster Garvey, Lane Powell, Legal Aid Services of Oregon (generously funded by the Oregon Women Lawyers Foundation), Miller Nash Graham & Dunn, Nike, the OSB Professional Liability Fund, PacifiCorp, Richardson Wright, and Umpqua Bank. These summer sponsors

are fortunate to be working with some of the state's best upcoming lawyers, and are also demonstrating their deep commitment to diversity of the Oregon bar through support of this program.

We are also very happy to report that the 2019 MBA Bar Fellows - the inaugural class - had very successful experiences



Lewis & Clark Fellows Michael Cebert, Juan Pablo San Emeterio, Mark Cebert and Queen Rynders

in their first summer placements and are well on their way to becoming successful members of the OSB.

Thank you again to the summer sponsors, judicial mentors, and law schools for joining together to support our Bar Fellows!

If you or your firm or company is interested in learning more about the MBA Bar Fellows Program, please visit www.mbar.org/fellows or contact Jollee Patterson at jollee.patterson@millernash.com or 503.224.5858 or Kathy Modie at the MBA at kathy@mbabar.org or 503.222.3275.



University of Oregon Fellows Alexis Prado, Rebeca Lopez-Figueroa, Manuella Tshala, Jocabeth Zarate, with attorney Emily Teplin Fox, Dean Marcilynn Burke and Assistant Dean of Admissions Sarah Keiski

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