

Working Caregivers:
A First Look

by Sarah Radcliffe
MBA Past President



Thank you to everyone who participated in the survey on working caregivers in the legal profession. I am amazed by the number of people who completed a very long survey! We received 607 responses. This degree of participation alone is a great statistic that proves our legal community’s investment and interest in supporting caregivers in the profession.

The beauty of a survey is that it translates our individual experiences into cultural trends. I am at home, juggling homeschooling, trying to stay engaged with my work in between mediating sibling squabbles and logging my kids on to their Zoom classes. It turns out that these circumstances are not unique to me! In fact, 71% of mothers who responded to the survey are acting as full-time caregivers due to school and daycare closures.

This data is a treasure trove that I am sure the MBA and our partners with OWLS, the OSB, and specialty bar associations will continue to mine. I am sharing a few sneak peeks here. Admittedly, I pulled the threads in the database that caught my eye. There is much to explore in the future related to part-time and flexible schedules, intersections between caregiving roles and other identities such as disability, non-dominant culture, and LGBTQ status, implicit bias and caregiving, the unique stresses for male caregivers, cross-generational perceptions, and differences in types of law-related workplaces.

Overview of Demographics

Of those who responded, 398 were women, 200 were men, and eight identified with other gender categories. Twenty-three respondents identified as having a disability, and most of those individuals described their disability as hidden or invisible. Forty-four respondents identify as LGBTQ. Eighty-five percent identify as white, 4% Latinx, 4% East Asian, 3% Southeast Asian, 2% Black or African American, and 1% American Indian or Alaska Native.

Of the respondents, 372 respondents were caregivers. Most (67%) are caring for minor children, but others are caring for spouses (19%), parents (16%), or adult children (8%). Thirty-five of the parents surveyed (8.5%) are caring for children with disabilities or significant health challenges. And 10% of parents or in-laws with caregiving needs have disabilities or significant health challenges. Eighty-nine point five percent of respondents live with a partner or spouse. Thirteen respondents are single parents.

I am at home, juggling homeschooling, trying to stay engaged with my work in between mediating sibling squabbles and logging my kids on to their Zoom classes. It turns out that these circumstances are not unique to me!

Eighty-two percent of the respondents work as lawyers and most of the rest work in other capacities in the legal profession. Seventy-four percent work in Multnomah County. Fifty-one percent of respondents are employed at law firms, 17% in solo practice, 12% in government, 7% at nonprofit organizations, 3% in corporate settings, and 3% are judges or hearings officers.

How are Mothers and Fathers Balancing Care for Children during the Pandemic?

Not surprisingly, all parents reported that they have significantly increased their caregiving commitments during the pandemic. Women are assuming more of these duties, as compared to men. The sample sizes for other gender identities were too small to allow anonymity in reporting.

Pre-pandemic, the largest percentages of all parents (43% of mothers and 49% of fathers) reported three to four hours of caregiving per weekday. The rest of mothers were concentrated at the higher end (31% reporting five to six hours per day) and the rest of fathers were concentrated at the lower end (31% reporting zero to two hours per day).

Pre-pandemic, 15% of mothers were spending more than seven hours per day providing care. Now, 71% of mothers are spending more than seven hours per day caregiving. And 47% of those are spending more than nine hours per day caregiving.

Pre-pandemic, 6.5% of fathers spent more than seven hours per day providing care. Now, 40% of fathers are spending more than seven hours per day caregiving. And 18.5% of fathers are spending more than nine hours per day caregiving.

The fact that such large percentages of parents are engaged in full-time caregiving jobs proves that the economy and the work of our firms and organizations will be hampered until schools and daycare programs reopen. It is not realistic to expect that we can maintain a full-time work load while we’re providing full-time caregiving; there aren’t enough hours in the day. If we’re worried about the mass exodus of mid-career women from the legal profession, now is the time for legal employers and the broader legal community to take meaningful steps to show that we value the work of caregiving and the people who do that work. That means scaling back work duties, without shame or repercussion, in order to make space for caregiving.

How is the Pandemic Impacting Self-Care?

Across the board (all genders, with and without caregiving duties), self-care has dropped since the pandemic. Pre-pandemic, the largest cohort (20%) was spending five to six hours per week on self-care; now the largest cohort (20%) is spending one to two hours per week on self-care.

Twenty-seven percent of parents are now spending just one to two hours per week on self-care and 10% of parents report zero time for self-care. Forty-three percent of mothers report currently spending less than two hours per week on self-care.

Continued on page 2

mba|CLE

Due to the COVID-19 situation, the MBA will be offering all seminars **ONLINE ONLY** through **June 30**. 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.

JUNE

6.12 Friday
Oregon Sales Taxes? The New Oregon and Portland Taxes on Gross Receipts
Nikki Dobay
Dan Eller
Valerie Sasaki

6.17 Wednesday
How to Succeed in Mediation: Tips from Mediators
Judge Jean Kerr Maurer
Chris Kitchel
Jan Kitchel
Molly Jo Mullen

6.24 Wednesday
For the Public Good: Sharpening Your Skills Through Pro Bono Practice
Judge Stacie F. Beckerman
Amanda Caffall
Sadie Concepción
Meg Houlihan
Robert Koch
Jill Mallery
Jollee Patterson

6.25 Thursday
Snooping, Digging, and Following People Around: Effectively Using Private Investigators to Gather Information
James Comstock
Lloyd Rash
Helena Snyder
Steve Wilson

In This Issue

Calendar	2
CLE	3
Pro Bono Thanks	5
Announcements	6
Ethics Focus	6
Around the Bar	8
News From the Courthouse	10
Tips From the Bench	10
Profile: Judge Morgan Wren Long	11
Profile: Judge F.G. “Jamie” Troy II	11
YLS	12
Professionalism	15
Classifieds	16

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Remembering the Courthouse

As we prepare to say goodbye after more than a century of court business conducted at the Multnomah County Central Courthouse, the MBA is looking for interesting stories, articles and photographs to commemorate the closing of the historic building. Please send your submissions and ideas to the MBA at mba@mbabar.org.

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Working Caregivers

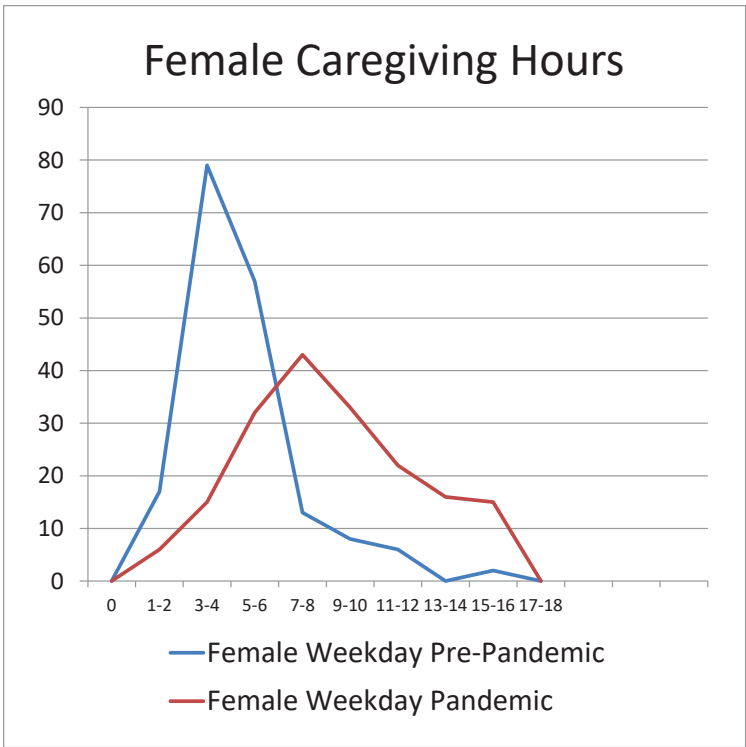
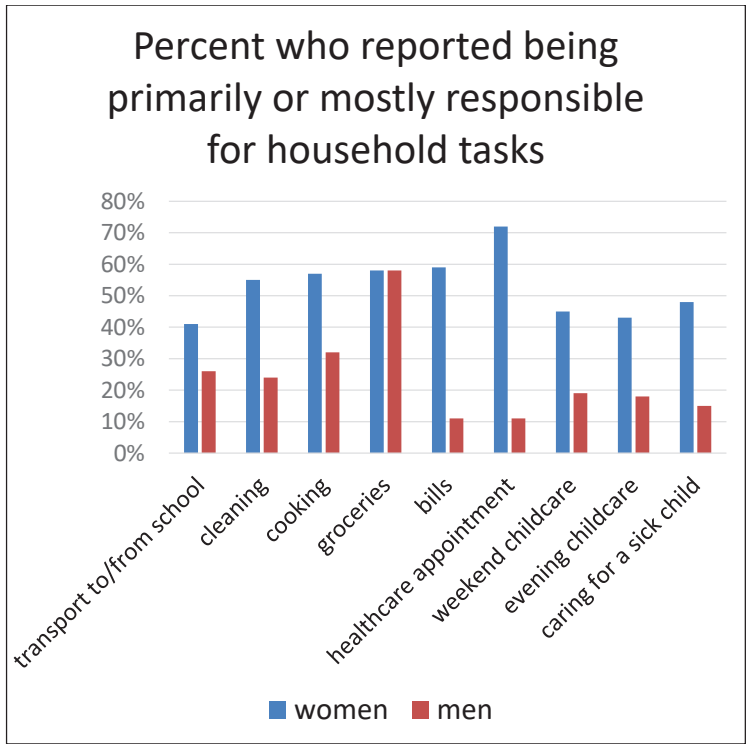
Continued from page 1

How Do Couples Divvy Up Household Tasks?

In heterosexual couples, the fact that mothers are spending more time caring for others and less time caring for themselves is exacerbated by a stark disparity in the division of household tasks along gender lines. As

Do Law-Related Workplace Cultures Accommodate Parenthood?

The difficulty of managing it all seems to contribute to ambivalence among lawyers, particularly women, around starting a family. Sixty-one percent of mothers (and 18% of fathers) reported that their career or job requirements led them to delay, consider delaying, or decide against starting a family.



compared to fathers, mothers reported double the rate of feeling primarily or mostly responsible for eight out of nine parenting and household tasks. The exception was grocery shopping, which was evenly split. LGBTQ respondents were more likely than straight respondents to describe these tasks as “equally shared.”

It’s no wonder that 32% of mothers reported falling short of their firm’s billable hour target. When asked about the factors contributing to the likelihood of staying at their job, 70% of mothers pointed to their “ability to manage personal and work obligations.” This was the most significant factor, followed by “work hours and work demands” (66%).

When we do start families, our workplaces aren’t necessarily celebrating with us. Forty-three percent of mothers reported experiencing negative comments or behaviors (whether subtle or intentional) when people at work became aware that they were expecting a child. *Mothers were twice as likely as fathers to report a negative workplace reception to their news of upcoming parenthood.* Thirty-two percent of mothers also experienced a negative workplace response to lactation breaks, breastfeeding, or pumping.

The chilly reception for lawyer mothers is also reflected in unsatisfactory parental leave policies. Ninety percent of mothers surveyed had taken parental leave. Eighty percent of these women took the maximum amount of leave available, but 60% of them wished that they could have taken more time.

