

Building Resilience to End Racial Injustice

by Valerie Colas
MBA President



The last few months have been challenging - without much notice, we had to drastically change our daily routines and interactions. Words such as “pandemic,” “social distancing,” “self-isolation” became a part of our everyday conversations in addition to the barrage of emails and articles containing the word “unprecedented” in describing the times of COVID-19.

At first, many believed that the coronavirus was an “equalizer,” a non-discriminating virus.

However, Black, indigenous, and communities of color are bearing the brunt of the COVID-19 pandemic’s health and economic impact. The coronavirus has magnified the prior inequities that existed as a result of another pandemic: racism. Unfortunately, coronavirus and racism are dangerously too similar, and together they are a lethal combination to Black and brown people. Coronavirus, just like racism, (1) allows those who have not experienced it or been affected by it to ignore and disbelieve its existence; (2) vilifies the victim and further blames them for being a victim; and (3) discharges any sense of collective responsibility to address it, but instead puts the burden on the victim, often with no power or support, to seek redress on their own.

Then, amidst the sudden and drastic changes to our lives due to COVID-19, we were horrifically reminded of how deadly and evil the pandemic of racism was. In dread and dismay, we watched the life of George Floyd, a Black man, being taken from him without any regard. While a white police officer knelt on his neck for eight minutes and forty-six seconds, George Floyd pled and cried, “I can’t breathe.” Those were also the dying words of Eric Garner in 2014 when a police officer held him in a chokehold. This excruciating racial pain once again reminded the Black community that Black lives are not valued; Black lives don’t matter.

Now, I say these words feeling the full weight and sting of them. As a Black person, I have had my own experiences of not belonging, not being valued, and fearing for my safety. Whether it was as a college student witnessing a white supremacist group protesting on my campus because they believed that the university admitted too many students of color or as an attorney being called the “N-word” as I walked back from the courthouse, those are just a couple of examples of what being Black is - it is to be seen only by the color of your skin with the most negative stereotypes attributed to it.

In the days and weeks that have followed George Floyd’s murder, there have been local and national protests demanding justice,

equality, and the end to police brutality. In many ways, the current demonstrations parallel the protests against racial injustices and state sanctioned violence going as far back as the post-Civil War days in the 1870s to the uprisings in 1943, 1965, 1968, 1992, 2014, and so forth. These protests are more than just about George Floyd or the recent killings of Ahmaud Arbery and Breonna Taylor. These protests are rooted in the long history of racial violence and inequality and are a referendum on the inadequacies of our democracy. A democracy that has extolled that “[we] are all created equal” but continues to treat Black people, indigenous people, and people of color unequally, as less than in every aspect of society.

As much as I have felt hurt and heartbroken over these tragedies and the many more that continue to happen, such as Tony McDade and Rayshard Brooks, I am also hopeful that transformative change is possible. Today’s demonstrations are markedly interracial. Public opinions about the need for police accountability are changing. There is a re-examination of statues in the likeness of, and buildings named after, individuals with racist pasts to determine whether they truly exemplify our values and ideals. In some cases, the statues have been removed or the buildings have been renamed. In other cases, where the statues and building names remain, the full story of the individual is included to provide the proper context. Our racial and cultural history is complex and, oftentimes, contradictory. But we must grapple with it if we are to stand for equality for all.

In addition, many organizations and law firms observed June 19 or Juneteenth - also known as “Freedom Day” or our nation’s “Second Independence.” Juneteenth commemorates June 19, 1865, when the enslaved in Galveston, Texas, finally learned of their freedom and began their struggle for equal rights. This was two months after the end of the Civil War and more than two years after the Emancipation Proclamation. Moreover, many national and state organizations, including the MBA, have issued statements of solidarity with the Black community and a commitment to racial justice.

Yet, there is still more to do. Statements of solidarity are important gestures, but they are only the first steps. As MBA President, I commit to amplifying the voices of those who are marginalized and are unheard. I am committed to creating an environment of belonging where the differences of individuals are valued. As a member of this legal community, I ask for your help in fighting against racial and other injustices. We do not know how long COVID-19 will be with us, but we know that institutional and structural racism have existed for decades. The movement to end them will be long and arduous. And the fight for equality, inclusion, and belonging require resilience. Resilience to engage in difficult and painful conversations about race, racism, oppression, and white privilege. Resilience to acknowledge and hold space for the deep pain and trauma that people of color have experienced and the pain from unpeeling the layers of our complicity. We must listen to and center the experiences of Black, indigenous, and people of color (BIPOC).¹ Both individually and collectively, we must take responsibility for doing the work of being anti-racist.

I am also hopeful that transformative change is possible... Our racial and cultural history is complex and, oftentimes, contradictory. But we must grapple with it if we are to stand for equality for all.

...amidst the sudden and drastic changes to our lives due to COVID-19, we were horrifically reminded of how deadly and evil the pandemic of racism was.

¹ The term BIPOC stands for Black, Indigenous, People of Color. It is used to acknowledge that not all people of color face the same level of injustice and oppression. By specifically naming Black and Indigenous communities it highlights that these communities face different, and often more severe, forms of oppression and erasure.

mba|CLE

Due to the COVID-19 situation, the MBA will be offering all seminars **ONLINE ONLY**. To register for a CLE seminar, please see p. 3 or visit www.mbabar.org and log in as a member to register at the member rate.

AUGUST

8.19 Wednesday
Estate and Gift Tax Planning in an Environment Without a One-Size-Fits-All-Approach
Jonathan Cavanagh

SEPTEMBER

9.24 Thursday
Build Better Mousetraps, or at Least Effective Limitations of Liability
Jaimie Fender
Jack Levy
Jacob Zahniser

The Young Lawyers Section Upcoming Fall Series “Advising Oregon Businesses” begins September 17.

See page 3 for list of seminars.

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The Carmen M. Sylvester PCC Criminal Justice Scholarship

by Kelly Zusman

Carmen Maria Sylvester was the first African American woman hired by the Portland Police Bureau (PPB) in 1973. Sylvester withstood both racism and sexism from the public and a few



of her fellow officers. Sylvester's response? "I just told them I wasn't going anywhere. I had babies to take care of, and I made clear to them that they couldn't embarrass me or force me out."

Sylvester worked patrol and did stints as a District Officer in the North and East precincts. She took a year's leave to complete her Associate Degree with Portland Community College (PCC). When she returned to work, she was assigned to the Traffic Division and she eventually joined



the "Officer Friendly" program. She worked with kindergarten through sixth grade students.

Sylvester believes that the best police officers are people who have had actual life experiences. "It helps, when dealing with members of the public, to know what it feels like to have a past-due utility bill," she says. She recounted several instances in which citizens called the police for help - not because they were crime victims - but simply because they didn't know who else to call.

What does law enforcement need today? Sylvester believes there are two broad categories: First, Oregonians need to understand this state's history. The anger and protests are not just about recent events, but instead reflect 400 years of history and a lot of unresolved injustices. Next, we need good people "with real life experiences" in law enforcement. Young people contemplating a

career in law enforcement today should do so, Sylvester believes, if they have "a desire to help people." That's because being a police officer is not just about investigating crime; it's about being a civil servant and helping people, often during their darkest hours.

Forty-six years after she began her work with PPB, Sylvester is still on the job protecting federal courthouses in downtown Portland. In 2017, Sylvester was tapped for a special



assignment: she was asked to swear in Danielle Outlaw, PPB's first female African American Police Chief.

