



Re-Defining and Re-Imagining the YLS Environment

by Brad Krupicka
YLS President

“2020, what a year?” That sentiment has to be the biggest understatement of any year in recent history. But through all of it, the MBA Young Lawyers Section has adapted and pushed forward. The level of enthusiasm

from returning and new members has been incredible. The dedication and perseverance shown in continuing the strong programming of the YLS has been phenomenal. This article showcases some of the ingenuity the YLS and its members have shown over the past year in re-defining its events, and the re-imagining going forward with new programming and ideas being finalized for the remainder of the committee year.

High School Panels: The YLS Board and other YLS members joined the Aloha High School Street Law class and had a lively and wide-ranging discussion with at-risk students. The students had the opportunity to ask questions such as “what do lawyers actually do?” and hear answers to specific inquiries on all sorts of legal topics.

The MBA Visits the Portland Children’s Museum: The YLS Membership Committee held another great family-friendly social at the Portland Children’s Museum. MBA members and their families had free reign of the museum without the crowds, and were able to network in this unique environment.

LLC Formation Clinic: In a special collaboration between the YLS and Lewis & Clark’s Small Business Legal Clinic, YLS members and seasoned attorneys provided LLC formation services to underrepresented groups. Despite the clinic being held shortly after the pandemic began, the program moved to a virtual format and went off without a hitch. I’m already looking forward to the next clinic.

Socially Distanced Community Service Days: The YLS Service to the Public Committee (YLS STP) has held socially distanced community service days. Starting off the year strong, the committee organized a potluck-style meal day for the Transitions Project. Committee members prepared food, and volunteers picked up and delivered the meals to some of Portland’s most at-risk houseless residents during a difficult time. In October, the YLS STP organized a donation drive for Impact NW, an organization that works to prevent homelessness. New ideas will be rolling out in the months to come.

CLEs Go Online: The YLS CLE Committee has moved all of its programming online, which is a first for the YLS. The committee held the Estate Planning series and several standalone seminars over Zoom earlier in the year. The committee also recently began the Advising Oregon Businesses series which will wrap up on November 12, finishing an incredible slate of programming. They also have several standalone CLE’s in the works that you will not want to miss. If you have an idea for a CLE topic you would like to see, please email Lauren Fairshter at lauren@mbabar.org.

“YLS committees have not allowed the pandemic and related isolation to stop their activities...”

YLS Past President Holly Hayman stated that “YLS committees have not allowed the pandemic and related isolation to stop their activities. They have not been deterred. Committee members have been innovative and creative to ensure that their programming and service continue to reach audiences.”

For me, the YLS has been the place where new ideas are born and newer lawyers get to imagine the way they would like to practice. I’ve had the unique pleasure in helping start numerous new events in my time in the MBA and YLS, including the Battle of the Lawyer Bands, the Pro Bono Pour, and the Bench, Bar & Bagels events. This year’s committees have shown that innovative spirit yet again, and we are excited to announce some of their upcoming events and updates, showcasing their contributions to the bar.

New Admittee Social: A new look for the New Admittee Social will help us welcome Oregon’s newest lawyers in a virtual environment. This crop of lawyers joins us after one of the most challenging final years of law school, bar admissions, and job uncertainty. Every new lawyer deserves our absolute respect and we are thrilled to have them join us.

Virtual Wills for Heroes Clinic: Long considered the flagship of the YLS Pro Bono Committee, the Wills for Heroes Clinic has been providing pro bono wills, life planning, and advanced directives for first responders since the terror attacks of 9/11. The clinic has updated its forms and will be operating in a new virtual environment. Also, the national Wills for Heroes Foundation has given us its approval to offer clinic services to hospital workers on the front lines of the COVID-19 response.

New Networking and Social Opportunities: While most, if not all, will be virtual through May 31, 2021, there will be plenty of new networking opportunities. In addition, I am excited to see some of our previous events come back to life in new and improved formats!

New Ways to Help Job Searchers: Even in this environment, the YLS is already planning new ways to help job seekers. From speed networking to mock interviews (plus numerous other virtual opportunities) the YLS is rapidly brainstorming ways to help newer lawyers in today’s tough job market. Also, look for the online New Admittee Survival Guide launching soon.

This committee year promises to be one of the most outstanding yet. It also promises to be one of the more impactful. In addition to the standing commitment to diversity, equity, and inclusion issues, the YLS Committees have taken it upon themselves to increase that focus in this new environment to reach out to traditionally underrepresented groups, both as lawyers and as members of the community, especially because those groups have been hit the hardest during the pandemic. And I am excited to announce the launch of the YLS Social Justice Task Force. The task force will focus on ways that the YLS can better address social justice issues in and out of the YLS, and strategize some action items focusing on addressing systemic oppression, social justice, and access to justice issues, and how those issues relate to the YLS communities, newer lawyers, and the future of the profession.

This year’s committees have shown...innovative spirit yet again...

mba|CLE

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

DECEMBER

**12.10 Thursday
Mandatory Mental Health and Substance Use CLE**

Judge Gregory Silver
Mae Lee Browning
Hugo Gonzalez Venegas
Harry Wilson

**12.10 Thursday
Civil Litigation - Old School vs. New School**

Bill Barton
Brent Barton
Matt Levin
Renée Rothauge

**12.17 Thursday
Annual Probate Update**

Judge Patrick Henry
Judge Susie Norby
Judge Janelle Wipper

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Congratulations, Award Recipients

The October 14 MBA Annual Meeting recognized exemplary members of our profession. **Robert C. Joondeph** received the MBA Professionalism Award. The MBA Diversity Award recipients were **Kamron L. Graham** and **Diane S. Sykes**. MBA Awards of Merit were presented to **Barbara Marcille**, **Penny H. Serrurier** and **Emery Wang**. YLS Awards of Merit were given to **Ioana Lavric** and **Steven W. Mastanduno**. **Allison N. Kamilos** received the YLS Rookie of the Year Award. Pro Bono Awards recognized **Dallas S. DeLuca**, **Johnathan S. Haub**, **James K. Hein**, **Thomas E. Kim** and **Tamara B. Maher**.

The Annual Meeting recording is available at live.mbabar.org/c/2020-mba-annual-meeting.

Congratulations to all the very deserving award recipients!

