

An Unexpected Journey: Navigating the Road with the PLF

by Emilee Preble
MBA Secretary and Excess Program Lead Underwriter, PLF



*"It's dangerous business...going out
your front door."*

J.R.R. Tolkien,
The Fellowship of the Ring

I've thought about that quote a lot over the past month. This brave new world we are all learning to navigate does seem more dangerous and more uncertain than any time I can recall. In the space of a few short weeks, we have all been forced to reimagine how we live our lives – from buying groceries to interacting with our friends and neighbors to (re)learning how to work remotely. I've been at the Professional Liability Fund (PLF) nearly 10 years now, and during that time I had found a rhythm to my work - how I organize my day, how I connect with my colleagues, when I answer phone calls, and so on. On March 16, that all changed. Suddenly, I, like many of you, had to quickly figure out how I was going to shift all of those patterns from my office in Tigard to my home in Southeast Portland.

As I write this article, I have been working from home for five weeks - along with the entire staff of the PLF. In that time, I've seen the still life images of children and spouses sitting framed on a colleague's desk come alive during video meetings, and the once-static cuddly images of beloved pets now provide a colorful soundtrack to group meetings. Along with the challenges of moving all my work online, there are these splashes of color, of reality, that have - perhaps unexpectedly - made me feel closer and more connected to my colleagues than I did when we were a few offices apart.

The work we do at the PLF is focused on Oregon lawyers. From handling claims to providing practice management assistance - we are always aware of the unique role the PLF plays in this legal community. As part of this article, I thought I would spend some time with my colleagues in different departments of the PLF to see how they see this COVID-19 pandemic is affecting Oregon lawyers.

Shari Pearlman, Assistant Director/Attorney Counselor, Oregon Attorney Assistance Program (OAAP)

When I connected with Shari Pearlman at the OAAP, it was one of those perfect spring days outside, and she was talking with me from her porch. She noted that in the first few weeks of the shelter-in-place order, the phones at the OAAP were quieter than normal. She thought this was likely because everyone was busy trying to figure out their work-from-home plans and beginning to orient themselves in this new reality. After this initial period, though, the phones did start to ring again in earnest.

Shari reflected that, even during this time, the attorneys she and her colleagues are working with are concerned about familiar issues

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like anxiety and stress. But those issues are manifesting differently than in ordinary times because so much of the anxiety today stems from uncertainty and unknowns - stress related to finances, worry for the future, concern for staff. Still, in spite of all of these concerns, Shari described a budding resiliency. People seem to be open to being more personal now and sharing more. Perhaps it is because we are not all at our desks in our suits, she mused. There is a rawness to these less-polished interactions that, she thinks, could positively impact the legal community socially and professionally in ways we haven't yet imagined. Unexpected silver linings.

Before we got off our call, I asked Shari what other things the OAAP was working on to help Oregon lawyers during this time. She said there are ongoing groups and recovery meetings taking place all the time - via video and phone conferencing, of course! The attorney counselors were excited to develop and launch a new blog, Thriving Today (www.oaap.org/thriving-today), that is focused on sharing resources to enhance well-being. And, as always, the OAAP is available as a resource to Oregon lawyers - so please call!

Madeleine Campbell, PLF Director of Claims

Madeleine Campbell and I connected through a video meeting to chat about what was happening in the PLF Claims Department. The first thing she wanted me to share was that the PLF is open, and the claims department, though working remotely, is still fully operational and handling claims against Oregon lawyers as normal.

Madeleine also noted that the first few weeks of the shelter-in-place order saw a drop in telephone calls to the claims department. That call volume, though, has picked back up in the past several weeks.

I asked if there were any reflections she could share that might help lawyers during this time. Her advice was to really think about communication. Consider how you as the lawyer can best be reached, and be sure that your clients are aware of how to reach you. Now is also likely a great time to check in with clients you may not have heard from in a while. Also, she recommended that lawyers pay especially close attention to documents - particularly those with e-signatures - to make sure that the documents being finalized and sent out are indeed the final version. Since most everything is being done electronically, and remotely, it could potentially be more difficult to track document versions, so keeping a careful eye is important.

Like Shari, Madeleine did see some silver linings that may come out of this time. The claims department has moved forward with some administrative efficiencies that will likely stay in place even after this pandemic is over. For example, the PLF website now has a way for lawyers to self-report potential claims. This feature had been contemplated for a while, and with the sudden shift to working from home last month, the time seemed right to move forward.

Rachel Edwards, PLF Practice Management Attorney (PMA)

When I caught up with Rachel Edwards for this article, she began with a now familiar story. During the first week or so of the shelter-in-place order, things were pretty quiet. By the second week, however, calls and emails picked up. Rachel noted that in the first several weeks, many attorneys were contacting her to discuss office systems and other topics related to remote work. Remote working strategies and best practices were such a hot topic that Rachel and Hong Dao, another PMA, gave a webinar on tips and strategies for working from home. They covered practical issues like video conferencing and remote connections, and gave advice on how best to set up your home office (hint: make it as much like your work office as possible, and lighting is key!).

If there was a silver lining for Rachel, it might be that the lawyers contacting her seem to be more cautious, more reflective. Perhaps it is the broader uncertainty in the world, but it seems that some of that uncertainty is manifesting in a willingness to pick up the phone and ask a question. In the hustle of our pre-pandemic world, those pauses maybe seemed like an unwelcome distraction. There is more time now. Time to take a moment and, perhaps, if there isn't a clear answer, our natural instinct to pick up the phone and connect with someone who could point out a resource is exactly the right thing. We all need support from time to time. Rachel is glad she can be that kind of resource at the PLF.

Nena Cook, PLF Chief Executive Officer

When I spoke with Nena Cook, she was finishing up a walk where she was listening to the PMAs' webinar on tips for working from home. She was excited about the information the PMAs were sharing and glad that the PLF was focused on figuring out different ways to serve Oregon lawyers during this time.

Nena started her tenure at the PLF in January of this year, and she hit the ground running. No one could have predicted that three months into 2020 we would be faced with a global pandemic. Lawyers have certainly

Continued on page 2

mba|CLE

Due to the COVID-19 situation, the MBA will be offering all seminars **ONLINE ONLY** through May 31. To register for a CLE seminar, please see p. 3 or visit www.mbabar.org.

MAY

5.12 Tuesday
Arbitrations in Oregon: The What, Where, Why, and How
Judge David Rees
Brad Krupicka
Kirsten Rush

5.26 Tuesday
Spousal Support Awards: Post-TCJA and Other Thorny Issues
Judge Patricia McGuire
Judge Eve Miller
Judge Keith Raines
Judge Todd Van Rysselberghe
Judge Kathryn Villa-Smith

JUNE

6.17 Wednesday
How to Succeed in Mediation: Tips from Mediators
Judge Jean Kerr Maurer
Chris Kitchel
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Remembering the Courthouse

As we prepare to say goodbye to 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.

In This Issue

Announcements.....	2
Calendar.....	2
CLE.....	3
CourtCare Campaign Suspended.....	4
Ethics Focus.....	6
Around the Bar.....	8
News From the Courthouse.....	10
Tips From the Bench.....	10
MBABoard Directors & Officers.....	11
YLS.....	12
The Corner Office.....	15
Classifieds.....	16
Pro Bono Thanks.....	16

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Navigating with the PLF

Continued from page 1

not escaped the sudden shift in the workflow and economy these past few weeks. With these dramatic changes have come some important questions for the PLF that have never been asked before. Those questions landed right on Nena's desk.

In late March, Nena received a few inquiries about the upcoming PLF assessment second installment deadline on April 10. Lawyers were concerned about their ability to pay while continuing to practice. Over a few days, the calls and emails increased, and Nena set to work marshaling the PLF managers and Board of Directors to look into possible solutions. Normally, changes cannot be made to the PLF installment amounts or deadlines without approval of the PLF Board of Directors and the OSB Board of Governors - a process that can take some time. With the payment deadline less than two weeks away, it seemed a stretch to pull together an approval before the deadline.