The Carmen M. Sylvester PCC Criminal Justice Scholarship was named to honor Sylvester's courage in blazing a trail with PPB, both as an African American and a woman. It also reflects her belief that the best officers are those who, like many PCC students, have real-life experiences and who are committed to helping their communities. A donation to this fund will directly help defray tuition expenses for criminal justice students committed to supporting diversity in the criminal justice system. Our goal is to raise enough money to endow the fund so that it will exist in perpetuity. This is a positive way to help support



the next generation, to improve our criminal justice system, and to begin to heal the wounds of the past. Contributions may be mailed to: PCC Foundation, P.O. Box 19000, Portland, OR, 97280 (in the memo, please include "Carmen M. Sylvester Scholarship"), or online at www.pcc.edu/give (choose "other" in the first drop down designation, then type into that field "Carmen M. Sylvester scholarship").

Calendar

JULY

17 Friday
Courthouse closed for Oregon Judicial Department furlough day

AUGUST

19-21 Wednesday-Friday
Old Central Courthouse closed for physical move

24 Monday
New Central Courthouse opens

SEPTEMBER

10 Thursday
CEJ Campaign Kickoff - Justice Jubilee
www.cej-oregon.org/events

17 Thursday
23rd Annual MBA Golf Championship to Benefit the CEJ

Pro Bono Volunteers

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

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

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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 online.

Estate and Gift Tax Planning in an Environment Without a One Size Fits All Approach

Wednesday, August 19 3-4 p.m.

Online Participation Only

Members \$30/Non-Members \$50

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

The federal lifetime exemption amount is at an all-time high and individuals can currently transfer, either during life or at death, \$11.58 million of value and not pay any federal transfer taxes. However, Oregon has an estate tax that allows for an individual to transfer only \$1 million at death without paying Oregon estate taxes. The difference between federal and Oregon specific planning is important and many clients who think they don't have to worry about federal estate taxes are surprised to learn about Oregon estate taxes. Attorneys must know how Oregon estate tax planning impacts their clients and how to plan for their clients' total tax situation, including income tax planning. Join our speaker, **Jonathan Cavanagh**, partner at Cable Huston LLP, for this informative class.

For more information: Contact Justice Brooks, Cable Huston LLP, at 503.973.0653. For registration questions, contact the MBA at mba@mbabar.org.

Build Better Mousetraps, or at Least Effective Limitations of Liability

Thursday, September 24 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

Incorporating novel materials into a construction project can present significant risk. Contractors and tradespeople are routinely required to use unfamiliar products and techniques. Cross-laminated timber, zip panel siding, and MgO boards are just a few novel materials that have experienced challenges. Whether the end goal is to improve environmental performance or simply to save costs, in some instances, things can go terribly wrong. By reference to case studies, **Jaimie Fender**, MacMillan Scholz & Marks PC, **Jacob Zahniser**, Miller Nash Graham & Dunn LLP and **Jack Levy**, Gilbert Levy Bennett will overview what and how things can go wrong with novel materials. Part A of the program will help the construction law practitioner guide their clients on how to build a better mousetrap by following a nationally recognized vetting process for new building materials. Part B will focus the audience on key decisional law on how to craft effective liability waivers.

For more information: Contact Ian Christy, Miller Nash Graham & Dunn LLP, at 503.205.2416. For registration questions, contact the MBA at mba@mbabar.org.

Young Lawyers Section Upcoming Fall Series Advising Oregon Businesses

A series of weekly, one-hour seminars on pre-trial litigation issues and practices. Eight hours of practical skills and one hour of ethics OSB MCLE credit will be applied for in total.

Date/Time: Nine weekly seminars from 12-1 p.m. beginning Thursday, September 17.

Location: Remote attendance only via Zoom.*

Cost: \$135 for members (or \$30 per individual seminar); non-members \$225 (or \$45 per individual seminar).

Entity Formation: Building a House from Bricks, Not Straw | Thursday, September 17
Adam Adkin, Tonkon Torp LLP

Understanding and Interpreting Restrictive Covenants | Thursday, September 24
Alex Trauman, Motschenbacher & Blattner LLP, and Joseph Haddad, JJH Law PC

Best Practices for Hiring and Firing | Thursday, October 1
Kyle Busse, Markowitz Herbold PC and Kirsten Rush, Busse & Hunt

Purchase and Sale of Businesses | Thursday, October 8
Amy Opoien, Ater Wynne LLP

Securities | Thursday, October 15
Tanya Durkee Urbach, Markun Zusman Freniere & Compton LLP

Ethical Considerations of Closely Held Businesses | Thursday, October 22
(Note: One hour of ethics OSB MCLE credit will be applied for)
Anne Koch, Wyse Kadish LLP

Labor/Union Specific Issues | Thursday, October 29
Stephen Brischetto, Law Offices of Stephen L. Brischetto

Tax Issues | Thursday, November 5
David Brandon, Miller Nash Graham & Dunn LLP

Is it the End? Options, Workouts, or Dissolution | Thursday, November 12
Ann Chapman, Vanden Bos & Chapman LLP

Register online at www.mbabar.org/cle

* If circumstances change and we are safely able to host in-person attendees, we will notify registrants of that option.

CLE Registration Form

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Online CLE registration strongly encouraged. Visit www.mbabar.org to register online. 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 the address below. Accommodations available for persons with disabilities; please call in advance for arrangements.

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 Online attendance only - link will be emailed
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Visit www.mbabar.org/probono to discover pro bono opportunities in Multnomah County.

Noontime Rides

Social distancing will be observed and the rides will continue as scheduled. 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.

Thank You CLE Speakers!

The MBA would like to thank everyone who has volunteered their time to speak at CLE seminars since the COVID-19 situation changed the way we conduct classes. Starting with the March 19 Addressing Debtor-Creditor Issues YLS seminar, all MBA CLE classes have been held online. In addition to the MBA's usual programming, the CLE Committee also added special COVID-19 classes, which began April 7 and are free to members. We appreciate the following volunteer speakers' flexibility and commitment to the legal community.

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Ethics Focus

Keeping Track: Calendaring in Law Firm Risk Management

by Mark J. Fucile
Fucile & Reising LLP



Late last year, the OSB Professional Liability Fund's *inBrief* newsletter included some eye-catching statistics:

"For claims closed between July 1, 2018, and October 1, 2019, the PLF paid almost \$3.5 million to plaintiffs who had a malpractice claim caused by a missed deadline. That represents 34% of PLF money paid to claimants." (December 2019 at 5.)

Oregon is not unique in this regard. Since 1985, the ABA has periodically published a "Profile of Legal Malpractice Claims" reflecting statistics compiled from insurance carriers nationally. Calendaring and related administrative errors have remained stubbornly persistent throughout. No doubt that is at least in part because many practice areas - litigation in particular - are weighted heavily with deadlines. Although some deadlines are soft and can be stipulated away through agreement with opposing counsel, many are hard and unforgiving. Further, the Oregon Supreme Court in *Vandermay v. Clayton*,

...missed deadlines can present risks beyond malpractice claims.

328 Or 646, 984 P2d 272 (1999), held that expert testimony may not even be necessary when a lawyer's error is inherently within a lay jury's understanding. It is not difficult to imagine a trial judge in a given case ruling that a jury could readily understand the import of, for example, a missed statute of limitation.