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6 Friday
OSB Virtual Awards Ceremony
www.osbar.org

10 Tuesday
Queen's Bench Luncheon
Speaker series
www.owlsqueensbench.org

26-27 Thursday-Friday
Thanksgiving - MBA Office Closed

DECEMBER

8 Tuesday
Queen's Bench Holiday Luncheon
www.owlsqueensbench.org

25 Friday
Christmas Day - MBA Office Closed



Habitat for Humanity seeking volunteer attorneys to guide homebuyers through affordability documents.

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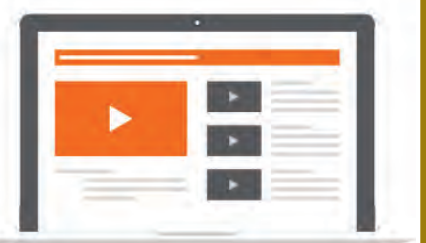
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www.mbabar.org/freecle



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

Mental Health and Substance Use CLE

Thursday, December 10 12-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Note: Worth one hour of Mental Health and Substance Use OSB MCLE credit.

A landmark 2016 ABA/Hazelden Betty Ford Foundation national study found that attorneys are nearly twice as likely as the general population to experience problematic alcohol use, and younger attorneys (under 30) are approximately three times as likely. Reported levels of depression, anxiety, and stress were also significantly elevated among attorneys according to the study. Given these realities, the Oregon Supreme Court approved amendments to the MCLE rules requiring mental health, substance abuse, and cognitive impairment education. The speakers in this CLE will talk about when to ask for help for yourself and for colleagues, and how to recognize when someone needs help. You will also hear personal stories of recovery. This CLE will be presented by **Senior Judge Gregory Silver**, Multnomah County Circuit Court, **Mae Lee Browning**, Attorney at Law, **Hugo Gonzalez Venegas**, Oregon State Bar and **Harry Wilson**, Markowitz Herbold.

For more information: Contact John Dunbar, Dunbar Law LLC, at 503.222.9830. For registration questions, contact the MBA at mba@mbabar.org.

Annual Probate Update

Thursday, December 17 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

The MBA presents the 2020 Annual Probate Update, featuring **Judge Patrick Henry**, Multnomah County; **Judge Susie Norby**, Clackamas County; and **Judge Janelle Wipper**, Washington County. The judges will discuss current practices and procedures for each of the tri-county area courts. This CLE seminar is a must for all probate practitioners and their staff.

For more information: Contact Ryan Flatley, Thede Culpepper Moore Munro & Silliman LLP, at 503.416.6133. Contact the MBA at mba@mbabar.org.

Civil Litigation - Old School vs. New School

Thursday, December 10 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

This CLE will touch on all phases of civil litigation, including discovery, trial preparation, settlement negotiations, and trial. Our panel of trial lawyers will discuss and contrast old school, conventional methods with modern and evolving techniques and strategies. What still works? What has been improved? How has the “vanishing trial” impacted civil litigation strategy? What is the impact of current technology on traditional trial preparation and trial techniques? Find out from our presenters, **Matt Levin** of Markowitz Herbold, **Renée Rothauge** of Perkins Coie, and **Bill Barton** and **Brent Barton** of Barton Trial Attorneys.

For more information: Contact Anit Jindal, Markowitz Herbold, at 503.295.3085. Contact the MBA at mba@mbabar.org.

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 Class Registration (\$60 Members/\$95 Non)\$ _____

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Oregon Lawyers Against Hunger Fund Drive

Join Oregon Lawyers Against Hunger November 2-13 to fight hunger and its root causes! Food insecurity in Oregon has doubled since the beginning of the pandemic. Together, we can ensure hunger is not a symptom of COVID-19. Contact OLAH Board President Melissa Kenney at melissakenney74@gmail.com to get involved or donate at give.oregonfoodbank.org/olah.

The Multnomah Law Library is Moving

Later in November, the Multnomah Law Library will move to its new location, across the street to the west of the old courthouse. The new location, the Sixth+Main Building, 1050 SW 6th Avenue, Ste 180, is in the heart of downtown Portland. The Multnomah Law Library will continue to offer library services remotely, including curbside checkout, and will operate from the old courthouse building until the move. Reach out to the law library staff for answers to research questions, to obtain electronic documents, and to explore other library services at librarian@multlawlib.org, 503.988.3394, or www.multlawlib.org. The library staff remains available to assist you even during these constantly changing times.

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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.



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What Malpractice Insurance Renewal Questionnaires Teach About Law Firm Risk Management

by Mark J. Fucile
Fucile & Reising LLP

An odd side effect of the primary layer of PLF coverage being mandatory in Oregon is that there is no annual renewal questionnaire. By contrast, Oregon firms that have excess coverage through either the PLF or a private carrier ordinarily complete an annual renewal questionnaire - often around this time of the year. Annual renewal questionnaires vary by carrier. Unsurprisingly, they ask about potential claims. More fundamentally, however, they also ask about a firm's practice areas and practice management systems. In this column, we'll focus on these latter two for what they tell us about law firm risk management. Put simply, if your carrier cares, you should, too.

Practice Areas

Renewal questionnaires typically ask firms to describe - often in percentage terms - their practice areas. The questionnaires then ordinarily probe specific areas more closely. These more detailed questions usually address practice areas that generate large dollar claims. Two staples in this regard are securities and intellectual property. According to PLF's annual report series, for example, securities and intellectual property are among the top practice areas in Oregon measured by the "severity" of claims.

The simple fact that a practice is relatively high-risk is not a reason in and of itself to avoid including that in a firm's strategic portfolio. Having a high-risk practice, however, counsels three fundamental risk management considerations.

First, the firm should have sufficient expertise to anticipate and guard against commonly recurring risks in the practice involved. Malpractice statistics nationally suggest that "dabblers" - those who dabble outside their primary areas of expertise - are more likely to miss critical substantive or procedural elements in highly technical areas. Significant expertise won't necessarily eliminate all errors, but it should lower the risks associated with the most common for a particular area because reasonable safeguards for known risks can be woven into the practice.

Second, the firm should have adequate depth on its "bench" to provide meaningful internal supervision. If only one lawyer at the firm has expertise in a high-risk area, it can be difficult to provide coverage if the lawyer is not available for reasons ranging from illness to being in trial elsewhere. More subtly, relying on only one lawyer in a high-risk area can mean that there is no truly informed internal peer review.

