



Volunteering with Legal Aid During the Pandemic

by Jill Mallery
Statewide Pro Bono Manager, Legal Aid Services of Oregon

As the COVID-19 crisis continues to impact our communities, more people will have new and unanticipated civil legal problems. Lawyers are trained to spot issues and quickly pivot to solve problems. Oregon's three legal aid programs

are doing just that. They have responded quickly and comprehensively to the new challenges presented by the pandemic and economic crisis.

Pro bono attorneys have been stalwart supporters and partners to Oregon's 112 legal aid attorneys statewide. Since COVID-19 first appeared in Oregon, civil legal aid and pro bono attorneys have been providing critical legal assistance to people in need. To address the rapidly growing poverty population and need for legal help caused by the effects of COVID-19, legal aid's pro bono programs quickly shifted from providing in-person assistance to mostly remote assistance. Volunteer attorneys responded to the urgent need and volunteered with legal aid utilizing their unique skill set to provide much needed assistance. Thanks to the strong support of pro bono attorneys statewide, legal aid has been able to continue to provide access to justice through many of our pro bono projects.

Volunteer attorneys have provided critical assistance on a variety of urgent legal issues, such as representing domestic violence survivors in contested restraining order hearings, assisting low-income Oregonians overcome severe financial hardship through bankruptcy, helping vulnerable seniors with legal issues, aiding tenants to maintain safe housing and advocating for unemployed workers to receive life-sustaining unemployment insurance benefits. These are just a few examples and do not begin to describe the level of emergency legal assistance that pro bono attorneys have been providing throughout the pandemic. Attorneys have shown dedication, creativity and flexibility in providing pro bono assistance. They have learned new laws related to COVID-19, developed innovative ways to provide assistance to clients remotely and represented clients in hearings under newly implemented court procedures instituted during the pandemic to help stop the spread of the virus. The legal assistance provided by volunteer attorneys has helped keep low-income Oregonians safe and secure and has made a positive impact on the lives of their clients and the community.

Over the last several months, it has become clear we will be facing long-term consequences of COVID-19 and an increased demand for legal assistance. Prior to the pandemic and economic crisis, Oregon legal aid had resources to meet 15% of the civil legal needs of low-income Oregonians. Due to the increasing poverty population, volunteers are needed now more than ever to help legal aid meet the needs of low-income Oregonians.

Legal aid's pro bono opportunities are tailored to the needs of low-income clients and the available resources in the particular community. Legal aid offers many virtual volunteer opportunities and continues to provide support on pro bono cases. For information about volunteer opportunities with Legal Aid Services of Oregon, please contact Jill Mallery at jill.mallery@lasoregon.org. For information about volunteer opportunities with the Oregon Law Center, please contact Kristy Wood at kwood@oregonlawcenter.org.

Legal aid is fortunate to work with private attorneys who are committed to providing assistance to those who cannot afford legal services. Their volunteer work embodies the true spirit of the legal

profession. There is no better way to illustrate the great pro bono work that has been done over the last several months than to hear directly from the attorneys that have been volunteering. A few dedicated attorneys kindly shared their insights about pro bono work and volunteering with legal aid during the pandemic.

David I. Bean, Wyse Kadish LLP Volunteer, Domestic Violence Project (DVP)

Why I Volunteered

I volunteered during the pandemic to help meet the increased need for assistance with restraining orders. This is a tough time and it's important to me to make a difference by helping others who are struggling.

On Doing Pro Bono Work

DVP is a good opportunity to gain courtroom experience and maintain your trial skills. Being in front of judges and exercising those muscles, helps keep your skills sharp and keeps you on your toes.

Volunteering with DVP has enriched my life by providing me with an opportunity to work with clients with different backgrounds. Volunteer work has added meaning and purpose to the work I do. Access to justice is such a big issue. By contributing to the CEJ and volunteering for the DVP, I'm trying to do my part.

Insights on Volunteering During the Pandemic

Don't be afraid to volunteer! The court is doing a good job of keeping people safe. Restraining order hearings are mostly conducted over the phone. Legal Aid continues to provide strong support to its volunteers. I hope others will consider volunteering.



Vanessa L. Triplett, Miller Nash Graham & Dunn LLP Volunteer, Miller Nash Graham & Dunn Virtual Legal Clinic

Why I Volunteered

The pandemic has created unprecedented challenges for everyone - with court closures, remote work mandates, and the transition to virtual modes of communication - many lawyers have seen significant changes in their practice and to their caseloads. These disruptions to the legal community, however, have not stanchied the considerable flow of individuals in urgent need of legal assistance. If anything, the need for legal aid has grown, with many feeling the impact of COVID-19 on their employment status, housing situation, and family struggles.

In recognition of this ongoing need during the pandemic, my firm sent an appeal to the entire office to ask for volunteers for the LASO/OLC virtual pro bono clinic. Volunteering was instinctive: I wanted to help and suddenly had more capacity in my schedule. Many of my cases had stalled due to court closures, and I was able to take on more work. The best part about volunteering for the clinic during the stay-at-home order, was that the infrastructure for meeting clients through video-conferencing was already in place. Within a week, I was able to sign up for a time slot, receive my client's pre-meeting information packet, and talk to her through my computer screen in my home office.

Client Story

One of the most memorable cases I received through LASO involved helping an elderly woman save her home from foreclosure. The woman had been certified as eligible for the Oregon Department of Revenue Senior Citizen Tax Deferral Program for years but suddenly received a notice that she no longer qualified. The woman attempted to explain the situation and supply supporting paperwork to the Department of Revenue, but because she did not have a lawyer, she missed the 90-day period to formally appeal the decision. With a meager income of \$700/month in Social Security, the client lived on food stamps. Disqualification from the deferral program would have meant that over \$8,000 in deferred property taxes would have become immediately due and she would have faced foreclosure. Through the virtual pro bono clinic, I was able to take this woman on as my client, and convince the Department of Revenue to reinstate her status in the

Continued on page 5

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.mbar.org and log in as a member to register at the member rate.

OCTOBER

10.7 Wednesday
Data Privacy and Cyber Security for Lawyers
Frank Gillman
Anne Hasenstab
Simone McCormick

10.22 Thursday
UNconference
Heather Decker

10.28 Wednesday
Chief Justice/Presiding Judge Update
Hon. Martha L. Walters
Hon. Stephen K. Bushong

Tools to Help Your Firm Incorporate Pro Bono into its Practice

"Take a Matter that Matters" by taking the MBA Pro Bono Pledge
www.mbar.org/probonopledge

Add a pro bono policy to your firm's policies by using the OSB Pro Bono Model Policy Tool Kit
www.osbar.org/probono/policy/index.html

Find pro bono opportunities on the MBA and OSB websites
www.mbar.org/probono
www.osbar.org/probono/VolunteerOpportunities.html

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Multnomah Bar Association Annual Meeting and Awards Recognition

Wednesday, October 14
Noon-1:15 p.m.

Free remote attendance via Zoom

Celebrating the profession and recognizing our colleagues

Professionalism Award

Robert C. Joondeph

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Register at www.mbabar.org.

Arbitration Provisions and Boilerplate Language in Contracts

by Joshua Stadler
Dunn Carney Allen Higgins & Tongue LLP



Oregon courts recognize the strong federal policy in favor of arbitration. See, e.g., *Livingston v. Metro. Pediatrics*, 234 Or. App. 137, 147 (2010). However, the presumption in favor of arbitration is not always enough to overcome poorly drafted arbitration clauses, which can, in turn, become the subject of litigation. A recent order of the US District Court for the District of Oregon narrowly construing the scope of an arbitration agreement between two commercial parties exemplifies this. In *Willamette Biomass Processors, Inc. v. Perdue Agribusiness LLC*, the court concluded that an expansive arbitration clause in one agreement between the parties did not and could not apply to a dispute over a subsequent agreement between the same parties. No. 3:19-cv-01677-AC, 2020 WL 2535047, at *2 (D. Or. Apr. 13, 2020). *Willamette Biomass* illustrates several essential points businesses and their attorneys should consider when both drafting and evaluating arbitration provisions.

First, the breadth of an arbitration provision is determined by the specific language contained within the parties' agreement. In

general, courts find an arbitration provision broad in scope if it includes language concerning disputes "relating to" the agreement. For example, a broad provision might include terms such as "any controversy or claim arising out of or relating to this contract shall be settled by arbitration." See *Drafting Dispute Resolution Clauses: A Practical Guide*, American Arbitration Association (2013), bit.ly/aaa_guide. In contrast, a narrowly drafted arbitration clause omits this sort of expansive language. In *Willamette Biomass* the arbitration provision required that, "[i]n the event a dispute arises under this Agreement, the matter will be promptly submitted to arbitration." The term "under this Agreement" was too narrow to cover a dispute over a subsequent agreement between the parties.

In evaluating the scope of an expansive nature of an arbitration provision, courts including the *Willamette Biomass* court, also consider the interrelated nature of any contracts between the parties. The general rule is that an arbitration provision in one agreement will not govern disputes arising out of a subsequent agreement unless the two agreements are "interrelated in an ongoing series of transactions." If an arbitration provision's scope is narrowly drafted or deemed not interrelated, courts generally consider all collateral matters to be outside the purview of the arbitration clause, such that the provision will not encompass subsequent disputes.

Businesses seeking to compel arbitration of any and all potential disputes arising out of or related

Calendar

OCTOBER

1-2 Thursday-Friday
Historic Central Courthouse
closed for physical move

5 Monday
New Central Courthouse opens
1200 SW 1st Ave, Portland, OR
97204

13 Tuesday
Queen's Bench Luncheon
Speaker Series
www.owlsqueensbench.org

14 Wednesday
MBA Virtual Annual Meeting
www.mbabar.org

15 Thursday
AILA Oregon Vibrant
Communities Gala
bit.ly/aila_gala

NOVEMBER

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

26-27 Thursday-Friday
Thanksgiving - MBA Office
closed

Oregon Lawyers Against Hunger Fund Drive

by Julie Peterman
Corporate & Community Relations Coordinator, Oregon Food Bank

Alongside our global community, Oregon is in the midst of a crisis. It's no secret that thousands of families are reeling from lost wages, unpaid medical leave, and unplanned childcare and healthcare costs. Estimates from Oregon State University show that food insecurity has doubled since the start of the pandemic, and the Oregon Food Bank (OFB) Network expects to serve one to two million people in the coming year.

Now, with wildfires raging across our region, evacuations have displaced individuals and communities already struggling to meet basic needs.

But in the midst of crisis, our community is coming together. As businesses shuttered and schools closed in mid-March, individuals and organizations immediately jumped into action. People of all ages, identities, and expertise rallied around their communities to raise resources to support the fight against hunger.

Because of our community's support, hunger relief partners across the state have been able to step up to meet the dramatically increased need. Almost overnight, agencies had to pivot to accommodate social distancing and meet the increased need for food assistance. Northeast Emergency Food Program set up a drive-through pantry, which often has a line of cars stretching from 72nd to 82nd Avenue. In the entire year of 2019, the program served 42,000 clients. In just the month of April, they served over 47,000 clients.

Causa, an immigrant rights organization, is another partner doing the work to fight hunger in our area. Many Oregon workers do not qualify for

to its contractual relationships should take care to include broad arbitration provisions in all of their contracts, and should avoid "cut and paste" boilerplate language that may omit necessary terms and phrases. Of course, parties intending to settle disputes



unemployment insurance or stimulus payments, simply because of their immigration status. When COVID-19 cases hit Oregon, Causa moved quickly with community partners to create the Oregon Worker Relief Fund. They've raised tens of thousands of dollars to get money into the hands of Oregonians to ensure no one is worried about where their next meal will come from, regardless of their immigration status.

As we know, the pandemic is far from over, and it will take all of us working together to support our community during these crises.