The Oregon Supreme Court noted in *In re Snyder*, 348 Or

307, 316, 232 P3d 952 (2010), that "[a]n isolated incident of negligent conduct does not establish neglect" in a regulatory sense under RPC 1.3. Nonetheless, missed deadlines can present risks beyond malpractice claims. *In re Obert*, 336 Or 640, 89 P3d 1173 (2004), for example, involved a lawyer who filed an appeal three days late, resulting in its dismissal. The lawyer was so chagrined by his error that he waited five months before telling the client. He was disciplined for the delay in informing the client.

Because deadlines are a fact of life for many practice areas, calendaring is also an essential part of law firm risk management. Although calendaring systems vary by firm size and practice, they typically include two central elements: inputting and monitoring dates. In this column, we'll briefly survey both. The PLF has a variety of practice aids on its website addressing calendaring and its knowledgeable practice management team is also available to consult with its insureds.

Inputting Dates

Technology has made calendaring both easier and more difficult at the same time.

It has made it easier in the sense that even general office software programs now typically include a variety of calendar features that make it easy to enter key dates on both individual and work team or central calendars along with intermediate "reminders."

Even the best calendaring system can fail as a risk management tool if an incorrect deadline is calculated on the front end.

It has made it more difficult in the sense that electronic tools, like spam filters, may need to be adjusted to ensure that emailed court notices are not inadvertently blocked. Similarly, if a particular court only sends notices to an attorney of record rather than, for example, a "service" address including all work team members, the firm should set up an internal forwarding mechanism to make sure that notices and other time-sensitive correspondence are shared with the entire work team and docketing staff so that they are appropriately calendared.

Throughout the inputting process, it can also be critical to have "more than one set of eyes" double-check the accuracy of the dates entered. Even the best calendaring system can fail

as a risk management tool if an incorrect deadline is calculated on the front end. If court rules are ambiguous - for example, rules stating that an action is due "before" a particular event and not

Staff members should feel empowered to speak to other firm lawyers if a particular lawyer appears to be ignoring or losing track of a looming deadline despite earlier reminders.

making clear whether the day of the event is included or excluded - they should be discussed within the work team and the most conservative date entered.

Monitoring Dates

Simply calculating and docketing a correct deadline for a particular event is not the end of careful calendar management. As an event approaches, the deadline must also be monitored to make sure that the action required is taken. Calendar "reminders" should be set so that there is adequate time to complete the task. Simply because electronic dockets in many venues now permit filing up to 11:59:59 p.m. does not mean that should be a regular practice.

Human "reminders" are equally important. In an era when we can suffer from electronic "information overload," having a member of a work team remind the responsible lawyer in-person of an impending due date and monitoring progress can be essential. Staff members should feel empowered to speak to other firm lawyers if a particular lawyer appears to be ignoring or losing track of a looming deadline despite earlier reminders.

Again, having "more than one set of eyes" on an impending deadline can be critical. If the lead lawyer on a case, for example, is ill or in trial, another member of the team may need to step in and handle preparing and filing the brief, motion or notice of appeal involved in the other lawyer's absence.

Summing Up

Most lawyers didn't go to law school so they could calendar a never-ending stream of deadlines. The most brilliant legal argument may never be made, however, if the lawyer missed the filing deadline involved. As long as there are deadlines in law practice, calendar management will remain one of the most mundane but essential tools of law firm risk management.



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Around the Bar



Kyle Rohrer

Cosgrave Vergeer Kester LLP

Kyle Rohrer has joined the firm. Rohrer's practice focuses on premises liability, products liability, professional liability, personal injury, and dram shop law.

Rohrer has also represented general contractors and subcontractors in construction cases. He has both arbitration and trial experience, and achieved a defense verdict in a Washington tribunal on behalf of a general contractor after a four-day trial. Furthermore, he achieved early dismissal for his clients through summary judgment motions on premises liability, product liability, and common law negligence claims in Oregon Circuit Court.



Rachel Wagner

Hart Wagner LLP

Rachel Wagner has joined the firm's preeminent medical malpractice and general liability defense teams. Her work on these teams will include personal injury and wrongful death defense, premises and product liability defense, and regulatory agencies representation. Before joining Hart Wagner, Wagner worked as a certified law clerk at the US Attorney's Office, and a law clerk at the Oregon Law Center.



Ryan Bledsoe

Tonkon Torp LLP

Litigation partners Ryan Bledsoe and Anna Sortun have been admitted as Fellows to the International Society of Barristers.

The organization is an honor society that maintains a worldwide membership of less than 750 trial



Anna Sortun

lawyers deemed by their peers and judges to be "outstanding in the field of advocacy." One of the principal goals of the society is the preservation of the adversary system and jury trial. Membership is by invitation only, and nominees are considered for their ability, experience, accomplishments, and ethical standards.



Iván Resendiz Gutierrez

Miller Nash Graham & Dunn LLP

Iván Resendiz Gutierrez was recently elected to serve as co-chair of the Board of Directors of the Oregon Minority Lawyers Association (OMLA). OMLA is committed to developing a legal community in Oregon that provides a welcoming environment where people of all colors, races and ethnic backgrounds can excel academically, professionally and personally. Resendiz Gutierrez has served as a board member since 2016.



Graham Sweitzer

Harrang Long Gary Rudnick PC

Graham Sweitzer has joined the firm as a shareholder based in our Portland office. Sweitzer is a trial lawyer whose practice focuses on the defense of complex civil litigation claims, with an emphasis in the areas of professional malpractice, product liability and personal injury. In an era when civil jury trials are increasingly rare, Sweitzer has successfully tried more than 15 cases in state and federal courts, and has briefed and argued a number of reported appellate cases.



Matthew Kahl

Jordan Ramis PC

The firm is proud to announce Matthew Kahl has received the 2020 Daniel R. Ginsberg Leadership Award from the Anti-Defamation League (ADL). This award recognizes outstanding young professionals for their leadership and commitment in the fight against anti-Semitism, racism and all forms of prejudice.

Kahl currently serves as a member of both the ADL's Pacific Northwest Region and the Glass Leadership Institute Alumni Advisory Boards and also serves as the ADL's local representative in the Oregon Coalition Against Hate Crime and the Jewish Community Relations Council, a public affairs and advisory body for the organized Jewish community of NW Oregon and SW Washington.

A member of Jordan Ramis PC's transaction and municipal law practice groups, Matthew assists clients in a range of matters, including real estate, creditors' rights, land use, and municipal law. His experience includes negotiating purchase and sale agreements, resolving title issues, drafting easements, negotiating deed-in-lieu, loan forbearance, and loan modification agreements.

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.

Leveraging Web Technologies to Grow Your Firm

by Ben McKinley
Cascade Web Development

Few people argue the importance of a well-designed and organized website to promote a law firm in this day and age. For many prospective clients, a website is their first tangible connection with a law firm. You know what they say about first impressions. During the pandemic, a firm website has often been the only tangible connection available. My team has been designing and building websites and robust portals for law firms and bar associations for over 20 years. I wanted to share some key tools that have proven to help law firms provide top-tier service online.

While we are talking about technology tools to support firm needs, I can't overstate the importance of selecting the right team of people with whom you partner on the web solution. Technology is only as good as the people harnessing the power to identify needs, build tools to achieve stated goals and the ability to track analytics and optimize the site over time.