Third, the firm needs to balance the economic risk of the practice area concerned with

...securities and intellectual property are among the top practice areas in Oregon measured by the "severity" of claims.

enough insurance coverage that acknowledges the risk. This analytical exercise can also foster a useful conversation within the firm on whether the economic benefits of a high-risk area justify the costs involved.

Practice Management Systems

Renewal questionnaires typically ask about three practice management systems: conflicts checking; engagement agreements; and calendaring. With each, the PLF has knowledgeable practice management advisors available to assist in tailoring commercial products to a particular firm's size and practice.

The Oregon Supreme Court in *In re Knappenberger*, 338 Or 341, 355, 108 P3d 1161 (2005), noted the regulatory obligation for lawyers to run conflict checks before taking on new matters. Conflict systems - as long as they are used consistently and adequate information is provided - should lower both the risk of discipline and disqualification. Identifying and addressing conflicts appropriately can also lower civil damage risk from claims for breach of the fiduciary duty of loyalty that parallels our regulatory obligations. Although systems vary by firm size and practice, conflict management at its heart records and analyzes the names and relationships of clients, opponents and related persons or entities.

Engagement agreements, in turn, are a central tool to confirm precisely who the firm is - and is not - representing. Defining the client can be

important in many situations. A commonly recurring scenario, however, involves representing an affiliate of a larger "corporate family." In *Atlantic Specialty Insurance Company v. Premera Blue Cross*, 2016 WL 1615430 (WD Wash Apr 22, 2016) (unpublished), for example, a law firm was disqualified in a major insurance coverage case for a long-time client in Seattle because its Portland office was already representing an affiliate of the carrier on the other side. When the Portland office opened the earlier matter, it did not use an engagement agreement narrowly limiting the client to the affiliate involved. The court in Seattle specifically called out the lack of an engagement agreement in later finding that the firm had implicitly taken on the carrier's entire corporate family by representing the affiliate and disqualified the firm for an unwaived conflict. Engagement agreements also vary by firm size and practice, but they should generally define and limit the specific client represented, outline the scope of the representation and include the financial terms involved.

Identifying and addressing conflicts appropriately can also lower civil damage risk from claims for breach of the fiduciary duty of loyalty that parallels our regulatory obligations.

Calendaring is a deceptively simple task that can have devastating consequences if a key date - such as a limitation period or an appeal deadline - is either miscalculated on the front end or missed on the back end. The PLF annual report series also lists the top practice areas by frequency of claims. They include deadline-driven areas such as civil litigation, bankruptcy and family law. As with the other systems noted, calendaring mechanisms vary by firm size and practice. Generally, however, the system chosen should both enter deadlines routinely and monitor them for compliance for the entire team handling the matter involved. To increase reliability, both entry and compliance should ideally be cross-checked by more than one person.

Around the Bar



Natalie Pattison



Donna Maddux



Julie Preciado

Barran Liebman LLP

The firm is proud to welcome **Natalie Pattison** and **Julie Preciado** to the firm.

Pattison recently graduated with her JD from the University of Oregon School of Law, during which time she served as an articles editor for the Oregon Review of International Law, as president of OUTLaws, and as a law clerk for the US Attorney's Office.

Preciado recently earned her JD, cum laude, from Willamette University College of Law, during which time she was a Presidential Scholarship Awardee, served as president of the Multicultural Law Student Association, and completed an externship for Chief Justice Walters.

In addition, both completed internships for Honorable Magistrate Judge John V. Acosta at the US District Court.



Shayda Le

Shayda Le, an employment law partner at Barran Liebman LLP, has been named to the *Portland Business Journal's* "Forty Under 40" Leading Executive list. In addition to her legal work, her contributions to the profession, and her broader community involvement, she is a kind and thoughtful person who strives to give her best efforts to her colleagues, clients, friends, and family.

Lewis Brisbois

The firm is pleased to announce the addition of **Donna Maddux** to its Portland office as a partner in its Data Privacy & Cybersecurity Practice.

Maddux joins Lewis Brisbois from the US Department of Justice, where she served as an assistant US attorney in the Criminal Division of the US Attorney's Office (USAO) for the District of Oregon for the last eight years. In this role, Maddux prosecuted a variety of crimes, including wire fraud, healthcare fraud, and money laundering. She regularly managed multi-agency investigative teams and worked closely with the Federal Bureau of Investigation, the Internal Revenue Service, and the US Department of Health and Human Services.

Prior to her tenure with the USAO, Maddux served as an Assistant Attorney General for the Attorney General's Office of the Oregon Department of Justice. Over the course of her 10 years in this position, she prosecuted white collar and regulatory crimes across Oregon, including Medicaid fraud, while working closely with state regulatory agencies.

In addition to prosecuting crime throughout Oregon, Maddux currently serves alongside Lewis Brisbois partner Sean Hoar as president of the Financial Crimes and Digital Evidence Foundation, a nonprofit organization dedicated to providing annual training and networking opportunities to professionals who fight fraud and cybercrime. Maddux is also an executive board member for the Owen M. Panner American Inn of Court, and is a past chair of the Criminal Law Section of the OSB.

Tonkon Torp LLP

The firm welcomes **Erin Roycroft** to its Labor & Employment Practice Group. Roycroft joins the firm from the Oregon Court of Appeals, where she served as a judicial clerk to the Honorable Scott Shorr for two years. While there, she worked on criminal, civil, and administrative appeals involving a variety of issues such as contracts, insurance, and property disputes.



Erin Roycroft

While a law student, Roycroft served as a judicial extern for the Honorable Michael Simon in the US District Court for the District of Oregon and for the Honorable Darleen Ortega of the Oregon Court of Appeals. In addition, she worked as a summer associate for Haglund Kelley LLP, and completed a public interest fellowship at Metropolitan Public Defender.



Kalia Walker

Tonkon Torp also welcomes attorney **Kalia Walker** to the firm's Litigation Department. Walker joins the firm from Bullard Law.

Walker focuses her practice on helping private and public companies navigate a broad range of disputes in state and federal courts. She has significant employment law experience, including defending discrimination and harassment claims and wage and hour violations.