This fall, Oregon Lawyers Against Hunger (OLAH) will once again rally the legal community around hunger relief in Oregon and Southwest Washington. For over 20 years, OLAH supporters have worked to fight hunger and its root causes. Supporting OLAH this year will mean providing immediate relief for people displaced by fires, fighting the systemic inequities that contribute to hunger, and being a part of a larger movement to support the most vulnerable members of our community through a year of crisis. Contact OLAH Board President Melissa Kenney at melissakenney74@gmail.com to get involved in the OLAH drive November 2-13, or donate at give.oregonfoodbank.org/olah. It will take all of us, as a community, to ensure hunger will not be a symptom of COVID-19. Join us and together, we will emerge stronger.

through arbitration can avoid questions of interrelatedness by including arbitration provisions in all of their contracts at the outset and/or acknowledging the interrelatedness of the transactions

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

Data Privacy and Cyber Security for Lawyers

Wednesday, October 7 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

Law firms of all sizes have become treasure troves for bad actors ready to monetize on valuable data: intellectual property, sensitive information regarding mergers, social security numbers, personal-, protected health- or payment card information. What are the ethical obligations with regard to safeguarding client data? How can lawyers protect against these attacks? In this CLE you will learn:

- An overview of data privacy laws and ethical obligations;
- Common cyber threats for lawyers/law firms of all sizes;
- How to mitigate cyber security threats and increase your resilience;
- Practical tips on how to secure your digital environment.

Join our speakers for this informative seminar. **Simone McCormick**, Partner, Lewis Brisbois. **Anne Hasenstab**, Executive Risk & Cyber Security Practice Leader, Ward Insurance. Anne has spent the last 19 years specializing in insurance products designed to mitigate the economic damage caused by terrible human behavior. **Frank Gillman**, Principal, Vertex Advisors Group. Frank has more than 30 years of executive technology experience in the legal field.

For more information: Contact Garrett Garfield, Holland & Knight LLP, at 503.243.2300. For registration questions, contact the MBA at mba@mbabar.org.

UNConference

Thursday, October 22 3-5 p.m.

Online Participation Only

Members \$30/Non-Members \$50

UNconference is a fun and interactive take on collaborative learning. The goal of an UNconference is to share and learn from each other about topics chosen by participants. Presenters and teachers are the participants themselves. Learning arises from peer-to-peer sharing and conversation with a few experts sprinkled in with specialized knowledge to share.

Participants will submit topic ideas related to law practice generally, business of law or law office management. Nine topics will be selected for three tracks and three short sessions. Each UNconference participant will attend three sessions of their choice. CLE credit will be sought

Please join us for this fun and unique event! Space is limited.

Facilitator: **Heather Decker**, JD, tcb coaching + consulting

Collaborators: **Elise Bouneff**, Senior Vice President, Columbia Bank; **Brian Rapp**, CPA, McDonald Jacobs, P.C.; **Sarah Prevost**, Co-Founder, Mintage Labs; **Stacey McCormack**, CEO, Musimack Marketing; **Hsin-Cheng Kuo**, Certified Financial Planner™, Northwestern Mutual; **Chris Torrey**, Senior Account Executive, Novitas Data; and **Sheila Blackford**, Practice Management Advisor, OSB Professional Liability Fund

For more information: Contact the MBA at mba@mbabar.org.

Chief Justice/Presiding Judge Update

Wednesday, October 28 12-1 p.m.

Online Participation Only

Members and Non-Members FREE

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

Please join the **Honorable Martha L. Walters**, Chief Justice, Oregon Supreme Court and the **Honorable Stephen K. Bushong**, Presiding Judge, Multnomah County Circuit Court for this free seminar.

For more information: Contact the MBA at mba@mbabar.org.



and now is the time to renew your MBA membership.

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Seminar Selection:

Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to participate.

10/7 Data Privacy and Cyber Security for Lawyers
Online attendance only - link will be emailed
 Class Registration (\$60 Members/\$95 Non)\$_____

10/22 UNconference
Online attendance only - link will be emailed
 Class Registration (\$30 Members/\$50 Non)\$_____

10/28 Chief Justice/Presiding Judge Update
Online attendance only - link will be emailed
 Class Registration (FREE).....\$_____

Total due\$_____

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Payment Options:
 Check VISA MasterCard
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Online CLE registration strongly encouraged. Visit www.mbabar.org to register online. Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed the address below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Unable to attend?
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5:00 to 5:30pm

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Critical funds raised at Partners Party benefit the abuse prevention work of Guardian Partners. Thank you for your support!

Contact Executive Director Marc Kochanski at marc@guardian-partners.org or 971-409-1358.

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Volunteering with Legal Aid

Continued from page 1

property tax deferral program, which saved her house.

On Doing Pro Bono Work

One of the reasons why I enjoy pro bono cases so much is because the work can make such a tremendous impact on people who would otherwise not be able to afford legal help. Feeling like I am doing good, doing something meaningful with my time, gives me an unparalleled sense of fulfillment as a lawyer. Experiencing the sense of gratification that I am putting my law degree to good use is one of the many reasons why I love this profession.

Words of Encouragement

Volunteering during this pandemic is one of the best decisions you can make. People are in need of legal assistance more than ever. If there is ever a time to step in, and step up, it is now. If you're a longtime practitioner with extra time on your hands, you could use this newfound free time to make someone's life better. If you're a new lawyer and you want to hone your skills, volunteering is a great way to gain experience. Someone once told me that no lawyer should shy away from taking on pro bono work out of fear that they lack expertise in a particular practice area, because to the client having an inexperienced lawyer is still far better than having no lawyer at all.



Stacie L. Damazo, Dunn Carney LLP
Volunteer, Housing Notice Clinic

Why I Volunteered

Since early reporting on the coronavirus, so much has been unknown, but it quickly became apparent the pandemic would not end before upending countless lives. So many people were, and still are, experiencing considerable uncertainty with respect to their employment, housing, health, etc. Amidst all of this uncertainty, it has been important to me to find ways to support those most impacted by the pandemic.

Client Story

As stay-at-home orders began taking effect, I assisted a residential tenant who was constructively evicted by their landlord, despite the eviction moratorium and landlord's knowledge they are a domestic violence survivor and considered "high risk" in relation to COVID-19. The landlord's actions amounted to violations of the Oregon Residential Landlord Tenant Act, Portland City Code, and Governor Brown's then-applicable Executive Order. Ultimately, we were able to obtain a favorable result for the client that

enabled them to secure a new place to live and begin moving forward.

On Doing Pro Bono Work

There are many benefits to doing pro bono work - both for the client and the lawyer. We legal professionals are uniquely positioned to guide clients out of difficult situations and doing so at no cost, even where the task may seem simple, can have a very meaningful impact on the client.

Personally, pro bono opportunities before and throughout the pandemic have helped me feel more connected to my community, especially in more recent times of increased isolation. Through volunteering, I have developed my communication style, improved my case management skills, and gained experience I would not have gained otherwise.



Laura L. Donaldson, Kuni Donaldson, LLP
Volunteer, Bankruptcy Clinic

Why I Volunteered

I volunteer for the clinic because it is important to me that everyone has access to justice. In my tenure as a lawyer, I have witnessed individuals and families struggle with not having the resources to hire a lawyer to help defend their rights. The pandemic and resulting large unemployment rates have created a climate where previously middle-income households are now feeling the devastation of potential homelessness.

On Volunteering

The pandemic has brought about challenges for all involved in the bankruptcy clinic including how to meet safely with clients, provide information they would normally get through the in-person clinic, obtain credit counseling and attend their court hearing. The clinic has been instrumental in streamlining direct referrals, and our courts have been outstanding in providing access to justice through telephone rather than in-person hearings. We use Zoom, Google Duo and other online platforms for our consultations and document-signing appointments; email, Dropbox and other platforms for delivery of information. For individuals without access to a computer, we arrange for drop off of documents and sanitization upon receipt and return of the documents to our clients.

Other Pro Bono Work

In a separate group effort with bankruptcy court judges and local practitioners, we have formed a committee to develop a program similar to the Oregon District Court's pro-se program to assist parties with discharging student loans in bankruptcy. The objective is to provide volunteer attorneys who agree to represent an individual for the whole case, or

provide limited legal advice. The purpose is to allow those without the resources to hire a lawyer to increase their likelihood of success in their litigation matters. It is an incredibly worthwhile project that we hope will eventually evolve into other pro-se bankruptcy litigation matters. The program is in the initial stages of development. We are always looking for additional volunteer attorneys.



Theresa Hollis, Fitzwater Law
Volunteer, Senior Law Project

On Doing Pro Bono Work

I have volunteered for Legal Aid's Senior Law Project (SLP) since 1998. Initially, my goals were to gain experience and possibly to connect with some paying clients. I have continued to make volunteering at SLP a priority for the last 20+ years because I witnessed first-hand what it means to seniors to receive that free half-hour of legal advice.

A legal problem is often a huge cause for stress in a senior's life. Sometimes I am able to resolve their problem quickly and sometimes it takes more work. Either way, they are always very thankful and have expressed to me many times how much it means that someone was willing to volunteer to listen to them and try to resolve their problem.

Words of Encouragement

Seniors come to SLP with many different types of legal issues from problems with a landlord, to needing a will, to dealing with the death of a loved one. In the past, I would meet with seniors in person at local senior centers. It was always nice to get to speak in person but I could tell that it was often a chore for the senior to travel to the senior center.

During the pandemic my point of contact changed. I am now calling seniors at a prescheduled time. This has the benefit of the senior not having to travel. As long as you are a good communicator over the phone, it is not any more challenging to volunteer for SLP during the pandemic. If you are interested in helping our seniors, I would strongly encourage you to consider volunteering. The need is great and the feeling of accomplishment is hard to beat.

Josh Ross, Stoll Berne

Volunteer, DVP

Why I Volunteered

I've volunteered with LASO's DVP for about 13 years and have always found the work challenging and rewarding. By definition, these cases involve difficult circumstances. But especially now - I couldn't imagine what it would be like for a DV victim to experience abuse while essentially quarantined at home during the pandemic, and then have to figure



out a way to navigate the court system for help. I felt volunteering was a pretty simple way for me to help people during a major crisis.

On Doing Pro Bono Work

For some, taking pro bono work (particularly in a different or new practice area) can be intimidating, and for many it is hard to find the time to "fit pro bono in" with billable pressures and other commitments. Legal Aid makes it relatively simple by offering case placement, resources, education, and support. For lawyers of all experience levels, DVP cases can provide excellent training experiences and help maintain court skills as almost all cases involve evidentiary court proceedings. But, the real reward for me is helping clients who are often in distress and trying to get through what is the most difficult moment of the client's life. It is cliché, but as lawyers we have incredible powers and I feel those powers should be used to help those most in need. It's that simple.

Words of Encouragement

Make it happen! Block out time on your calendar and commit to pro bono clients just as you would to paying clients. Talk to colleagues and others at your firm about strategies to make time for this important work. Especially now. Especially now! Lean on Legal Aid's expertise and resources. Or, call me and I will be happy to help or co-counsel a DVP case with you!

Todd Trierweiler, Todd Trierweiler & Associates

Volunteer, Bankruptcy Clinic

Why I Volunteered

It has been my pleasure to work with Legal Aid and similar groups over the past 35 years. I think that when many of us went to law school, we had a burning fire deep inside to right the wrongs and help the downtrodden. Along the way many of us got married, had kids, and have juggled work and our personal lives. For many, that fire subsided a bit.

Especially in this time of such a horrible pandemic, working with Legal Aid and helping people in a pro bono bankruptcy project has reignited those embers and reminded me, and other volunteer attorneys, what really matters. So many people are in so much need at this time.