There are endless platform options that warrant consideration depending upon a firm's needs. Some are open source while others are not. All have strengths and weaknesses. Like any customized solution, the right technology depends upon the needs of the firm. If you want something that is lightweight with minimal feature needs, low cost and checks the box when it comes to online marketing, Wordpress, Squarespace or Wix are worth looking into. On the other hand, if you want to differentiate your brand, accept online bill pay, or offer secure operational tools to your team and/or clients, I'd suggest you explore those needs with more robust platforms.

In terms of tools that firms make available to their clients, we are seeing three main offerings:

1. Firm Website: This is the content hub for your organization. It's vitally important that it properly positions your firm amongst the competition. The typical law firm website includes

attorney biographies, practice areas, office location(s), firm history, community involvement and a blog. Creation of fresh content around evolving legislation, case law, events, news, etc. is a powerful way to inform your site users and improve your search engine rankings.

2. Online Bill Pay: Online bill pay is available in many shapes and sizes. This might simply be a link to a third-party system that processes payments, like PayPal. Others are part of a secure portal and allow clients to enter their credit card numbers into custom-built forms tied to invoices. Demand for this is increasing and it just makes sense to make it as easy as possible for clients to pay for services.

3. Document Storage and Management: While many law firms have been reluctant to transfer or store sensitive information online, it's become the standard more recently. While we are certainly not recommending that clients share any personal identifiable information via email, there are many viable options to transfer and store sensitive information online. The spectrum runs from Google and Dropbox to third-party document management systems that allow for tiered user access and rights. It's a powerful and efficient tool that can be a strong differentiator.

I hope you find this helpful as you consider the right online presence for your law firm. Again, be sure to find a good match with knowledgeable, committed people to help you make informed decisions.

Learn more about the services provided by Cascade Web Development at cascadewebdev.com or contact Ben McKinley at bmckinley@cascadewebdev.com, 503.260.2021.



JESSE JACOBS

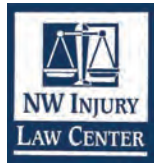
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News From the Courthouse



by Andrea Ogston
Court Liaison Committee

Presiding Judge Stephen Bushong and Trial Court Administrator Barbara Marcille

Presiding Judge Orders and Level 2 Restrictions

The Multnomah County Circuit Court began moving to Level 2 restrictions on June 22. The presiding judge has issued Presiding Judge Orders (PJOs) describing the operations that will be conducted until the move into the new courthouse. The PJOs for juvenile, family and probate cases will remain in effect until the Level 2 restrictions are lifted. The PJOs for civil and criminal cases cover the first phase of Level 2 operations through August 3 and may be extended.

On June 1, the circuit court began hearing civil motions and used the month of June to effectively catch up on the motions backlog from the previous ten weeks, with most parties appearing remotely via teleconference.

Civil jury trials may be scheduled after August 1, but as long as the court is required to maintain social distancing for all court proceedings, it is unlikely that civil jury trials will be able to be held. Our court is one of the few courts in the nation to have actually held a jury trial during the pandemic, and we've learned through experience that it takes up to eight courtrooms to select a jury and conduct a single trial while maintaining the required social distancing. With the distancing needs, we've determined that we are able to handle no more than two to three jury trials per week because of the number of courtrooms and other resources required for each trial. Those trial slots will likely be used for criminal cases with in-custody defendants facing statutory or constitutional speedy trial deadlines. As a result, it is unlikely that many - if any - civil jury trials will be held until the social distancing requirements are lifted. The most recent Chief Justice Order (CJO) imposing Level 2 restrictions authorizes - but does not require - the court to resume landlord/tenant dockets after July

1, to the extent permitted under the moratorium on evictions. The Multnomah County Circuit Court intends to resume the landlord/tenant docket on August 3 for those matters permitted under the moratorium.

In-custody criminal matters remain the primary criminal proceedings being held on-site at the courthouse. Presiding call, ex parte, and misdemeanor criminal proceedings court (CPC) are being held telephonically. Criminal pleas for defendants that are out of custody are being taken remotely. The criminal sentencing for convicted murderer Jeremy Christian was held on-site at the courthouse during June and required multiple courtrooms for distancing. Some of the witness statements were made in the courthouse and others were given via videoconference. Due to the very limited capacity for seating in the courthouse, the sentencing was streamed online for public viewing.

The Justice Center has been heavily damaged and is not currently accessible to the general public. Arraignment proceedings held at the Justice Center are available online through live stream links posted on the court's website.

Budget Updates

The judicial branch was asked to implement temporary but immediate measures to reduce expenses for the state. The circuit courts throughout the state implemented one day court closures in the months of May, June, and July. The cost-savings in our jurisdiction also included furloughs for approximately 40 court staff including 10 downtown hearings referees, 10 judicial clerks, and other personnel that are being furloughed through July. These are temporary furloughs, not permanent layoffs. Many matters ordinarily heard by our court's hearings referees have not been authorized to be held under the pandemic operations restrictions; those matters that do need to be held are being presided over by circuit judges in the referees' absence. The court needs a full staff back at work, whether remotely or onsite, in order to resume more

services and proceedings for the public and recover from the accumulation of filings over the past several months. We anticipate that further information regarding the budget will be available following the special legislative session.

All state courthouses were ordered to be closed on Friday, July 17, for another statewide furlough.

New Courthouse Opening August 24

Due to pandemic-related delays, the opening of the new Central Courthouse is postponed to August 24. The last day of business at the Fourth Avenue courthouse is Tuesday, August 18, and then the historic courthouse will be closed August 19-21 for the move. The new Multnomah County Central Courthouse opens on August 24 at 1200 SW First Avenue.

Dockets have been updated to reflect these changes. The court thanks you for your patience during this time.

While the new building is spectacular and fully functional, we anticipate that the first weeks of operation will be especially challenging. As you can imagine, our move preparations have been constantly interrupted by the events of the last several months, and on top of that we are opening with an entirely new set of criteria for operating the courthouse. The new building was designed to prioritize access and efficiency for court patrons, but many of those features - such as touch-screen kiosks and public service counters without glass barriers - need retrofitting to reduce contact points during the pandemic. The public elevators in our new 17-story building are very fast, but we now have social distancing capacity limitations that will impact movement of people through the facility. The building's jury spaces, conference rooms, courtrooms, and all the office areas have restrictions for how they can be used. We haven't been able to offer tours or provide orientations to prepare lawyers or even our own staff and judges. Nevertheless, the new Central Courthouse in downtown Portland is opening for business at last.

Tips From the Bench

by Judge Patricia McGuire
Multnomah County Circuit Court



Multnomah County has now moved into Phase One reopening, which means that Multnomah County Circuit Court is operating under Level 2 restrictions. Level 2 restrictions means that we can now hear Category 2 and 3 essential proceedings in the Family Law Department, which are:

- Immediate Danger motions and hearings
- Writ of Assistance motions
- Protective Orders motions and hearings
- Pre- and Post-Judgment Status Quo (motions and hearings)
- Enforcement of Parenting Time motions and hearings
- Temporary Relief motions and hearings

If you want to have any other matters heard while Level 2 restrictions are in place, you must file a motion electronically to request the matter be heard, explaining the urgency and necessity of the matter being heard now. Those motions go to Chief Family Law Judge Svetkey, who will grant such a motion only if she can determine that the proceeding is urgent, can be conducted remotely (or with sufficient social distancing if in person), reasonable precautions are available to protect the health of the participants (including court staff and interpreters), and there is sufficient court staff and judges available to conduct the hearing.