Walker is an active participant in Portland's broader legal community. She is a member of the Oregon Women Lawyers Board of Directors, the Owen M. Panner Inn of Court, and the Oregon Chapter of the National Bar Association. Walker earned her JD from the University of Oregon School of Law in 2015.

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.

Mourning Ruth Bader Ginsburg

by Erin Morris

Morris, Stannard & Batalden Family Law PC



The passing of Ruth Bader Ginsburg has left me, and a great many women lawyers in my professional sphere, bereft of our living embodiment of how to make meaning in our roles as women in the law. I have drawn so often from the deep well of her intellect and lived experience throughout my life and career. There are scarcely moments in my evolution, from young law student to first-year associate to mother of two to owner and partner in my own law firm, that I cannot trace back to the gifts of her mind and the courage of her convictions. For me, the gift of Justice Ginsburg's life and career lies in her fearless integration of her experience and her professional commitments - the unapologetic fusion of her life as a woman and mother and her legal ethic and argumentation as a lawyer and justice on the US Supreme Court.

So often, as a woman in the law, you are discouraged from acknowledging or intimating the truth of your lived experience in your professional capacities. The realities of my life as a woman and mother have so often been framed in stark competition with my professional advancement or value. Justice Ginsburg was the bridge across the cavernous divide between woman and lawyer, between the human experience of marginalized persons and the "cramped" interpretations of American jurisprudence that strain and ache to keep them at the margins.

I first encountered the full force of Justice Ginsburg, as many first-year law students did, in her dissents. Justice Ginsburg did most

of her work in her dissents - which alone was a life-raft for me. The dissent - while not winning the day - made meaning in its very insistence on being heard, being reckoned with, despite the disfavor of the majority male court. As a 20-year-old woman law student, struggling to summon the courage to add my contribution to the chorus of confident male voices, her words were the first real hints at the law acknowledging, or at least being forced to confront, the lived experience of a woman in this country. Her sensitivity and intellectual integrity surrounding the view from the "bottom" of the system has been pivotal in integrating my own experience and its essential value to my practice.

Throughout the years, I found myself going back to Ginsburg's example again and again as I navigated not only the course of my legal career, but also my life as a woman, wife and mother against the backdrop of contrasting professional expectations. My struggle to integrate these seemingly (and historically) incompatible experiences would likely have led me to a swift exit from the law. But it is Ginsburg's life and career, her steady and relentless commitment to equal justice under the law and her embrace of her own lived experience, that has buoyed me and countless others.

Justice Ginsburg once wrote, "Work-life balance was a term not yet coined in the years my children were young; it is aptly descriptive of the time distribution I experienced. My success in law school, I have no doubt, was in large measure because of baby Jane." She concluded, "Each part of my life provided respite from the other and gave me a sense of proportion that classmates trained only on law studies lacked." In a time when working parents, and especially working mothers, are stretched beyond measure, Ruth's extraordinary life and contributions to the promise of equal justice, fragile and receding as it may be, calls us back to the work that remains.

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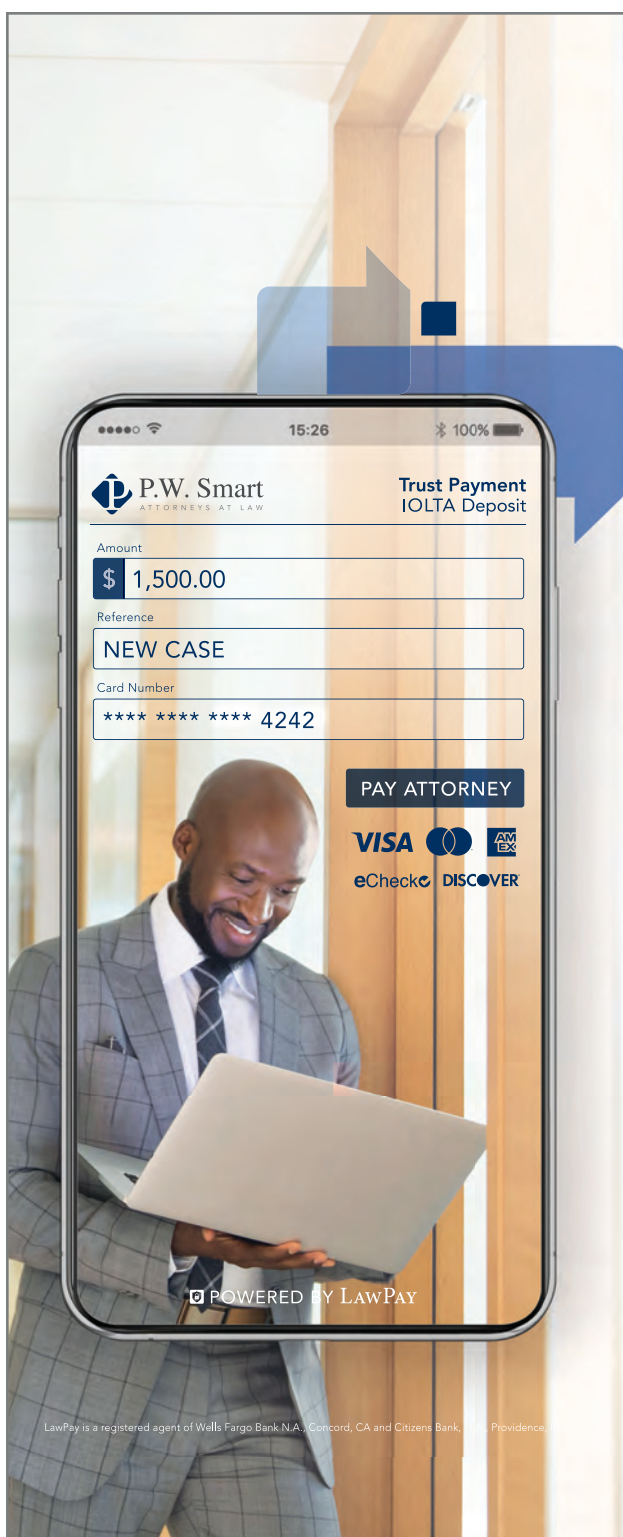
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Tips From the Bench

The Legend of Scotts Mills

by Hon. Patrick W. Henry
Multnomah County Circuit Court

Perhaps you saw the image and the story by Samantha Swindler in *The Oregonian* on September 13. Under the headline, “Behind the firelines, the race to save Scotts Mills,” Ms. Swindler captured the story of farmers, loggers, and heavy machinery operators who banded together to save the town of Scotts Mills from the Beachie Creek fire. Ms. Swindler quoted community member Mike Craig, who said:

“It’s one of the greatest community togetherness events that I’ve witnessed,” Craig said. “And I think, the way that the world is now, why wouldn’t you start taking pictures of the greatness of this, and show people what happens when we come together?”