On Doing Pro Bono Work

Some of you have heard me say, "Debt is like cancer. It sucks all of the life and joy out of a person." There are very few things worse in a person's life other than not having the money to feed their kids or buy prescriptions when they need them. The work the pro bono clinic does saves not only a person's financial life, but

sometimes their actual life. Debt is one of the leading causes of stress-related illness and is also a significant factor in the increasing suicide rate in the United States. The difference a volunteer can make in a person's life is not just measured by the debt they discharged, but in the incredible change that client experiences both in the quality of their life and their ability to once again become productive members of society.

Pro Bono Volunteers

On behalf of Legal Aid Services of Oregon and the Oregon Law Center, we thank and appreciate each and every volunteer for their support and dedication to increasing access to legal services during the pandemic.

- Alexzander Adams • Ashlee Albies • Alan Aldous • Matthew Arbaugh • Penny Austin • Kachelle Baxter • David Bean • Stephen Behrends • Lauren Bernton • Susan Bock • Kathryn Bourn • Rebecca Boyette • Hon. Trish Brown • Angie Burcham • Tomas Butcher • Brett Carson • Maurice Cassidy • Craig Chamberlain • Thomas Chow • Anna Marie Clark • Cheryl Coon • Beth Creighton • William Critchlow • Sarah Crooks • Rex Daines • Amanda Dalton • Stacie Damazo • Kenneth Davis • Dallas DeLuca • Joshua Dennis • Laura Donaldson • Bridget Donegan • Darin Dooley • Paul Duden • Jeannine Ferguson • Celia Fitzwater • Sarah Flanagan • Erin Forbes • Max Forer • Mike Franklin • Julia Fraser • Laura Gardner • Gerry Gaydos • Will Gent • C. Andrew Gibson • Charles Gillis • Stephen Gindling • Stacy Hankin • Seth Hantke • Rick Harder • Andrew Harris • Lei Hart • John Haub • Erick Haynie • Natalie Hedman • Hon. David Hercher • Dona Hippert • Charlene Hiss • Edward Hoeffliger • Theresa Hollis • Stephanie Holmberg • Shanelle Honda • James C. Horn • James Huddleston • Kay Hyde Patton • Noah Jarrett • Edward Johnson • Samuel Justice • Christopher Kane • Keith Karnes • Kathryn Kelly • Sean Kelly • John Koch • Mark Kramer • William Kwitman • Mark Lang • Elizabeth Lemoine • Tamara Maher • Riley Makin • David Malcolm • John Manning • Brian Marshall • William H. Martin • Nicoleas Mayne • Hon. Peter McKittrick • Hon. Maureen McKnight • Rizza McWhorter • Gene Mechanic • Christopher Mertens • Jeffrey Miller • Souvanny Miller • Kristin Moore • John Moot • Arya Morman • Ilene Munk • Michael O'Brien • James O'Connor • Lucy Ohlsen • Jesús Palomares • Vanesa Pancic • Richard Parker • Jollee Patterson • Teresa Pearson • Amy Pedersen • Gerald Pederson • John Pinzelik • Teri L. Powers • Ben Pradhan • Scott Pratt • Greg Roberson • Jessica Rogers • Joshua Ross • Susan Rossiter • PK Runkles-Pearson • Craig Rusillo • Kendra Russell • Lauren J. Russell • Ava Schoen • W. George Senft • David Shannon • Ian Simpson • Richard Slottee • Phillip Spicerkuhn • Natalie Stack

Continued on page 18

mba | ANNOUNCEMENTS

2021 MBA Award Nominations Due October 30

To make nominations for the Professionalism, Diversity and Merit awards, please complete and return the nomination form(s) available at www.mbabar.org or contact Kathy Modie at kathy@mbabar.org for more information. Nomination forms are due October 30 to the MBA. The MBA will present the recipients of the Professionalism, Diversity and Merit awards at the MBA Annual Meeting on May 19, 2021.

MBA Mentor Program - Sign up by October 30

The MBA Professionalism Committee administers the MBA Mentor Program. With many unknowns and unusual circumstances this year, the program is needed now more than ever. To participate as either a mentor or mentee in this year's program, please complete and return the sign-up form available at www.mbabar.org by October 30.

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LawPay provides your clients with an easy way to pay you by credit card, debit, card or eCheck - and you get the power to separate your earned and unearned fees and protect your IOLTA from third-party debiting. MBA members opening a new LawPay account by September 30 receive three months with no monthly fee, plus a \$100 credit towards processing fees. Visit bit.ly/lawpay_sept for details.

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.

Take a Matter that Matters

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

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

Noontime Rides

Social distancing will be observed and the rides will continue as scheduled. Short fast rides with hills. Meet at SW corner of Pioneer Courthouse Square (Yamhill & Broadway) between noon and 12:10 p.m., Monday and Thursday. Contact Ray Thomas at 503.228.5222 with questions, or meet at start.



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MBA Mentor Program Frequently Asked Questions

If I am participating in the OSB New Lawyer Mentoring Program (NLMP), will I be assigned the same mentor for the MBA Mentor Program? That's up to you. Let us know your wishes on the MBA sign-up form and we'll match you appropriately.

How are mentors and mentees matched? Mentors are matched with mentees by MBA Professionalism Committee members based on the responses given on the sign-up form. Let us know if you would like the same mentor you have in the NLMP. If you're not signed up for the NLMP, let us know what's important to you in a mentor - practice area, firm size, gender, etc. We'll do our best to match you appropriately.

Is the MBA Mentor Program compatible with the NLMP? Yes, it is possible to participate in both programs either with the same mentor or a different mentor.

Who can participate as a mentee in the MBA Mentor Program? Any YLS member (any MBA member in practice less than six years or under the age of 36), whether or not they are signed up for the NLMP, may participate as a mentee.

Who can participate as a mentor in the MBA Mentor Program? OSB members in good standing, with reputations for competence and for conducting themselves ethically and professionally, and with at least seven years of practice, may participate as mentors.

Ethics Focus



by Mark J. Fucile
Fucile & Reising LLP

Lawyers follow many different paths to providing pro bono services. One common way is through board membership for a nonprofit that the lawyer's firm represents. This is usually a "win-win" scenario for both the lawyer and the nonprofit. The lawyer is able to engage in the community. The nonprofit, in turn, gains the benefit of a lawyer's insight into its operations on the board.

At the same time, board membership in this context can present many of the same risk management issues as when a lawyer is a director of a firm corporate client. In this column, we'll survey three key areas lawyers and their firms should evaluate when considering whether a firm member should also serve as a director of a nonprofit for which the firm also provides legal services: (1) conflicts; (2) attorney-client privilege; and (3) competence.

This is not intended to be an exclusive list. Rather, they are simply some of the more commonly recurring issues. Similarly, although these issues are sharpened if the nonprofit is also a firm client, they don't necessarily go away if not.

Conflicts

Conflicts for a lawyer-director can arise from both the roles as "lawyer" and "director." OSB Formal Opinion 2005-91 (rev 2016) discusses conflicts in both of these roles and is available on the OSB website.

On the "lawyer" side, conflicts can be either multiple-client under RPC 1.7(a)(1) or material limitation under RPC 1.7(a)(2). *Kidney Association of Oregon v. Ferguson*, 315 Or 135, 843 P2d 442 (1992), touches on both. A lawyer-director of a local charity whose firm also represented the charity was asked to handle the probate of the estate of a decedent whose sole beneficiary was the charity. The Supreme Court ultimately concluded that neither a multiple client nor a material limitation conflict arose because the personal representative and the charity shared an interest

Is there a fee to participate? The MBA Mentor Program is free for all participants.

If I am participating in the NLMP why would I also sign up for the MBA Mentor Program? The MBA program offers additional opportunities for mentoring outside the OSB structure, including networking,

Pro Bono: Risk Management Considerations for Nonprofit Board Membership

throughout in maximizing the estate's distribution to the charity. Nonetheless, friction still arose between the lawyer and the charity over the legal fees incurred because the probate turned out to be significantly more complicated than anticipated and ate into the eventual gift.

On the "director" side, statutory and decisional law typically impose fiduciary duties of care and good faith on directors. These can be triggered, for example, when the board is asked to evaluate the work of the lawyer-director's firm. For lawyers who are invited to join the board of a nonprofit and may not be familiar with the duties of a director, the Attorney General's Office has a practical "Guide to Nonprofit Board Service in Oregon" available on its website.

Attorney-Client Privilege

Courts have long drawn a line between legal and business advice provided by lawyers - with the former generally accorded protection under the attorney-client privilege and the latter

Conflicts for a lawyer-director can arise from both the roles as "lawyer" and "director."

usually not. Professor Kirkpatrick put it this way in his *Oregon Evidence* treatise (6th ed. 2013 at 336): "If the client consults with the lawyer as a friend, counselor, business advisor, executor, investigator, tax preparer, attesting witness, or scrivener, the privilege will not arise."

This distinction can have important practical consequences for lawyer-directors given their overlapping roles.

With business advice, if privilege is not available, the lawyer may become a fact witness in later litigation over the matters concerned. In that event, the lawyer-witness rule - RPC 3.7 - may come into play. RPC 3.7(a) generally prohibits a lawyer from acting as trial counsel if the lawyer will be a "likely" witness. Under RPC 3.7(c), personal disqualification can ripen into firm disqualification if the testimony from the lawyer-witness will be adverse to the lawyer's client. OSB Formal Opinion 2005-8 (rev 2016) outlines these twin facets of the lawyer-witness rule in detail.

and obtaining free CLE credit available exclusively to people participating in the MBA program.

How do I sign up? Complete and return the sign-up form available at www.mbabar.org. Forms are due to the MBA by October 30.

With legal advice, ABA Formal Opinion 98-410 (1998), which discusses lawyer-director issues extensively from a national perspective, counsels (at 6) that lawyers should keep legal and business advice separate in an effort to preserve privilege:

"[I]t is vital that the lawyer who also serves as a director be

Today's practice reality... forces most of us into relatively narrow niches and a lawyer-director may not necessarily have substantive expertise on the particular legal point confronting the board.

particularly careful when her client's management or board of directors consults her for legal advice. The lawyer-director should make clear that the meeting is solely for the purpose of providing legal advice... When appropriate, the lawyer-director should have another member of her firm present at the meeting to provide the legal advice."

Given the sensitivity of privilege, the ABA opinion suggests that lawyer-directors discuss this area with their fellow board members and executives at the client organization when they join the board involved.

Competence

Particularly with smaller nonprofits, lawyer-directors may be viewed by their fellow directors as authoritative voices on all things legal. Today's practice reality, however, forces most of us into relatively narrow niches and a lawyer-director may not necessarily have substantive expertise on the particular legal point confronting the board. In that situation, lawyer-directors need to be diplomatic enough to demur on providing legal advice in an area beyond their competence. Simply because legal advice is provided pro bono to a nonprofit does not exempt it from the regulatory duty of competence or the civil standard of care. Even if they are not able to advise on a particular matter, lawyer-directors are often in an excellent position to identify other lawyers within their firms or the community at large who can provide the specialized advice required.

Learn more about the OSB NLMP at www.osbar.org/nlmp.

If you have questions about the MBA Mentor Program, please contact Kathy Modie at kathy@mbabar.org.

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Around the Bar



Jack Scholz

Hart Wagner

Associate **Jack Scholz** has been selected by the OSB as its Young Lawyer Delegate to the American Bar Association for a two-year term. Oregon's ABA delegates serve on the ABA House of Delegates, the policy-making body of the national organization. The ABA House of Delegates convenes twice each year to consider resolutions governing the practice of law throughout the entire country. Pursuant to OSB rules, one delegate from Oregon must be a lawyer under 35 years of age, and Hart Wagner is pleased that Scholz will be serving in this role until August of 2022.



Heather Fossity

Barran Liebman

Heather Fossity has joined the Board of Directors for the Forest Park Conservancy. As a trail runner with a strong appreciation for this urban sanctuary, Fossity is passionate about the Conservancy's mission of protecting Forest Park's ecological health while encouraging responsible recreation and access. After serving on the Stewardship and Strategy Committee since 2019, she looks forward to continuing her support of the Forest Park Conservancy through this new role.