Under Level 2 restrictions, the Family Law Department will continue to have two judges available each day for Protective Order applications and hearings. Those judges will also serve as

ex parte judges to sign orders for the types of cases set forth above. Please note that an Order to Show Cause for a modification proceeding can be signed at ex parte, but the hearing date will be after January 1, 2021.

Similarly, all dissolution trials will not resume until after January 1, 2021: if your case is retained, the retained judge's staff will contact you to reset the trial. If the case is on Trial Assignment, you will be given a trial date that is after January 1, 2021.

Trial Assignment resumed June 1, and hearings on Category 2 and 3 essential proceedings will be sent out for hearing on the next day. Motions for Special Set can be filed electronically and will be routed to Judge Svetkey for signature. Stipulated Orders and Judgments may be submitted for processing. Adoptions will be processed. Finally, Motions for Appointment of an Attorney for the Child will be routed to either Judge Svetkey or the retained judge for signature.

If you began a trial prior to the imposition of Level 3 restrictions, and your trial can be completed remotely in one day (or less), your case can be scheduled before January 1, 2021. If any party objects to finishing the trial remotely, that party has the burden of persuading the trial judge that the prejudice of the remote appearance outweighs the compelling health and safety reasons to finish the trial remotely. Of course, the parties can always stipulate to finishing the matter after January 1, 2021.

While the Family Law Department is excited to be able to hear more types of cases, please understand that we are nowhere close to normal operations. Normal operations require multiple staff to process and enter documents into the court file, but both social distancing requirements and budget reductions/furloughs will prevent us from being fully staffed for the near future. Social distancing requirements also mean that it is likely that all cases will continue to be heard remotely via telephone.

A Sad Goodbye

Our friend and colleague Shelley Keller passed away unexpectedly on June 15. Shelley joined our court as a pro tem judge and hearings referee in January 2018. She worked in the Multnomah County courthouses for two decades, as both a public defense attorney and a deputy district attorney prior to becoming a referee. The new courthouse won't be quite right without Shelley in it.



Shelley Keller

Mediation by Video Conference

by Richard J. Vangelisti
Vangelisti Mediation



The COVID-19 pandemic has required counsel and parties to mediate using videoconference. Oregon mediators have completed numerous mediations by video conference. While in-person mediations are ideal, video mediations are working well. My experience and some early national data is that the settlement rates are the same as compared to the traditional in-person mediation. Of course, I am still a bit skeptical considering we are at the early stage of this experiment.

At some point the pandemic will pass, and we'll have the ability to return to our pre-COVID-19 practices in trial preparation and mediation. In the meantime, video mediation is a reality and will likely play a significant role in future mediation practice even after the pandemic. This article covers the advantages and disadvantages of video mediation and some effective practices to consider.

Video mediation occurs on a video conference platform rather than in person at an office.

The video mediation can occur in a hybrid format in which some of the participants meet in person and then jointly participate in the video. Many video platforms exist and include Zoom, Webex, BlueJeans, GoToMeeting, Google Hangouts, etc. This article covers Zoom features because my experience is predominantly with Zoom video conferencing. Zoom is becoming more widely accepted as a secure, stable and user-friendly platform. JAMS, a national ADR service, uses Zoom for its mediations.

The basic video mediation format is that each participant clicks a link to join the video conference hosted by the mediator, one of the lawyers or a third party. As a Zoom security feature, the host admits each participant from the virtual waiting room and assigns them to their side's virtual "breakout" room. Once in the breakout room (visualize "Hollywood Squares"), the participants converse with one another as though they were in their private conference room.

Thereafter, the mediator moves between or among the private breakout rooms. If the need arises for the opposing lawyers to confer directly, the mediator can assign them to their own breakout room to caucus and then return them to their primary breakout rooms. In breakout rooms, the participants can share documents with one another on the screen. If a settlement is reached, it can be reduced to writing and digitally

signed using a web-based service such as DocuSign.

As with nearly every approach in legal practice, tradeoffs accompany the use of video mediation vis-à-vis the traditional in-person mediation. On the positive side, video mediations are easier to schedule and have less travel costs as participants can participate from their personal devices. Video mediations also can provide some human dimension that cannot be found in a conference room at a lawyer's office. Video mediations inevitably feature someone's beloved pet or inquisitive child. Some parties feel less stressed on a video at home as they are not going to pass the opposing party in the hallway of an office.

Of course for every advantage of a video mediation, a disadvantage may arise depending on the unique circumstances of the case and parties. The lower barriers to participation in a video mediation may take away that "sunk cost" of time and effort that is needed to commit the parties to the process and reaching a settlement.

Video mediation also can lower the quality of communication between a lawyer and client as well as with the mediator because the non-verbal communication is suppressed by the video medium. Distractions exacerbate the communication challenges. A participant's focus on the process can be diminished if they are interrupted by co-workers, family members, delivery service, pets, etc.

Studies have already shown that the videoconference can be fatiguing to the brain. The video medium requires us to focus more intently to absorb information from the conversation, especially the non-verbal information. Perhaps this negotiation fatigue is often good for ultimately achieving resolution when the parties are in person, but the video mediation format makes it easier to walk away.

Video mediations require some special planning and preparation. The technical logistics include doing a practice session with the client in the days before the mediation. This ensures that the client has a suitable device, internet speed and a quiet and comfortable location for the mediation. The device may be as simple as a smartphone or laptop. Platforms have various minimum internet speeds that can be determined with a quick Google search. Use www.fast.com to test the internet speed.

Even with the best internet connections, sometimes the video can temporarily slow or freeze. This speed problem often is related to the internet itself rather than the individual user's connection. Once in a while a participant has a connectivity problem that is resolved by disconnecting and rejoining the meeting again with the same video link. If all else fails, the participant can just call into

the meeting as they would into any conference call. My experience is that if the lawyer and client do a practice session, any technical issues are resolved by the time of the mediation.

Video mediations require a little more preparation because the video format seems to slightly slow the negotiation and communication. This constraint can be easily overcome with a few simple steps in advance of the video. First, the mediator may want to confer with counsel for each party by telephone or even video conference to gain a head start on the issues. This initial conferral may include the client, which can save time on the day of the video mediation.

Second, counsel may scan and highlight key documents or testimony to be used for the "share screen" during the video mediation. Counsel may consider dual monitors - one for the video conferencing and the other to access documents and the client file. Finally, in advance of the mediation, counsel for one of the parties should have a draft settlement agreement ready for review by the opposing party. In more complex cases, counsel often exchange drafts before the mediation to narrow the issues for negotiation.

With video mediations, an interesting question arises with what the lawyer and client should do after the mediator has left their breakout room. Rather than sitting in a conference room together, they are now interfacing with one another on video. At the click of the "mute" and "stop video" buttons, they can easily disengage to focus on tasks other than the mediation at hand.

The answer to what to do with the time the mediator is outside the breakout room - like nearly everything in mediation - depends on the circumstances. Ideally the lawyer and client would continue to work on their case evaluation and negotiation strategy as the mediation process unfolds. In some cases, realistically there may be some downtime for some of the participants to address other matters. Whatever the circumstances, the lawyer, client and mediator should confer on the expectations for the day. To move the process along, participants should have a method for having a participant come back to the video when the mediator comes back into the breakout room with an offer.

As we navigate through the pandemic, some additional thoughtful planning can make video mediation a viable settlement process for the client. Though I look forward to returning to in-person mediation, I suspect that in the future video mediation will augment our traditional practice. Before I sign off, I want to express my appreciation for my friends who provided me feedback on their mediations by video conference. Good luck!