Mr. Craig’s comment about “taking pictures” related to the picture, which Mr. Craig took, that accompanied the story. The picture showed Scott Kuenzi, Mr. Craig’s friend and neighbor, in the cab of a bulldozer “silhouetted by the blaze” as “flames licked the blade of [his] bulldozer that plowed toward the fire.” Mr. Craig indicated that he, Mr. Kuenzi, and their neighbors managed to stop the fire “within 300 feet of the homes.”

The story of the wildfires that have devastated so many families and communities in our state appeared at the same time as stories about the unimaginable suffering and loss of life caused by the coronavirus pandemic and stories about the long overdue reckoning in American cities relating to hundreds of years of racial injustice and inequality. The stories and images are troubling. And yet.

By now I expect everyone has heard the story that Fred Rogers told about being a boy and seeing scary news stories on television. His mother told him, “Look for the helpers. You will always find people who are helping.”

There are certainly helpers in Scotts Mills. I imagine that one day they will have a song written about them (“The Legend of Scotts Mills”), a parade in their honor, and a statue in the town square by a clever artist who will somehow capture in bronze the sweat and ash-streaked face of a determined bulldozer operator riding fearlessly toward a wall of flames. It will be epic.

I think it’s safe to say that none of the readers of this column will ever be

immortalized in bronze riding a bulldozer to save the day. If for no other reason, I doubt that any of you can drive a bulldozer. You can, however, do something that only a relatively small number of people in our community can do - practice law. And, like the farmers and loggers in Scotts Mills, you can come to the assistance of vulnerable people in our community.

In Multnomah County, we have a “program” that provides legal assistance to people who are respondents in guardianship and conservatorship proceedings. The “program” is, in effect, a list of attorneys who have volunteered on a pro bono basis to take cases that are referred to them by the court. They take these cases without any hope



Photo provided by Mike Craig

of payment and give a voice to people who face the potential loss of their autonomy and ability to make decisions about how they will live their lives.

Shannon Conley, James Cartwright, Michelle Johannsson, Brooks Cooper, Michael Edgel, Tim McNeil, Julie Meyer Rowett, Daniela Holgate, and Robert (Kim) Lusk. Since the beginning of the pandemic, in the midst of the anxieties and stresses that we all currently face, they have accepted pro bono appointments to represent vulnerable Oregonians. They are our helpers. I wish I could organize a parade and commission a statue in their honor. Unfortunately, all I can do is mention their names and offer my sincerest gratitude.

Perhaps one day, once the virus and the fires have died down, we’ll manage to have a “community togetherness event” and we’ll be able to thank them in person for showing us what happens when we all come together. And you’ll ask yourself, standing there and holding your smartphone in your hand, “Why wouldn’t I take a picture of the greatness of this?”

News From the Courthouse



by Leslie Johnson
Court Liaison Committee

Presiding Judge and Trial Court Administrator Report

Chief Justice Order 20-028, imposing restrictions on court operations during the COVID-19 pandemic, is expected to remain in effect for the foreseeable future. Judge Bushong has issued a series of presiding judge orders to implement the CJO requirements in the 4th Judicial District. Links to these orders are posted in the colored alert boxes on the court’s website homepage, www.tinyurl.com/order20-028.

The new Central Courthouse opened on Monday, October 5, as planned. The opening coincided with the state judicial conference, which ran from October 5-7. Even after the move, many judges and staff in the Multnomah County Circuit Court are still working remotely to prevent overcrowding in the building. Lawyers are encouraged to continue to use email for communication with court staff as possible.

Courtrooms and judicial chambers are primarily located on floors seven through 17 of the new building, and there are four high-volume courtrooms on the second floor. Presiding court is located on floor seven. Courtroom capacities are limited due to distancing requirements, and the capacities are posted at the entrance to each courtroom. COVID-19 cautionary signage has also been posted throughout the new building. Under the pandemic restrictions, the elevator cars are limited to two riders at a time, and visitors are encouraged to use the stairs to access the lower floors when possible. Court functions with heavy use are on the lower floors, including the court’s central customer service area and legal resource center on the second floor and the jury assembly room on the third floor.

The court adds a reminder that the new courthouse is not just a new structure - the new building necessitated many organizational and process changes; contains advanced technology including a new VOIP phone system, digital docket displays, integrated audio-video functionality, and

electronic check-in kiosks; and uses advanced systems for security and access. Judges, court staff, attorneys and others are experiencing all of this for the first time and adjustments are to be expected. Current information including a new phone directory has been posted on the court’s website.

Some out-of-custody arraignments and out-of-custody probation violation hearings resumed in the old courthouse, and those dockets will be continued and, eventually, expanded in the new courthouse. The Justice Center remains closed to the public due to damage sustained during the protests. As a result, the court is only able to use the Justice Center for in-custody arraignments and other in-custody proceedings at this time.

The Small Claims docket resumed on October 19.

Presiding Court ex parte appearances will continue at 10:30 a.m. each day by phone. Currently there is no afternoon ex parte. Judge Bushong recommends planning civil ex parte appearances for Tuesday, Wednesday and Thursday mornings when dockets are lighter; the criminal call docket on Monday and Friday tends to go long. Contact Judge Bushong’s staff directly and email documents to *both* presiding clerks. The presiding clerks’ email addresses are suzanne.r.johnson@ojd.state.or.us and katlynn.m.backus@ojd.state.or.us. One or both of the clerks will be in the courthouse Monday through Friday until 12:00 p.m. to handle telephone calls.