Tonkon Torp LLP

Kate Roth joins the firm as an associate in its Tax and Executive Compensation & Employee Benefits Practice Group. Roth was previously a US Tax Court judicial law clerk for the Honorable Kathleen Kerrigan. While there, she conducted federal taxation research and drafted memoranda and opinions regarding tax-related disputes and issues.



Kate Roth

Prior to the US Tax Court, Roth worked at Grant Thornton, LLP as a Mergers & Acquisitions tax associate and was a law clerk for the Oregon Department of Justice, Civil Enforcement Division. She earned her Taxation LLM. from Georgetown University Law Center, and her JD from University of Oregon School of Law.



Mick Harris

Mick Harris has been appointed to the Willamette University Alumni Board. The board works to foster alumni relations by organizing events, networking and career resources.

Harris is an associate in Tonkon Torp's Business Department where he works with the firm's Cannabis Industry, Real Estate & Land Use, and Entrepreneurial Services practice groups, among others. He graduated with honors from Willamette University College of Law in 2019.



Melissa J. Healy

Stoel Rives LLP

The firm is pleased to announce that labor and employment partner **Melissa J. Healy** has been named a recipient of the Portland Business Journal Forty Under 40 award for 2020.

Healy represents employers in both traditional labor law

and employment litigation. She regularly handles labor arbitrations and matters pending before the National Labor Relations Board for unionized workforces and has obtained successful results in multiple cases with significant implications for large employers.

She is a board member and the treasurer for the Oregon Southwest Washington Industry Liaison Group and Vice Chair for the Employment Practice Group of the Oregon Association of Defense Counsel. She is a volunteer attorney for Stoel Rives Pro Bono Night Clinic and the US District of Oregon Pro Bono Program, and a past recipient of the Stoel Rives Pro Bono Award. Healy is a board member for Kids Community Learning Center and a former board member for the Classroom Law Project.



Kurt Peterson

Harrang Long Gary Rudnick PC

The firm is pleased to announce that **Kurt Peterson** has joined the firm as a shareholder based in our Portland office. Peterson started his legal career in 1998 after graduating from the University of Oregon School of Law. He spent his first five years in Hood River practicing criminal law and trying numerous cases. After returning to Portland, Peterson began practicing insurance defense and has done so ever since. Peterson represents insureds in all manner of insurance defense including auto, property, premises liability, trucking, and construction defect in Oregon and Washington. He also represents insurers in PIP, UM/UIM, and homeowner policy disputes as well as providing coverage analysis and opinions.

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.

In Memoriam

Susan M. Hammer

December 14, 1948-August 26, 2020

MBA President, 1987-88

MBA Professionalism Award

Recipient, 2006

Susan Hammer, a trailblazing lawyer, mediator and community leader, passed away August 26.

Susan graduated from Willamette University College of Law in 1976 and served as the law clerk for Justice James Dolliver on the Washington State Supreme Court. She practiced law at Stoel Rives for 20 years, beginning in 1978. She was one of the first women to become a partner in a major Portland law firm, practicing in the areas of commercial litigation and labor and employment law.

She continued a lifetime commitment to community service while at the law firm, serving as the first woman president of the MBA in 1987-88 and through extensive board and pro bono work.

Susan developed an interest in mediation as early as 1988 as a way to provide a less expensive and more satisfying method for clients to solve legal disputes. In 1998, with the encouragement of her friend and mentor, the late Sidney I. Lezak, Susan left Stoel Rives to start her own mediation practice. She was one of the first women in Portland to establish a mediation practice in an area of law that was little understood or used. Over the next 20 years, she mediated thousands of cases and served as a senior fellow at the Willamette University Center for Dispute Resolution.

She served as chair of the board of Planned Parenthood Columbia Willamette, and chaired its capital campaign for the new Regional Service Center. Her other major roles in the community included president of the City Club of Portland; trustee and then life trustee of the Willamette University Board; service on the boards of the Pacific Northwest College of Art, Ecotrust, and most recently, the boards of Literary Arts and Oregon Public Broadcasting. Among her many awards were the MBA Professionalism Award in 2006.

Susan was interviewed for the MBA's 100th Anniversary celebration in 2006. Here are some of her comments:

- I was the first woman president of the MBA. I was told during the previous 80 years or so, women were allowed to be secretary of the MBA but no one progressed beyond that point.
- The ABA president came to Portland in about 1987 and held one meeting with lawyers at the then exclusively male Arlington Club in Portland. Ellen Rosenblum and I objected but neither the ABA President nor his local host (who shall remain unnamed) saw anything wrong with a meeting place that excluded



women. We circulated a petition urging that the meeting be moved to a location where all members of the MBA could attend. *The Oregonian* picked up the story and ran it as a news article, an editorial and in Jonathan Nicholas' column. The meeting place didn't change but we felt vindicated. We also had a lot of fun with it!

- In the mid-80's, I became committed to advancing alternatives to litigation. During the time I was on the board, the MBA took up the issue. We formed a committee, chaired by Elaine Hallmark, put together a directory of ADR services and looked closely at how to integrate ADR into our practice and into the court system. As I recall, at this time, neither the OSB nor the ABA were doing anything with ADR. The MBA was out in front.
- During my term, the MBA formed a committee looking at the issues of balancing family and career. This was a first; a response to the growing number of women practicing law and dealing with part-time work issues, parental leave (before the passage of the Family and Medical Leave Act in 1992) and discrimination in law firms.

Oregon Attorney General Ellen Rosenblum had this to say about Susan: "In 1990, she chaired my first campaign for judge (when I had a last-minute opponent file). When she served as the first woman president of the Multnomah Bar Association in 1987 she formed a women lawyers committee that conducted a survey of law firms to find out what policies they had for parental leave for women lawyers - the answer was virtually none! When the President of the American Bar Association came to Oregon in the early 1980's and was invited by two local lawyers to speak at the then still all-male Arlington Club, Susan and I spearheaded a letter of protest (that resulted in an apology) signed by 300 Portland lawyers. She was brilliant, humble, fearless, independent and the best mediator in Oregon. Most important, she was a special friend to so many and her loss to us and this community is incalculable."

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Tips From the Bench

Seeking Attorney Fees

by Judge Leslie Roberts
Multnomah County Circuit Court



"[T]he laborer is worthy of his hire."
Bible, Luke 10:7

You have done the work, won the case, and you wish to be paid. In the best of all possible worlds, and to the joy of your client, you can collect that payment from the unsuccessful opposing side. How do you do it?

The so-called American rule is that each party to a dispute pays that party's own fees; however, a variety of statutes provide for fee-shifting. In addition, and especially important to those attorneys who work on a pro bono basis or at reduced fees based on public interest, or in the interests of a larger group than the individual plaintiff, the inherent authority of courts of equity provide in some cases for fee-shifting awards to support litigation that is of wider benefit than the individual involved. *Deras v. Myers*, 272 Or. 47, 66, 535 P.2d 541, 550 (1975). It is not unusual that public-benefit organizations derive significant elements of their funding from attorney fees earned through such litigation.

The substantive right to attorney fees is a topic of separate discussion; but regardless of the source of the right to attorney fees, the procedure to obtain an award is governed by ORCP 68 and ORS 20.075. (Section 1 of ORS 20.075 lists considerations where the award of fees is authorized and *discretionary*, and Section 2 provides that the same considerations, and additional conditions spelled out in Section 2, apply when the award of fees is authorized or *required*. In practice, both sections are in play in virtually all cases. Neither statute expressly covers a *Deras* situation, where there is no *statutory* basis for attorney fees; however, I am not aware of a case or practice that applies a different standard than ORS 20.075 to such cases. Moreover, because the ORS 20.075 factors are broadly logical and not exclusive, there is no cogent argument to my mind in departing from that framework in nonstatutory cases.)

Attorney fees in all cases may not exceed what is a "reasonable" fee for the case. ORS 20.075(4). When the court seeks to determine what fee is reasonable, the court does not consider whether a particular party paid no fee in fact or paid a discounted fee. *West v. French*, 51 Or. App. 143, 625 P.2d 144 (1981).

You can obtain attorney fees, if substantively available, by filing a "statement," not a "motion" of attorney fees and costs and disbursements. We used to call this a cost bill and petition, but ORCP 68 now calls for a "statement." (No judge will deny an award based on terminology - but why not be correct? It is always an advantage to appear to know what you are doing.)

The statement of fees must be filed "not later than 14 days after entry of judgment." That does not give you a great deal of time to prepare what may be a long document, but you can ask the court to give you more time (ORCP 68C(4)(d)). Do not, however, blow past that deadline; although not as deadly as it once was considered, it is a full and simple way of denying your request in total, and because extension of time is discretionary with the court, such a denial is not likely to be successfully appealed.

Even before you have earned the award, you must think about it. It is a requirement for an award that you plead in your complaint (or answer, as the case may be) your right to fees. If you haven't filed an answer but seek fees, claim them in your motion for judgment by dismissal or summary judgment. ORCP 68C(2)(a), (b).

Your statement of attorney fees must justify the basis for seeking attorney fees, and justify the amount sought based on the factors recited in ORS 20.075 (or any applicable rule). I have seen quite a few statements of attorney fees in a form that simply lists the factors and includes a check mark for the ones that it is contended apply. This is pointless unless you explain *why* and *in what way* a particular factor applies. For instance, a consideration may be the ability and experience of the attorney. If that item is simply checked off, without more, the judge still knows nothing about what that ability and experience is. You need to include a declaration that tells the judge that, for instance, the attorney has practiced for 20 years and is the chair of a relevant bar section. Otherwise the court knows nothing about that ability and experience. Others check off a box relating to the relationship with the client, or preclusion of other work - without giving the court even a hint of what the relationship is, or why the case precluded work. That sort of checklist is, frankly, persuasive only of the negligence and lack of comprehension of the attorney who uses it, without supplying relevant facts.

A statement of attorney fees also requires a "signed and detailed statement of the amount of attorney fees and costs and disbursements." ORCP 68 (4) (a)(i). The great majority of attorneys attach copies of their billing statements by way of

Continued on page 16

News From the Courthouse



by Amanda Nadell
Court Liaison Committee

Presiding Judge and Trial Court Administrator Report
Court Updates Regarding Level 2 Pandemic Restrictions
Chief Justice Order (CJOs) and the implementing Presiding Judge's Orders (PJOs) are helpful documents. Lawyers who have questions about current court operations should consult these documents before calling the court. They are available on the court's website - click on the link "current Multnomah County Circuit Court's judicial orders and information regarding COVID-19" inside the green box on the court's home page.

CJO 20-016 restricts current court activities during the COVID-19 pandemic, and gives some discretion to presiding judges around the state regarding court operations. The CJO requires courts to ensure social distancing for all in-court proceedings, and to hold hearings remotely as much as possible.

Presiding Judge Bushong's main goal is to keep people safe and reduce the risk of spreading the coronavirus. Court proceedings and staffing are scheduled to minimize the number of people coming to the courthouse and limiting the time they are spending inside the building. This applies to lawyers, judges, clerks, and court staff in addition to members of the public.

One PJO requires everyone entering the courthouse to wear a mask. Social distancing is required for every matter occurring in the courthouse. Every courtroom and the jury assembly room is marked off to reflect social distancing guidelines. In the event that a trial is held, jurors must remain at least six feet apart. As a result, jury selection alone requires multiple courtrooms in order to maintain social distancing.

All ex parte matters are being handled daily at 10:30 a.m. by telephone in presiding court. The phone number is 408.418.9388, with an access code of 146-700-8974. The least busy days tend to be Tuesdays, Wednesdays, and Thursdays, as the criminal call docket (which directly precedes ex parte) tends to run longer on Mondays and Fridays. Ex parte documents should be emailed to the presiding clerk in advance of

the ex parte docket. The lawyer can then appear at 10:30 a.m. by phone, though limited in-person appearances in presiding court are also allowed.