Court Operations June 22-August 18

by Presiding Judge Stephen K. Bushong
Multnomah County Circuit Court



"Slow ride,
Take it easy"

On June 19, Multnomah County entered "Phase 1" reopening from the COVID-19 state of emergency declared by Governor Brown. Under a Chief Justice Order (CJO) issued by Oregon Supreme Court Chief Justice Martha Walters, approval of the county's "Phase 1" reopening plan meant that Multnomah County Circuit Court moved from Level 3 restrictions to Level 2 restrictions. Under Level 2 restrictions, the court is allowed to conduct more proceedings than it had been conducting under Level 3.

This does not mean that the court suddenly reopened for "business as usual" as before the pandemic. Instead, the resumption of court services is going to be, as in the Foghat song quoted above, a "slow ride" due to staff limitations, budget cuts, and health concerns. Exactly what additional services will be allowed will be specified in a series of Presiding Judge Orders (PJOs). Lawyers should consult the PJOs - which are posted on the court and MBA websites - to learn the details.

In summary, court operations under Level 2 restrictions have and will resume in two stages. During the period June 22 to August 18 - before the move to the new courthouse - all of our courthouses will continue to be fairly quiet. Most judges and staff will continue to work from home. Most court proceedings will continue to be postponed. The "essential proceedings" that have been held under Level 3 restrictions will continue to be held. A few additional proceedings will be held, but many proceedings will continue to be postponed. After we reopen in the new Central Courthouse on August 24, we will still be subject to Level 2 restrictions, but the layout, technology, and additional space in the Central Courthouse may allow us to conduct a few more court proceedings than we can handle in the old courthouse. However, this will be another "slow ride" to resuming operations because we will continue to limit the number of people in the courthouse and comply with physical distancing requirements as we adjust to the new facility.

The combination of four factors will continue to limit the court's ability to conduct court proceedings in all areas - civil, criminal, family, juvenile, probate - during the period June 22 through August 18. Those factors are:

- **Jury trials and social distancing.** Social distancing will be required for all court proceedings under Level 2 restrictions. Our court is one of the few courts in the nation to conduct jury trials during the COVID-19 pandemic. Under Oregon law, an in-custody criminal defendant must be brought to trial within 60 days after being taken into custody. That period can be extended twice for good cause, but after that, the defendant must be brought to trial or released. Some defendants are released, but we've held trials where the court has concluded that release puts the victim or the public at risk. It takes up to seven courtrooms to conduct jury selection and trial while complying with social distancing requirements.
- **Budget reductions/furloughs.** The judicial branch was forced to cut expenses immediately due to revenue shortfalls caused by the COVID-19 pandemic. Ten downtown referees and about 40 other critical court employees have been furloughed during the months of June and July. As a result, the court simply does not have enough staff to do all the work we would like to be doing.
- **Backlog of civil motion hearings.** Civil motion hearings were delayed under Level 3 restrictions until June 1. The court decided to "catch up" on the backlog of hearings right away, scheduling all the delayed matters for remote hearings in June. It took a substantial commitment of judicial and staff resources to get these hearings back on track.
- **The move.** The court will be closed August 19-21 for the move. We'll reopen in the new courthouse on August 24. Moving an organization of this size and complexity into a brand-new facility would be a challenge in "ordinary" times. It is especially challenging during a pandemic. Court resources and staff that would otherwise be used for court business are devoted to planning and preparing for the move.

The combination of the above factors makes it impossible for this court to conduct all the proceedings that might be allowed under the CJO. Please be patient. Do not expect us to be able to do everything right away. Instead, as Foghat suggests, just "take it easy."

Endnote. The English rock band Foghat formed in 1971. Its hit song "Slow Ride" is on the band's 1975 album Fool for the City. Attending his first "major" rock concert, a teenager named Steve Bushong saw Foghat perform the song live at the Civic Center in Saginaw, Michigan in the mid-1970s.

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,
My workplace asked us to “work from home” because of the current COVID-19 situation. I’ve never worked from home for an extended period of time and I’m struggling to be efficient. Can you provide some tips and suggestions for this potentially prolonged work arrangement?*

- Quarantined at Home

Dear Quarantined at Home,

You’re not alone. Many legal professionals are accustomed to commuting to an office environment where they diligently assist clients. For better or worse, the customary “commute” in today’s world is often a short walk to an adjacent room or a basement office. For many, this reduced commute time has been a joy. However, working from home also presents challenges: home-schooling children, caring for babies and toddlers, pets that insist on your full attention at all times, and frequent trips to the kitchen for snacks are some challenges people face on a daily basis. The solution for each challenge will differ from person to person. And a solution for a challenge one day may not work the next day (your toddler loved watching PAW Patrol yesterday but now is over it). Although there isn’t enough space in this column to address every work from home challenge, here are some general tips and suggestions for a more productive work from home life:

Have a Routine

In a prior working life, you likely had a general routine. Perhaps you grabbed a cup of coffee from your neighborhood café and then ran after the bus (being careful not to spill your hot coffee) before slipping into the office restroom to fix your wind-swept hair just in time to catch your daily team conference call. That routine of yours, whatever it was, helped prepare your mind and set your intentions for the day. Now that you are working from home, you need a new routine. Maybe it includes getting dressed as if you were going into the office. Maybe not. Having a routine will help you be better prepared for the day, be better organized throughout the day, and lead to less anxiety, thereby increasing productivity.

Take Breaks

When developing a routine to structure your day, make sure to build in breaks. The breaks may just be a bit different than in the past. Instead of chatting with colleagues in the office hallway, you might instead take a walk around the neighborhood to give

your eyes a break from the screen. Or take a break to play with your child. You could also have a daily or weekly call with a friend or family member. Breaks give you a mental (and sometimes physical) respite from your work, allowing you to be newly energized upon return from your break.

Set Boundaries

While working from home, it can be difficult to separate personal matters from your work life. However, it is important to set boundaries. Talk with your partner about when you are available to help with childcare during the workday. Talk about when you will be unavailable. For example, if you have an important call at a certain time, you can let your partner know that for the next hour you shouldn’t be disturbed unless it’s an emergency.

In addition, having a dedicated work area or workspace can be helpful, allowing you to have all of your work materials and papers in one place. A dedicated work area or workspace also communicates to you and your brain that you are moving to work mode and also communicates to others that you are “at work.”

This also means, once you move away from your work area or workspace, that you switch to home or personal time. One challenge that new work-from-homers encounter is being able to separate themselves from their work, as it is very easy to slip into work mode again. Accordingly, I’d urge you to be conscious and deliberate about disconnecting from work. This is important for your own mental health and well-being, as well as for those around you.

Clearly Communicate to Others

Because you are no longer working in an in-person office environment, it can be more challenging to clearly communicate with your team, colleagues, and clients. This means you’ll need to be purposeful and proactive about reaching out to your team members, colleagues, and clients. Don’t be shy about picking up the phone to talk with others and when a virtual call is warranted or desired, put on your video. Most people are able to understand others better when they can see each other - this allows people to take in and process non-verbal cues.

Working from home can be challenging. Increasing your working-from-home efficiency will take time and practice. Keep at it. Be kind and understanding of others. We’re all learning how to work from home together.