Calendar

JUNE

10 Wednesday
Solo & Small Firm Workshop
www.mbabar.org

SEPTEMBER

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

JULY

15-17 Wednesday - Friday
Old Central Courthouse closed for physical move

20 Monday
New Central Courthouse opens

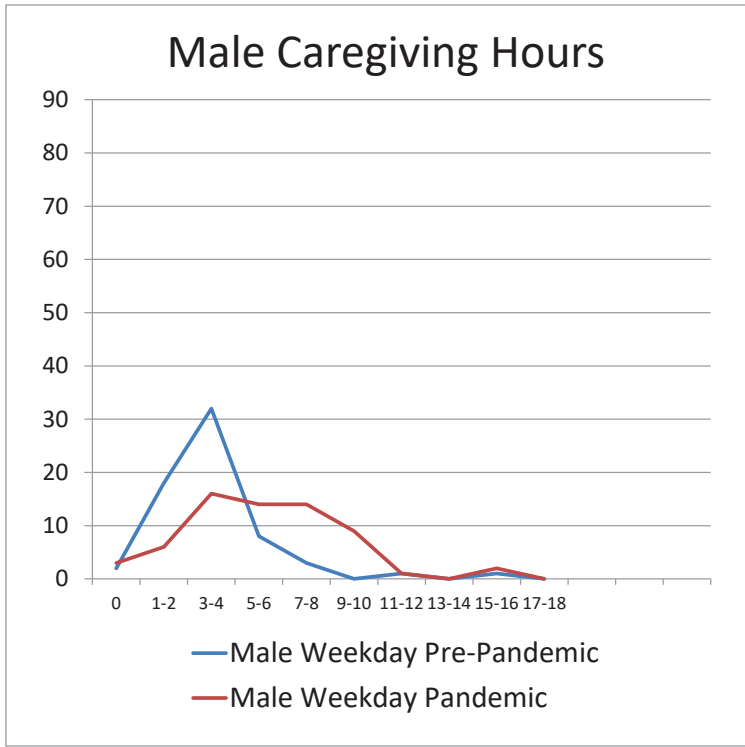
17 Thursday
23rd Annual MBA Golf Championship to Benefit the CEJ

23 Wednesday
CEJ Party Under the Stars
www.cej-oregon.org/events

Twenty-four percent of women took less than 10 weeks of leave after the birth or adoption of a child. The largest cohort, 44%, took 11-12 weeks.

Seventy-nine percent of fathers took parental leave, but only 38% took the maximum amount available. Only 30% wished they could have had more. Sixty-three percent took less than six weeks.

changes in your workplaces and profession. Let’s continue to work together to support a more family friendly culture and gender-equitable policies. There will be more to come soon from the Oregon Legal Workplace Taskforce (a taskforce made up of members from the MBA, OWLS, OC-NBA, OGALLA, OHBA, OAPABA, SABA, OMLA and OFALA). The taskforce is working on things such as workplace



What’s Next?

Both realms - home and office - are out of balance, creating a “double whammy” for mother lawyers. The myth of gender equity in home and parenting, and the myth of equal opportunity in the workplace, are not born out in our daily realities. Honestly, this data paints for me the picture of my mother’s life, when she left her husband in 1970 and ran off with another woman, not the life I envisioned for myself when I enrolled in law school.

Especially given the dismal numbers regarding available minutes for self-care during this intensely demanding time, I am grateful that so many people dedicated 15-20 minutes to complete this survey. I realize that many of you invested in this cause with the hope of seeing tangible

policies and other advocacy geared toward making the legal workplaces more hospitable for people of color, women, members of the LGBTQ community, and people with disabilities.

In the meantime, we can start by embracing the messy reality of our current circumstances by letting our kids crash our Zoom meetings (and giving a friendly greeting to the kid faces we see), and we can congratulate and support our colleagues who are wearing multiple hats. And on that note, it’s time for me to take off one of my hats. It’s been an honor to serve as MBA President, and I’m so thrilled to welcome our new President and my longtime friend, Valerie Colas.



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.

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

Friday, June 12 2-4 p.m.
Online Attendance Only
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 statewide sales tax.

For more information: Contact Samuel Grosz, Attorney at Law, at 503.676.3800. For registration questions, contact the MBA at mba@mbabar.org.

How to Succeed in Mediation - Tips from Mediators

Wednesday, June 17 3-5 p.m.
Online Attendance Only
Members \$60/Non-Members \$95

Mediation often presents the best opportunity for a favorable resolution to civil litigation. Lawyers, however, occasionally squander it. The list of mediation pitfalls are many, but the successful strategies are equally abundant. Hear from a cast of local lawyers - with deep experience as advocates, neutrals, and triers-of-fact - on how best to capitalize on mediation. Retired Multnomah County Circuit Court **Judge Jean Kerr Maurer** (maurermediation@gmail.com); **Chris Kitchel**, Kitchel ADR; **Jan Kitchel**, Kitchel ADR; and **Molly Jo Mullen**, Molly Jo Mullen ADR, will discuss what makes a case ripe for mediation, the information to provide your mediator (and/or adversary) in advance, logistical and procedural missteps, the common negotiation mistakes that move parties further apart, smart tactics that consistently bridge the gap, and other helpful tips to succeed in mediation.

For more information: Contact John Berg, Littler Mendelson, at 503.889.8863. For registration questions, contact the MBA at mba@mbabar.org.

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

Wednesday, June 24 12-1 pm
Online Attendance Only
Members \$30/Non-Members \$50

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

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

For more information: Contact Adrian Brown, CLE Committee Chair, 971.221.6237. For registration questions, contact the MBA at mba@mbabar.org.

Snooping, Digging, and Following People Around: Effectively Using Private Investigators to Gather Information

Thursday, June 25 3-5 p.m.
Online Attendance Only
Members \$60/Non-Members \$95

Private investigation can be a valuable tool for attorneys before and during litigation. Locating hard-to-find individuals, interviewing witnesses, gathering records, and tracking assets are all tasks commonly assigned to P.I.s. However, news coverage of P.I.s gone wrong and movie stereotypes continue to make the work of investigators murky and mysterious. Attorneys may not understand exactly what an investigator can do and what they cannot (and might be surprised by both). Oregon licensed private investigators **Steve Wilson**, Portland Investigators, **Lloyd Rash**, Foremost Investigations, **Helena Snyder**, Pettus Investigations, and **James Comstock**, InsightLI, will discuss the use of private investigators by attorneys, explaining the benefits and dangers, and detailing what kind of information is legally available using the techniques of skiptracing, interviewing, public records searches, and surveillance. They will cover the laws and ethics that govern P.I.s, hiring and effective communication, and provide examples and anecdotes of ways investigators have helped attorneys find the information they need to win a case.

For more information: Contact John Berg, Littler Mendelson, at 503.889.8863. For registration questions, contact the MBA at mba@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 participate.

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Online attendance only - link will be emailed
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6/25 Snooping, Digging, and Following People Around: Effectively Using Private Investigators to Gather Information
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Total due\$_____

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.

Photocopy registration and mail payment to:
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GoFundMe Account Established for Mike Long

Mike Long, who was a ground-breaking OAAP attorney counselor, had a stroke over a year ago and is still working hard to regain his ability to walk. He is hoping to try some new therapies in Canada and has started a GoFundMe campaign. He has made slow and steady progress and is not giving up. Please consider helping him take these next steps by contributing to his medical funding campaign and also please share this with everyone you feel is appropriate. Mike sends his regards and deepest thanks.



Contribute to Mike's campaign at
www.bit.ly/MikeLongGoFundMe

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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mba | ANNOUNCEMENTS

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

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.

Presiding Court Update Webcast Free on MBA Website
In response to the circumstances surrounding the COVID-19 virus, the MBA is offering a free video recording of the April 2 Presiding Court Update CLE seminar as a service to the legal community. Visit www.mbabar.org to access the webcast video and materials.

LSAT Preparation Scholarships Awarded

Since 2014, the MBA Equity, Diversity & Inclusion (ED&I) Committee has been awarding LSAT preparation scholarships. This is the second year the MBA and OSB have combined funds to award the scholarships. The scholarships are awarded to applicants who come from backgrounds traditionally underrepresented in the Oregon legal community, who have financial need, and who plan to go to law school and practice in Oregon. Fifteen outstanding future lawyers benefited from the scholarship this year, chosen from over 40 applications.

In the past, the LSAT preparation course scholars have been honored at the annual Tillicum Gathering for leaders of Oregon’s diversity and specialty bar organizations, along with representatives of the MBA and OSB.

This year’s Tillicum Gathering was canceled, and we’d like to honor the recipients here. Congratulations to Yarina Aguilar Becerra, Maria Casa, Benjamin Charbonneau, Alyse Cronk, Cecilia Delao, Katherine DuPont, Carina Garcia, Aleesha Kazi, Adriel Person, Kimberly Quiroz Alvarez, Fernando Rivas Estrada, Amairani Santillan Guzman, Yomaira Tarula-Aranda, Sofia Velasquez and Natasha Voloshina.

The committee looks forward to seeing these individuals flourish in law school and beyond.

Many thanks to the ED&I Pipeline Subcommittee for administering the 2020 scholarship program: Whitney Stark, Lisa Farrell, Rachna Hajari and Jovita Wang.



Free Conference Room Space in Portland

The Professional Liability Fund is offering Oregon lawyers free use of a conference room located at 520 SW Yamhill Street, Suite 1025, Portland, Oregon. To reserve this space and learn more details about this free conference room space, go to the PLF website, www.osbplf.org, and click on Practice Management, then Oregon Lawyers’ Conference Room.

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



Ethics Focus

Golden Handcuffs: Restrictive Covenants in Law Firm Employment Agreements

by Mark J. Fucile
Fucile & Reising LLP



In some industries, employment agreements include so-called “golden handcuffs,” provisions that effectively restrict employees from going to work for competitors through direct prohibitions or financial penalties. RPC 5.6(a), which is based on its ABA Model Rule counterpart, generally prohibits them in law firm employment agreements:

“A lawyer shall not participate in offering or making:
“(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship[.]”

The principal exceptions are narrowly tailored to retirement agreements under RPC 5.6(a) and sales of law practices under RPC 1.17(h). Comment 1 to ABA Model Rule 5.6 explains the rationale for the rule:

“An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer.”

At the same time, law firms sometimes include pre-departure notice or related financial provisions in their employment agreements that walk up to -

...pre-departure notice provisions are not inherently suspect because both a departing lawyer and the lawyer’s firm have a duty to inform the clients...

and occasionally cross - the line between permissible and prohibited restrictions. Although in theory impermissible restrictions could expose the participants to regulatory discipline, the larger practical risk in most instances is that such provisions will be held unenforceable by courts.

In this column, we’ll look at both pre-departure notice provisions and related financial disincentives. With each, precise line-drawing is generally

impossible in light of their inherently fact-driven contexts. Nonetheless, we’ll survey the factors that courts have used in determining on which side of the line these kinds of provisions fall.

Pre-Departure Notice
This past December, the ABA issued an ethics opinion - Formal Opinion 489 - that focused on pre-departure notice. In doing so, the opinion built on an earlier ABA opinion - Formal Opinion 99-414 (1999) - that addressed lawyer mobility issues generally and that, in turn, significantly influenced the primary state opinions on that topic in the Northwest, OSB Formal Opinion 2005-70 (rev 2015) and WSBA Advisory Opinion 201801 (2018).

The new ABA opinion emphasized that pre-departure notice provisions are not inherently suspect because both a departing lawyer and the lawyer’s firm have a duty

Firms have an ethical obligation to assure that client matters transition smoothly...

to inform the clients for which the lawyer was principally responsible of the lawyer’s planned departure and to protect the clients’ interests in the transition. At the same time, the ABA opinion - quoting an OSB *Bulletin* article - cautioned:

“Although “reasonable” notice provisions may be justified to ensure clients are protected when firm lawyers depart, what is “reasonable” in any given circumstances can turn on whether it is truly the client’s interest that is being protected or simply a thinly disguised restriction on the right to practice in violation of RPC 5.6(a).”

In striking a balance, ABA Formal Opinion 489 synthesized case law nationally and concluded:

“Firms have an ethical obligation to assure that client matters transition smoothly and therefore, firm partnership/shareholder/member/employment agreements may request a reasonable notification period, necessary to assure that files are organized or updated, and staffing is adjusted to meet client needs. In practice, these notification periods cannot be fixed or rigidly applied without regard to client direction, or used to coerce or punish a lawyer for electing to leave the firm, nor may they serve to unreasonably delay the diligent representation of a

client. If they would affect a client’s choice of counsel or serve as a financial disincentive to a competitive departure, the notification period may violate Rule 5.6.”

Financial Disincentives
ABA Formal Opinion 489 noted that there is no practical distinction under ABA Model Rule 5.6(a) between pre-departure notice provisions that impermissibly interfere with client choice and financial disincentives imposed on a client’s preferred lawyer that do the same:

“There is no meaningful distinction for purposes of Rule 5.6 between an agreement provision that imposes a financial disincentive to a competitive departure irrespective of the pre-departure notice requirements and a provision that imposes a financial disincentive for the failure to comply with a fixed, pre-established notice period that extends beyond the time necessary, generally or in a particular case, to ensure an appropriate transition[.]”