Civil jury trials were initially postponed until after August 1 due to the COVID-19 pandemic. Civil jury trials currently scheduled for the remainder of 2020 are unlikely to happen because of the social distancing requirement in CJO 20-016 and the need to protect potential jurors from the risk of spreading the virus through extended in-court proceedings. These trials will likely need to be rescheduled. Lawyers should confer with each other, their clients, and their witnesses in order to select new trial dates that work for all parties, and then contact presiding for a scheduling conference. The court is holding scheduling conferences on Wednesday afternoons to reset these matters.

Multnomah County Circuit Court has caught up on all delayed civil motions from earlier in the pandemic. Remote hearings on civil motions and other matters are being held via WebEx. The hearings may be audio only, or by video conference where appropriate.

The landlord-tenant docket is up and running in two courtrooms for those matters allowed to proceed under the evictions moratoriums. The court encourages people to appear remotely whenever possible.

All juvenile case matters are being held. Family law trials are being deferred until next year due to docket sizes and the COVID-19 pandemic.

The probation violation docket is currently limited to in-custody cases, though some out-of-custody probation violation hearings are being conducted using remote means.

As of the date of the writing of this article, there have been no known cases of COVID-19 in the Multnomah County jail. The Multnomah County Sheriff has worked with the District Attorney's office, criminal defense bar, and court staff to successfully reduce the jail population.

The morning call docket is heard daily at 9 a.m. in presiding court, with almost all parties appearing by phone at the phone number listed above for ex parte matters.

Two criminal jury trials have been held in Multnomah County so far during the ongoing pandemic. These were in-custody defendants where trials were required to be held due to statutory speedy trial requirements. The court needed up to eight courtrooms for each of these trials, due to the social distancing requirements during jury selection and the course of the trial. Because of the limited capacity for people in the courtroom, the court transmitted the trial proceedings to another courtroom via live video stream for observers and others in order to comply with the Open Courts provision of the Oregon Constitution.

During one of the special sessions, the legislature passed HB 4212, which allows the chief justice to authorize presiding judges to extend, for good cause, the time that people spend in custody awaiting trial, in limited situations. To the extent criminal jury trials can be postponed, that will be done if the court makes the findings required by HB 4212.

Other than criminal jury trials, everything else for in-custody defendants is happening, including release hearings, plea hearings, pre-trial motion hearings, and judicial settlement conferences. For out-of-custody defendants, arraignments in domestic violence cases, pleas in felony and misdemeanor cases, and judicial settlement conferences in felony cases are currently being conducted. The court is working to conduct out-of-custody arraignments in other cases as possible while the Justice Center remains closed to the public. The court recently issued a PJO authorizing an out-of-custody arraignment docket for certain cases. Defendants appearing for those arraignments will be directed to the historic courthouse or the Central Courthouse while the Justice Center is still closed to the public, and the arraignments are being live-streamed from the Justice Center for participation and for public viewing to comply with the Open Courts provision of the Oregon Constitution.

The DUII Diversion docket was postponed due to the pandemic but is now being held. The court is also conducting proceedings on the following

Continued on page 19

Building a Bridge to the Future: The New Courthouse

by Presiding Judge Stephen K. Bushong
Multnomah County Circuit Court



A courthouse is a special place. Under our constitution, the courthouse is where people go to resolve their disputes peacefully. It is also where people go to seek protection from arbitrary, unreasonable actions by the government. Grand juries of ordinary people from our community convene in the courthouse to ensure the government has enough evidence to proceed with prosecuting someone for a felony. Our court protects everyone's right to be free from unreasonable searches and seizures by the police. Anyone accused of a crime relies on the court to protect their right to a fair and open jury trial, where they may be represented by counsel and are presumed innocent unless the government proves their guilt beyond a reasonable doubt. Our court also

protects against abuses by the other branches of government, applying the rule of law in exercising the power of judicial review. The most vulnerable people in our community - children, elderly people, victims of domestic violence - need the courthouse open every day so they can seek protective orders designed to keep them safe.

But the historic Multnomah County Courthouse and other government buildings in downtown Portland have been repeatedly defaced in recent weeks. Windows are now boarded up to prevent further damage. The attacks on the courthouse typically occur in the dark of night, following peaceful protests against discrimination, racial injustice, and police violence taking place in Portland and across the nation after George Floyd was killed by Minneapolis police officers.

The protests are justified. As the Justices of the Oregon Supreme Court said in a statement addressing the George Floyd killing, the Oregon courts acknowledge the pain, trauma, anger, and frustration felt by the Black community and other communities of color. We are committed to ensuring justice for all. We must stand firm against racism and oppression. Our courts are an integral part of the

justice system, ensuring justice for all. The men and women working in the courthouse are dedicated to serving the people of this community. We are committed to equal access to justice and fair, consistent application of the rule of law to people of all races, religions, gender identities, and ethnic backgrounds.

Although we cannot condone the messages of hate smeared on the walls of our historic courthouse in recent weeks, we must acknowledge that our courthouse's history might lead some people to see it as a symbol of racial injustice. During World War II, lawyer and activist Minoru Yasui was jailed in the courthouse for defying a curfew that applied only to citizens of Japanese descent before he was relocated as part of this country's discriminatory Japanese internment program. Under a clause in the Oregon Constitution adopted in the 1930s, many people have been convicted of felonies by less than unanimous juries in our historic courthouse. But as the US Supreme Court recently pointed out in the *Ramos* case, that clause can be traced "to the rise of the Ku Klux Klan and efforts to dilute the influence of racial, ethnic, and religious minorities on Oregon juries."

On the other hand, we have relied on our courthouse to

address injustices committed against people in this community for decades. Thirty years ago, the skinheads who brutally murdered Ethiopian student Mulugeta Seraw were tried, convicted, and sentenced in our historic courthouse. A Multnomah County jury then awarded the Seraw family \$12.5 million in the civil rights case they brought against neo-Nazi Tom Metzger and his White Aryan Resistance organization. More recently, Jeremy Christian was tried, convicted, and sentenced in our courthouse for murdering Taliesin Namkai-Meche and Ricky Best - and seriously wounding Micah Fletcher - in an attack on a TriMet MAX train that galvanized our community.

While the history of our courthouse has been mixed, the new Multnomah County courthouse gives us the opportunity for a fresh start to building a better, fairer system of justice. We will not repeat the sins of our past in the new courthouse. No person will be convicted of a crime based on a less than unanimous jury verdict in the new courthouse after the *Ramos* decision. In the new courthouse, we will seek to eradicate the remnants of Oregon's history of racial injustice - to paraphrase the Oregon Supreme Court's statement - by examining, anew, what we are doing (or failing to do) to root out conscious and unconscious bias in our legal system.

In the song, "Build a Bridge," Mavis Staples sings about people "standing side by side us divided, lonely in the land of the free." It is an unfortunately accurate

observation of the divisiveness plaguing our nation, but it is also a song of hope. Mavis Staples sings about bridging the gap between our divided communities, helping us to build a bridge to a better future.

Our new courthouse can be part of that bridge to a fairer, more just society. It stands as a symbol of the procedural fairness that judges and court staff are committed to providing to everyone. The new courthouse is designed to bring our community together, bridging the gap from our past missteps to a more just and equitable future. Many local and regional artists of color have contributed to the artwork displayed inside and outside the building, representing the perspectives and experiences of minority viewpoints. This community should be proud of the new courthouse and the diverse community it serves. Celebrate it. Recognize that the new courthouse represents our continued commitment to improvement in our quest to provide equal justice for all. Let justice for all be our present and our future.

Endnote: Mavis Staples - a renowned R&B and gospel singer and civil rights activist - has recorded and performed with her family's band, The Staples Sisters, and as a solo artist for many years. She was inducted into the Rock and Roll Hall of Fame in 1999 and the Blues Hall of Fame in 2017. Mavis wrote the song "Build a Bridge" with Jeff Tweedy of the band Wilco. It appears on her 2017 album If All I Was Was Black.

Meet Legal Aid's Pro Bono Staff

by Maya Crawford Peacock
Executive Director, Campaign for Equal Justice

Civil legal aid ensures fairness in the justice system. It provides essential services to low-income and vulnerable Oregonians who are faced with legal emergencies. To the average person, our legal system is a maze. That is why lawyers are trained to guide their clients through the system.

Prior to the COVID-19 pandemic and economic crisis, Oregon legal aid programs only had funding to meet 15% of the civil legal needs of the poor. The pandemic and resulting economic crisis are causing poverty numbers to increase, and bring with them widespread suffering.

In Oregon, we are fortunate to have volunteer lawyers ready to work hand in hand with legal aid attorneys across the state, to help serve those most in need. Their pro bono time and efforts are needed now more than ever. Willing volunteers, however, are only one piece of a robust pro bono program. Trained pro bono staff are also a critical component. Attorney Pro Bono Coordinators are necessary to screen clients, train and mentor pro bono attorneys, manage programs, and advise clients who cannot be placed with volunteers.

Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC) have dedicated pro bono staff, who ensure both

excellent client services and a great volunteer experience for attorneys. I had some time recently to talk with the four people who dedicate their time to coordinating pro bono programs for legal aid. Here is what I learned:



Jill Mallery, Statewide Pro Bono Manager for LASO



Brett Cattani, Staff Attorney & Pro Bono Coordinator for LASO



Tiffanny Smith, Staff Attorney & Pro Bono Coordinator for LASO



Kristy Wood, Operations Manager for OLC

Tell me about your background. What drew you to being a pro bono coordinator?

Jill: I joined the pro bono team five years ago. This work aligns with my belief that all people should have access to the justice system. I am originally from Oregon. I started

my legal career working for the OSB, then moved to Tennessee, where I worked for a legal aid program there. I have seen how detrimental the effects are on people who don't have access to attorneys for legal emergencies. I am fortunate to be able to do this work and reduce barriers for low-income people.

Brett: I started working for legal aid right out of law school - first in the Oregon City office, and then the Portland office when the two merged during the last recession. In 2016, I moved to New York, where I was a housing attorney for Bronx Legal Services. I moved back to Oregon, where I worked for the Oregon Crime Victims Law Center for a couple of years, and am happy to be back at LASO, helping to tackle the access to justice crisis on a broader scale.

Tiffanny: I have worked for two different public interest law firms in Kentucky and Ohio. Most recently, I worked with women in prison. I have always tried to find ways to make broader impacts on the criminal justice system. A critical part of this work is recruiting and training volunteer law students and attorneys. I am excited to be part of the Oregon legal aid pro bono team, where I have the opportunity to engage private attorneys in important poverty law work.

Kristy: I am new to my position as Director of Operations and new to the OLC. I am so pleased that pro bono coordinating is part of my work now. Prior to working at OLC, I had 18 years of experience

as an executive director for various nonprofits. Most recently, I was the ED of Guardian Partners.

Has client need increased since the pandemic? What types of cases are you seeing?

Brett: Yes, the volume of clients needing help is going up, even though pre-COVID there was already a big need. One thing we have seen is an increase in several case types, things like help with unemployment cases, increased call for domestic violence-related cases, and increased housing problems.

Jill: We are seeing a whole new population of clients who didn't need our services before, but do now. Our poverty population has grown during the pandemic. We also know that this is not a short-term problem. People will continue to have civil legal needs long after the immediate crisis of the pandemic is over. Due to COVID-19, not everyone who has a legal issue has even reached out yet. People are focusing on day-to-day survival. When it comes to both the adverse health effects of COVID-19, and the economic consequences, our clients feel it first, are hit the hardest, and recover last. This will be a long struggle, and the need for volunteers will extend into the future.

How can private attorneys help legal aid address the growing civil legal needs of low income Oregonians?

Tiffanny: Reach out to legal aid.