Legal Aid Services of Oregon (LASO) Pro Bono Spotlight

by *Shelby Smith*
LASO Staff Attorney and YLS Pro Bono Committee Member



Appearing in court and directly interacting with clients isn’t often the first thing new lawyers in civil practice get to experience. There is often a long wait before you are trusted to even take on a brief appearance or motion hearing. However, representing your firm’s clients isn’t the only way to gain valuable experience. Legal Aid Services of Oregon’s (LASO) pro bono programs and clinics offer new and experienced attorneys alike an opportunity to meet with clients and step into the courtroom, making a big difference for someone in our community.

LASO pro bono programs that currently have the highest need and are predicted to have an increase in demand for volunteers are the Domestic Violence Project (DVP), the Unemployment Insurance Benefits Panel, the Senior Law Project (SLP), and the new Housing Notice Clinic.

The coronavirus pandemic has been a very difficult time for people who experience abuse due to being confined at home with their abuser. Local counties and cities have seen a spike in domestic violence related calls to law enforcement and channels of support once available to survivors have been vastly curtailed. *The Oregonian* recently reported that organizations that provide assistance to survivors have seen an increase in demand for services and many are stretched to capacity. To help address legal needs of survivors, LASO’s DVP matches pro bono attorneys with survivors of domestic violence for representation in contested restraining order hearings. These cases tend to have short timelines, involve limited issues,

and require a court appearance, which is perfect for new attorneys looking for experience and face time with a judge.

As you likely know, court operations throughout the state were restricted to statutorily-required proceedings. So while many trials and hearings have been postponed, restraining order applications continue to be accepted and contested restraining order hearings are being scheduled. LASO continues to provide legal services to survivors of domestic violence, stalking, sexual assault, and elder abuse. Legal Aid attorneys are representing survivors in court, and referring contested restraining order cases to volunteer attorneys through the DVP is critical right now. The DVP compiles a list of attorneys who are available to receive referrals from Legal Aid. The list functions as an on-call list and there are no specific dates. When LASO has a case to refer, we will contact an attorney from the list. There is no obligation to accept a case. We only ask that, if you are contacted, you respond to the referral as soon as possible.

The need for legal assistance with unemployment benefits is also high and rapidly increasing due to the pandemic. Between March 23 and April 30, 362,000 Oregonians filed for unemployment benefits. As unemployment claims continue to hit unprecedented levels, LASO is working to expand its pro bono attorney panel for low-income Oregonians with controversies involving unemployment insurance (UI) benefits. Unemployment insurance is the sole means of temporary wage replacement for workers and it is critical in preventing individuals and families from spiraling into poverty. This initiative connects UI claimants with volunteer attorneys to provide legal advice and possible representation at administrative hearings before the Oregon Office of Administrative Hearings.

Low-income seniors are another group in increasing need of legal services in our community. As widely reported, older adults are at a higher risk

for developing more serious complications from COVID-19. Because of their increased vulnerability, many seniors are living in isolation, suffering from anxiety due to lack of access or understanding of technology, and have limited options to seek assistance. Therefore, legal assistance provided through the SLP is more critical now than ever. SLP provides free legal consultations on civil issues to seniors 60 years of age and older in Multnomah County. The SLP continues to be an important community resource by offering phone consults to seniors. By providing telephone consultations, pro bono attorneys are providing access to legal assistance for many seniors.

Finally, while an eviction moratorium is currently in place, landlord-tenant issues are expected to increase as restrictions are eased. LASO’s new Housing Notice Clinic will have volunteer attorneys provide self-represented litigants advice on their rental termination notice. The attorney will review a client’s housing termination notice and determine whether the notice is valid or whether defenses exist using a comprehensive check list. Attorneys will sign up in advance for a specific week to receive a direct referral.

But what about training? LASO’s pro bono program provides introductory trainings and ongoing support and materials to our volunteer attorneys. LASO understands that taking on a case in an area you are unfamiliar with can be daunting, so we try to make the experience as smooth as possible for our volunteers to be able to provide such a valuable benefit to clients.

Right now, LASO needs volunteer attorneys more than ever. The pandemic has only increased the need for representation of Oregonians experiencing poverty. While LASO attorneys continue to represent clients in these areas, pro bono attorneys are a key resource for our clients facing these tough situations.

For more information and to get involved, please contact Jill Mallery at jill.mallery@lasoregon.org or Brett Cattani at brett.cattani@lasoregon.org, or call 503.224.4086.

YLS CLE Committee Wrap-Up

by Maxine Tuan
 YLS Board Director and Former CLE Committee Chair



As the YLS CLE programming year wraps up, I want to share the YLS CLE Committee's deepest appreciation to presenters who volunteered to speak over the past 10 months. Furthermore, to each of you who attended one of our CLE seminars, thank you!

When the COVID-19 pandemic hit, the committee quickly pivoted to a virtual CLE format. The committee worked hard to get up to speed with technology and worked with already scheduled speakers to make sure CLE's went off without any problems. Committee members conducted test runs and helped facilitate questions and answers during the seminars. Due to the hard work of committee members, there were no CLE cancellations. The YLS was able to continue to provide valuable education to attorneys in an inclusive environment during a global health pandemic.

Each year, the YLS CLE Committee hosts three CLE series in addition to a handful of standalone CLE seminars. We kicked the year off with an Advanced Litigation series, which covered topics varying from filing documents under seal to corporate designee

depositions. The second series of the year was our annual Young Litigators Forum, designed to introduce attorneys to the fundamentals of litigation. Our third series, Estate Planning, wrapped up in June. The series provided fundamental information about wide-ranging topics estate planning attorneys encounter, from succession planning to spotting capacity and substitution decision making issues.

This year's standalone seminars provided information to practitioners about ex parte protocol and professionalism in Multnomah, Washington, and Clackamas counties. The committee was honored to have Judge Patricia McGuire, Judge Theodore Sims, and Judge Kathie Steele speak about each of their county's varying protocols and professionalism expectations for attorneys appearing at ex parte. We also had standalone seminars on debtor-creditor issues and fundamentals of immigration law.

Next fall, the committee will present a series focusing on advising Oregon businesses. The series will be a valuable resource for any attorney representing an Oregon business, providing information on a broad range of business-related topics such as hiring and firing employees and tax issues.

We welcome and seek member feedback for future CLE topics and speakers. Our committee strives to present quality programming for newer attorneys focusing on fundamental and practical knowledge in a variety of practice areas. The goal is to create a forum where attorneys can meet one another and begin building professional

relationships in the Portland metro area.

Over the past few years, the YLS CLE Committee has made efforts to expand and diversify our pool of speakers. It continues to be a priority and is vitally important that the committee

seek speakers from non-dominant cultures. If you have any suggestions for topics that you want or wish you had access to, please contact our MBA staff liaison, Lauren Fairshter at lauren@mbabar.org.

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Succession Planning

The first duty of a lawyer, RPC 1.1, is to provide competent representation. One of the elements of competence is providing clients with an orderly transition in the event that a lawyer must stop practicing, whether because of injury, illness, retirement or death. A professional lawyer should likewise plan for a smooth transition for colleagues and staff to the extent it is possible. To provide an orderly transition, plans must be made, and protections put in place. Developing a written succession plan assists a lawyer in covering all the potential issues involved in winding up their practice, and will assist their survivors in carrying out the lawyer's wishes after death.