The Oregon Court of Appeals in *Gray v. Martin*, 63 Or App 173, 663 P2d 1285 (1983), and *Hagen v. O’Connell, Goyak & Ball, P.C.*, 68 Or App 700, 683 P2d 563 (1984), took the same approach with other financial penalties for leaving. In *Gray*, for example, a law firm partnership agreement included a provision forfeiting future income rights if a departing lawyer continued to practice in a three-county area surrounding the firm’s office. In *Hagen*, a law firm shareholder

...these notification periods cannot be fixed or rigidly applied without regard to client direction, or used to coerce or punish a lawyer for electing to leave the firm...

agreement included a provision reducing the valuation of a departing shareholder’s stock unless the lawyer executed a non-compete. The Court of Appeals found that both provisions were unenforceable under RPC 5.6(a)’s analogous predecessor in the former Oregon Code of Professional Responsibility. Similarly, WSBA Advisory Opinion 2118 (2006) concluded that an outright liquidated damages provision tied to breach of a non-compete in a law firm employment agreement was also prohibited under Washington’s version of RPC 5.6(a).

By contrast, the simple fact that a lawyer who leaves before a firm’s scheduled year-end compensation process and effectively foregoes the opportunity to be considered for year-end bonus should not ordinarily raise the same issues under RPC 5.6(a) - as long as it is not a direct penalty for leaving.



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Around the Bar



Ken Aber

Cosgrave Vergeer Kester LLP

The firm is pleased to announce the return of two litigation partners: **Ken Aber** and **Nicole Nowlin**. The addition of these two partners adds depth and experience to Cosgrave’s robust litigation practice.

Aber focuses his practice on personal injury, premises liability, products liability, sexual assault, real estate, and business litigation. With more than 25 years of experience, he has represented clients in 39 jury trials and over 200 arbitration hearings. Since July 2014, he has tried 12 jury trials to verdict. Prior to beginning his law career, he worked as a personal insurance underwriter for Chubb Insurance and a commercial insurance underwriter for Safeco Insurance.



Nicole Nowlin

Nowlin has defended individuals and businesses in a wide variety of complex matters over her 18-year legal career, including dram shop claims, premises liability regarding retailer, hospitality, and hotel-related claims; professional liability; automobile liability; and catastrophic bodily injury claims. She has had extensive experience defending businesses in vicarious liability claims involving sexual assaults by employees and agents. She is also an experienced insurance coverage attorney. She has courtroom trial experience and routinely handles binding arbitrations.

Miller Nash Graham & Dunn LLP

The firm is pleased to welcome attorney **Souvanny Miller** to the firm’s Portland office. Miller joins the firm’s prominent education law team, representing educational institutions throughout the Pacific Northwest. Before joining the firm, Miller practiced at a small law firm in southern Oregon. She also served as a law clerk for the Oregon School Boards Association, assisting staff attorneys in advising school boards and superintendents.

Miller has experience advising municipalities and other public entities in regulatory compliance,



Souvanny Miller

constitutional law and public records and public meetings law. She has also represented clients in administrative proceedings, in Oregon circuit courts and before the Oregon Court of Appeals. Miller earned her law degree at Lewis & Clark Law School. During law school, Miller served as a judicial extern for the Honorable Michael H. Simon at the US District Court of Oregon and as a law clerk for the Trial and Appellate Divisions of the Oregon Department of Justice.



Amy Robinson

Amy Robinson was recently appointed to serve on the Washington State University (WSU) Vancouver Advisory Board for WSU’s Carson College of Business. Through building industry alliances, the advisory board helps to define the college’s vision, as well as provide guidance and best practices to the academic departments.

Robinson is a seasoned employment attorney with over 15 years of experience in advising her clients on their ever-evolving employment law needs. She represents public and private employers throughout Washington and Oregon in a broad range of workplace-related issues. Robinson received her bachelor’s degree from WSU before earning her law degree at Lewis & Clark Law School. Prior to her legal career, Robinson worked as a human resources professional.

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.

COVID-19 Lawyer Stress: SOS

by Victoria Blachly
Samuels Yoelin Kantor
MBF Board



Lawyers like to fix things: we help people solve problems; we research and resolve; we take charge and plot a path; we are pretty much unstoppable. But then COVID-19 arrived and screamed, “Not so fast there, all of you cool cats and kittens!”

While it is uncertain how long COVID-19 has been laying waste to people’s plans, let alone their very lives, we have now all been living with this new reality for the last several weeks. (And if I hear or read “these are unprecedented times” again, I will scream.)

With all of the Paycheck Protection Program news, remote working tips, and even how to make yourself look better on Zoom (yes, there is a filter you can use, and I do - don’t judge me), I keep turning, time and time again to my lawyer friends and colleagues to ask, “What are you doing to get through this? How are you keeping yourself from breaking down from the stress?”

I read articles that say scary things like, “The coronavirus pandemic could have a ‘profound’ effect on people’s mental health - now and in the future, say psychiatrists and psychologists who are calling for urgent research.” Philippa Roxby, BBC News (April 16, 2020).

That [COVID-19] can be transmitted asymptotically has forced us to envision everyone as a potential threat. ‘We are training people to see the world as a dangerous place. This invisible enemy could be anywhere,’ says David Spiegel, a professor of psychiatry and behavioral sciences at Stanford University. *How a ‘quarantine state of mind’ will define an era*, Vox, Eleanor Cummins (April 16, 2020).

Some of us find that COVID-19 isn’t making a substantial impact - maybe you have a small office that allows appropriate social distancing, sufficient financial reserves to weather the storm, or are enjoying the break from the often unrelenting pressures of the legal profession. But there are many more of us that find this time of paralysis frightening and stressful, because we are trained to take action and simply cannot take the action we want to take, in many instances.

But there is hope. There should always be hope. And

there are tools. This article provides several healthy coping mechanisms for you to choose from, opting for your own adventure for how to focus on positive mental health. But first, The Requisite Lawyer Disclaimer: I am, in absolutely no way, qualified to give actual mental health advice, through experience or training, and we cannot minimize the serious impact COVID-19 is having on some of us that would require professional mental health assistance.

Please be kind to yourselves and seek appropriate care.

Rather, this article is meant to share some tips that have worked for other lawyers - or tips that haven’t worked at all - in an effort to get us all talking about this scary, scary time.

We have to stay strong to get through to the other side to the “new normal” or the “new abnormal.” Attorney Tanya Durkee Urbach puts it into a better focus, “The idea that this is all temporary and someday it will return to ‘normal’ can cause a tremendous amount of impatience to return to that state of normalcy. Early I realized that ‘return to normal’ is nothing more than an idea. The truth is, whatever the future holds, it will not be the same ‘normal’ we once knew, at least not possibly for many years to come. That realization was key. It reminded me that today’s normal is normal today. So, with intentionality, I decided to wake up every day knowing, this is what life is right here, right now. I realized that if I do not find the joy, make the most, do what I can today, while this is what life is, and tomorrow, while this is what life still is, months maybe even years will go by and I will have lost time and opportunity for joy.”

These many tips and tricks are offered for you to try to find that “opportunity for joy.”

We’re Gonna Zoom, Zoom, Zoom-a-Zoom

Where is the room in your home or a space outside that is quiet enough to keep you focused on the meeting, but interesting enough to make the other attendees jealous of your yard, your curated and intellectual bookshelf, or your cute cat that magically knows when the Zoom meeting starts? Or is it more like, “Where is that mute button!?” because your children have come screaming into the room, or everyone else in your household is already on their own Zoom meetings, so you are stuck in the laundry room, balancing your laptop on a pile of dirty clothes? Dan Duyck’s theory is that your real estate may well increase in value, if you promote your separate, private, well designed “Zoom Room” as a feature.

My own firm has a standing Friday Zoom Happy Hour,

and we’ve tried charades, Pictionary, theme nights, and trivia. In some ways it’s forced family fun, because you can be certain that not everybody feels like attending every event, but it’s also necessary, because we miss each other. Zoom or FaceTime with friends, family and colleagues can be a good stress reliever. It’s easy and you only have to wear a clean shirt with your pajamas or sweatpants. Go for a theme: western, 80’s big hair, Jersey shore, Hawaiian shirts, fun cocktails, cooking tips - the list is endless. Leslie Johnson calls her Zoom lunch with friends, “Really good medicine.” Michael Walker attended a webcast gala for the Oregon Symphony, enjoying the live performance and calling it “a breath of fresh air.” One of my first Zoom experiments was when Chris Costantino taught my 12-year-old daughter how to make macarons via Zoom. Chris’ were picture-perfect and ours...well, not so much. Melanie Marmion shares, “I would say I’m coping with the stress by being more in touch with my extended family and friends who are scattered across the states. We’ve done Zoom birthday parties together and figured out how to play virtual card games. Prior to COVID-19 much of my favorite socializing involved live music. With that outlet off the table, we’ve adjusted. Every weekend my friends pick a live concert that we can all watch on YouTube and we have a Zoom virtual dance party. It’s been nice to connect with friends and family in ways that we never did before COVID-19.”

Hilary Newcomb says, “Basically there’s no such thing as over-communicating lately. People desire that connection, feedback and it’s necessary for our cases to stay on task and for us to be coordinated and productive.”

Paul Gilles reiterates that point, “Most important for us/me, is to be visible and available for folks. Let them know what we’re doing, be open about our struggles and wins. Everyone is anxious, so this transparency (even if only so that they can plan) is very important.”

Hobby Anyone?

There is an unrealistic expectation that one should be massively productive with this time in quarantine, learning a new language, knitting your own safety masks from your organic silk worms, and/or solving world peace. But do we really need added pressure to perform right now? As one person told me, “My new skill is finding a place to hide my potato chips from my kids.”

Some people have enjoyed this time to read those novels stacked by their bed, but give me television like “Tiger King,” because - say what you want about it - I did not think about COVID-19 once the entire time I was watching that train wreck.

Never have lawns and gardens been so well-tended. Never have dogs been more walked. Marie Kondo now makes

Continued on page 18



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Tips From the Bench

by Judge Judith H. Matarazzo
Multnomah County Circuit Court



In March and April all attendees of MBA CLE seminars were asked to fill out evaluations. They were given the opportunity to ask questions, and many of those questions appear below. Perhaps because some of us are working from home and have time to fill out evaluations and pose questions, there were a fair number in the last two months. I have selected several questions from the list as they appear to be consistently asked and basically deal with the issue of effective and honest communication.

Does the court have a system in place for giving feedback to judges on their performance and decisions (other than waiting for appellate decisions)?

In short, no. However, most judges would welcome some feedback as the job of a judge is very isolating and, in all cases, one party leaves the courtroom with the impression the court is nothing short of brilliant and the other party leaving with the knowledge the judge shouldn't be on the bench. I would recommend you contact the presiding judge with constructive comments, both positive and negative.

The question assumes an appellate decision will provide "feedback" to the judge as to his or her performance and in some cases it might. I admit when I first came to the bench I worried that an entire collection of Advance Sheets might be dedicated to my errors. Over time that subsided, and I began to look at an appeal in a civil case differently. In many civil cases there may be very little related Oregon case law and both parties understand from the start that the case is going up on appeal. There are many issues that frankly could go either way, and reasonable minds disagree. The court welcomes guidance and clarity from the appellate courts, and, with the help of the parties, will attempt to make the record as clear as possible to allow for review. Therefore, I am not sure an appellate decision is the best assessment of a judge.

Why does the court require bench copies of motions and memoranda when apparently the judges can review them online? This is belt and suspenders stuff. I can understand bench copies of draft jury instructions, but not the general trial memo,

motion, supporting and opposing memos, all of which are filed electronically.