Nena said this question was really forefront on her mind. So one morning she woke up early and decided to read through the PLF Bylaws and Policies to see if there was anything in there that could help. That early morning reading led her to a provision that gives the PLF CEO the authority to "take reasonable and necessary actions, including extending deadlines and suspending late fees, if national or statewide events occur that severely disrupt the normal course of business." As best we can tell, this policy has never been utilized before, but our Board quickly agreed that the CEO did have the ability to modify the assessment deadline during this time.

That day, Nena announced an extension of the April 10 payment deadline by 60 days without charging any late fees and still allowing lawyers to continue to

take advantage of the installment plan if the full amount of the second installment is paid on or before June 10.

We obviously do not know what will happen in the days and weeks ahead, and the PLF cannot promise any other changes to our assessment in the future. With this in mind, though, Nena said that figuring out a way to help Oregon lawyers *right now*, even in this small way, felt like a huge win. When I asked her what she would like to remind lawyers about the PLF, she said that we are here and we are responsive. Whether that's assistance with coverage questions, potential claims, practice management issues, or OAAP counseling - the PLF is here to help.

In Closing


I am grateful to my colleagues for sharing their reflections, and I hope you found them valuable. I've always been proud to work at the PLF because, as I think you can glean from this article, we place a great deal of focus on ways we can help Oregon lawyers.

As I am writing this in April, it does still feel like dangerous business to go out my front door. Within that wider world, though, we are also experiencing pockets of safety and community that, over distance, are bringing us closer together. We've had to figure it all out quite quickly. There hasn't been much time to pause and catch our breath. We are all simply trying to do our best. I will conclude with another offering from Tolkien that, to me, so aptly captures how I feel in this moment.

"I wish it need not have happened in my time," said Frodo. "So do I," said Gandalf, "and so do all who live to see such times. But that is not for them to decide. All we have to decide is what to do with the time that is given us."

J.R.R. Tolkien

The Fellowship of the Ring



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Calendar

MAY

25 Monday
Memorial Day - MBA Office Closed

23 Thursday
Oregon Women Lawyers' Annual Fashion Show Benefit
www.oregonwomenlawyers.org/events

JULY

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

20 Monday
New Central Courthouse opens

AUGUST

6 Thursday
Battle of the Lawyer Bands
www.mbabar.org

mba | ANNOUNCEMENTS

Take a Matter that Matters

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

Noontime Rides

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.

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The MBA will apply for 2 hours of general OSB MCLE credit unless otherwise noted; Washington credit may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held at the World Trade Center, 26 SW Salmon, Portland.

Arbitrations in Oregon: The What, Where, Why and How

Tuesday, May 12 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

From mandatory court-annexed arbitration under ORS 36.400, et seq. to private arbitration through AAA, ASP or JAMS, arbitration is playing a larger and larger part in civil dispute resolution. With the US Supreme Court's decision to endorse class action waivers in Epic Systems Corp., arbitration has become even more prevalent. The recent trend of legislative barriers to private arbitration - including ORS 36.620(5) - are unlikely to turn the tide. Hear from Multnomah County Circuit Court **Judge David Rees** and experienced members of the plaintiff and defense bar, **Brad Krupicka**, Littler Mendelson, and **Kirsten Rush**, Busse & Hunt, on the theory, procedure, and practical issues of arbitration, including key issues in the drafting and enforcement of arbitration agreements.

For more information: Contact John Berg, Littler Mendelson, at 503.889.8863. 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.

World Trade Center, Mezzanine

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.

Spousal Support Awards: Post-TCJA and Other Thorny Issues

Tuesday, May 26 3-5 pm

Online Participation Only

Members \$60/Non-Members \$95

Attention family law practitioners of all experience levels! You will not want to miss this discussion of spousal support issues by our tri-county panel of judges, including **Judges Kathryn Villa-Smith** and **Patricia McGuire** of Multnomah County Circuit Court; **Judges Todd Van Rysselberghe** and **Eve Miller** (Senior Judge and mediator) of Clackamas County Circuit Court; and **Judge Keith Raines** of Washington County Circuit Court. This distinguished panel will discuss issues that impact your trial and mediation practices, including:

- How best to present spousal support cases for trial post-Tax Cuts and Jobs Act
- Differing approaches between the counties
- Modifications of spousal support
- Review of statutory factors
- Numerous other issues you navigate daily in your spousal support practice

For more information: Contact Shannon Hall, Gevurtz Menashe PC, at 503.227.1515. For registration questions, contact the MBA at mba@mbabar.org.

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5/12 Arbitrations in Oregon: The What, Where, Why and How

Online registration only - link will be emailed

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5/26 Spousal Support Awards: Post-TCJA and Other Thorny Issues

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Photocopy registration and mail payment to:

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Unable to attend?
Live and archived webcast options are available
at www.mbabar.org/cle

CourtCare's 17th Annual Fundraising Campaign Suspended

by Jim Oliver
MBF CourtCare Campaign Committee Chair

Normally this is the time of year when the Multnomah Bar Foundation (MBF) calls on the Portland legal community to support its innovative and nationally recognized Multnomah CourtCare® program, but as we all know, these are far from normal times. During the unprecedented circumstances due to the COVID-19 pandemic, and considering all the ways our community has been impacted, the MBF Board has decided to suspend the CourtCare fundraiser for the year. We encourage everyone

to CourtCare this year. Our community needs your help, and we are all in this together.

For those who do not know, or for those who need a refresher about CourtCare, the program provides free, high quality, drop-in childcare for parents with court business. In turn, access to justice is increased by removing the barrier of childcare for parents seeking assistance from the court, and the administration of justice is improved by reducing distractions in the courtroom and reducing the number of reschedules and

We are one of the few jurisdictions in the country that provides this essential service.

Parents consistently express gratitude for the program:

A parent in January 2019 said "I am so thankful that my kids didn't just hear what I went through, they are already freaked out enough." Another mom was able to support her husband because of CourtCare. She stated, "I wanted to be with my husband for his sentencing and had no other place for our baby to stay."

Kids love the program, too. One happy customer reported: "I love all the cows, you always give me oranges and crackers, and I only get oranges here. I love oranges." Another expressed that "this is my best place to go."

Recently, according to Crystal Ross, the director of the Family Relief Nursery and interim director of Drop-In Services for the Volunteers of America (VOA), the organization the MBF partners with to operate CourtCare, "CourtCare often has parents who show gratitude for the program, but one parent in particular expressed her gratitude in a big way. Stephanie (not her real name) has two grown sons about to leave the house and embark on a new journey



New CourtCare space nearing completion

as adults. When the boys were three and four years old they were living in Portland and going through a very difficult time. Stephanie juggled several court dates, at risk of losing custody of her boys, and unsure of what the future held for her family. She stumbled upon CourtCare while attending her court appearances and expressed instant relief that childcare was available and one less thing she had to worry about. Stephanie dropped her boys off at CourtCare with two teachers who the boys immediately formed a bond with, helping Stephanie feel even better about having to go to the courthouse so often. Fast forward to January 2020; Stephanie drove five hours from her home in Washington State with a purpose. She didn't know if CourtCare was still in

existence, but said she was so happy to find the program in the same room she remembered. She also received another pleasant surprise. The two teachers who welcomed her sons with open arms over 15 years ago were still there. She gave them both hugs, thanked them for caring for her boys during the most challenging time in her life, and let them know that CourtCare was there for her family when she needed it the most. Her sons were also featured on the very first brochure for CourtCare and she requested a copy to include in a scrapbook she was putting together for them when they move out of the house. Stephanie became a foster parent shortly after gaining full custody of her sons and has a heart for

Continued on page 16



MULTNOMAH CourtCare
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who has donated to CourtCare in the past to identify a charitable organization in your community to support in lieu of donating

no-shows because childcare is not available. In the words of Judge Katherine Tennyson "CourtCare is a service that every court needs."

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Ethics Focus

**Trust Accounts:
What Goes
In and What
Comes Out**

by Mark J. Fucile
Fucile & Reising LLP



Trust accounts are an essential - but very technical - part of private practice. We have a general duty under RPC 1.15-1 to maintain a trust account to hold client and third-party funds separate from our own. RPC 1.15-2, in turn, addresses "IOLTA" accounts in particular and in considerable detail. The OSB *Ethical Oregon Lawyer* contains an entire chapter on trust account administration and the OSB Professional Liability Fund has a variety of practical

resources on that same topic available on its website.