Death, disability and retirement are topics that no one likes talking about, but they are facts of life, and laying a plan for them is preferable to letting nature take its course. Ideally, succession planning takes a part of a lawyer's annual review of the practice's status and future goals. The succession plan should be a written document that treats, for example, issues such as:

- When to retire. (Yes! Set a date! A range of dates is fine at first.)
- Determining the value of the practice, if any, and its disposition.
- Listing referral sources and identifying who will maintain those.

- Identifying the lawyer's areas of expertise and who will assume those functions as the lawyer transitions to retirement.
- Making a detailed client memo, identifying current and future work for each client and designating successors for those responsibilities; identifying files for transfer, storage and destruction; and providing for the disposition of trust account monies and records.
- Discussing the need and the source for malpractice "tail" coverage.
- Planning what to do after retirement, both continued legal work, if any, the status of bar licensure, and other interests and activities to pursue.

Ideally, the lawyer will make a draft of the plan well in advance of the anticipated retirement, and will revise it over time, making it more specific and detailed. While the early plan may not anticipate all retirement issues, the same plan should cover an unexpected - and sooner - windup of the practice for other reasons. Doing this early accomplishes two beneficial outcomes: informing the successors and fixing the retirement date. Accident, illness or death can find a lawyer any day of their life, and careful planning will make life easier for those who must attend to wrapping up the practice when

the lawyer is unable. Second, fixing a retirement date and making plans for after retirement helps to encourage a lawyer's enthusiasm at the prospect of retirement and helps to ensure that the lawyer actually will retire. Many of us have seen and heard about lawyers who continue in the practice long after their competence can be trusted. A big part of making a succession plan is making sure that a succession, in fact, occurs in a timely way.

In a law firm, the succession plan should be approved by firm management and not revised - other than to supply detail - without the consent of management. This has the effect of fixing the date of retirement so everyone knows when it is and can make appropriate plans. Solo practitioners and lawyers in small firms may have to rely more on their own discipline to get this done. Remember both how important it is and that failure to do it is arguably an ethical violation. Formal Opinion No. 2005-129 (rev 2018). If there is to be a continuing relationship with the former attorney - either wrapping up cases or serving as an adviser - those arrangements should be spelled out in detail.

The Arizona Supreme Court has adopted a rule requiring a succession plan. Ariz R S Ct 41(i) ("The duties and obligations of members shall be...To protect the interests of current and former clients by planning for the lawyer's termination of or inability to continue a law

practice, either temporarily or permanently."). The *Arizona Attorney* suggests the following options for preparing for retirement:

1. Arranging for another lawyer to take over the practice.
2. Bring in a new experienced partner.
3. Merge with a similarly sized firm.
4. Join a larger firm.
5. Consider selling your practice.

A key piece of the succession plan is identifying a lawyer or lawyers who will assume that lawyer's client representations. An assisting lawyer can help with the closing and disposal of client files and learning about the practice in preparation for the lawyer's retirement or unexpected death or injury. (Unless they are in the retiring lawyer's firm, client notification and consent are needed for this.) Someone other than the retiring lawyer should be added to the trust account to avoid the bar having to take custody of the trust. The same is true with the files. You or your estate will pay the attorney fees for the custodianship, should one become necessary.

Resources

- Barbara S. Fishleder, "Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death," Oregon State Bar Professional Liability Fund (August 2015).
- Helen Hierschbiel, "Dreaming of Retirement? Plan an Exit Strategy," Oregon State Bar Bulletin (June 2015).
- Michael Long, John Clyde and Pat Funk, *Lawyers at Midlife* (Decision Books 2009).

Lawyer Steven T. Lovett was very helpful in the preparation of this article.

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

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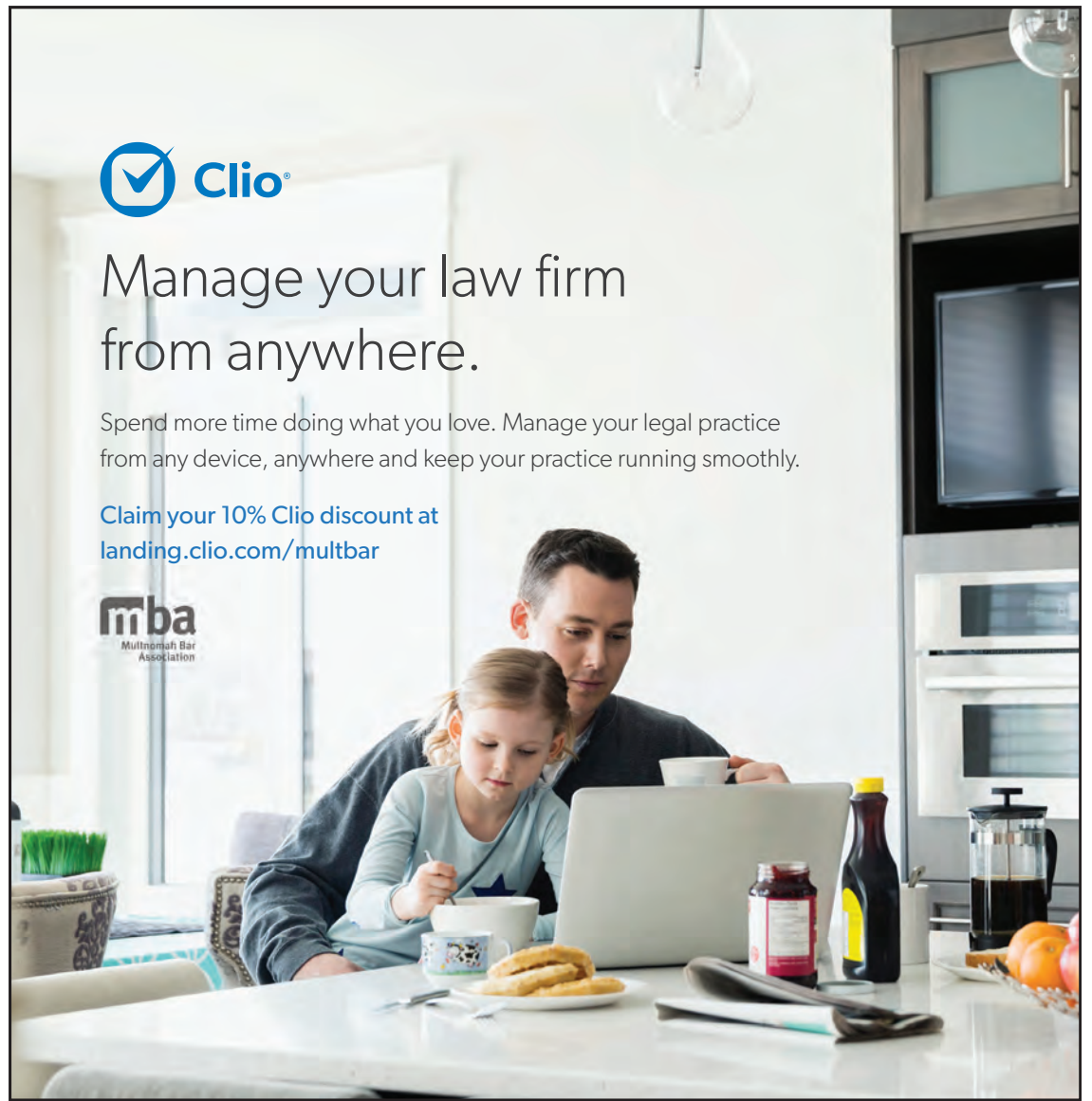
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