To fully answer this question, one must understand how the Civil Department is set up. First when you file a motion in case, a motion judge is assigned. The motion is NOT directed to the judge nor is the judge informed that they are designated as "the motions' judge." Until you call the judicial assistant (JA) to schedule the motion, the judge has no idea a motion has been filed. Once a judge has been assigned, motions are still not routed to that judge. We do not know you have filed a motion until a call to schedule the motion is made. Our local rules allow for a five-week motion cycle. If you wait until the fifth week to call the judge, it may mean months go by before your motion is heard. The best practice is to call the judge's JA as soon as you file the motion. Many attorneys send hard copies of the motions, responses and replies because that is what the supplemental rules calls for, and many of us like to read paper copies. However, when you call to schedule the motion ask whether the judge wants to receive paper copies. Until the recent "working remotely," many of us did not have access to Odyssey at home. There are many times when cases are scheduled back to back. If a jury returns a verdict at 4:30 in one case and the next case begins the next day, I can take the hard copies home to read. If not, it simply means staying late or coming in early. If your goal is to have the trial judge understand your case, ASK the question and then provide the materials according to their preferences and of course, the rule (SLR 6.051).

Why are trial and hearing settings in special set cases always so far out?

The calendar for 2021 will be developed in the fall of 2020. Judges are asked to designate all matters that are on their 2021 calendar, including vacations. Most judges will be assigned a mixture of Justice Center work and misdemeanor rotations for approximately five or six months of the year. Some judges manage treatment courts or other specialty dockets as well. Therefore, as soon as a case has been given a complex designation, the parties and the judge should schedule a conference for the purpose of setting a trial date, status conference, motion and potentially a case management order. The trial date should be set in stone! Given the master calendar, many judges have limited time for a three- to four-week trial unless it is scheduled out. A case management order with trial and hearing dates on the calendar allows the parties to plan. If the motion dates are not needed they can be cancelled. Finding time is much more difficult.

Continued on page 17

News From the Courthouse



by Valerie Colas
MBA President

Presiding Court Update

Judge Stephen Bushong noted that the court is starting to settle into a routine under the Level 3 restrictions. For now, the court is prioritizing the essential dockets as identified in the Amended Chief Justice Order (CJO) issued on March 27, and his Presiding Judge Orders issued on April 10 and 21. (For the Amended CJO imposing Level 3 restrictions on Court Operations, please see www.bit.ly/level3op and for Multnomah County Circuit Court's Orders, please see www.bit.ly/judicialorders).

The court is maintaining social distancing for those coming into the courthouse, and is continually working to adjust processes to meet physical spacing guidelines. An immediate challenge is maintaining social distancing for jurors when the court is required to bring in a jury pool. Multnomah County Circuit Court is making masks available to those summoned for jury duty and has extra staff present to answer questions and ensure that people observe the signs about physical separation and face coverings. While some functions of the court are not operating right now, the court is using many courtrooms for seating to provide adequate space for the jurors when they are directed to appear. Courtroom capacities are greatly reduced with the distancing requirements. Most court employees are working remotely with laptops and cell phones. Lawyers, litigants, and

the public should look on the Multnomah County Circuit Court webpage for information about how to contact the court.

The court remains open and available to the public. The court is providing the public access to proceedings and making the appropriate accommodations depending on whether the proceeding is held in person at the courthouse or is being held remotely. For instance, if the proceeding is remote (by telephone or video conference), then the public can either attend the proceeding in person or access it remotely. At this time, OJD is testing the WebEx application for remote proceedings. OJD is not using Zoom due to security concerns about use and storage of the digital files. The use of WebEx for remote proceedings may be expanded sometime in June for the Multnomah County Circuit Court.

At the writing of this article, restrictions are expected to continue through May and beyond with the possibility that Chief Justice Martha Walters may amend her order.

Judge Bushong noted that they are still on track to move into the new courthouse in July. The construction site is observing social distancing rules. It is very unlikely that the court will be able to provide tours of the new courthouse to the bar and community, but hope to have videos to show people what to expect in the new courthouse. The court is also working with the architects to put social distancing measures in

place at the new courthouse. As of now, the downtown historic courthouse is still expected to be closed July 15-17 for the court's move, and to reopen July 20 in the new courthouse.

Civil Court Update

Judge Chris Marshall provided an update on civil matters in Multnomah County. The court is open and available to parties for civil matters. Staff for civil matters are doing their best to get up to speed so that civil motion hearings can resume beginning on June 1. Judicial assistants are available and are returning phone calls, but the best way to contact the court is by email. Jury trials may be scheduled in civil matters for dates after August 1; bench trials may be scheduled and conducted before August. Parties should consider resolving their cases through mediation or settlement conferences whenever possible. There are judges available for settlement conferences; attorneys should contact judicial offices directly to see what days they are available.

Lunch and Learn CLE

The court will work to schedule the Lunch and Learn CLE, "Technology in the New Courthouse" at a later time, as soon as possible. The court's information technology specialists are extremely busy helping to keep the court functioning remotely during the pandemic restrictions on top of their work to prepare the new courthouse for business.

Expedited Access Cards for Use at the New Courthouse

The new building will be equipped with technology that will allow for more efficient and safe entry. To integrate this technology, the Multnomah County Sheriff's Office (MCSO) will be issuing new cards to replace existing Expedited Access Cards.

Those with cards expiring after July 20, 2020 will not be charged for a replacement

card. Cardholders with cards expiring prior to that time are asked to renew as usual, with no additional charge for an updated card when it arrives.

Moving forward, the expiration date on current cards will remain the expiration date for the new Expedited Access Card. New cards will be mailed to the address on file with the MCSO Concealed

Handgun License Unit, and should arrive no later than July 15.

If you have questions, or need to change your address, please contact the MCSO Concealed Handgun License Unit at 503.988.0517.

The Honorable F. G. “Jamie” Troy II

Multnomah County Circuit Court Judge

by Katie C. Goss
MBA Court Liaison Committee

Governor Kate Brown announced the appointment of F. G. “Jamie” Troy II to the Multnomah County Circuit Court bench on September 11, 2019. He was sworn in alongside fellow appointee, Morgan Wren Long on October 28, 2019 and has served as a judge in the Family Law Department since that time.

Judge Troy was appointed to fill a vacancy to the bench created by the retirement of Judge Katherine Tennyson, his former employer. The appointment to this particular vacancy was personally significant to Judge Troy, as Judge Tennyson had mentored him as a young attorney and played an integral role in the early days of his training as a trial attorney.

Judge Troy grew up in Midlothian, Virginia, a suburb of Richmond. His father was a prominent attorney, at one time serving as the attorney general for the Commonwealth of Virginia. In his youth, Judge Troy did not desire to follow in his father’s footsteps. He initially was on a pre-med track at the College of William & Mary, but later switched his major to Anthropology after seeing “Gorillas in the Mist.”

Nearing completion of his undergraduate degree, Judge

Troy concluded his extroverted personality was not well suited to a solitary career studying primates in the jungle. He found himself drawn to law school after developing an interest in environmental law. He attended the University of Richmond School of Law for his first year of law school, then moved to Oregon to attend Lewis & Clark Northwestern School of Law, where he earned a Certificate in Environmental and Natural Resources Law and his Juris Doctor degree in 1995.

Judge Troy joined the Oregon bar in 1996. In his first years of practice, Judge Troy worked for a short period at a small firm, which allowed him to gain experience in multiple areas of the law, ranging from landlord-tenant issues, family law, corporations work and personal injury work, amongst other areas. He later worked at Tennyson & Winemiller, and Kliewer & Associates, shifting his focus to juvenile law.

Judge Troy spent the majority of his career in private practice as a juvenile law attorney with a high-volume indigent defense case load, the last 11 years of which he spent as a partner at Troy & Rosenberg, PC. He focused on juvenile delinquency, juvenile dependency,

and termination of parental rights cases. He also handled a smaller number of domestic relations cases, where the primary focus was often on the resolution of custody and parenting time matters.

Many of his clients faced extremely challenging situations, such as addiction and sexual abuse accusations, and he enjoyed the advocacy that was required for each client and each unique set of circumstances. He is proud of the firm he helped to build with his former law partner, Judith Rosenberg, and the advocacy they provided for their clients.

As a practitioner, Judge Troy enjoyed all that litigation and being in the courtroom had to offer. He thrived with the challenge of crafting a well-founded legal argument. He also enjoyed the thinking on your feet problem-solving skills required of attorneys when curveballs are presented in the courtroom.

After nearly 22 years as a juvenile court practitioner in Multnomah County, Judge Troy was widely respected as an attorney. He was encouraged to seek a position within the court by, amongst others, Judge Michael McShane, federal judge of the US District Court for the District of Oregon, and Judge Maureen

McKnight, prior Chief Family Law Judge in Multnomah County.

Upon becoming a judge, Judge Troy was pleasantly surprised to find an extraordinarily collegial bench with the majority of members welcoming questions and offering assistance as he overcomes the steep learning curve that all new judges must face. He is learning the ropes of directing the courtroom, quick but thoughtful decision making on evidentiary issues, and managing all matters in his queue when not on the bench. While the workload is heavy, he considers his position to be a dream job. Judge Troy looks forward to ensuring that every party within his courtroom feels he or she was heard and treated respectfully, whether on the winning or losing side of a claim.

Among other civic and community activities, Judge Troy was a member of the Department of Human Services Child Welfare Advisory Committee, has served on the City of Portland’s Citizen Review Committee and is past president of the Gus J. Solomon Inn of Court. Judge Troy also serves on the Board of the Bill and Ann Shepherd Legal Scholarship Fund, which provides financial assistance to third- and fourth-year law students who wish to advance equal rights and justice for lesbian, gay, bisexual and transgender individuals.

Despite his roots on the East Coast, Judge Troy has been in Oregon since 1993 and now considers himself an Oregonian through and through. He travels



Judge F.G. “Jamie” Troy II

back to the East Coast once or twice a year to visit family, but does his best to avoid picking back up his Southern accent while there.

In his free time, Judge Troy enjoys singing as a tenor in the Oregon Repertory Singers and running with the Northwest Billy Goats running club, where as one of the oldest members of the group, he is affectionately known as “Papa Goat.” Judge Troy has been partnered for 23 years to Barry Pack, Director of the Oregon Lottery. Judge Troy lovingly notes that Barry is the most accomplished member of the family. While Judge Troy is one of 175 judges in Oregon, there is only one lottery director.

Judge Troy’s wealth of experience in juvenile law is a welcome addition to the Family Law Department in Multnomah County. He is still adjusting to former colleagues addressing him as “Your Honor,” but appreciates all that his position has to offer, and welcomes the responsibility to the public and the bar that comes with it.

The Honorable Morgan Wren Long

Multnomah County Circuit Court Judge

by Amanda Nadell
MBA Court Liaison Committee

Growing up in Virginia, just outside of Washington, DC, the Honorable Judge Morgan Wren Long became accustomed to the pressures of living near the nation’s capital - people trying to get ahead of everyone else, pressure to always do more, and a lack of community. Her move to Portland in 2003 was a welcome change. As she describes it, “people are much nicer here.” The community that welcomed Judge Long with open arms 17 years ago has influenced the type of courtroom she wants to oversee. Each day, Judge Long is committed to showing respect to each litigant and party that comes before her, ensuring that everyone feels heard in her courtroom.

Judge Long was sworn in as a judge on the Multnomah County Circuit Court on October 28, 2019, filling the vacancy created by the retirement of the Honorable Judge Maureen McKnight. She is assigned to the Family Law Department. Prior to her judicial appointment, Judge Long served as a juvenile court referee and judge pro tem for the Multnomah County Circuit Court from May 2017 until her swearing in.

Upon earning her Bachelor of Arts degree in English from Virginia Commonwealth University in 2003, Judge Long moved to Portland just days after graduation. She went on to earn her law degree from Lewis & Clark Law School in 2007. For the next 10 years, she litigated juvenile dependency cases, juvenile delinquency cases, family law matters, and criminal defense matters at the firms of Bertoni & Associates; Ridehalgh & Associates; Dore Long, LLC; and Morgan Long Law, PC. As her legal career reflects, juvenile court has always been her passion.

Judge Long’s “strong desire to ensure fairness and equity” is what drew her to a judicial career. From the first time she entered a courtroom, she began noting the pros and cons of the various judicial styles she encountered, and she knew that one day she would want to take on the role of judge. Judge Long remembers the frustration of her clients with the court process, particularly when they felt ignored or unable to present their case. Judge Long strives to be a judge who listens and who ensures a fair process for all litigants and parties appearing

before her. A judge’s job, she explains, should be to make orders that make people better and that lift people up, whenever possible.