In this column, we'll take a narrower focus on two fundamental questions of trust account management: what goes in and what comes out? Although simple in concept, both can be much more nuanced in practice. With both, we'll focus on the very useful guidance provided by a series of ethics opinions that are available on the OSB website.

What Goes In?

RPC 1.15-1(a) outlines the basic rule for what goes into a trust account - *other people's money*:

"A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate 'Lawyer Trust Account' maintained in the jurisdiction where the lawyer's office is situated."

Common examples of funds that must be deposited into a trust account are advance fee deposits and settlement funds payable to clients. With the former, RPC 1.15-1(c) explains that an advance fee deposit remains the client's money until earned by the lawyer. With the latter, RPC 1.15-1(d) notes that funds belonging to clients must be

disbursed "promptly" once the check involved has cleared. A less common, but still recurring, example is an overpayment by a client on a bill - with the overpayment being refunded to the client and the lawyer's earned fees being transferred to the firm's business account.

RPC 1.15-1(b) allows a lawyer to deposit the lawyer's own funds into a trust account "for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account[.]" The same rule cautions, however, that any such deposits must be limited to the "amounts necessary for those purposes." OSB Formal Opinion 2005-145 (rev 2016) prohibits additional "cushions" beyond service charges (or minimum balance requirements) because that risks defeating the overdraft notification protection required of all trust accounts.

What Comes Out?

In some respects, the question of "what comes out?" is simply the converse of "what goes in?" In other respects, however, this second question is more difficult. We'll look at three recurring examples illustrating the latter.

First, with advance fee deposits, RPC 1.15-1(c) requires that fees be transferred to the lawyer's business account once they are earned. OSB Formal Opinion 2005-149 (rev 2016) permits this to occur when the

client is billed. The opinion elaborates that "[a]lthough not required to do so, Lawyer may wait a reasonable period of time - such as 30 days - after Client has been invoiced before withdrawing earned funds." This practice effectively allows a reasonable period for the client to object or otherwise question a particular bill before earned funds are withdrawn. The opinion does not, however, require a lawyer to return funds to trust if a dispute over a bill arises later - provided the lawyer was not aware of the dispute at the time the funds involved were withdrawn.

Second, RPC 1.15-1(e) addresses disbursement issues when more than one party claims the funds involved:

"When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute."

OSB Formal Opinion 2005-68 (rev 2016) discusses this rule in detail in the context of settlement proceeds from litigation. Mirroring the text of the rule, the opinion counsels that undisputed portions

should be distributed pending resolution of the claims to the disputed portions. The opinion also emphasizes that the lawyer holding the disputed funds is not cast in the role of adjudicator of the competing claims. Rather, the opinion advises that the lawyer must either continue to hold the funds in trust while the claimants attempt to resolve their differences or interplead the disputed funds into a court.

Third, when disbursing money from trust, we need to make sure that the corresponding inbound check involved has cleared. If not and the inbound check is later declared uncollectible, then the law firm may have unintentionally but effectively given other clients' trust funds to the person paid with the outbound disbursement. In other instances, the same scenario may result in the trust account being overdrawn - triggering an accompanying notice by the bank to the OSB. Although governed generally by Federal Reserve regulations rather than the RPCs, banks vary on when a check is considered "cleared" and this is not the same as a "provisional" (and reversible) credit a bank may accord a business customer like a law firm. In short, a firm needs to be certain an inbound check has cleared before disbursing the corresponding outbound funds.



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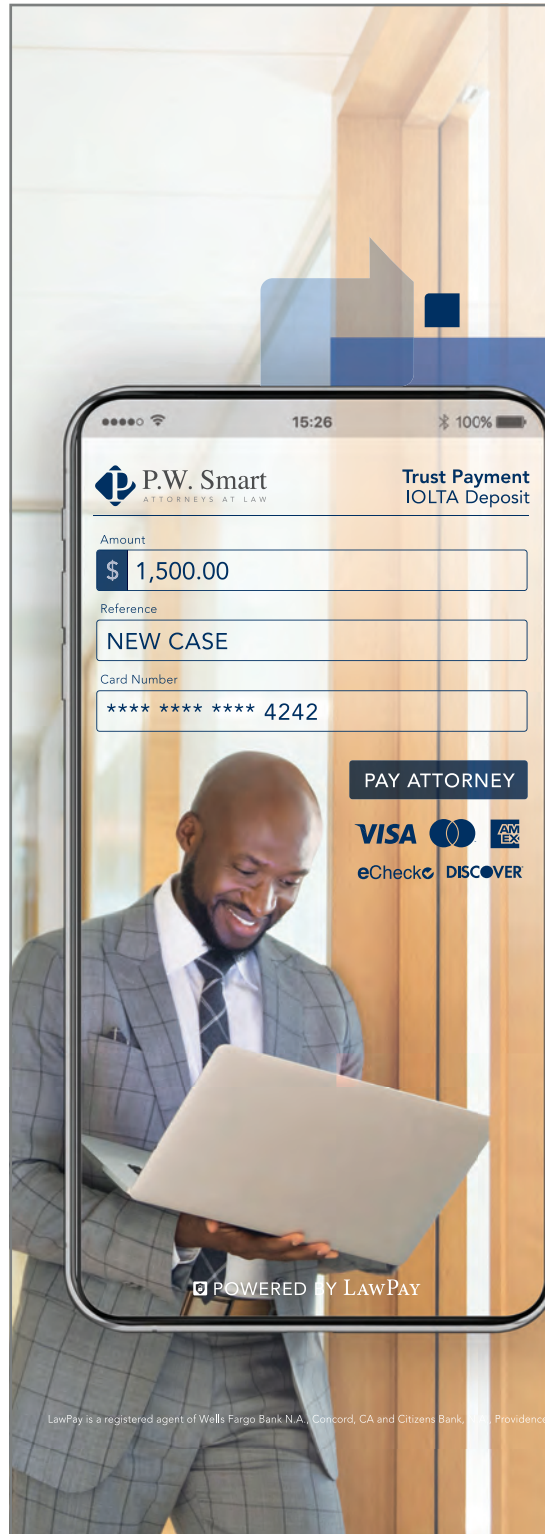
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Around the Bar



Kay Teague

Rose, Senders and Bovarnick

The firm is pleased to announce that **Kay Teague** has joined the firm as an associate. Teague has been a lawyer since 2016. She has a degree in Spanish from Michigan State University and a JD from Lewis & Clark. She has considerable experience with medical negligence and other tort cases. Teague is also looking forward to learning about railroads and the FELA. She is dedicated to her community and volunteers at the St. Andrew Legal Clinic and is a mentor for 1Ls at Lewis & Clark Law School. Teague's compassion, skills and work ethic will help RSB continue to provide excellent service to our clients. Teague's skills at collaboration and sense of humor will help RSB do the work we do together for our clients. Kay can be reached at kay@rsblaw.net or 503.227.2486.



Lauren Bernton

Tonkon Torp LLP

Lauren Bernton has joined the firm as an associate in the Litigation Department. Her practice is focused on resolving commercial disputes.

Bernton works as an advocate for multinational companies, regional companies, and local businesses to help them achieve their goals through trial and in administrative settings. Prior to joining Tonkon Torp, she was an attorney with the Eugene, Oregon law firm Gleaves Swearingen LLP. Bernton graduated Order of the Coif from the University of Oregon School of Law.

Christopher Morehead has joined Tonkon Torp's Labor & Employment Practice Group. Morehead works with local, regional, and national employers in industries such as banking, manufacturing, retail, hospitality, and craft beverage to help them



Christopher Morehead

solve complicated employment matters and comply with Oregon employment law.

Morehead also has substantial experience representing employers in state and federal court, and before Oregon's Bureau of Labor & Industries (BOLI) and Equal Employment Opportunity Commission (EEOC) offices across the United States. He graduated cum laude from Lewis & Clark Law School.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to mba@mbabar.org.