Civil Jury Trials

Judge Bushong is encouraging lawyers to set up scheduling conferences to discuss rescheduling trials currently set to occur during the remainder of 2020. Due to the COVID-19 pandemic, the court is not currently enforcing the time-to-disposition standards in the Uniform Trial Court Rules. Civil jury trials will resume when jurors are not placed at risk of coronavirus infection when they appear for jury service. The best estimate at this writing is that jury trials will resume in the spring or summer of 2021. The court is willing to schedule

civil jury trials for earlier in 2021, but those trials might need to be rescheduled again due to the progression of the pandemic. Attorneys should contact presiding court to set a scheduling conference; they are usually held on Wednesday afternoons. Court/bench trials can be held during the remainder of 2020 or earlier in 2021. Parties needing an early resolution of their cases should consider waiving their right to a jury trial, stipulating to a six-person jury, or stipulating to other procedures that will minimize jurors’ risk of infection. *If attorneys believe there are compelling circumstances for going forward with a civil jury trial in 2020 or early 2021 with or without alternative procedures, they should schedule a conference with Judge Bushong.*

Many judges are available for judicial settlement conferences (JSCs) in civil cases. Lawyers should consider scheduling a JSC now, before judges get too busy catching up on the backlogs of civil and criminal matters that have been postponed during the pandemic.

Family law trials have been postponed to at least January 2021, absent compelling reasons for conducting an earlier trial. All other hearings in domestic relations, juvenile, and probate cases are being held, many of them remotely. The dockets of all family law judges are generally filled for the remainder of 2020.

Civil Motions

The court has caught up with the initial backlog of civil motions hearings, and civil motion hearings - other than summary judgment motions - will be scheduled by the judicial assistant (JA) for the assigned motions judge. Attorneys should contact the JA to make the appropriate arrangements. Where necessary, attorneys may appear at civil motion hearings in person, though the court encourages parties to appear by remote means, either video conference or by telephone, to reduce the number of people in the courthouse. Summary judgment motions and other motions will continue to be scheduled through civil calendaring.

Waiting on the World to Change: Jury Trials During the Pandemic

by Presiding Judge Stephen K. Bushong
Multnomah County Circuit Court



*"We keep waiting (waiting)
Waiting on the world to change."*

When John Mayer wrote *Waiting on the World to Change* in 2006, the COVID-19 pandemic was not on the horizon. But lawyers and litigants waiting for a jury trial might rightly feel that they're just waiting for the world to change.

The right to a trial by jury in a civil case is protected by the Oregon and United States constitutions. Jury trials are the way civil disputes are ultimately resolved in a civil society. Individuals, businesses, government entities and others go to court to resolve their disputes peacefully, knowing that a jury of people from their community will be called on to decide their case fairly. Lawyers have built their practices in reliance on promptly resolving cases through jury trials when necessary. Many lawyers do not get paid until the case is resolved.

Despite the importance of civil jury trials, during the COVID-19 pandemic, most civil jury trials have been postponed. According to the National Center for State Courts, 49 states have postponed civil jury trials statewide in response to the pandemic. The same is true in federal courts across the nation.

Why Postpone Jury Trials?

Civil jury trials are delayed because it is too risky to conduct a civil jury trial - no matter what precautions are taken - during the COVID-19 pandemic. And unlike criminal cases, which face strict statutory and constitutional speedy trial requirements, there are no statutory or constitutional impediments to delaying jury trials in civil cases.

The risks associated with conducting a jury trial during the pandemic are well-documented. According to the Centers for Disease Control (CDC), the coronavirus is transmitted primarily through respiratory droplets that are spread through the air or on surfaces when people come into contact with each other indoors or in other enclosed spaces. The longer people remain together indoors in an enclosed space, the greater the risk of infection. Thus, according to the CDC, the highest risk of spreading the COVID-19 virus in a business or community setting occurs when large numbers of people are gathered together indoors for extended periods of time. Social distancing and masks can help reduce the risk of infection, but the CDC recommends avoiding such gatherings whenever possible.

A jury trial generally involves 12 jurors, plus alternates, gathered together in a courtroom with lawyers, parties, witnesses, a judge, court staff, and others, for the duration of the trial. Some jury trials last only two or three days, but others can last many days or weeks. When the jurors are not in the courtroom, they are gathered together in a small, enclosed jury room. In short, the typical jury trial would place all participants in the very situation that puts people at the highest risk of infection. Some litigants and their lawyers might choose to accept that risk, especially if social distancing and other precautions are taken. But jurors are not given that choice. The court uses the power of the state to summons people to serve as jurors, subject to potential sanctions for contempt if they ignore the summons. The possibility that jury service will unnecessarily put people at risk of infection is why most courts across the nation - including the Multnomah County Circuit Court - have chosen to postpone civil jury trials during the COVID-19 pandemic.

Conducting Jury Trials Safely During the Pandemic

Multnomah County Circuit Court conducted two jury trials in criminal cases from the

beginning of the pandemic in mid-March through October 1. It is likely that this court will conduct a few additional jury trials in criminal cases through the end of the year. Similarly, state and federal courts across the nation have held a limited number of jury trials in selected criminal cases, usually involving in-custody defendants and/or speedy trial deadlines. All courts conducting jury trials during the pandemic have taken extraordinary steps to minimize the risk of spreading the virus. Jury selection is conducted in multiple courtrooms to maintain social distancing. In the trial courtroom, jurors are seated at least six feet apart throughout the courtroom instead of in the jury box. To comply with the Open Courts clause of the Oregon Constitution, the proceedings may be transmitted live to additional courtrooms to allow public and media access. All participants are required to wear masks; surfaces are frequently sanitized. Plexiglass barriers have been installed in many courtrooms. The jury deliberates in a separate courtroom, not a jury room.

These steps minimize the risk of infection, but the risk of conducting the trial is still greater than simply postponing it. In criminal cases, speedy trial requirements may prevent further postponements. When further delays are unavailable, the only option would be to dismiss the case. In serious felony cases, that option is not acceptable to the victims and the community. Delaying trials for in-custody defendants means that an individual held in jail before trial - presumed innocent - will continue to be deprived of liberty and exposed to the risk of infection in the jail setting. That is why courts have looked for ways to conduct jury trials during the pandemic in a limited number of criminal cases.