The transition from juvenile court referee to judge of the Multnomah County Circuit Court has been relatively smooth for Judge Long, no doubt in large part due to the vast experience she brought to the bench. That said, Judge Long has enjoyed spreading her wings more as a circuit court judge. She explains that as a judge, you have an even greater ability to effect change within the system. Judge Long serves on a variety of workgroups and committees in which she aims to drive systemic change in a positive direction. Her current involvement includes the Judicial Engagement Leadership Institute, Education Work Group; Multnomah County Child Welfare Council; Multnomah County Kids in Court Committee; Multnomah County Circuit Court Equity and Diversity Committee; Multnomah County Model Court Team; Multnomah County Juvenile Justice Council; Multnomah County Crossover Implementation Committee;

Juvenile Detention Alternative Initiative, Equitable Alternatives Workgroup; and Oregon Indian Child Welfare Act Compliance Committee, State Statute Subcommittee. She is also past chair of the OSB Juvenile Law Section Executive Committee.

Racial disparity in the juvenile and delinquency judicial systems is an issue that Judge Long cares deeply about and is committed to working on. Judge Long knows that just walking through the doors of a courtroom, alleged to have committed a crime, is traumatic and damaging to a child. The chances of recidivism go up with every new contact a youth has with juvenile detention. One of the ways she is addressing the racial disparity inherent in these issues is by working with a team committed to transforming juvenile probation in Multnomah County. The focus of the group is not only to ensure greater success of youth on probation, but also to keep youth out of detention in the first place. As part of this, the group is exploring successful diversion options for youth in the juvenile court system.

The impact she can have on the system and community, simply because of her “judge” title, is not lost on Judge Long. One of the best memories of her judicial career thus far is when she had the opportunity to



Judge Morgan Wren Long

attend a celebration organized for youth on juvenile probation who are graduating from high school. Judge Long said the kids looked so touched that a judicial officer would attend.

When she’s not at work, Judge Long enjoys spending time with her husband and two young children, ages six and three. Her family enjoys going on “adventures” together every weekend, and makes a point to try something new or go somewhere different as often as possible. In display of her commitment to her community outside the courtroom, Judge Long, a self-described “joiner,” also serves on her children’s elementary school PTA Board.

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 work hard, but when I check my timesheet at the end of the day, I only have a few hours billed. What gives?

-Timekeeper in Training

Dear Timekeeper,
Tracking your time in six-minute increments can be hard, especially for new lawyers. While some attorneys view billing time as the bane of their existence, it doesn't have to be. Billing time not only generates revenue for you and your firm, but if done accurately, it can be a great way to show partners and clients how you are adding value. Here are three tips to help you track time accurately and keep your clients, your partners, and yourself happy.

Enter Your Time Throughout the Day
“There is no time like the present.” This adage applies with equal force to tracking your time. The best way to capture your time is to record your tasks as you complete them.
The reason for this is simple. After working an eight-hour day (or longer), you won't be able to remember everything you did during the day. This is especially true if you are trying to piece your time together from call logs, emails, or sticky notes at the end of the month. If you enter your time contemporaneously, you will not only capture the amount of time you worked on a file, but the specific tasks you performed, as well.

For example, my firm uses software that allows timekeepers to track their time using a stopwatch. Before I start on a task, I enter the client and file number, along with a description of the work I am about to perform. I then start the stopwatch once I start working on the task and stop it when

I'm done, switch tasks, or take a break. That way, I can capture my time down to the minute.
If the stopwatch isn't your thing, or your firm doesn't use billing software, no worries. Applying these same general principles will help you capture your time no matter how you track it, whether it be in Excel or with good old-fashioned time sheets. Find a system that works for you and your firm.

Schedule Time to Review Your Entries
As great as it would be to write perfect time entries for every task you perform, sometimes that simply isn't possible. The phone won't stop ringing. A partner bursts into your office with a rush project. You're in meetings all day long, one after another. Days like this happen and it is important to be realistic and flexible about your goals for entering time.
I recommend scheduling time to periodically review your entries, either on a daily or weekly basis. This will help you identify any time you might have missed. It will also give you an opportunity to double-check your entries to make sure the description and amount of time you billed are accurate.

Seek Feedback and New Ideas
Billing time is not innate. Like most other things, it is a skill that is learned over time. As a young attorney, don't be afraid to ask senior associates or supervising partners for advice on how they track their time. Developing a system that works for you and your firm will not only help you reach your billable hours goal, but will allow you to focus on what is truly important - continuing to provide top-notch legal services for your clients.

Health in the Time of Corona

by Allison Kamilos and Carlie Bacon
YLS Membership Committee



Allison Kamilos



Carlie Bacon

Especially during this time of social distancing, it can be challenging to give our bodies the care and attention they need. Below are some straightforward tips/ideas for yoga and cardio intended to suit most people's ability levels. We hope these tips inspire you to try something new or add on to your existing routine. Of course, be mindful of your own body and limits, and if you have any concerns about how these movements might affect you, consult a healthcare provider. Take care.

Easy Yoga to Relieve Stress
So many of us sit in a chair all day, shoulders slightly hunched, perhaps not even the ergonomic chair you were used to before we were all working from home. Here are a few basic poses that will help you manage those tight muscles and monkey mind.
To open your chest and give your shoulders some relief try the following: scoot to the edge of your chair. Place your hands behind your back or on the edge of your chair seat. Shrug your shoulders up toward your ears. Roll your shoulders back and squeeze your shoulder blades together. Drop your shoulders down. Take a full breath into the center of your chest, exhale, move your navel back toward your spine and let your tailbone sink into the chair. Repeat for five-10 breaths.

Feeling lethargic?
Overwhelmed? Anxious? Do a twist! Place your feet flat on the floor. Inhale and sit up straight. Exhale and begin to turn toward your left, turning from your waistline. As you turn, twist through your waist moving your ribs and shoulder back. Keep your chin in line with your chest to avoid leading the twist with your head. Place your hands on your chair's arm or your desk for support. Do five-10 deep breaths, twisting a little bit more toward the left with each exhale. Repeat for the right side twist.

If your hips feel tight from sitting in that pesky chair you usually only use for the dining room table, you can do a variation of figure-four without ever leaving your seat. Sit on the edge of your chair and place both feet flat on the floor. Cross your left ankle over your right thigh; flex your foot. Your left leg should create an "L" shape and your right leg should be in a 90 degree angle supporting the left. Place your right hand on your left foot or ankle and gently press on your right thigh with your left hand. Inhale and lengthen your spine. Keeping your spine straight and bending from your hips, begin to lean forward. Exhale and relax your face and shoulders. Breathe for 30 seconds to one minute before switching to the other side.
Last one - this can't be done from your desk, but it's worth the relief if you're feeling particularly anxious or overwhelmed. Feet up the wall will help your nervous system calm down. It really is just what you think - position your body so that you are laying down with your back perpendicular to the wall, close enough that your tailbone and legs can touch the wall as if you are sitting on it. Hands either at your sides or with one hand over your heart and the other over your stomach. Take several deep breaths. This pose works best if you are in it for at least three minutes.
Special thanks to yoga instructor Kimi Marin (www.kimimarin yoga.com) for her assistance in drafting the above instructions.

Cardio Activity for All
It's recommended that adults get 150 minutes of moderate activity per week. Remember that every minute counts! Depending on your comfort and abilities, consider these activities (in addition to the yoga above), both indoors and outdoors.

Walking, Jogging, and Running
Try hitting the streets at night, when fewer people are out. If you do, consider wearing bright clothing, reflective gear, or lights to stay visible.
Share the road. Sidewalk congestion makes it hard to maintain social distancing. Consider using the road, *safely*, in Neighborhood Greenways, which are residential streets with low volumes of auto traffic and low speeds where bicycles and pedestrians are given priority. Search online for greenways close to home.
Walk and Talk. Have a video conference, remote happy hour, or call planned? Try taking a walk while you do. You can download video conferencing platform apps on your phone. My coworkers got a kick out of my low-key virtual neighborhood tour during our Zoom happy hour. Remember to be mindful of safety and social distancing while multitasking!

Bodyweight Exercises
Upper body and core: **Push-ups** (try regular, wide, and narrow "diamond" hand positions for variety). To modify, go to your knees. **Triceps dips** using a chair/bench. Hold a **plank position**, including forward facing and one on each side (to modify a forward-facing plank, widen your stance with your feet). To strengthen your back, try "**superman**" by lying face-down on the floor, arms bent and elevated with hands by your ears (like for a sit up/crunch), then extend your back to elevate your upper body off the floor, head in a neutral position and careful to not strain the neck, hold for a second or two, and lower down to the floor with control.
Lower body: **Squats** (try regular, narrow, and wide stances to activate different muscles). **Lunges** (for an added challenge, try elevating your rear leg on a chair or bench or chair). **Calf raises** (lift up on your toes and lower with control). **Glute bridges** (lie on your back on the floor, legs bent with heels close to your glutes). Press into your heels, lifting your glutes off the floor, and hold for a second or two before lowering with control. For an added challenge, elevate one leg in the air while making a bridge.

General Wellness Reminders
Hydrate, especially before and after activity.
Stretch, and consider using a foam roller on major muscles (quads, glutes, calves) to prevent injury. **Eat** after your workout to aid in recovery.
Aim for eight hours of **sleep**.

Anna Claypool

YLS Member Spotlight

by Aurelia Erickson
YLS Board

Anna Claypool is only in her first year as a member of the YLS CLE Committee, but she is making her presence known. Anna, along with MBA staff liaison Lauren Fairshter, have been instrumental in ensuring that the committee’s CLE seminar series and stand-alone CLEs can continue and remain inclusive during the COVID pandemic. “One of the biggest issues has been convincing speakers that the programs still matter,” says Anna, “and that their presentations will still be interactive.” Anna has worked

with the committee in making the transition to online-only presentations and CLE attendance has remained strong. Each committee member works to secure speakers and facilitate the CLEs. The committee had to get up to speed with new technology quickly so they could then ensure speakers knew how to use the technology. Committee members also needed to be able to facilitate questions and discussion at each CLE. Anna grew up in Portland, but ventured to the Midwest for law school and received

her JD from the Southern Illinois University School of Law in 2015. Her mother is an attorney and Anna grew up immersed in law firm life. She says it influenced how she wanted to practice law. Many new lawyers don’t have a good frame of reference for what it is like to work in a big firm versus government or in-house, but Anna knew what style of firm would best fit her personality and it narrowed her focus coming out of law school. Anna is an associate at the Abbott Law Group, where she is one of four attorneys. As a member of a small firm, Anna wanted to join the YLS to network and make connections with other small firm associates. She was also interested in influencing what and how

new lawyers are being taught. “Joining the CLE committee felt like the best way to help out,” says Anna. Anna is also active with the OSB Pro Bono Committee and Oregon Women Lawyers. The YLS Estate Planning Spring Series was one of the first to make the transition to remote-only attendance due to the pandemic. It runs through June 4. Anna also worked on a stand-alone CLE, titled “Immigration Law for the Non-Immigration Attorney: Common Procedures to Use in Your Practice and Volunteer Endeavors.” Although it was conducted remotely, it generated a lively discussion as immigration issues continue to be relevant and practitioners continue to look for ways to help.



Anna Claypool

Currently, you can find Anna working from home with her one-year-old puppy and facilitating remote CLEs. For more information on upcoming MBA and YLS CLEs, visit www.mbabar.org/cle.

How to Support Young Lawyers During the COVID-19 Pandemic

A Message to Firm Leadership: Your Young Lawyers are Struggling. Are You Paying Attention?

by Stacie Damazo
YLS Membership Committee



Now that COVID-19 has arrived stateside, we are all experiencing considerable uncertainty. What started as news reports of a distant illness quickly became the stark reality of a formidable virus, threatening our health, the health of our family and friends, and our concept of normalcy. While we are all undergoing unprecedented change, young lawyers are navigating unique stressors. In a matter of months, our short- and long-term career plans and goals have unexpectedly shifted. As news of layoffs and pay cuts travels throughout the legal community, the phrase “last to hire, first to fire” is on constant repeat in our minds. Feelings of uninhibited potential have been replaced with ever-present stress and

anxiety. Hopes of achieving performance goals have turned into fears of becoming dispensable and that the firms we have just learned to call home will not survive this pandemic. As we begin to transition back to the office, these fears will not disappear. Just as the threat of a second wave remains, so do our worries of the unknown. For the health of young lawyers, and the profession at large, we turn to firm leadership for help. Fortunately, there are a number of ways firm leadership can intentionally and meaningfully engage with their young lawyers to alleviate the coronavirus’ impact on young lawyers’ mental, emotional, physical, and financial health.