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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 firm just notified me that we will be working from home at least until the spring. I have done a fairly good job of staying on top of my work, but things have gotten harder the longer this has gone on. What advice would you give to a newbie stuck at home for the indefinite future?

Although you might feel alone in this, you are not alone! There are many of us who face all sorts of different challenges right now. Below is my advice on how I have dealt with working remotely. I hope it will help you feel more secure and succeed even while not being in the office.

Schedule check-ins with your partners and staff. Communication is a key part of an effective practice. Keeping up with your team is crucial in keeping up with cases and discovery updates, and to strategize and think through how to approach cases.

Continue to drive your cases. It is easy enough under normal circumstances to ride cases and just respond to discovery or whatever the other side is doing. However, keeping your cases moving is crucial right now to make sure you do not come up against court deadlines, even when they do not feel real.

Set a timer. We all struggle with forcing ourselves to get started on work right now. Even when it is not related to kids, or cleaning, or the dog, or the million other things at home that feel like they always need our attention. It is easy to feel disconnected and unmotivated to tackle your workload regularly. Just pick the most pressing task and set a timer for doing it. I tell myself I will just work for an hour, or 30 minutes, or whatever it is. But usually, starting is the hardest part, so once you are into it, you'll want to keep going.

Put down work or writing and come back later to review. It is easy to get wrapped up in work and rush to do it just to get it off your plate. However, it is especially critical right now to come back and approach your work with focus. Sometimes that is best accomplished in pieces of time and if you can come back later the results will be far better. Also, try to remain human. Establish boundaries. Remember, you are working from home, not living at work. Be extra courteous and professional. Not only will it likely be reciprocated, but the courts are especially concerned about it, and it will go a long way towards helping your career.

Michael Fuller Pro Bono Spotlight

by Drew Eyman
YLS Pro Bono Committee

This month's spotlight is on Michael Fuller, an attorney at Underdog Law Office who dedicates 20% of his practice to pro bono work. Michael grew up in Hillsboro, Oregon and received his law degree from Willamette University. In 2009, Michael began his legal career at Olsen Daines, primarily working on consumer bankruptcy matters.

Seeking litigation experience, Michael volunteered with the District Court of Oregon's Pro Bono Panel. Representing inmates through that program quickly convinced him that he wanted to be a litigator. Michael started Underdog Law Office to continue litigating cases for underserved members of our community. On Fridays, he and his team serve lunch at the Blanchet House, a nonprofit that provides meals and housing programs to people in need. To learn more about the Blanchet



Michael Fuller

House and to volunteer, visit www.blanchethouse.org/volunteer.

Michael works with a number of nonprofit legal organizations, but he often finds many pro bono opportunities from referrals and people simply reaching out for help. In an effort to help meet the increased need for legal services as a result of the recent racial justice protests in Portland, Michael has taken on even

Meredith McMurray Member Spotlight

by Holly Hayman
Past President, YLS Board

Meredith McMurray lives by the mantra, "helping people who need help." Her passion for helping people is clear. I met Meredith while she was serving on the YLS Pro Bono Committee, where she approaches pro bono projects with energy and enthusiasm. Meredith's pro bono activities expand beyond her service on the committee. Her dedication to community service is highlighted in her prior work, her current service, and I'm sure it will continue in the future.

Meredith, a native Oregonian, attended Stanford University for her undergraduate studies in Russian Language and International Relations. Thereafter, she traveled to Russia and worked for Young Life, a Christian organization focused on providing services and assistance to youth in the region. Upon her return to Multnomah County, Meredith embarked on a career as a public school teacher in Gresham.

Meredith taught high school economics and government for 13 years at Sam Barlow High School. During that time, she also taught Street Law and introduced the Classroom Law Project to her students. As a teacher with a diverse student body, Meredith's focus was assisting students who didn't initially consider college an option. Her joy as an educator was to reach students with unfulfilled potential and help

them find and realize it. "Seeing a C student with potential and helping them become a B or an A student was very gratifying as an educator." As a public school teacher, Meredith faced many challenges, including increased class sizes and budget cuts. Eventually, she enrolled as an evening student at Lewis & Clark Law School to transition from helping students to assisting others in need.

Meredith is an estate planning attorney at Gevurtz Menashe where her firm encourages her to participate in pro bono activities. Meredith took the opportunity and joined the YLS Pro Bono Committee. She immediately took an interest in the Wills for Heroes program and is working to implement and expand the program.

The YLS Wills for Heroes program provides basic wills and estate planning for first responders. Recently, the program has expanded to include medical and hospital workers. Meredith instantly recognized the importance and value in the program and volunteered to help arrange clinics and volunteers in the future. Arranging a Wills for Heroes clinic is no small feat. Facilitating the clinics requires orchestrating the attorney volunteers, coordinating client meetings, and a laundry list of other difficulties induced by



Meredith McMurray

COVID-19 complications. True to form, Meredith volunteered to be the point person on the YLS Pro Bono Committee to overcome these hurdles to ensure that clients' needs are met and that the program continues.

Meredith's time on the Pro Bono Committee has encouraged her to expand her volunteer and pro bono activities. With Gevurtz Menashe's support, she serves several pro bono clients through the firm, but her activities with the committee allow her to take her service to the next level. The Pro Bono Committee exposes its members to different types of pro bono opportunities. It also accelerates members' understanding of the need for pro bono work and what the legal community is capable of providing.

There are many words you could use to describe Meredith McMurray: advocate, traveler, teacher, volunteer, and mentor. No matter what hat she is wearing, her passion for helping others shines through. The addition of Meredith to the practice is a benefit to our legal community.

more pro bono work than usual, including cases on behalf of peaceful protesters who were the victims of abuses of police power. He is also representing Portland residents who were affected by tear gas that entered their homes when law enforcement used the gas on protestors.

Michael also actively seeks out pro bono work. He joined a think tank to come up with ways to address chronic student loan issues, and created a student loan pro bono project called Oregon Student Debt (www.oregonstudentdebt.com). Through this project, Michael represents students seeking to eliminate their student loans through bankruptcy. He has helped wipe out millions of dollars in student loans through this pro bono project.

For others who are interested in helping underserved members of our community, Michael's advice is to simply start taking pro bono cases. "As lawyers, we get so concerned about time management and profitability, but you need to just do it," he says. He encourages young attorneys to find mentors who get good results for the poorest in our community. "Find those people whose work you admire and emulate them," he says. "Ask them to lunch and pick their brain." In Michael's experience, attorneys who are known for their pro bono work are also generous with mentorship time.

YLS CLE Preview

by Heather Fossity
YLS CLE Committee Co-Chair

It is my pleasure to serve as co-chair of the YLS CLE Committee this year, alongside Tom Marshall. The committee is currently comprised of 15 volunteer YLS members who will organize MCLE-accredited seminars through the spring of 2021. I am especially proud of the MBA and this committee for making COVID-19 related changes quite seamlessly; our year will look a bit different from previous years. Committee meetings and CLEs are all currently being held over Zoom, and while we do miss seeing everyone in person, this new format provides benefits as well. With the additional flexibility afforded by the online format, we look forward to putting on more frequent CLEs this year and covering a wider range of topics.

Our Fall "Advising Oregon Businesses" Series is already underway, but it is not too late sign up for the remainder of the series. The committee is also beginning to organize our Winter "Young Litigators Forum" Series, a new and exciting Spring Series, as well as additional seminars.

Our committee is focused on presenting innovative programming for newer attorneys at affordable prices and convenient times. We aim to provide

attorneys with the nuts and bolts of a variety of law practice areas, allow seasoned attorneys a venue to share their knowledge, and create a forum where attorneys can meet one another and build professional relationships. Most of our seminars are recorded and occur on Thursdays over the lunch hour. Although our seminars are currently being held over Zoom, we look forward to returning to The Standard Insurance building for in-person seminars when it is safe to do so.

Over the past few years, the YLS CLE Committee has made efforts to expand and diversify our pool of speakers. This year, our committee will continue these efforts and emphasize securing quality, experienced speakers with attention to diversity and inclusion. The committee listens to feedback from the YLS Board, our speakers, and CLE attendees when selecting speakers and topics for future CLEs. If you are interested in becoming a speaker or have suggestions for topics that you would like us to address, wish you had access to in your first years of practice, or that you think every new lawyer should learn, please contact me at hfofsity@barran.com or Tom Marshall at tom.marshall@troutman.com.

Lewis & Clark Law Student Legal Observers Attend Portland Protests

by Carra Sahler

Former Director of Public Interest Law, Lewis & Clark Law School

As I write this article, protests have raged against police brutality in downtown Portland for more than 100 days. By the time of publication, Portland is likely to approach 125 days of protests, which began after the May 25 death of George Floyd, a Black man who died after a white Minneapolis police officer knelt on his neck for more than eight minutes while other police officers stood by. At this point, there appears to be no end in sight.

During every one of those nights, Legal Observers from Lewis & Clark's student chapter of the National Lawyers Guild (NLG) have been present to document police interactions with, and arrests of, protesters.

This article is about those students. They put their physical and emotional safety at risk - whether from police activity directed at them, from COVID-19, or from people who disagree with them. They paid for their own protective gear and protective gear for other volunteers. They deserve our recognition for their important role in documenting interactions between police and protesters night in and night out.

Each of the students with whom I spoke is integral to the Legal Observing program. They each held down a full-time job

this summer working in the legal field and spent their nights at the protests. And they are and remain motivated to continue to do so for righteous reasons.

All of the students I interviewed preferred to use an alias to protect themselves.

Neo lost count of the number of nights he volunteered over the summer. He first started going downtown as a protester himself because he has Black family members. Since he had been trained the previous fall as a Legal Observer (LO), he started attending protests in that capacity. As an LO, he writes the jail hotline number on protesters' arms in case of arrest, and films altercations and arrests. He gives the police as much space as possible, never engages with them, and obeys orders unless it conflicts with the purpose of legal observing. LOs must remain neutral at all times.

Despite taking precautions to follow the rules assiduously, he has had a police officer rip his gas mask off, throw him down on the ground, and prepare to mace him, even though Neo was wearing his green hat indicating that he is an NLG Legal Observer. Press who were present yelled at the police officer that Neo was an LO until the police officer backed off.

Neo's experience is not rare. When I spoke with M, the coordinator for the LO program, he had taken a few nights off from Legal Observing because he had been hit in the back of the knee with a 40mm sponge bullet that left a fist-sized purple welt and a small laceration. Similarly, E, the student chapter's chair, who has attended between 20 and 30 protests as an LO this summer, described being hit by flashbang grenades and rubber munitions. The students hardly mentioned the tear gas - its nightly presence made them almost blasé about having to deal with the constant irritation and burning symptoms.

In fact, when describing what she wanted readers to understand, E said, "It is important to know just how brutal the conditions are. LOs have been shot in the chest or head by impact munitions, when they are behaving completely lawfully and following the guidelines set out by the temporary restraining order" adopted by Judge Michael Simon holding police to specific requirements when interacting with journalists and legal observers.

Neo, E, and M have similar reasons for acting as LOs, night after night. Neo explained, "Police don't police themselves, so it is important to capture interactions if evidence is needed later."

He tries not to get emotional - compartmentalizing what he has seen to deal with the trauma at a later time - but he feels strongly that he must show up for the protesters. "I am there to make sure protesters' constitutional rights are being protected. As someone who wants to be a lawyer, this is a requirement." E, who often protested before law school, noticed the LOs' presence when she first started protesting here in Portland (never having seen them in other cities). She said she wanted to get involved in NLG as an LO because she felt so appreciative of the LO presence at a protest. She is motivated to continue showing up as an LO because "I want to be able to use my privilege to protect those most vulnerable and marginalized. I have seen police brutality."

Since M coordinates the LOs, he finds himself at most of the protests. He has a few dozen volunteers he can call on, about half of whom are law students, but only six or seven are regularly present at the protests. He has "great volunteers, but I can't ask them to be out there if I'm not." Moreover, he feels strongly that it is an obligation of those privileged to attend law school to try observing at least once "to come out for the community." Protesters are so grateful to have LOs present; they feel they have moral support and safety. "People are taking a lot more of a risk to protest, so I have to keep going out," M explains.