Some courts have taken steps that might allow them to safely conduct jury trials in civil cases despite the pandemic. For example, courts have conducted trials outdoors at a park or fairgrounds, or at a large indoor facility with plenty

of space for everyone. Others have allowed lawyers, parties, witnesses, and even jurors to participate remotely through video conferences. Oregon law specifies procedures for jury trials that may preclude some of those measures, but this court is willing to consider any alternative procedures that will allow the court to conduct a jury trial safely if the parties stipulate to the process. Some measures may not be practical. The weather may preclude outdoor trials even if a large location is available. Multnomah County does not have a fairgrounds, and after spending over \$100 million on a new courthouse, the county is not going to incur the expense of renting additional space in the Convention Center or the Rose Garden, for example, to hold civil jury trials. Many potential jurors do not have access to the space or equipment needed to participate in a trial conducted through remote means.

Resuming Civil Jury Trials

Chief Justice Order 20-016 requires courts to maintain social distancing for all in-court proceedings during the pandemic. It allows - but does not require - circuit courts to conduct jury trials if social distancing can be maintained. In Multnomah County, recognizing that all jury trials place jurors at risk of infection, the court will continue conducting jury trials during the pandemic only where the risk of infection is outweighed by the consequences of further delay. That will likely be the case in a few criminal cases, mostly involving serious felony charges, in-custody defendants, and/or speedy trial requirements. Lawyers in civil cases who believe that the consequences of delaying the trial outweigh the risk of infection - or who stipulate to innovative procedures that minimize the risk - may set a scheduling conference with the presiding judge to discuss the possibility of scheduling a jury trial during the pandemic.

The delay in civil jury trials does not mean that civil cases should be put on "hold" during the pandemic. Lawyers should continue to conduct discovery so they are prepared for trial as soon as the pandemic eases. The court will conduct bench trials, judicial settlement conferences, and motion hearings during the pandemic to help resolve cases.

Litigants should not hesitate to engage in mediation or other forms of appropriate dispute resolution procedures to resolve their cases.

In Multnomah County Circuit Court, we will resume civil jury trials as soon as the Chief Justice lifts the social distancing requirements for in-court proceedings. At this juncture, nobody knows when that will be, though it likely will not happen until the virus is no longer a threat to public health due to a vaccine or other measures. The media has reported that COVID-19 vaccines may become widely available sometime in early-to-mid-2021. At this juncture, the best estimate is that civil jury trials may resume by the spring or summer of 2021.

Whenever social distancing requirements are lifted, the court will need to handle the backlogs of civil and criminal cases awaiting resolution. The court has no intention of further delaying civil jury trials due to the backlogs or resource availability. We have a large, new courthouse with 40 courtrooms potentially available for jury trials. We can summon as many people as needed to serve as jurors for those trials. We can call on many experienced retired judges to help with the increased workload when the risk of coronavirus infection has subsided. In short, when social distancing is no longer required, if lawyers and litigants are ready for trial, the court will be ready and able to conduct the trial as needed.

In the song, John Mayer sings that it's "hard to beat the system when we're standing at a distance." Lawyers do not need to simply stand at a distance, waiting on the world to change during this pandemic. Instead, all Oregon lawyers must work with each other, exercising the highest levels of professionalism, to move cases toward resolution during and after this crisis. The courts are here to help.

Endnote: "Waiting on the World to Change" appears on John Mayer's third album, Continuum, released in 2006. At the 49th Grammy Awards, the song earned Mayer a Grammy for the Best Male Pop Vocalist.

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What is the YLS?

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

Ask the Expert

Dear Expert,

I'm a new admittee to the Oregon Bar, but with COVID-19 I'm worried I won't be able to network. Do you have any suggestions on how I can build my professional network while social distancing?

Trying to build your professional network can be a daunting experience for new admittees, even in normal times. With the COVID-19 pandemic placing many area lawyers on full-time work from home status, and in-person networking events, socials, and CLE seminars being postponed indefinitely or made virtual, professional networking looks a lot different this year. That said, there are still many ways you can network. Check the websites for local bar sections

that have adapted existing events to a virtual format. For example, the MBA recently held its Annual Meeting virtually and ONLD has been holding virtual happy hours. While CLEs are largely virtual now, they can still be a good way to get introduced to experienced practitioners in the area. Pay close attention and reach out to the presenter afterward with a thoughtful question. It may feel a little more awkward to send an email than to casually hand over a business card while sharing drinks, but reaching out directly to attorneys who specialize in your practice area is a great way to start a conversation and lay the groundwork for a coffee or lunch meeting in the (hopefully not-too-distant) future when COVID-19 is a thing of the past.

Communication in the Time of COVID

by Elyse Lopez
YLS CLE Committee



Many of us have now been working remotely for seven months. Since the COVID-19 pandemic began, there has been a shift in the way lawyers conduct business both with each other and clients, as well as other third parties like courts and judges. Young lawyers are now faced with new challenges presented by the work-from-home culture.

Mentorship also looks different now. We can't pop into each other's offices to ask questions or meet after work for

happy hour. As a young lawyer, I've struggled to find the right mode of communication to suit my needs. In-person is off the table, but what about Zoom? Do you really want to set up a Zoom conference with the partner every time you have a question? Maybe you limit yourself to one Zoom meeting per week where you go over all the questions you have at that time, review what you're currently working on, and look ahead to future deadlines. Zoom has been a preferred platform of communication in my office because of the ability to visually connect with the other people you're talking to. It's also fairly easy to use and you can send an invite via email with the meeting link included.

Zoom is not always practical for those quick questions though. This is where I have struggled the most in my remote work: Can the question be shot off in a quick email? Is there a plan of action or recommendations you need to talk through with

someone? Sometimes I sit down and write what I think will be a quick email, only to find myself writing four or five paragraphs. When that happens, I usually finish drafting my email, but then I pick up the phone and call the partner to talk out what I've written. I think it's natural for most people's eyes to glaze over if they have to read more than one paragraph in an email, which makes it easier for them to miss something important in what you've written.

It is understandable to feel like you are bothering the partner with your questions or to assume you are supposed to struggle to find the answer yourself. But that's not the case. As a young lawyer, you are still learning and navigating what it means to practice law and manage your own caseload. The more you talk things out with other attorneys in your firm, the more information and knowledge you will attain and the better lawyer you will become. So, in our "new normal," while it might be easier to send off an email with your question, stop and think about what you might be missing out on and whether you should pick up the phone instead.