Mental and Emotional Health
Check on your young lawyers. Ask and ask again. With change comes loss. And with loss comes grief. Just because your young lawyer is showing up to Zoom meetings and submitting their work on time does not negate the very real possibility they are struggling to cope with recent events. If you are unsure how your young lawyers are coping, ask. And ask again. Are they

getting outside regularly? Are they quarantined alone? Do they have enough toilet paper? How are they *feeling* about all of this change? Don’t just ask once. Ask and ask again. Open up a dialogue that may not have existed pre-coronavirus. If you have a mentorship program, this is an opportunity to rely on it more heavily. If not, create one! Partner off your attorneys and encourage them to meaningfully check in with each other on a regular basis.

Check yourselves. How are you addressing, or affirming, the mental health stigma in the legal profession? The ways in which you discuss mental and emotional health around the office or in Zoom meetings may impact your young lawyers’ willingness to seek support. How are you framing conversations about mental and emotional well-being? Are your young lawyers aware of the free and confidential resources available to them through the Oregon Attorney Assistance Program (OAAP)? By connecting your young lawyers to available tools and resources, you may be connecting them to the help they didn’t know how to ask for.

Provide opportunities for meaningful social engagement. Yes, Zoom fatigue is real. But providing a space for free and open conversation, much like what we used to enjoy pre-coronavirus, is key. Combat the isolation by encouraging your practice groups or teams to schedule regular, virtual check-ins. And combat the decline in coworker camaraderie by encouraging your associates to do the same.

At Dunn Carney, our firm leadership has worked hard to continue our recurring social events via Zoom, in addition to creating new opportunities to check in with one another. In any given week, you can find Dunn Carney attorneys enjoying a virtual Morning Meeting at the Watercooler, Afternoon Coffee with Colleagues, or Third Thursday Happy Hour. Next up on the agenda is a virtual cooking class! What creative ways can you come up with to stay connected?

Physical Health
Ask about your young lawyers’ home workspace. Many of us did not enter quarantine with an ergonomic home workspace ready for our day in, day out use. While our offices are empty of personnel, they are full of transportable office equipment that can make our home “offices” more functional. Ideas to improve home workspaces include permitting employees to check out desk chairs, monitors, and full-sized keyboards for their at-home use. **Start a workout challenge!** Boost morale and blood flow by starting an internal workout challenge. Partners, challenge your associates to do 15 pushups a day for seven days. Associates, challenge the partners to do five burpees a day for 14 days. Business Team, challenge your Real Estate Team to a sit-up competition: how many can the teams collectively do in one week? Keep it light and fun, while also encouraging your colleagues to keep moving.

Financial Health
Are you supporting your student loan borrowers? The CARES Act allows employers to contribute up to \$5,250, in tax-exempt dollars, toward an employee’s student loan debt, much like a 401(k) contribution. What’s the catch? Qualifying employer contributions must be made before January 1, 2021.

Are you having honest conversations about the firm’s financial health? In these uncertain times, young lawyers are craving transparency. Despite being inundated with reports of how businesses are managing the impacts of COVID-19, many young lawyers have no sense as to how their own firm is faring. Some firms are ahead of the game, sharing monthly financial reports that compare the current financial health of the firm with prior years’ performance. However, not all firms are this progressive. Sharing the firm’s financial picture, including what relief programs the firm is actively seeking to take advantage of, will empower your young lawyers with the knowledge their firm is working hard to keep its people employed. The effects of COVID-19 have left young lawyers feeling isolated and vulnerable. Affirmatively addressing the aforementioned strategies to intentionally and meaningfully connect with your young lawyers is a positive step toward improving their well-being during the era of COVID-19.

Stacie Damazo is an associate in her first year of practice at Dunn Carney, LLP, a Portland-based firm.

Employment Laws and Resources for Employees

by Dezi Robb
YLS CLE Committee



As we move into the third full month of Governor Brown’s Stay Home, Save Lives Executive Order we still face much uncertainty as a community. As an employment attorney, I feel especially compelled to help individuals navigate through these uncharted waters. The entire country, including Oregon, has seen a record number of employees laid off as the nation faces the highest unemployment numbers we have seen since the Great Depression.

Personally, I have witnessed friends and family laid off with no idea what next steps they need to take in order to sustain themselves and their families. The government, both local and Federal, has passed an unprecedented amount of legislation to help assuage the potential hardships the unemployed will face. Because there have been so many changes and new laws added, it might be difficult to know where to start to help people facing this type of situation. To help attorneys who might not be familiar with all these new changes in laws and looking for a place to start their research, I have compiled a brief update summary of the different laws and resources as applicable in Oregon that are aimed at helping employees who find themselves faced with being furloughed and/or terminated. However, these summary points are not to be taken as definitive. Please consult the legislation or an employment attorney for applicability to any individual or employer.

Laws Protecting Employees

1. Families First Coronavirus Response Act (FFCRA)

- Effective April 1 through December 31.
- Paid leave for employees impacted by COVID-19.

2. Emergency Family Medical Leave Expansion Act (EFMLEA):

Employers with less than 500 employees to provide temporary paid family leave to employees directly impacted by COVID-19.

- **Emergency Paid Sick Leave Act (EPSLA):** Non-public employers with less than 500 employees to provide temporary paid sick leave to employees who are unable to work due to COVID-19.
- **Oregon’s Family Leave Act (OFLA)** has been expanded through September to allow for eligible employees to take the following leave: parental leave, serious health condition leave, pregnancy disability leave, sick child leave and the death of a family member.
 - Sick child leave now includes protected leave to care for children whose schools have closed due to the coronavirus outbreak.

Employees Subjected to Lay-Offs/Reductions in Force

1. Employer Responsibilities to Employees.

- **Employers must still uphold anti-discrimination laws** such as ORS 659A.030.
 - Employers cannot use this as an opportunity to terminate a “problem” employee.
- **Maintain employee confidentiality** as much as possible.
 - Although some privacy regulations such as HIPAA have been relaxed due to the WHO’s designation that COVID-19 is a pandemic, an employer should maintain the confidentiality and identity of sick employees.

2. Employers must ensure compliance with other applicable laws.

- For example, employer required by the Americans with Disabilities Act to provide employees who are working at home with reasonable accommodations.

3. If employee is laid off permanently or will not be brought back within 35 days, the employee can treat the layoff as a termination.

- If employee terminated: Last day of employment, employee must receive final paycheck which includes all owed compensation, possibly including unused PTO/ vacation days dependent upon company policy.
- If layoff is temporary (or projected to be 35 days or less): Employer can pay employee on next regular payday.

Unemployment Insurance Benefits

1. The CARES Act was enacted on March 27 and expands Unemployment Insurance benefits.

2. Oregon Employment Department (OED) is no longer processing applications in-person. The easiest way for an individual to apply for benefits is through OED’s online application.

- Although they have not done so yet, OED will provide employees with guidance in regards to the following:
 - **Federal Pandemic Unemployment Compensation** weekly benefit of \$600; benefits for self-employed individuals, including those working in the “gig” economy; expansion of unemployment benefits for individuals whose benefits will expire soon; and benefits for individuals unable to start new work because of COVID-19.
- Approximately a one-week to 10-day waiting period for benefits to start.

3. If an employee is experiencing a temporary layoff, they can still apply for benefits as long as they are able to work, stay in contact with their employer and be available to work when their employer calls them back to work.

If a Business Fails to Follow Governor Brown’s Executive Order:

1. Class C Misdemeanor punishable by up to 30 days in jail, a fine up to \$1,250 or both.

2. Businesses that fail to comply may be closed until they can demonstrate compliance.

3. Employees can contact the Bureau of Labor and Industries (BOLI) to report a business that is in violation of Governor Brown’s Order.

- Employees can also contact their local office for OSHA and report the business.

If an Employee Reports a Business for Failure to Comply with COVID-19 Orders:

1. ORS 659A.199 (private employers) and **ORS 659A.203 (public employers)** are Oregon’s whistleblower and anti-retaliation laws.

- These laws protect employees who make reports regarding their employer’s failure to comply with COVID-19.

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Professionalism in a Pandemic

by Lisanne M. Butterfield and Matthew B. Millman
Carr Butterfield LLC



Lisanne Butterfield

The COVID-19 virus is not only a contagion that poses the gravest public health crisis in modern American history, but the pandemic also presents an important public policy issue for all lawyers.

On March 8, Governor Kate Brown declared a state of emergency to address the spread of COVID-19 in Oregon.¹ The Governor’s Executive Order² issued on March 23, directs Oregonians to stay home except for essential needs. At the writing of this article, the Oregon Health Authority (OHA)³ had recently reported 61 new confirmed cases and 11 new presumptive cases of COVID-19, which brought the state total to 3,283. As of May 12, Oregon recorded 130 deaths attributed to COVID-19.⁴

As we navigate our way through stay-home orders and global shutdowns, and as our healthcare industry is pushed to its limit in response to the pandemic, some of us may wonder, in the middle of a worldwide pandemic, how can lawyers best exude professionalism, and is mere civility enough?

The New Normal

Courts across the country are adjourning most appearances, including trials. Many courts are hearing only “emergency matters,”⁵ often via teleconference or other remote methods. This presents a new quandary for the criminal defense bar, and trade secret and restrictive covenant lawyers, who regularly must seek emergency injunctive relief to protect their clients’ trade secrets, intellectual property, and customer goodwill. We are called upon to balance our clients’ best interests with the safety and welfare of society at large. With videoconferences the new norm, and court resources stretched thin, we also must ask: what standards apply?

The current public health and economic crises dictate that lawyers must be *more diligent* and perhaps more deliberately patient and respectful. Extensions absent prejudice should be liberally granted, especially



Matthew Millman

now. Sweatpants, leggings, and quarantine beards may have become commonplace among many working from home, but our judicial system also requires that lawyers continue to respect the courts, clients, witnesses, opposing counsel, and others. Clothing, diction, volume, and adherence to core business hours are still necessary to meet professional standards. Perhaps now more than ever, we owe a duty to protect the credibility of our justice system, and the profession that serves it.

The Response from the Bench and Regulatory Agencies

With the pandemic came unprecedented challenges to our already over-burdened court systems. Indeed, the effects of the current health emergency materially impacted our state and federal court judges. *See, e.g., Thomsen v. Naphcare, Inc.*, No. 3:19-cv-00969-AC (D. Or. April 6, 2020). Magistrate Judge John V. Acosta of the United States District Court for the District of Oregon issued an Order (“Judge Acosta’s Order”), which cites Standing Orders 2020-4, 2020-5, 2020-7, 2020-8 issued by Chief Judge Marco Hernández between March 12, 2020 and March 31, 2020.⁶ Depositions are happening remotely, or via Zoom. Alternative dispute resolution options have also been taxed by the pandemic, with mediations postponed or held via Zoom, and arbitrations postponed for many months. *See, e.g.,* Financial Industry Regulatory Authority’s (FINRA’s) most recent general notice regarding postponement of all FINRA hearings through July 3, 2020.⁷

Recent court orders reflect criticism of litigators who fail to cooperate to resolve technical or deadline-related disputes, or who unnecessarily tax the court’s limited resources to resolve issues that the courts do not view as truly “urgent.” Some judges have chastised attorneys for appearing before them by videoconference without proper business attire, and for failing to “mute” ambient sounds that distract from the proceedings. At least one notorious toilet flushing took place in the middle of a Supreme Court oral argument, which was itself historic because the lawyers and the justices appeared

6 www.ord.uscourts.gov/index.php/information-regarding-coronavirus-disease-covid-19-and-court-operations

7 www.finra.org/rules-guidance/key-topics/covid-19/hearings

via teleconference and the oral arguments were live-streamed for all to hear, along with the alleged flush. *See* “**Oyez. Oy vey. Was that a Toilet Flush in the middle of a Supreme Court live-streamed hearing?**” (Fred Barbash, May 7, 2020, reporting on *Barr v. American Association of Political Consultants* (citations omitted).)⁸

A court order from the Northern District of Illinois - widely revered as the “Unicorn Order” - also helps redefine our duty of professionalism. In that case, a plaintiff filed a motion for a temporary restraining order (TRO) and requested a hearing to prevent defendants from selling allegedly counterfeit products that infringed plaintiff’s trademarked unicorn designs. *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto* (N.D. Ill., No. 1:20-cv-01666 (March 18, 2020)).⁹ In the wake of COVID-19, the trial court postponed the TRO hearing by a few weeks. After the plaintiff filed a motion for reconsideration and requested an immediate hearing on its requested TRO, the court excoriated the plaintiff, quoting the early 20th century Secretary of State Elihu Root:¹⁰ “About half of the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop.” Judge Steve C. Seeger of the US District Court for the Northern District of Illinois wrote in the Unicorn Order, issued 30 minutes after plaintiff filed its second emergency motion, that the court’s resources should be dedicated to true emergencies: “The world is facing a real emergency. Plaintiff is not.” Unicorn Order, *supra*, at 2. The motion to reconsider was denied.