MBF Thanks CourtCare Donors

The MBF would like to express its gratitude for recent donations to CourtCare: The Attorney Admission Fund, \$45,000, Troutman Sanders LLP, \$2,500, and in late 2019, the OCF Joseph E. Weston Foundation, a \$10,000 grant, and Queen's Bench: Multnomah County Chapter of OWLS, \$1,000.



Román Hernández, Portland Managing Partner, presents Troutman Sanders' CourtCare contribution to MBF President Jen Wagner



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LEGAL SERVICES CORPORATION

Notice of Grant Funds Available for Calendar Year 2021

The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2021. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. On or around April 1, LSC will publish the list of service areas for which grants are available, and the service area descriptions at www.bit.ly/331bW01. The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at www.bit.ly/2wps1Lz on or around June 1. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC's online application system in order to participate in the grants process.

Please visit www.bit.ly/2wps1Lz for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov.

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We are pleased to announce that **Meg Houlihan** has joined our team.

Meg is an associate in the firm's litigation group where she focuses on complex litigation. Prior to joining Stoll Berne, Meg was an associate in another Portland law firm and also had served as a judicial law clerk. She received her law degree from Yale Law and her undergraduate degree from Gonzaga University.

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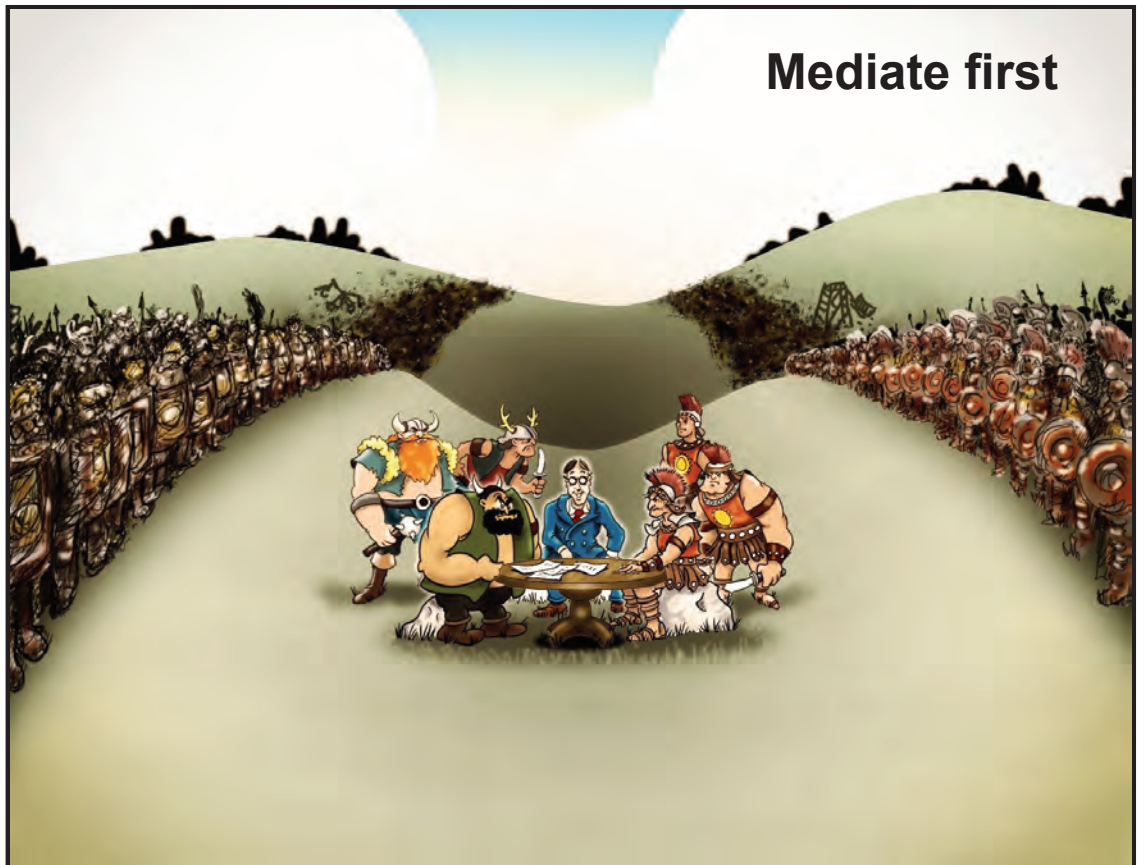
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Tips From the Bench

“That No-Good Rotten Liar!”

by Judge Christopher Ramras
Multnomah County Circuit Court



It feels a bit surreal writing this article now; so many greater and new issues having arisen during the pandemic. Life and the law continue though, even if at a slower pace. Today’s topic was selected from a list of questions MBA members submitted in February: *How should one handle misrepresentations by opposing counsel in briefs and/or oral argument?* The short answer is “forcefully, but respectfully.”

Presiding Judge Stephen Bushong is currently working on a procedure for civil motions which will potentially allow a judge to decide a motion based solely on the written submissions if both sides agree. Once implemented, this will allow decisions on at least some motions that are becoming backlogged during our current Level 3 restrictions that limit court operations to essential hearings. The current restrictions last until June 1, but it is possible they will be extended. I mention this because I believe there is some difference in addressing perceived misrepresentations in writing versus oral argument. This article attempts to deal with both.

You may believe opposing counsel has misrepresented either the law or facts. While this can be frustrating, understand that judges will usually wonder if such “misrepresentation” is actually that. Two sides often interpret a case or facts differently. Differing interpretations doesn’t (necessarily) mean the other side is “wrong.” A judge may default to assuming that there is a difference in interpretation rather than concluding one side is deliberately false. It is important to check your first impression of what opposing counsel is up to and respond respectfully, even when you *don’t* respect them.

Reread the case trying to imagine the other side’s perspective. If it still seems inherently incorrect, you should forcefully inform the court but use verbiage that avoids insulting the other side. I can tell you that I tend to give more credence to a side that remains respectful because they appear to be arguing from a place of logic. We judges are supposed to make decisions based on our belief of the law, whether we emotionally agree with it or not. I have read briefs that are extremely strident in their tone and frankly, I question the writer who is overly insulting. It can come across as more defensive than informative. A written

response allows an attorney a “calming period” after reading opposing counsel’s brief, so it is hard to understand why some lawyers write in angry language. An overly emotional written brief highlights a lack of maturity.

Many judges will not know either counsel or be familiar with the reputation of a particular attorney practicing in your area of law. While all your colleagues may agree that “Lawyer X can’t be trusted and has been dishonest for years,” a judge may not share this sentiment. It is best to avoid terse replies such as “counsel is wrong” or “counsel misrepresents the case holding” and better to simply write: “counsel cites (such-and-such case), but this case does not support their position.” Then provide an analysis of what the case actually stands for and why you believe it to be so.

In some ways, correcting a perceived “misrepresentation” during oral argument is easier. This is because tone of voice can convey information along with word choice. If you believe there is a misrepresentation of law, you can use tone of voice to convey the import of the judge reviewing a particular case. Saying “Your Honor, this case stands for a different proposition than that suggested by opposing counsel,” in the right tone of voice, is as effective as saying “Your Honor, counsel is simply wrong!” The former seems less defensive.

Of course, there may be times when you get the sense the judge hasn’t read the particular case or can’t recall its details. In such a situation, you can repeat the importance of the case and emphasize you’d be happy to wait for a ruling pending the judge rereading the case(s). This should be done delicately as you don’t want to imply the judge hasn’t read it. You can say something along the lines of: “Your Honor, I understand you are busy and that we have cited a number of cases to review. I don’t expect you have memorized every case. I have no issue awaiting a ruling if you would like to review the case(s).” This is respectfully, but forcefully, highlighting the importance of a particular legal position. The judge may or may not take your suggestion, but they shouldn’t become upset with someone acting rationally.