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We are pleased to announce that Sophie von Bergen has joined our team.

Sophie is an associate in the firm's litigation group where she focuses on complex litigation. Prior to joining Stoll Berne, Sophie was a judicial extern and a Stoll Berne summer associate. She earned her law degree (*summa cum laude*) from Lewis & Clark Law School and her undergraduate degree (*cum laude*) from Occidental College.

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The MBA Bar Fellows Class of 2021 is Off to a Great Start!

by Emily Teplin Fox, Jollee Patterson, and Adele Ridenour

The MBA Bar Fellows Program - a highly selective program designed to diversify the Oregon bar and increase access to justice - has launched its third class of impressive law students! With the support of the University of Oregon School of Law, Lewis & Clark Law School, and a great group of summer sponsors, the program is supporting seven first-year law students in the 2021 class: four from the University of Oregon - Pamela Domingo, Anna Lyall, Leilyn Miles and Phil Santos, and three from Lewis & Clark - Stacy Adriano, Aisha Ahmad and Radhika Shah. Each Fellow brings strong skills and a deep commitment to the law, and will increase the diversity of the bar.

Diversifying the legal profession is a critical goal for the MBA. The MBA Bar Fellows

Program furthers this goal by recruiting and supporting outstanding diverse law students who plan to practice in Oregon. Each Fellow receives (1) a tuition scholarship of up to \$60,000 from the University of Oregon or Lewis & Clark, (2) a 10-week paid summer fellowship at a firm or in-house law department, (3) a judicial mentor, and (4) other targeted opportunities.

The 2021 summer sponsors are Ball Janik, Dunn Carney, Lane Powell, Legal Aid Services of Oregon (generously funded by the Oregon Women Lawyers Foundation), Hart Wagner, Markowitz Herbold, Miller Nash Graham & Dunn, Nike, Richardson Wright, and Umpqua Bank. These summer sponsors are fortunate to be working with some of the state's best upcoming lawyers, and are

also demonstrating their deep commitment to diversity of the Oregon bar through support of this program.

Thank you also to our judicial mentors: Judge Angela Lucero, Judge Melvin Oden-Orr, Judge Katharine von Ter Stegge, and Judge Youlee You!

We are also very happy to report that the 2020 MBA Bar Fellows had very successful experiences in their first summer placements and are well on the way to becoming successful members of the OSB.

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

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



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The Corner Office PROFESSIONALISM

Late Supreme Court Justice Ruth Bader Ginsburg: A Model of Professionalism

With the passing of Ruth Bader Ginsburg on September 18, the United States Supreme Court not only lost a legal giant and pop-cultural icon, it also lost a shining model of professionalism. As acrimony in public discourse grows, Ginsburg leaves behind a legacy of civility and decency.

Growing up in Brooklyn in the 40s and 50s, Justice Ginsburg's mother Celia drilled her, over and over, with two pieces of advice: (1) be independent, and (2) be a lady. We hear much about how Ginsburg utilized the advice about independence, and for good reason. She boldly forged rights for women when others considered them far-fetched. She flouted entrenched stereotypes, broke down barriers, and championed true equality. In doing so, she inspired generations of Americans, men and women, from aspiring students to our most powerful

leaders. "If you want to be a true professional," she advised, "do something outside yourself."

But Justice Ginsburg also embraced her mother's second piece of advice no less. To her, "be a lady" meant "[d]on't be distracted by emotions like anger, envy, resentment ... [that only] zap energy and waste time." She applied this advice as a neutral and an advocate, in both the workplace and the courtroom.

In the workplace, Justice Ginsburg believed that the Justices of the Supreme Court "couldn't do the job the Constitution assigns ... unless we work well together." She managed her disappointment, dismay, and even shock at the decisions of her colleagues as "only momentary." She rarely became personal in her criticism of their legal arguments or in questioning during oral arguments. While her dissents were strongly worded, they

always remained respectful. She never let the bitter battles and sharp dissents translate to acrimony or erode the collegiality of the court.

Ginsburg's shy, reserved, and sober style served her particularly well as an advocate. Focused on listening and learning from others, she practiced with the ideal of "fight[ing] for the things that you care about, but do[ing] it in a way that will lead others to join you." She carried a big stick, but looked for opportunities to teach her adversaries, not embarrass or humiliate them. She warned that "[r]eacting in anger or annoyance will not advance one's ability to persuade," and offered sound advice for tranquil, effective advocacy and relationships - e.g., "[w]hen a thoughtless or unkind word is spoken, best tune out;" "[i]n every good marriage, it helps sometimes to be a little deaf." On the whole,

Ginsburg wisely recognized that compartmentalizing some of the natural emotion of advocacy served the greater goal as much or more than zealous representation.

With this approach, it is no wonder Ginsburg fostered endearing relationships with her ideological opposites on the court, with whom she regularly sparred over legal doctrine. Associate Justice Clarence Thomas, regarded as a staunchly conservative voice on the court, lauded Ginsburg for "exact[ing] the best from each of us, whether in agreement or disagreement." Associate Justice Brett Kavanaugh, whom Ginsburg considered a "very collegial fellow," recently hailed Ginsburg as an "inspiration" before an audience of conservatives. Above all, Ginsburg held a close personal friendship and mutual respect with perhaps her most fierce adversary, the late Justice Antonin Scalia. Scalia explained their odd coupling with eloquence: "I attack ideas. I don't attack people. Some very good people have some very bad ideas." Unlike Ginsburg, however, Scalia remained convinced that "[a] man who has made no enemies is probably

not a very good man." After a lifetime of building allies and bridging differences, Ruth Bader Ginsburg personified why we can expect more from ourselves and one another in our legal community.

Whether you herald her as a real-life superhero (the Notorious R.B.G.) or you refused to accept her apology for labeling President Donald Trump a "faker," we can all learn from her example. Indeed, it is difficult to fathom a better model of collegiality and professionalism in the law.

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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by Pamela Hubbs
Office and Foundation Administrator



With help from the legal community, MBF CourtSupport is staffing the information desk in the courthouse lobby with a Navigator to answer basic questions about the court and connect individuals who need accommodations or extra assistance with services and resources within the courthouse. Through this and future projects, CourtSupport will work to close critical funding gaps in areas impacting access to justice and the quality and administration of the legal system.

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