In the Southern District of Florida,¹¹ the trial court judge addressed an emergency motion for a protective order regarding the scheduling of a corporate designee deposition. In *C. W. v. NCL (Bahamas) Ltd.*, No. 1:19-cv-24441-CMA (S.D. Fla. March 21, 2020), the defendant filed “an **emergency** motion for a protective order...concerning a routine snafu over the date of a corporate representative deposition.” (Emphasis in original.) Magistrate Judge Jonathan Goodman of the US District Court for the Southern District of Florida was unimpressed, and he issued his own scathing opinion, where he reminded us to “keep-things-in-perspective.” Sage advice from Judge Goodman includes the following:

8 www.washingtonpost.com/nation/2020/05/07/toilet-flush-supreme-court/

9 aboutblaw.com/PDN and www.abajournal.com/news/article/judge-slams-emergency-motion-to-halt-knockoff-unicorn-art-amid-pandemic

10 history.state.gov/departmen-thistory/people/root-elihu

11 www.law.com/daily-businessreview/2020/03/27/not-a-proper-emergency-cruise-lines-motion-angers-judge-amid-coronavirus-pandemic/?slreturn=20200412162544

The entire world is in the midst of a pandemic. Thousands of people...have contracted the Corona virus and there have been hundreds of virus-caused deaths in the United States. Millions of Americans have been ordered to remain in their homes. Millions more have lost their jobs in the past two weeks. The stock market has taken a brutal beating in [recent]... weeks. Many people are scared. Others are panicked. Everyone is unsure about the future...We are living in an unprecedented situation. Nevertheless, the lawyers in this case have been exchanging snippy emails over the past two weeks over the scheduling of a corporate representative deposition. Moreover, defense counsel certified that this routine discovery dust-up is so important that it merits “emergency” status.

No it doesn’t.

[Emphasis added.] *Id.*, at 3. Citing that court’s Local Rule 7.1(d), Judge Goodman noted that a movant seeking emergency relief must certify that a “true emergency” exists because meaningful relief could not be provided on “*a critical, non-routine*” issue within seven days (emphasis added). Yet, “[a] spat over the specific day of a corporate representative deposition is hardly critical. It is, in fact, routine.” *Id.* Judge Goodman also expressed his “shock...that counsel could not on their own resolve the issue. Given the health and economic crisis we are in, not postponing the deposition scheduled for next week [was] patently unreasonable.” Notably, Judge Goodman also observed that it was “painfully obvious that counsel for both sides failed to keep their comparatively unimportant dispute in perspective.” *Id.*

In *Thomsen, supra*, at 4-6, Judge Acosta, like Florida’s Judge Goodman, implored the attorneys to keep things in perspective in light of the virus-caused deaths, loss of jobs and uncertainty about the future. The discovery dispute in *Thomsen* transpired while many Oregonians have been impacted by the current health emergency, which should guide counsel to grant reasonable extensions of time and other accommodations. Judge Acosta reminded us that “[c]ontext feeds common sense.” Judge Acosta’s Order, at 4.

Given today’s economic climate, professionalism requires us to think long and hard before filing an “emergency motion.” As Judge Elizabeth Stong of the federal Bankruptcy Court in the Eastern District of New York recently ruled: “Truly urgent matters can and will be addressed. But...not everything that feels urgent is. Pause before you file that letter or make that phone call. Be sure it’s urgent.” Aebra Coe, “Judges Warn It’s Not ‘Business as Usual’ Amid Pandemic.”¹²

12 www.law360.com/articles/1256415/judges-warn-it-s-not-business-as-usual-amid-pandemic?nl_pk=0416b9cc-c6bb-474e-

Guidance from Bar Associations

In addition to court orders, many state bar associations have issued statements to provide guidance on legal ethics in the time of coronavirus. *ABA Formal Opinion 482*, issued September 19, 2018,¹³ addressed professional conduct affected by “disasters.” *See also* the ABA’s *Five Pointers for Practicing in a Pandemic*;¹⁴ the Bar Association of San Francisco’s *Professional Conduct in Times of Crisis*;¹⁵ the Michigan State Bar’s *Ethics in the COVID-19 Pandemic*;¹⁶ and *Practical Considerations for Commercial Litigation during the COVID-19 Era*.¹⁷

Attorneys are reminded to avoid unnecessarily creating more stress through our actions. To maintain the integrity of the legal profession and promote civility, we are urged “to exercise professional judgment and... extend courtesies to avoid... exacerbating this already difficult situation... This is a time for our profession to demonstrate an even higher level of civility [and considerate responsiveness] without compromising our obligations to clients, [opposing counsel, and the tribunals before which we practice]. We [are reminded]...to not participate in any...strategy...or conduct that would put anyone at unnecessary health and safety risk.” *Professional Conduct in Times of Crisis Calls for Heightened Civility*, Statement by the Legal Ethics Committee of the Bar Association of San Francisco (March 27, 2020).¹⁸

Well before the COVID-19 outbreak, in person client-lawyer communications seemed largely antiquated. With email the preferred means of communication, a growing consensus among state bar association ethics committees around the country reminds us of the reasonable expectation of confidentiality and privacy in unencrypted email. From a practical standpoint, lawyers have been exercising “social distancing” with clients and third parties for some time. We have done so not by choice, but by necessity, primarily driven by the goals of increased productivity

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Continued on page 16

Professionalism

Continued from page 15

and reduced costs using digital technology tools for practice. With the coronavirus pandemic, most lawyers are already well-adapted and sufficiently equipped to serve clients from a (virtual) distance, despite some unusually drastic changes to our work environments. Now more than ever, it is critically important to ensure that such “distance lawyering” does not morph into “lawyer distancing” where we unknowingly or unintentionally become inaccessible or unresponsive to clients who are left underserved in these unprecedented times of calamity.

As we continue to navigate uncertain futures with fluid market volatility or other economic pressures, it may be tempting to delay the delivery of reassuring client status reports, or to otherwise knee-jerk react and accelerate disputes in order to sustain our own livelihoods. Yet, professionalism dictates that we strike a balance to continue to keep our clients informed and zealously advocate and protect our clients’ interests, while remaining ever mindful of the unusual circumstances that force us to redefine “business as usual.”

Going Forward in the Pandemic

While picayune discovery disputes, trade secret misappropriation, or intellectual property theft may seem like emergencies in the moment, they most certainly are not during an actual “health and economic crisis.” Especially in a pandemic, professionalism should guide a lawyer’s judgment to treat each other with candor, civility, and kindness whenever humanly and reasonably possible.

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Tips From the Bench

Continued from page 10

How do I pass on praise for court staff? Often, I have really good experiences and would like to show my appreciation.

A kind word is always appreciated and if the staff person is a JA or clerk, let the judge know. Contact Barb Marcille if the praise is for other courthouse staff. The courthouse staff sees many people at their worst and I have seen amazing acts of kindness by members of our staff. Please tell them when you are touched by the manner in which they do their job.

Does it make you crazy that lawyers are seemingly incapable of listening to an answer the first time?

When I stopped laughing, this struck me as a really good question. Some lawyers assume I did not understand when I don't decide in their favor.

While that is a possibility, in most cases, continuing to talk is not a good idea and

rarely accomplishes the desired outcome. Most judges will ask questions and will tell you when they are not following your argument. Stating it again, perhaps with more force or sounds, doesn't generally help. I hope it doesn't make us crazy as it appears to be routine. Learning to listen for understanding as opposed to preparing a reply is a skill we all need to more fully develop.

How will civil trials be scheduled after the court is back open?

For all those complex or specially assigned cases, set up a telephone conference with the assigned judge as soon as possible and get a new trial date. In most cases it will be after August. We had three set for the summer and they have all been rescheduled for the fall and winter. In other cases, Judge Bushong is working on getting cases that were postponed reset through a series of trial readiness conferences.

While certainty is desired, given our current state of affairs, all I can say is they are working on it.

Judges are free to do settlement conferences now and to the extent you believe a judge can be helpful, call or email the JA and get it set up. I have conducted several phone conferences and believe there are options with appropriate social distancing to conduct some settlement discussions.

As with most opinions, they belong to the person espousing the opinion and, in this case, they are my own. I have attempted to give you some understanding of how the court functions, but I dare say other judges may have other opinions, which is the best reason to check the judge's webpage, call the judge's JA or clerk and ask if you have questions. George Bernard Shaw once summed up his thoughts on communication by saying "The single biggest problem in communication is the illusion that it has taken place." During this time in our history perhaps we can learn to communicate more effectively with one another.

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COVID-19 Lawyer Stress: SOS

Continued from page 17

her organizing process look like a cakewalk, compared to how quarantined over-achievers have taken to their homes.

Laura Nelson suggests virtual wine tasting (www.ardenpdx.com/virtual-wine-tastings) and acrylic paintings of pets.

How about shopping, that age-old-hobby? Ginger Skinner reports, “There are three new Porsches in my neighborhood. I think people are spending money to have a sense of control.”

Valerie Sasaki cut her own hair, and was so excited about her success that you would have thought she had won the lottery.

Both Ginger Skinner and Joe Willis recommended the same bird feeder - that crazy one that spins squirrels right off of it. That’s what passes for entertainment in this day. Not to be outdone, Lane Shetterly reports, “I’ve come to look forward to weeding on Saturdays.” And there’s a lot of truth in this: take joy in small things. But it is good that Lane is outside stretching his legs, when Francine Shetterly is baking and cooking more, to which Lane states, “I heartily endorse.” Indeed, my own 12-year old daughter, beyond bored, recently cooked a four-course meal for me and my husband, which I also “heartily endorsed.”

Cooking is a very popular stress-relieving hobby. Bonnie Richardson shares, “It’s actually therapeutic to me and reminds me of the time before kids when I used to cook all kinds of wonderful meals from scratch and on a super budget, feeding all of my law school friends who were my family back then.” Rosemary Colliver is also cooking more: “Super fun to spark up the BBQ for lunch and grill some brats!” And Hilary Newcomb is seizing the day when she says, “It’s fun and delicious to bake a cake every week! Sheesh, why not?”

Pilar French finds her entertainment with podcasts, “I love them - you can exercise, clean the house, cook, garden, and listen to some great free entertainment. My favorite is Business Wars: the rise of Patagonia and The North Face and every single season of American Scandals - lots of white collar crime and governmental corruption historical stories.” Carl Bjerre is another podcast fan who says, “Walks are great, especially with the wonderful toasty Spring weather that arrived recently, and especially with podcasts or a piano piece.”

Anne Steiner listens to music with her children, taking the opportunity to teach them about The Beatles, Led Zeppelin, Rolling Stones, and other eras and genres of music, like Motown.

“I try to do things that make me laugh, like watching videos or TV shows,” Holly Somers says (another Peloton devotee, but more about Peloton later). Check out SGN (Some Good

News) with actor John Krasinski on YouTube, for something that will make you smile - although it might also make you cry. It is heartwarming.