COVID-19 is always in the background; it "complicates everything," E says. Every LO must take precautions, wear face masks,

and use hand sanitizer. Neo finds himself worrying about it since he is physically close to protesters, writing the jail hotline phone number on people's arms. M noted that the crowd is very concerned about the illness, and he sees everyone wearing masks.

Some other law students, worried about COVID-19 but committed to assisting and supporting protesters, staffed a jail hotline all summer. Working late into the night, these law students volunteered thousands of hours providing support to protesters. They were motivated to serve on the hotline as a way to help vulnerable people in crisis.

Feel inspired? Want to help?

NLG's student chapter accepts donations through the Lewis & Clark Law School general giving page. Go to law.lclark.edu/giving/ and click "make a gift." There is a section labeled "My gift should benefit..." In that menu choose "other," then write in "NLG." These funds will then be available to the chapter to reimburse members for purchases of PPE and other materials for legal observers. It is important to note that one gas mask with filters starts around \$50, and one helmet costs between \$80 and \$100. The students also need goggles, padding, and masks since they cannot share materials due to COVID-19.

If you wish to follow NLG on Instagram, you may find it at: www.instagram.com/nlg_l_and_c/.

If you wish to volunteer for LO training, email legalobserver@lclark.edu.

Developing a Pro Bono Response to COVID-19

by Bill Penn

Assistant Director of OSB Legal Services Program and Oregon Law Foundation

Beginning with a Different Disaster

The first weekly meeting of the OSB staff comprising the Access to Justice Team happened on March 26. It was nine days after bar staff began working from home and just three days after Governor Brown's stay-at-home executive order. Not one, but two disasters were unfolding. The trajectory of COVID-19 was only beginning to become apparent, but there was also the immediate disaster that FEMA was preparing to declare stemming from the February flooding in the Pendleton area.

When FEMA declares a disaster, local pro bono disaster legal services hotlines are turned on. These disaster legal services hotlines help people with issues stemming from a disaster connect with FEMA and other disaster relief programs. In Oregon, the OSB Lawyer Referral Service (LRS) is the designated hotline host, and the Oregon New Lawyers Division is the partner that helps rally volunteers.

Knowing that the Pendleton declaration was coming and repercussions from COVID-19 were growing, the team met with Professor Latisha Nixon-Jones, Visiting Professor at the University of Oregon School of Law and disaster law expert. Professor

Nixon-Jones provided information about the disaster legal services process, and the team prepared and coordinated with the Pendleton office of Legal Aid Services of Oregon. When the disaster was declared, a roster of volunteers was ready, and the phone line was turned on. The call volume was low, but the hotline worked, and help was provided.

Turning the Focus to COVID-19

As the Access to Justice Team was implementing the Pendleton hotline, the fact that the effects of COVID-19 would be widespread and long-term became clear.

It also became clear that many people would have problems stemming from the pandemic where the legal system might help or where information from a lawyer about rights and obligations might help. The problem was that Oregon's existing civil legal help organizations and pro bono programs were already operating at capacity before the pandemic struck. What was needed was a way to help people affected by COVID-19 spot legal issues, identify next steps, and decide if a lawyer might be able to help with their problems. Done right, existing programs could keep their focus on cases that require more extensive legal help.

The team considered several ways to organize a pro bono program to help and decided on a COVID-19 panel through the LRS. An LRS pro bono panel would be an extension of the work that the LRS normally performed and could build on the success of LRS's work with other pro bono panels. In addition to the recent Pendleton hotline, the LRS has long operated and screened clients for two targeted pro bono panels: Problem Solvers connects kids between 13 and 17 with volunteer lawyers for a free 30-minute consult, and the Military Assistance Panel connects deployed service members and their families with lawyers who give up to two hours of free legal help. A COVID-19 panel would have a larger number of potentially eligible clients, and a broader set of legal issues would need to be addressed, but it could operate like prior LRS pro bono projects.

How the COVID-19 Panel Works

The COVID-19 Panel is run through the LRS and connects people needing help with lawyer volunteers for a single pro bono phone or videoconference consultation of up to 30 minutes. The project focuses on answering questions, spotting issues, identifying next steps, referring to extended services, and providing brief legal service where appropriate. People who need additional help are referred back to the LRS for information on other resources.

The panel is designed to help with many kinds of issues as long

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New MBF Initiative Off to a Promising Start \$108,475 Raised to Benefit CourtSupport

by Pamela Hubbs

Office and Foundation Administrator

CourtSupport is the MBF's new initiative to develop and fund projects designed to assist community members navigating Multnomah County courts. With the generous support of the legal community, the MBF has raised over \$108,000 this year to close critical funding gaps in areas impacting access to justice and the quality and administration of the legal system. CourtSupport's initial goal is to place a Navigator at the information desk in the new Central Courthouse lobby to answer basic questions about the court and connect individuals who need accommodations or extra assistance to services and resources within the courthouse. The Navigator's mission is to make the entire process of navigating the courthouse and legal system a little less intimidating.

All donors who contribute by December 31 will be acknowledged in the February 2021 *Multnomah Lawyer*. To learn more about becoming a Founding Donor or to make a tax-deductible charitable contribution, please visit www.mbar.org/courtsupport or contact Pamela Hubbs at pamela@mbar.org.



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Thomas Chow

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Arbitration Provisions

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in each agreement. Likewise, a business seeking to force arbitration over an oral agreement or a written agreement that does not have an arbitration clause should examine whether a prior agreement between the parties contains an expansive arbitration clause with terms similar to “relating to,” or other language demonstrating the parties’ intent

that all disputes between them be arbitrated. Finally, if a business’ standard arbitration clause is too limiting, the business would be wise to consider whether seeking to compel arbitration is in its best interest, given the decision in *Willamette Biomass* and the law upon which it relies.

In sum, courts require not only a clear intent to arbitrate but also language broad enough to encompass the present dispute. Attorneys representing businesses

that desire to arbitrate any and all potential disputes arising out of or related to their contractual relationship should ensure that intent is reflected through inclusion of an arbitration provision in each and every agreement. The language of each

such provision should clearly define the scope of arbitration, as any ambiguity concerning an arbitration provision’s scope could be the question that makes or breaks the enforceability of the clause. Additionally, attorneys can avoid the potential for ambiguity

in boilerplate language by carefully scrutinizing and adapting terms where needed, keeping in mind that boilerplate language is unlikely to fit the needs of every client. Clear and unambiguous arbitration provisions can save clients from needless delay and expense.



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Virtual Clinic Partnerships with the Private Bar

by Brett Cattani
 Pro Bono Coordinator/Staff Attorney, Legal Aid Services of Oregon

As a result of the COVID-19 pandemic and the resulting economic crisis, unmet civil legal needs for Oregonians have increased and have further exacerbated the unique challenges of providing access to justice to low-income persons and underserved communities in rural Oregon. Rural legal aid programs cover a much wider geographic region with fewer personnel than legal aid programs in more urban areas of the state. “Legal aid is critical to rural communities in Oregon,” said Monica Goracke, Executive Director of the Oregon Law Center (OLC). “Rural, low-income Oregonians face unique challenges in accessing legal services, including the distance they must travel to a lawyer’s office combined with the lack of affordable transportation options.” Similar challenges can also make it difficult for private attorneys to volunteer to provide pro bono services to rural clients. “Because legal aid offices are not present in every community, many rural Oregonians may not know that help is available,” said Goracke.

Throughout the pandemic, virtual clinics have continued to provide services through virtual or remote means. Such programs have an opportunity to strengthen connections through relationship building and use of remote technology, thereby making it possible for rural clients to obtain pro bono legal services from a volunteer attorney anywhere in the state. “Legal aid has a strong commitment to providing relatively equal access to justice for low-income clients statewide. With our virtual clinics, we’re better able to provide our rural clients relatively equal access to pro bono assistance,” said Janice Morgan, Executive Director of Legal Aid Services of Oregon (LASO).

The pro bono projects described below highlight just some of the efforts of the private bar and Oregon legal aid organizations that provide remote and/or virtual pro bono services in our ongoing effort to bridge the justice gap.

Davis Wright Tremaine, LASO, and OLC Virtual Clinic Partnership

We are excited to announce, Davis Wright Tremaine (DWT), OLC and LASO have partnered to expand access to legal services to rural areas of Oregon through remote and virtual technologies. The partnership was developed during the pandemic to increase services in areas outside the metro area.

In Oregon, approximately 65% of the state’s attorneys work in the metro area while the counties with the eight highest poverty rates are all located outside the metro area. Limited resources in rural communities combined with geographic barriers to services have created an urgent need to bring resources to these communities. Joanna Boisen,

Chief Pro Bono and Social Impact Officer at DWT explains, through the use of remote technologies and “dedication of our attorneys to provide remote legal services we will positively impact so many lives and communities that otherwise wouldn’t have access to justice.”

We thank DWT for their commitment, support and willingness to partner on a new project during the pandemic and resulting economic crisis. Joanna adds, “It makes me proud to work with attorneys who are so determined to give of their time and talent to doing good in the world.” We look forward to working with DWT to increase access to legal services for many Oregonians.

Miller Nash Graham & Dunn, LASO, and OLC Virtual Clinic

Applauding its fifth year, the Miller Nash Graham & Dunn (MNG&D) Virtual Clinic works in partnership with the Central Oregon Regional Office of LASO in Bend and the Coos Bay Regional Office of the OLC, serving low-income persons and vulnerable communities in Coos, Curry, Deschutes, Jefferson and Crook counties. “Miller Nash has been a tremendous resource,” said Andrea Malone, Regional Director of LASO’s Central Oregon Regional Office. “Their continued support and commitment to public service has provided invaluable legal assistance to our client service area.”

The Virtual Clinic connects pro bono attorneys from MNG&D with rural clients via phone and video conferencing technologies. Initial appointments are advice and consultation only, but attorneys may agree to further representation. Case types include landlord-tenant, consumer, small estate and small claims cases. “The Miller Nash virtual clinic provides our rural community with a valuable avenue for representation,” said Bill Niese, Managing Attorney at the OLC Coos Bay Office. “It’s a great help in our mission to achieve justice for low-income Oregonians.”