The danger of oral argument is being angered anew by something opposing counsel says that is unexpected. In responding, avoid insulting language or behaving histrionically. Take some (subtle) deep breaths before responding if necessary. If you are not sure how you present, I suggest practicing an oral argument while filming yourself and seeking input from those you trust. Allow your roommate, friend or significant other to interrupt you and try to throw you off your game. The ultimate goal is to persuade, and

Continued on page 11

News From the Courthouse



by Rebecca Cambreleng
Court Liaison Committee

Presiding Judge’s Report Hon. Stephen Bushong and TCA Barbara Marcille

This morning the discussion focused on the COVID-19 crisis and the court’s response. See the most current Chief Justice Order Imposing Level 3 Restrictions on Court Operations, the court’s Presiding Judge Orders for Civil, Criminal, and Family Law matters, and the court’s most current information sheet, which are all posted on the court’s website in the red Alerts box at the top of the page: www.courts.oregon.gov/courts/multnomah.

The Presiding Call docket will continue to be held daily for the assignment of new dates after the period of restrictions, and ex parte will be held only in the mornings from 10:30-11 a.m. in Room 208, with most or all attorneys appearing by telephone. Most civil trials will be postponed until after August 1. Judge Bushong made clear that the courts are prepared

for emergencies and have restrictions in place to keep things moving as smoothly as possible while protecting the health and welfare of employees and the public. Most hearings that continue to be held are being conducted telephonically. The court is open and available to handle emergency situations, and those matters should be presented to the presiding judge. If you are sick, please do not come to the courthouse. Any employee who is ill is asked to stay home as well. Judge Bushong urged rationality and following the CDC and health department guidelines.

There was a question about potential tours of the new courthouse. Construction is being completed, equipment and furniture installation is continuing, and the planned move and grand opening dates have not changed. The court still intends to open in the new building on July 20, but the evolving COVID-19 situation might affect the opening date. The court hears the legal

community’s interest in getting a behind-the-bench look at the new building before operations fully begin, and will keep everyone updated as news is available. Because it is unlikely that we will be able to hold the ribbon-cutting celebration that was previously planned, the court and the county will explore alternative ways to introduce the new building.

Free Lunch and Learn CLE in the Courthouse

The court and the MBA Court Liaison Committee have been planning to offer a CLE seminar about the technology in the new courthouse. The presentation will now be developed for online participation, and content will include information about the courtroom audio visual systems, digital displays throughout the building, interactive public kiosks, and building access controls. Details to follow when a date and format has been established.

MBA Health Plan Makes Accommodations in Response to COVID-19

The MBA sponsors medical, dental and vision plans for member attorneys and their employees. Many firms have had questions about coverage for employees who have been laid off or had hours reduced.

The MBA plan allows employers to change their hourly requirement making it possible for the employer to cover employees who are not working full time if the employer still wants to cover them. The MBA contracts also provide for a 90-day leave of absence, which allows employers to continue to cover their employees and pay for their coverage during that 90-day period, even if they are not actively at work. If the employer chooses not to pay for the employees’ coverage and the employee is effectively terminated, the plan would then offer COBRA coverage to those employees. The recently passed federal legislation also has a number of effects on the

MBA plan. This summary was prepared by Evan Cole, a benefits consultant at Aldrich Benefits, LP.

Tax Credits for Families First Coronavirus Response Act (FFCRA)

Employers who are subject to the Families First Coronavirus Response Act (FFCRA) will receive some financial relief in the form of tax breaks. Employers who comply with the new law will qualify for a dollar-for-dollar reimbursement on all qualifying wages paid out under FFCRA via a payroll tax credit against the employer’s payroll tax liability.

Qualifying Wages

Qualifying wages are defined as the benefits paid out to an employee who takes paid sick leave, or paid family leave under the FFCRA. For example, if an employee qualifies for the maximum payout amount of \$15,110, meaning they took sick leave and family leave, the

employer would be entitled to a credit for an equal amount. Additionally, further credits are available to employers should they continue to maintain health insurance coverage for their employees who are out on FFCRA sick or family leave. The amount that the employer pays toward the cost of that employee’s healthcare while they are out on FFCRA leave can apply toward the credit. These credits are only available for applicable benefits paid between April 1 and December 31.

Increased Benefit Flexibility

To provide employers with the financial flexibility required to offer these new benefits, the IRS has said that businesses can retain and access funds that they would, under normal circumstances, pay to the IRS in payroll tax. Before this guidance, the process required employers to deposit federal taxes along with the employer’s portion of Social Security and Medicare taxes with the IRS, and then file a quarterly payroll tax return. However, the new guidance provides significant leeway for employers and allows them to retain the amount of

Continued on page 11

OWLS Foundation COVID-19 Emergency Relief Grant

The Oregon Women Lawyers Foundation is pleased to offer a 2020 COVID-19 Emergency Relief Grant of \$3,000 to five Oregon lawyers. The grant application is now available on the OWLF webpage at www.owlsfoundation.org.

The grant is available to Oregon lawyers who identify as women and/or as members of any other historically disadvantaged groups who need financial support to continue operating an Oregon legal practice because they are:

1. unable to work due to a positive diagnosis or test result of the COVID-19 virus, or



2. providing full-time care for a family member with a positive diagnosis or test result of the COVID-19 virus and are unable to meet the operating costs of maintaining an Oregon law practice.

Applications are due no later than May 15. Grant recipients will be notified by May 30.

MBA Health Plan

Continued from page 10

payroll taxes equal to the amount of qualifying FFCRA wages paid.

Frequently Asked Questions

Are employers with fewer than 50 employees required to provide the benefits?

As of now, yes. However, the Secretary of Health and Human Services has the right to issue regulations that would exempt employers with fewer than 50 employees who determine the benefit jeopardizes the viability of the business.

If I already offer my employees two weeks sick pay or PTO, do I still have to offer them the Emergency Paid Sick Time on top of it?

This Act does not replace your existing sick pay or PTO policy, this is in addition to any benefits currently offered. Employers are not allowed to modify their existing leave benefits and policies after the enactment in an effort to avoid the new requirements.

Do employers have to pay out unused Emergency Paid Sick Time when an employee leaves the company?

The Act specifically states that employers are not required to pay out any unused Emergency Paid Sick Leave at the end of employment.

Does unused Emergency Paid Sick Time rollover to next year?

No, the benefits cease to be available at the end of this year.

Can employers require that employees give advance notice of intent to take Emergency Paid Sick Time?

No, the Act states that employees are not required to give notice prior to the first workday they plan to take Paid Sick Time. However, after the first day of benefits, employers may require the employee to follow reasonable

notice procedures in order to continue paid sick time.

Can employers require employees to use up all other forms of available PTO prior to taking advantage of these new Emergency benefits?

No, employers may not mandate that employees use other available benefits prior to using the Emergency Paid Sick Time or Emergency Paid Family Leave. However, employees can, at their discretion, choose to use these other benefits prior to utilizing the new emergency benefits should they so choose.

Can employers require that an employee find a replacement to cover their scheduled hours as a condition of taking the Sick Pay?

No, the Act specifically notes that the Sick Pay cannot be conditioned on finding coverage for the hours/shifts that the employee is going to miss.

What is my total potential exposure per employee?

Based on the limits in place, the maximum exposure per employee is \$15,110 (\$5,110 maximum pay out available for Paid Sick Time and \$10,000 maximum pay out for Paid Family Leave).

Is there any sort of support for employers?

The employers will be provided with a refundable tax credit against the employer portion of the Social Security taxes for up to 100 percent of the qualified sick pay and family leave wages paid in accordance with the Act.

For more information, contact: Steve Doty 503.716.8326 sdoty@aldrichadvisors.com

Mike Berry 503.716.9390 mberry@aldrichadvisors.com

New MBA Board Directors and Officers

New directors for the three-year terms which begin June 1 are:



Timothy Resch

Timothy Resch is the managing partner of Samuels Yoelin Kantor LLP. His litigation practice focuses on employment and healthcare. Tim spent four and a half years working for the Office of the Prosecutor at the UN's International Criminal Tribunal for the former Yugoslavia. He was also a special prosecutor with the Multnomah County District Attorney, representing the State of Oregon in misdemeanor criminal trials. Before that, he worked as a clerk to the Yamhill County District Attorney and as special judicial clerk to Multnomah County Circuit Court Judge William J. Keys. Tim graduated from the Northwestern School of Law. He volunteers as a regional judge for the Classroom Law Project and served on the MBF Board from 2016-18.