Steve Kantor, ever the humanitarian, wants to know how he can help others during this crisis, because he “can’t sew,” so aside from making face masks, what are the options? And while this is certainly admirable, it’s also important to take a step back from such pressures and take a time out. However, always the social creature that he is, Steve has also enjoyed lunches in his neighborhood cul-de-sac, with everyone at an appropriate distance, but also enjoying each other’s company.

Eric Wieland is another attorney who has found that assisting others helps to reduce his stress: “Being of service to other people gives you a sense of meaning and purpose, and that service can look different for everybody.”

And maybe it’s not picking up a new hobby, but dusting off an old one that helps with stress. The Honorable Stacie F. Beckerman reports, “I have returned to playing the piano after 30 years, finding music to be my most effective stress reliever right now.”

Parna Mehrbani’s hobbies include a combination of activities and rest: “I’m baking, finally learning how to use my sewing machine, knitting, planning knitting projects, just sitting, spending time with my plants, maybe over-watering them? Reading, cleaning, breathing. I have nowhere to go, which I feel like is a place I’ve been looking for, for a long time.”

My favorite story about a hobby was shared by Joe Willis: “Someone suggested doing puzzles. Our family always had one spilled out on a dedicated card table for family gatherings. It would generally be completed with the help of the many gathered. [My wife,] Judy and I tried it. Finished one over more than a week. Next was harder and took longer. In part because there were three missing pieces. One was at a crucial point for finding others. I spent several frustrating hours and gave up. We finally laid all pieces to discover three missing pieces. I accused the little terriers of eating them but they gave their cutest looks of innocence. Who knows? My take on all this: Puzzles are not relaxing.”

Get on the Move (Just Do It) or Relax (Don’t Do It)

You can go one of two ways: (1) Look at this extra time I have, now that I don’t commute, brush my teeth or hair, or care what I wear? I’m going to exercise like crazy. Or the second option is (2) We are all doomed, so I better take this entire bag of chocolate chips, make a bunch of gooey cookies, and eat them all in one sitting, because I haven’t worn anything with a waistband for a month and I’m in denial about the consequences of what I eat.

Never before have we had access to more free online exercise classes. And there’s a

valid reason Peloton’s stock has increased - people love it, like it’s an elixir. “People are exercising in my neighborhood like their life depends on it,” says Ginger Skinner. Bob Banks, (yet another Peloton devotee, by the way) takes a drive with his other bike to unpopulated country roads to ride outside Vernonia, Mountaindale and North Plains. Sara Butcher walks to and from work, both to avoid public transportation and for her mood, saying, “It is very helpful in dealing with stress and just being outside helps elevate my mood.”

Julie Engbloom is an inspiration for multi-tasking, when she shares, “Now I’m lunging around the house with leg weights on, doing bicep curls at my desk, and riding my stationary bike most days. It is so much easier to fit it in when there’s no commute and everything else that goes with getting oneself to and from the office every day.”

Robert Koury has focused some energy on exercise, “I have been trying to increase my step count every day/week (with mixed success). I have a good friend who is doing the same thing and some evenings I drive to his house and we walk his neighborhood (on opposite sides of the street) and catch up. He has taken this walking thing to a whole new level even hitting over 26.2 miles of walking in one day.”

Although, maybe the emphasis on exercise right now should be exercising for our mental health, more than for our physical health. It’s not a competition. This is a massive stress test in our lives, and there is no grade on your exercise plans. We each need to do what we can to get through, so whichever path you choose, just try for some moderation.

But let me submit another idea: Moving doesn’t necessarily have to be physical. Move out of your comfort zone. If you move in the same way, all of the time, physically or mentally, that can create a rut where you are not growing.

Author Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School. She is the author of *The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy* (ABA 2017) and *Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy* (ABA 2019). Brown wrote an article for the April/May 2020 *ABA Journal* titled, *How to Cross-Train for Peak Lawyering*.

Brown discusses how athletes use cross-training to become better athletes, and lawyers should do the same. “Real athletes and performers - and their employers and coaches - attend to numerous other facets affecting individual performance. These drivers include emotions such as fear, anxiety and self-doubt; challenges like ego or temper; the realistic need for rest and recovery; the ability to process feedback and critique; and the capacity to rebound from losses and mistakes.”

“We can challenge and inspire each other to attend to multiple well-being dimensions on a daily, or at least weekly basis. We can carve five minutes, 15 minutes, maybe even 30 minutes out of our billable calendars each week to:

- Acknowledge a work task we find satisfying and enjoyable.
- Give thought to one financial goal.
- Check in with our emotions.
- Think about moving our physical bodies in a different way or at a different time.
- Try one healthy(ier) food or drink option.
- Learn one new thing.
- Ponder our purpose.
- Connect with someone familiar or new.
- Check out something cultural.
- Do something artistic.
- Rest and recover like athletes and performers do.

*** This endeavor does not have to be expensive or time-consuming. It *does* have to be deliberate, intentional and inclusive.”

So many options, and you now have the time to try one or more.

Namaste Ohhhhhhhmmmmmmmmmm (Get it....Nama Stay Home. <groan>)

Tied with walking the dog, meditation/mindfulness was the most popular tip I heard from attorneys for a tool that helped with the stress of the times. Although, one could easily argue that walking your dog is indeed a type of meditation, in and of itself, so maybe that’s why they were so close. And before I leave the topic of pets, how many people have new puppies right now? Tim Resch’s justification for that adorable new puppy was, “When would we all be at home to train a puppy?” Kali Jensen calls those animals, “Pandemic puppies.”

Tanya Durkee Urbach shares her experience with meditation, “I have found such joy and contentment from sitting in gratitude for this moment right here right now. And, knowing I have had 10 minutes of silence helps me face what I need to do.”

Lawyer/coach Jill Long offers this easy meditation called, “Three Breaths.”

1. “Take a first deep breath in. As you exhale acknowledge what’s happening for you - name it in your mind (I’m anxious, I’m scared, I’m overwhelmed, etc...).
2. Take a second deep breath in. As you exhale really land in your body - focus on feeling the weight of your feet on the floor or if sitting, weight of your seat in the chair, let your arms hang at your side and feel the weight of gravity as they hang.
3. Take a third deep breath in. As you exhale turn your attention to what’s next (the next thing in your day: a meeting, making dinner, not yelling at your kids, etc.) and focus on how you want to show up. It can be

helpful to evoke a quality in your mind, like calm, loving, compassionate, etc.”

Jill also uses a daily gratitude journal, as a form of meditation and stress relief.

Daniela Holgate suggests a midday yoga break in your backyard, or meditating in front of an open window.

Take a Time Out

It is entirely okay to not click on the news as soon as you wake up. Could it be possible that checking that continuous count of people dying from COVID-19 might not be the very best option for starting your day? But as lawyers, we crave information and knowledge, and have an expectation that press briefings should help us to better understand what is occurring. We want instructions. We want knowledge. We want to know why Congress cannot take charge, or why PPE’s are so difficult to obtain. But satisfying answers often are not provided (don’t even get me started on bleach), so taking a step back might be just what we need.

Denise Gorrell, with two small children, gives herself a break by hitting that glorious snooze button on the alarm, because she can afford to take those few extra minutes, with the flexibility of working remotely.

Bob Banks says, “One thing not to do: look at your retirement account every day!”

Administrative Law Judge Holly Somers says she limits the amount of news she reads or watches to one hour per day. And it is too easy to get sucked into the news, due to our very nature as lawyers, compelled to gain information, isn’t it?

Sonia Montalbano shares how unplugging helps her, “I completely unplug for at least half a day on the weekends, always at the end of the day. No phone, no computer, no TV. That brings my stress level down significantly. It’s hard to do because we feel so isolated. However, the first time I did that I woke up the next morning feeling better than I had after a one-week vacation.” Think about the fact that while we are quarantined and isolated and reaching out through technology to connect, technology can also be a large psychic drain, so taking a break from it can actually reduce stress.

Jan Friedman shares, “Do the best you can with work and clients - then allow away time even if it’s not physically away. Remember that we are resilient, we can change, we have this opportunity to do so - to go through the portal.”

Kali Jensen sums it up perfectly: “Be forgiving with yourself, especially when you see others who have more free time now. Don’t expect yourself to learn new skills or accomplish incredible feats during this time. Many of us are working harder now than we were before, and we need to remember what a great contribution that is, and that we will come out of this

Continued on page 20

COVID-19 Lawyer Stress: SOS

Continued from page 19

better lawyers than we were before. If you have the time to develop new skills or do cool new stuff, that's great - but it's not expected. Taking care of yourself is expected. Treat yourself like you're someone you are responsible for taking care of."

Structure or Free-Flow?

Each of us had a routine for our workdays. Often those routines varied somewhat, but getting to the office at a certain time, pouring that cup of coffee, saying hello to your colleagues - there's a certain rhythm and pace that kept the beat of your day. With working remotely, does your day have that same type of structure, or is it more like a jazz scat routine where the rhythm is a challenge to follow? Do you ever get to the afternoon and think, "Hmmm... maybe I should make some effort and brush my teeth today?" (That can't be only me.)

Nellie Barnard has found that structure is important to her, and her young children: "My daughter comes and gets me at 5 p.m. every day and I am 'off the clock' until my kids go to bed. This and similar daily rituals are very grounding for us. We also read a book as a family in the morning after breakfast and my three-year-old walks me to work in the morning down the hallway."

Productivity Coach Heather Decker, JD, says, "My main coaching advice is to reduce expectations of ourselves and others. Identify your most important task to complete each day and get that done. Prioritize remaining tasks, and if you can complete a couple more tasks each day, bravo!"

Laura Nelson suggests you change your work location to break up the monotony. She moves throughout her house during the day, from the kitchen

table, to the basement, and then to the office in her attic. I can see how this would be helpful, because at our "normal" offices, one can take a break by walking down the hall and talking to a colleague, so take a break and move around.

The Honorable Stacie F. Beckerman takes her laptop outside to enjoy the sunshine while she works. A little Vitamin D is always a good thing.

Chris Ray is a fan of structure: "Converting office routine and organizational mechanics were a definite adjustment, but keeping a schedule is key. I can start work sooner than having to drive in, but need additional time at lunch to take Bear (miniature Australian shepherd) on a walk away from everyone. For me, adding structure and calm to the chaos is helpful."

"Take it one step and one day at a time. Go slow and take breaks," says Heather Decker. Because it is not just as simple as just taking care of ourselves, is it? As Judge Katherine Tennyson, Ret., explains, "This is not just happening to us, it is happening to the law firms, the employees, the clients who are in paralyzing positions, and everyone. This is trauma and can feel like an unrelenting sadness." Accordingly, experiencing substantial stress is to be expected. But with our take-charge lawyer genetics, we do have some control and we do have some choices.

Conclusion

We are all in the same ocean paddling as fast as we can, but we are just in different boats right now. Some law practices are busy and thriving now, and some are making difficult financial choices. When I asked one friend how she was doing, she responded, "I vacillate between coping remarkably and failing miserably." Another responded, "I have been on a roller coaster...

some good days; some bad days." And yet another said, "But in an honest moment I would say that like other tragedy-like periods in my life, my personal go-to mode is to lean in and plow through it with action (being called to the moment), and in the process I don't really take good care of myself. The signs are all over the place, but my brain instinctively works that way. The intentional piece is real - the will is what I am fighting now." And it's not just our stress, but stress for our families: "It's been a process to digest, this entire process so far, and I cried when they announced school was closed for the year." Yet another attorney reported there can be moments of peace, "but then my little energy of flame goes out and I am back to barely keeping my head above water." Another attorney said, "It has been like watching a tidal wave come in to shore and now being tossed about as the wave hit the shore, waiting to resurface to catch my breath." And the stress is not just for what we are enduring now, but what is to come. Another friend shared, "Right now, I am stressed about going back to the office before there are effective treatments or a vaccine."

Can't we all identify with these statements - some days, or some moments, seem fine, or even if they are not, we take action and plow through? That's what problem-solving lawyers do, right? But then I walk outside and see two strangers walking, tear up with anxiety, and I want to flee, not knowing if they are carriers or not. That's not healthy, right? But we don't have control right now and the truth is, we never did. Keep talking to others. Keep connecting in your own way. Keep trying. It's okay to ask for help, particularly when we are all missing or grieving something. Strive for progress, not perfection - and we will be together soon.



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