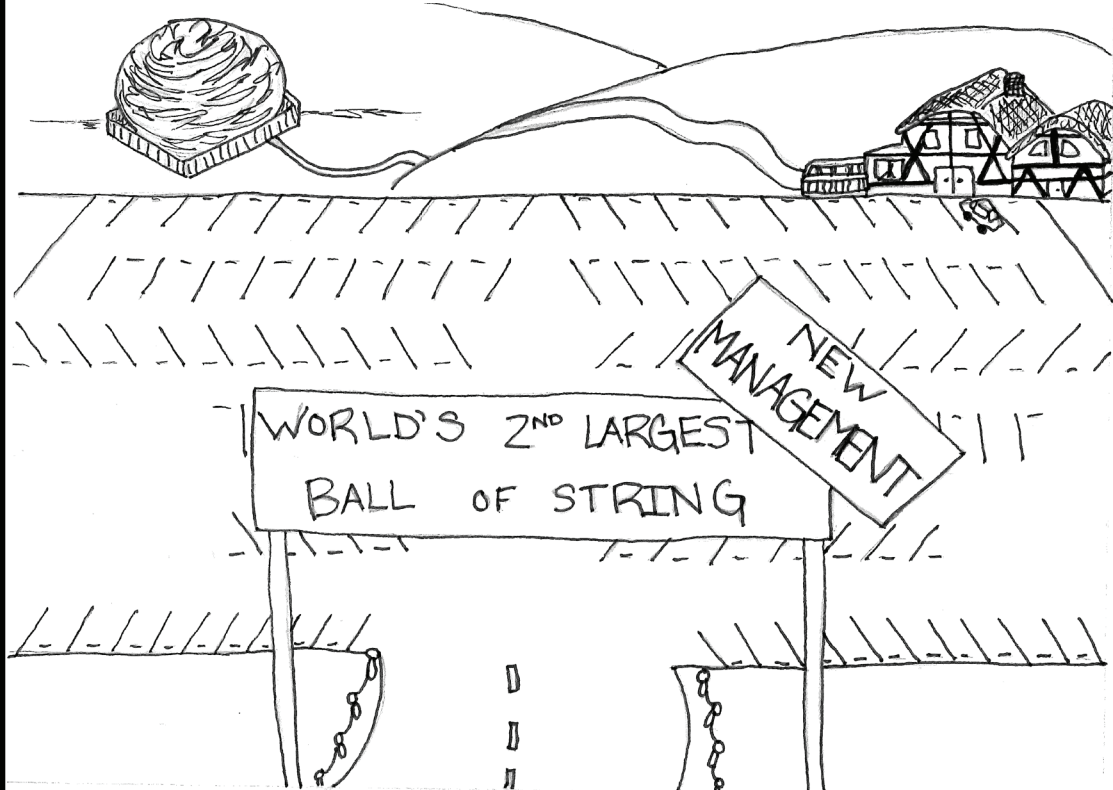
Schwabe Willison & Wyatt and OLC Pro Bono Clinic

In 1991, Schwabe became the founder, and provided the funding for, a low-income legal clinic which serves the Latinx community in east Multnomah County. Every year since, attorneys at Schwabe have volunteered their time to provide pro bono services to low-income clients.

Today the program is coordinated in partnership with the Oregon Law Center and continues to provide remote legal opportunities. The Clinic has ensured that more than 1,000 low-income clients receive bilingual legal counsel and representation on issues ranging from fair housing to consumer protection.

Continued on page 16

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Michael E. Haglund Pro Bono Award

For Young Lawyers in LASO, OLC, or MBA YLS pro bono projects

Pro Bono Award of Merit

For exemplary pro bono work

Virtual Clinic Partnerships

Continued from page 15

We thank Schwabe's volunteers for providing substantial legal assistance, helping more than 100 pro bono clients per year get their homes back, address automobile obligation and collections issues, and solve problems relating to individual civil rights.

Tonkon Torp, LASO Virtual Clinic Partnership

Coordinated through the Roseburg Regional Office of LASO, the Tonkon Torp Douglas County Virtual Clinic recognizes the importance of

bringing desperately needed civil legal services to low-income rural communities. The Virtual Clinic provides a unique opportunity for Portland-based attorneys at Tonkon Torp to serve Douglas County through phone conferencing or other remote technologies. The clinic offers legal advice and, in some cases, extended representation, while providing volunteer attorneys with a more flexible option to perform pro bono services.

Thank you, Tonkon Torp, for your commitment to providing access to justice and helping to eliminate barriers for rural low-income clients in accessing critical legal assistance.

Tips From the Bench

Continued from page 10

this requirement. This may be adequate, but it is not required, and other formats may be more helpful to convey to the court what exactly you did with the 500 hours for which you ask to be compensated. What is *not at all* helpful to the court in deciding the reasonable fee is 50 pages of bills that are redacted so that it is virtually impossible to figure out whether the time had anything to do with the case. An entry of one and a half hours in conference with [redacted] discussing [redacted] yields nothing but frustration. You must consider the point of view of the judge. The judge can't tell from such an entry whether this was time

discussing the Trailblazers with your partner. I'm sure it was not... but if we must just assume that, why have a 'detailed statement' at all? The "detail" in question is a showing that the time was related to the case and was reasonably necessary to the case. A bunch of redacted entries for "research" or "conference" or "telephone call" is pointless for the court, and so is pointless for you.

Think about the purpose here: it is to persuade the court to believe that your request represents the reasonable attorney fee for this particular case. In big cases, a declaration (or testimony, if the matter comes to hearing) by a respected practitioner who has reviewed your files in the case is very helpful. The fee you agreed with your client to charge

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(if the client was to pay any fee at all) is relevant but is by no means determinative. If the case took more time than a similar case - maybe there was a change in attorney, or maybe your client demanded an unusual amount of handholding - the client may be obliged to pay, but still the *opposing party* is not required to do so, if the fee is unreasonable for a similar case. On the other hand, if the opposing party launched a million document requests and litigated unsuccessfully all of them, a breathtaking fee may well be reasonable. Therefore, particularly if your statement is on the high side, you cannot simply state your fees and hours and leave it there. Justify those hours. Show the judge that the outcome was commensurate with the cost of litigation. In many public-interest cases, significant numbers of people are directly and indirectly benefited - prove this to the court by evidence (not just argument). For this, a declaration by a good witness can be valuable. In a case

involving a startling number of hours, you need to show the court that something was at stake beyond the bullheadedness of the litigants - the real stakes may not be apparent to the court.

Finally, many attorneys include an hourly charge for legal assistants, and a variety of disbursements, from travel to postage. If you expect to recover for the time of nonlawyers, you need to include justification as part of "reasonable attorney fees" - which you can do, if (and only if) you establish by evidence that the time worked was under the supervision of attorneys, and replaced the work otherwise done at a higher cost by a lawyer, and (again) was "reasonable" in the charge. If you include other charges such as postage or secretarial time or Lexis or Westlaw charges, all of which are usually viewed as overhead and rolled into hourly attorney fees (which you are probably justifying on market rates) you have to establish that such fees are

reasonable *as attorney fees* based on rates for work and customary billing practices in the community. If there is no evidentiary support for those contentions, the charges should be struck because they are not supported as required by rule and statute.

The detailed statements of procedure and relevant considerations are there in Rule 68 and in the statute. I haven't covered them all, and nothing replaces your attention to the exact terms of the law. The matters that I have highlighted, here, reflect the most important considerations in my mind and those that are often overlooked. But you can simplify the process by settling with your opponent on a reasonable award, if your right to it is established. That way you are not subject to the uncertain perspicacity of us judges. Good luck, and may your work always be appropriately rewarded.

Legal Aid's Staff

Continued from page 11

Volunteer with us. We will work with you to find a good use of your time. We'll give you cases that

are meaningful. We can help you find a place to give back. We are hosting monthly virtual new lawyer trainings to bring people on board.

Kristy: We have many systems in place to support volunteers.

We have substantive trainings for volunteers on our website on various poverty law topics. We can provide mentors to new volunteers (mentors might be a legal aid lawyer or another pro bono volunteer), we are available to answer questions and strategize on cases, and we can provide interpreters for non-English speaking clients.

What types of pro bono opportunities are available?

Jill: There are a variety of pro bono opportunities available. Each pro bono project is tailored to the needs of low-income Oregonians. Some opportunities are specific to a particular region of the state; others are available in many areas. For example, in partnership with the OSB Debtor-Creditor Section, we have a Bankruptcy Clinic that operates in several locations around the state.

Brett: In the Portland metro area, we are always recruiting volunteers to help with our Domestic Violence Project. We are also working with attorneys at Intel on a new virtual expungement clinic. We just

put together a series of trainings on unemployment cases and are actively recruiting volunteer attorneys. This is one area where we could really use more help.

Tiffany: Also in Multnomah County is our Senior Law Project. For this project, online Zoom appointments don't work very well. So, we are using a low-tech solution and appointments are taking place over the telephone.

Kristy: The pandemic has forced us all to think about new ways to connect with clients and volunteers. We are expanding our already existing virtual pro bono clinics to work with even more Portland law firms and rural legal aid offices. Our hope is to expand our reach in rural communities.

How should interested volunteers get in touch to volunteer?

To volunteer with LASO, please email Jill Mallery at jill.mallery@lasoregon.org. To volunteer with OLC, please email Kristy Wood at kwood@oregonlawcenter.org.

Court Support

Continued from page 13

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Volunteering with Legal Aid

Continued from page 5

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News From the Courthouse

Continued from page 10

dockets: violation of restraining orders; civil commitments; stalking orders; and support enforcement (SED). The other dockets not currently being held are the small claims, traffic, and parking dockets, although a recent PJO authorizes resuming the small claims docket beginning October 19.

Court Updates Regarding the Budget

Because of revenue shortfalls during the pandemic, the Oregon Judicial Department (OJD) was required to reduce its spending

for the remaining year of the biennium. OJD adopted a budget reduction strategy designed to reduce spending as early as possible, while the court was delivering reduced services, in order to have resources to conduct operations for the remainder of the biennium. As a result courts were closed statewide for furlough days during May, June, and July. Additionally, Multnomah County Circuit Court furloughed about 40 court staff and all downtown referees during the months of June and July. These actions were taken due to the anticipated state revenue shortfall; it is expected that these budget reduction actions combined with a hiring freeze should be sufficient to avoid

additional furloughs/layoffs for OJD for the rest of this biennium, which ends June 30, 2021.

Court Updates Regarding the New Courthouse

The new courthouse is scheduled to open on Monday, October 5. This is also the first day of the judicial conference, which is being held virtually this year.

Links to videos detailing the technology capabilities and other features of the new courthouse have been sent to the bar and are available on the court's website.

A court navigator position has been created for the new courthouse; it has been funded by generous contributions to the Multnomah Bar Foundation (MBF), and is staffed through the

Volunteers of America (VOA). The navigator will be stationed at the information desk in the lobby of the Central Courthouse to connect people to resources and accommodations throughout the courthouse and assist them in accessing the services they need. Donations are being accepted

to continue the funding for this important position.

Other Updates

OJD has developed an access and fairness survey. Members of the bar are encouraged to participate in this survey. A link was sent to MBA members.

Pro Bono Response to COVID-19

Continued from page 13

as they stem from COVID-19. So far, the most frequent issues have related to landlord-tenant law, employment/unemployment law, and public benefits. To help volunteers feel confident about the advice they are giving, there are already MCLE-accredited training videos related to housing issues and employment/unemployment issues.

How You Can Help

The COVID-19 panel needs more lawyer volunteers. At the writing of this article, the LRS is

connecting callers with COVID-19-related issues to the panel, but there has not been public advertising of the program. The expected demand that public advertising will bring can only be met with more volunteers.

To volunteer, log in to your OSB dashboard using the login button at the top of the www.osbar.org homepage and click the COVID-19 Assistance Panel Registration button. Both volunteers to take clients and volunteers to record training videos for other volunteers are being sought. You can sign up for as few or as many subject areas as make you comfortable.

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Oregon State Bar

www.osbar.org/probono
Find information on pro bono in Oregon that includes volunteer opportunities, pro bono hours reporting, MCLE credit for volunteering, attorney resources,

PLF coverage for pro bono, pro bono committees and types of membership status based on pro bono activities.

Oregon Advocates

www.oregonadvocates.org
This statewide advocate's website is sponsored by the legal aid community in Oregon and features a substantive law library as well as free CLE seminars for pro bono attorneys. Membership is free. Once you are a member, sign up for ProBonoOregon, a weekly listserv offering pro bono cases for

attorneys. You also can easily view selected pro bono opportunities from around the state at the ProBonoOregon webpages, located on the OregonAdvocates site at www.oregonadvocates.org/probonooregon.

Oregon Law Help

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Free legal information to low-income Oregonians is provided through this one-stop statewide website sponsored by legal aid offices in Oregon. Self-help handbooks are available for download and feature applicable statutes, remedies, forms and sample letters. These handbooks are great primers for the basics in some common areas of law.

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Pro Bono Net

www.probono.net
This site provides regional, national and international resources for attorneys working to assist low-income clients.

NATIONAL RESOURCES

American Bar Association

www.americanbar.org/groups/center-pro-bono/
The ABA Standing Committee on Pro Bono & Public Service and the ABA's Center for Pro Bono are national sources for pro bono information and resources.



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