John Robb

John Robb is an associate at Kevin Sali LLC representing people facing criminal charges. He graduated from Arizona State University's Sandra Day O'Connor College of Law. John began his legal career at Multnomah Defenders Incorporated. In 2016, John left MDI to begin his private practice with Kevin Sali LLC. He currently serves as chair of the MBA Court Liaison Committee.

Gloria Trainor is the owner of Trainor Law PC, where she handles plaintiff-side personal injury and employment discrimination cases and family law matters focusing on the LGBTQ community. She graduated from the University of Oregon School of Law in 2008. Gloria currently serves as chair



Gloria Trainor

of the MBA Judicial Screening Committee and just completed nine years of service on the Oregon Women Lawyers Board of Directors.



Theresa "Terry" Wright

Theresa "Terry" Wright is the Director of Externships and a fulltime Adjunct Professor at Willamette University, where she also obtained her JD. Between 1990 and 2014, she was a member of the clinical faculty at the Lewis & Clark Legal Clinic, after teaching in the Willamette Clinic for four years. She became the director of externships in August 2015. She served on the OSB BOG from 2006-09, has served on several MBA committees over the years and currently serves on the MBA CLE Committee.



Brad Krupicka

Brad Krupicka is an associate at Littler Mendelson. He advises and represents employers in a wide range of labor and employment matters. Brad is the 2020-21 YLS President and will serve as an MBA Director during his term. He received his law degree from Lewis & Clark in 2010. His MBA service includes past chair of the YLS Pro Bono and MBA Events committees and YLS board liaison to the

MBA Professionalism and Equity, Diversity & Inclusion committees.

Officers for the 2020-21 year:

Valerie Colas will serve as President. She is Access to Justice Counsel at the Oregon Judicial Department in the office of General Counsel for the State Court Administrator. Valerie said: "I am honored to continue my service for the MBA in this new leadership role. I believe that the MBA, now more than ever in these difficult and unprecedented times, continues to play an instrumental role in providing resources, support, and guidance to our members and legal community. As we respond to this crisis, the MBA remains committed to providing our members opportunities to make meaningful connections as well as providing resources and support to help them serve their clients and our community. We also remain dedicated to ensuring access to justice and creating a more inclusive, diverse, and welcoming bar and legal profession where everyone feels that they belong and can thrive."

Caroline Harris Crowne will serve as Treasurer. She is a partner at Tonkon Torp LLP. Regarding her service on the MBA Board, Caroline said: "I have been fortunate to practice as a lawyer here since the beginning of my career. The MBA serves a vital role in strengthening our community, providing resources and professional connections to help us thrive in our careers, and supporting our efforts to better serve the legal needs of our clients and all those who live and work among us. During these recent times of social distancing, I have had a renewed sense of appreciation for organizations like the MBA that keep us connected, as well as a renewed concern for those who remain isolated. I hope we can use the year ahead to extend the MBA's support and services to those who need it most."

Jovita Wang will serve as Secretary. She is a partner at Richardson Wright LLP. Regarding her service on the MBA Board, Jovita said: "I am grateful for the MBA community and am excited to continue working with our dedicated staff, board of directors, and committees. I am committed to seeing the MBA thrive in 2020 and beyond and to helping our community overcome both new and old challenges."

Also continuing on the board are: **Sarah Radcliffe**, Disability Rights Oregon, who will remain on the board as Past President; **Jacqueline Alarcón**, Yates Family Law PC; **Nellie Barnard**, Holland & Knight LLP; **David Bean**, Wyse Kadish LLP; **Paul Bovarnick**, Rose Senders & Bovarnick LLC; **Ben Cox**, Attorney at Law; and **Seth Row**, Miller Nash Graham & Dunn LLP.

Tips From the Bench

Continued from page 10

the art is different in written and oral form. Oral argument can supplement written, but it can also detract if the attorney makes a poor presentation.

Finally, it can be very difficult to correct what you believe is a misstatement of fact. Unless you can introduce an exhibit/attachment/affidavit that *definitively* proves the other side is wrong, it is best to recognize both sides view a "fact" as meaning

something different and explain why your view is correct. If you do catch opposing counsel in an obvious misstatement, recognize they (like you), have a large caseload and may simply have misremembered. Correct them.

Firmly, but respectfully.

mba | Young Lawyers Section

What is the YLS?

An inclusive section of the bar, comprised of any MBA member in practice less than six years or under the age of 36. The YLS provides leadership, networking, professional development and service opportunities. And we have fun!

Ask the Expert

*Dear Expert,
My co-workers, the news, and everyone I know is talking about the economic downturn that is likely to occur due to the global pandemic. I am afraid that I am going to lose my job. My stress levels are so high that I can't sleep. I don't know who to talk to or what to do.*

-Anxiously Social Distancing

Dear Anxious Social Distancer,

If you feel anxious and overwhelmed, you are not alone. This is a highly stressful time for many. There are many unknowns, which can lead to increased fear and anxiety about coronavirus, our individual health and the health of our loved ones, as well as the economy. As a starting point, I suggest looking into the resources provided by the Oregon Attorney Assistance Program (OAAP).

OAAP provides free and confidential counseling assistance to lawyers, law students, and judges. The program offers short-term counseling as well as referrals to other resources, support groups, workshops, CLE seminars, and educational programs.

All communications with the OAAP are completely confidential, and the counselors take this confidentiality very seriously. Conversations with the OAAP will not affect your standing with the Professional Liability Fund or OSB. OAAP does not disclose your information to anyone outside the OAAP without your consent. Contacts are kept strictly confidential pursuant to ORS 9.568, PLF Policies 6.150 - 6.300, OSB Bylaws Article 24, Oregon Rule of Professional Conduct 8.3(c)(3), and Judicial Code of Conduct for United States Judges Canon 3B(5). The only exceptions are: (1) to avert a serious, imminent threat to your health or safety or that of another person and (2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

Each OAAP attorney counselor is both a lawyer and a counselor. While the coronavirus pandemic is a new challenge, OAAP counselors' training and experience will assist them in listening to you and helping you navigate toward solutions.

Whether your current concern is stress, depression, anxiety, alcohol or other drug use, or other life changes, the counselors can help you develop

the skills you need to meet the demands and stressors of your professional and personal life in a healthy way.

In addition to the OAAP, if you have health insurance, check with your insurance company to determine what types of benefits, including counseling, you may be able to access through your insurance. Availability of remote counseling via video platforms and telephone has grown over the past years, and counselors are using these tools to connect with people during the pandemic. Furthermore, some of the remote options are more affordable than traditional in-person counseling. Some employers also offer their employees the ability to connect with financial advisors at no cost to the employee. Depending on the source of your anxiety, it may be beneficial to take advantage of these types of resources as well.

Remember, everyone reacts differently to stressful situations, so it is important to figure out healthy ways to take care of yourself and your community. The CDC recommends the following as a few ways to cope with stress during the pandemic:

- 1) Take breaks from watching, reading, or listening to news stories.
- 2) Take care of your body: take deep breaths, stretch, try to eat healthy well-balanced meals, exercise regularly, get plenty of sleep, try to avoid alcohol and drugs.
- 3) Make time to unwind.
- 4) Connect with others - talk with people you trust about your concerns and how you are feeling.
- 5) Call your healthcare provider if stress gets in the way of your daily activities for several days in a row.

Need Help? Know Someone Who Does?

If you, or someone you care about, are feeling overwhelmed with emotions like sadness, depression, or anxiety, or you feel like you want to harm yourself or others:

- Call 911
- Disaster Distress Helpline: 1.800.985.5990, or text TalkWithUs to 66746; www.samhsa.gov/disaster-preparedness
- National Domestic Violence Hotline: 1.800.799.7233; www.thehotline.org

YLS Board Changes

The YLS would like to recognize **Jason Pierson's** contributions and thank him for his hard work and dedication over the years. Jason's YLS involvement began when he volunteered to serve on the YLS Board as the 3L Law School Representative from the University of Oregon in 2014. Prior to graduating and passing the bar in 2015, he was already a member the YLS Pro Bono Committee (YLS PBC) and participating in the YLS Entrepreneur Academy. Jason received the YLS Award of Merit in 2017 for his coordination of the YLS Wills for Heroes clinics.

Jason went on to chair the YLS PBC, and marked his return to the YLS Board when he was appointed to serve a three-year term as director, 2018-21. Jason has decided to resign from the board at this time, and we wish him the very best.

Jessie Schuh has been appointed to fill the vacancy left by Jason. Jessie is presently completing her year as chair of the YLS Membership Committee. She first joined the committee in 2017. In addition to MBA service, Jessie serves as co-chair of the Campaign for Equal Justice's Associates



Jessie Schuh

Committee, and volunteers with Lewis & Clark Law School's alumni mentorship program.

Oregon Volunteer Lawyers Pro Bono Spotlight

by Meredith McMurray
YLS Pro Bono Committee

This month's Pro Bono Spotlight is on Oregon Volunteer Lawyers for the Arts (OVLA). OVLA first began over 30 years ago with a commitment to support low income artists and creatives by providing needed legal help that would otherwise be out of reach for most. Anne Koch, an attorney at Wyse Kadish LLP, is President of the Board of Directors and outlined OVLA's current volunteer opportunities and activities as follows.

Legal Clinics

OVLA's pro bono legal clinics occur once a month and are often held at Lewis & Clark Law School's Small Business Legal Clinic in downtown Portland. During the current health crisis, the monthly clinics are held via phone or video conference. The legal clinics are open to artists and creatives who earn \$45,000 or less per year and arts nonprofits with yearly budgets of \$100,000 or less per year. Past President of the Board of Directors and current Henry J. Casey Professor of Law at Lewis & Clark Law School, Lydia Loren, serves as the committee chair of OVLA's legal clinics.

The legal issues addressed at the clinics are dependent upon the needs of the clients and vary from month to month. Common topics include copyright and trademark matters, contract drafting and disputes, and formation of nonprofits and related tax issues.

A pro bono session between the volunteer attorney and client lasts 45 minutes. The volunteer attorney does not walk into the session blind, however, but instead receives a monthly email with the list of potential clients for the following month's legal clinic. If the attorney has capacity and finds a client matter of interest, the attorney responds affirmatively. Once a conflict check is cleared, the attorney is provided with the client's full application and a meeting time is

set. Students from Lewis & Clark Law School often sit in on the consultations, providing another dimension of teaching and mentoring to the legal clinics.

The OVLA clinic is OSB certified, which means volunteer attorneys can receive a certain amount of CLE credit for their volunteer time. In-house attorneys are also eligible to volunteer with the clinic.

Volunteer attorneys are asked to participate in two legal clinics per year and need not have a background in intellectual property or entertainment law. OVLA does ask that those volunteering for the legal clinics have prior legal experience.

Workshops and Other Speaking Opportunities

OVLA presents workshops covering topics of interest to artists and creatives. Attorneys present on a variety of topics ranging from copyright basics, contract negotiations, alternative dispute resolution, and estate planning, among others. Additionally, OVLA volunteer attorneys are often invited to speak to local organizations, and at events and festivals. OVLA has recently presented at events such as Design Week Portland, XOXO Fest, and the Portland Film Festival.

With the COVID-19 crisis, OVLA is currently focusing on providing more online content and resources for artists on its website and on social media, through FAQs, one sheets, and blog posts. OVLA is also partnering with the nonprofit Young Audiences of Oregon and Southwest Washington to provide monthly webinars. These webinars will be open and available to the public and recorded for future access.

Networking Events

Finally, OVLA hosts networking events during the year, as a way to thank volunteer attorneys for their pro bono service and to connect like-minded individuals in the art law world. OVLA and the OSB Intellectual Property



Section worked together recently to plan a joint social for their members (which Koch notes will be rescheduled as soon as we're all able to come together again in person).

Involvement in OVLA can take many forms. Attorneys with experience may participate in the legal clinics. Interested attorneys with lesser experience and law students may contribute to online content and help with the logistical aspects of speaking and networking events.

Once involved, volunteer attorneys' commitment to OVLA tends to be long-term. While she is now serving as President of the Board of Directors, Koch became involved in the organization as a law student nearly 20 years ago. Her background as an undergraduate music major may have lent her to OVLA's vision and objectives, but we don't all have to be gifted musicians to grasp the value of the arts and lend our hands to the promotion and support of artists and creatives. According to Koch, artists and creatives often have an uphill battle with legally protecting themselves and their art. Like 1Ls in their first contracts lecture, lay people are hard-pressed to understand the intricacies of the drafting and a band, writer, or artist is often vulnerable to an industry that sometimes values the possibility of profits at the expense of the originator of the work. As attorneys, we have the experience and knowledge to positively impact those in the art world who lack the resources to protect what is theirs. And after the past few months of social distancing, most of us have leaned into the arts in various forms for the support we ourselves need. If you are interested in giving back and contributing to OVLA's mission, please go to www.oregonvla.org/contact.

Zack Duffly YLS Member Spotlight

by Brad Krupicka
YLS President-Elect

Unlike many in the legal profession, Zack Duffly did not imagine himself being an attorney until later on in life, let alone working in Big Law. He took a non-traditional route through undergraduate, law school, and even after. However, the perspective garnered through his journey, along with his family's support and care, has helped him establish a healthy perspective and work-life balance; which is constantly tested in the current world.



Zack Duffly

Zack started his studies at UC Berkeley when he was 17 and did not complete his BA there until 13 years later. In the meantime, he worked in restaurants, traveled and lived in Thailand, Guatemala, and Cuba, and continued taking classes when he could. Coming back to Berkeley, Zack volunteered with the Berkeley Free Clinic as a medical section coordinator and as a medic. The Berkeley Free Clinic offers medical care to anyone, without cost, and is an important resource for medical care for houseless individuals and those without healthcare. After gaining valuable life experience serving people in need, Zack made the decision to finish his undergraduate degree and continue serving others through a legal career. He chose to focus on employment law in order to help individuals with their cases while also working to shape and help institutions resolve issues for workers.

Following undergrad, Zack attended law school at the UC Berkeley School of Law. In addition to balancing his legal studies, during his 1L finals, Zack and his wife welcomed their daughter to their family. Later, when studying for the bar, Zack and his wife were blessed with their second child, a son. Indeed, Zack's whole legal career has coalesced around finding that work-life balance to spend time with his family and perfect his craft. In today's new "work from home" (WFH) situation, Zack's advice to all the working families now dealing with the multiple roles of lawyer, caregiver, and teacher is that, although it is hard to do it all, and at times feels like you cannot do it well, we can all do it. And, it's worth it.

After law school, Zack served as a judicial law clerk for the Hon. Michael H. Simon, of the US District Court for the District of Oregon, and the Hon. Lynn R. Nakamoto, then of the Oregon State Court of Appeals. In between those clerkships, Zack also worked at Hoffman & Associates, working on the Governor John Kitzhaber cases.

As an employment lawyer, Zack has worked on both the employee and now the employer side. Prior to clerking, he received a grant from the Initiative for Public Interest Law at Yale to

serve as the Health Care Access and Advocacy fellow at Disability Rights Advocates, a nationally prominent civil rights law firm. Following his clerkships, Zack started his own nonprofit, the Portland Civil Rights Law Office, where he worked on a wide variety of issues, from employment discrimination to fair housing and police misconduct.

Zack is now an associate at Littler Mendelson PC, representing employers in a wide range of employment litigation and advice. He has been actively working on the Littler Oregon COVID-19 Task Force, answering hundreds of questions for employers on a wide range of issues from workplace safety, WFH policies, wage and hour considerations, layoffs, and unemployment guidance for employers and employees.

Zack enjoys the YLS and MBA social atmosphere and family-friendly events, like the MBA WinterSmash that he and his family recently attended. With what little free time he has, Zack also volunteers with the Oregon Justice Resource Center.

YLS UPCOMING SEMINAR Immigration Law for the Non-Immigration Attorney: Common Procedures to Use in Your Practice and Volunteer Endeavors

Wednesday, May 20
3-5 p.m.
Remote attendance only via Zoom

In today's uncertain political climate, undocumented immigrants are facing more challenges and obstacles than ever before. While one cannot simply transition into an entirely new area of law overnight, there are many ways non-immigration attorneys can help those in need.

Amanda Gray and **Gretel Ness**, Parker Butte & Lane PC, will cover practices and procedures you can utilize to help one of the most vulnerable populations. You'll get an introduction to the basics of protection and removal as well as the day-to-day procedures common in an immigration practice. You'll also gain insight into how to transition/incorporate business immigration into your already existing practice in addition to valuable employment-based immigration issues.

Cost: \$30 members/\$50 non-members
The MBA will apply for two hours of CLE credit.

Register at www.mbabar.org/cle

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I would love to schedule time to chat with you, your professional group, social group or faith group about our volunteer program. Let's talk!

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MBA Midsized Firm Partner Roundtable

by *Tim Resch*
 Chair, Midsized Firm Partner Group

Am I the only one scratching my head right now and wondering “why are we paying for all of this expensive downtown office space, when it turns out that our attorneys and staff are perfectly capable of working relatively efficiently from home?” Or, “how will my firm, and our clients, survive COVID-19 and mandatory stay at home orders?” Those are some of the candid thoughts that have been shared at the MBA’s Midsized Firm Partner Roundtable meetings.

For several years now, managing partners of midsized law firms (firms with 5-19 lawyers) have been meeting to discuss issues of importance to our firms. The group used to meet three or four times per year. In past years, we have discussed real estate - buying or leasing, succession and transition planning, generational differences (millennials vs. boomers), technology, and malpractice/excess coverage issues. For the past few years, my firm has hosted the roundtable, and we usually have eight to 12

participants per meeting. Our discussions tend to be organic and free flowing. Then again, we are a bunch of lawyers, and don’t seem to have much trouble finding topics to explore. The members of the roundtable also have access to a listserv.

With the recent outbreak of the Coronavirus/COVID-19 pandemic, the roundtable has transitioned to virtual meetings, via Zoom. Our attendance has blossomed, with over 20 partners joining our first virtual meeting. Now that we are several weeks into our new reality, some of the topics we discussed at the first meeting seem rather quaint. Our first virtual meeting was March 20. That was the Friday before Governor Brown issued her “Stay Home, Stay Alive” order. While some firms had begun transitioning to remote work, many of us were still working somewhat regular hours in our offices. As the crisis has evolved, so have the topics we are discussing.

The roundtable offers the group the opportunity to share

ideas about how to manage our way through this current crisis. Topics have included remote access technology, mail delivery services, preserving staff and attorney morale, and COVID-19 related legislation. The participants in our

roundtable come from a variety of practice areas - business, litigation, IP, employment, family law, real estate, and banking. We haven’t gotten too deep into longer term questions - like my question about real estate. But I suspect that issue

will be on our agenda when we return to “normal,” whenever that happens. During these uncertain times, my impression is that having a group of similarly situated colleagues is particularly helpful.

Continued on page 16

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The Corner Office PROFESSIONALISM

Sheltering in place has led me to wonder what professionalism looks like in a time of crisis. Is it different from everyday professionalism? Or does professionalism already include within it the values and priorities necessary to face unique and terrifying circumstances?

I am writing this in early April and hope this question has been rendered purely academic by the time the article runs. But it is more likely that we will be practicing in this environment for some time to come.

The MBA Commitment to Professionalism identifies both specific conduct that reflects professionalism as well as values that attorneys committed to professionalism should share. Professionalism, broadly understood, requires us to act competently, civilly, and with integrity. It also requires us to commit ourselves to the public good and to furthering the interests of justice. Respect, sympathy, and understanding are the first principles. It is our personal and professional responsibility to care for each other and our community.

I have not seen any commentary discussing professionalism among lawyers in times of crisis, but I have found discussion of the concept of “crisis professionalism” in the business world.

In simplest terms, the argument goes, professionalism in times of crisis is much less concerned with fulfilling a single, original business vision and getting ahead than it is concerned

with ensuring everyone’s business vision and way of life can continue. It involves waiving previous restrictions or boundaries to allow everyone to contribute in a cooperative rather than competitive way. The values underpinning crisis professionalism are very different from the values that guide non-crisis professionalism. Arguably, crisis professionalism embodies the true ideal, but decision-makers are loath to adopt it during business as usual.

What struck me when I tried to apply that thinking to professionalism in the legal community is that the values of attorney professionalism are already the values that should guide us in times of crisis.

It is in times like this that we must recognize our commitment to larger goals. We must remind ourselves that opposing parties and opposing counsel are human beings too, with the same fears and anxieties that keep us up at night. We need to put ourselves in the other person’s place and provide them with the same respect, sympathy, and understanding that we want for ourselves.

In practical terms it means being willing to adapt in a positive way. I have heard anecdotally of lawyers in New York City using this crisis to gain advantage in litigation. To me, that is the antithesis of professionalism. On 9/11, I was hosting a week’s worth of depositions in my office being taken by plaintiff’s counsel from the Midwest. Arriving at the office that morning I received a call from

the lawyers telling me they had rented a car as soon as they heard the news and were driving home to be with their families. Canceling the depositions was the only thing to do. When counsel for a co-defendant arrived for the scheduled start, and I told him of the call, he was irritated by the disruption of the schedule for the case and urged me to tell the lawyers to get back to Portland. I did not make that call.

Compassion, understanding, and accommodation for opposing counsel and parties are consistent with our obligations to our own clients under the Rules of Professional Conduct. They are not signs of weakness. Nor is it a sign of strength to take advantage of difficult circumstances through unreasonable posturing. Professionalism leads to more effective client representation, not less. And it is especially called for in times of crisis.

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

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CourtCare

Continued from page 4

caring for children who are facing challenging situations like her sons once were. It is stories like this one that really resonate with the mission and purpose of CourtCare, to provide support and care for children who do not need to see the inside of a courtroom, but instead have a safe and compassionate space

to be themselves.” In total, CourtCare is a win for parents, a win for kids, a win for the court, and a win for justice.

CourtCare will be open and ready to serve children at the new Central Courthouse the same day it opens its doors in 2020! The new Central Courthouse will feature a new and improved space for CourtCare that is specially designed for childcare and includes separate napping and

reception areas. The space is three times bigger than the current space and will have the capacity to serve twice as many children, and will have all-new furniture, cabinetry, and toys (items currently in use will be donated).

Multnomah CourtCare serves children as young as six weeks and as old as 10 years and, since opening in 2001, has served over

18,000 families. In addition to providing high quality childcare, CourtCare makes referrals to families for basic needs, housing, food, clothing and diapers, as well as mental health services and legal aid.

To learn more about CourtCare please contact me, Jim Oliver, at jimoliver@dwt.com, or at 503.778.5289. Also, please

visit www.mbabar.org/courtcare to view a brief informational video.

On behalf of the MBF Board, thank you for your consideration of donating to the community charitable program of your choice this Spring during the COVID-19 pandemic, and thank you in advance for supporting the essential, innovative, and life-changing program of CourtCare in the future.

Pro Bono Volunteers

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

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

Alexzander Adams • Matthew Arbaugh • Kachelle Baxter • Susan Bock • Brett Carson • Sarah Crooks • Amanda Dalton • Paul Duden • Jeannine Ferguson • John Haub • Natalie Hedman

• Dona Hippert • Samuel Justice • Garry Kahn • John Koch • William Kwitman • Elizabeth Lemoine • Riley Makin • John Manning • Hon. Peter McKittrick • Rizza McWhorter • Gene Mechanic • Michael O'Brien • Vanesa Pancic • Ben Pradhan • Greg Roberson • Susan Rossiter Arden Shenker • Anne Steiner • Todd Trierweiler • Evans Van Buren • Mary VanderWee • Emery Wang • Lee Wyatt • Whitney Yazzolino

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Mid-sized Firm Partner

Continued from page 14

Our roundtable has, for the time being, decided to keep meeting on a regular basis. Meetings are for whoever is available, and currently take place on Fridays, from 10-11 a.m. Kathy Modie manages the listserv, and we are happy to add new members to our Friday virtual roundtables. Feel free to contact Kathy at kathy@mbabar.org to be added to our listserv and roundtable. Hopefully this continues to be an avenue to share our experiences and some helpful ideas for managing our way through this difficult and unprecedented time.



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