



MULTNOMAH LAWYER ANNUAL PRO BONO ISSUE

October 2021
Volume 67, Number 9



The Oregon Way

by Nick Kampars
President, Campaign for Equal Justice

I would like to share a story that I have heard over the years I've been involved in the Campaign for Equal Justice. Prior to the pandemic, supporters of the CEJ would travel to Washington, DC alongside representatives from the Oregon State Bar to meet with Oregon's congressional delegation

and urge their support for legal aid funding. During those meetings, which were held on the American Bar Association's "Lobby Day," our colleagues would also meet with representatives of other bar associations from across the country, who were in DC for the same reasons. They would share with those representatives how, each year, lawyers across the state of Oregon collectively raised and contributed over \$1 million to support legal aid, through the CEJ's annual fundraising efforts. The responses they received in return were of utter surprise, shock and disbelief. "You're joking." "They did what?" "There's no way lawyers gave \$1 million in support of legal aid." My colleagues would reassure them that yes, in fact, Oregon lawyers did contribute mightily in support of legal aid funding. Upwards of 3,000 lawyers gave, and they gave year after year. They donated their time. And they created a culture of giving to legal aid in their respective firms, and across the state.

I share this story with you because it makes me proud to be an Oregon lawyer. That we can collectively find a cause worthy of our support, and then support that cause with such fervor, is no small feat. Over the past 30 years, we have contributed more than \$31 million in support of legal aid services. Those funds have enabled legal aid offices around the state to employ more legal aid attorneys. And that, in turn, has a direct and profound impact on our communities, as those legal aid lawyers work day in and day out to help our most vulnerable citizens access the justice system. Too often, when low-income Oregonians lack the resources for needed legal help, they are effectively shut out of that system. We all suffer significantly because of it. The legal aid lawyers our fundraising has supported are nimble and responsive to client needs as they arise, and the local legal aid offices across the state are in tune with the communities in which they serve. Through their efforts, they ensure that everyone, regardless of means, is treated fairly.

Last year was an exceptionally difficult year for every Oregonian, in different ways, but Oregonians who qualify for legal aid assistance often felt the brunt of all we have gone through. As the pandemic raged across the country and Oregon and parts of our state were set alight by wildfires, legal aid lawyers stepped to the forefront to help their clients with housing problems, with domestic violence issues and other emergent circumstances. By directly serving more than 24,000 people, and by serving tens of thousands more through impact

litigation and administrative advocacy, the legal aid lawyers met their clients' immediate needs, and through their efforts, gave them hope. And all of you who supported the CEJ last year stepped up as well. We raised more than \$1.4 million for legal aid in 2020, which exceeded even our rosier of budgeted projections. And although our donor numbers were down from 2019, the per capita giving rate exceeded the same rate from 2019 by a wide margin. Those donations and your support of these valiant legal aid warriors have embodied what I've come to learn is an exceptional quality among members of the bar: that our lawyers make it a professional priority to support our fellow Oregonians, and especially those who are most at risk. As my colleagues discovered on their trips to DC, this level of support is unique.

As the Campaign for Equal Justice embarks on its 31st year, the need for your support continues to be great. Legal aid had 111 attorneys statewide in 2020, but that number falls short of meeting the demand. The number of legal aid attorneys is growing this year thanks to increases in state funding and grant funding, specifically to support the newly created Eviction Defense Project, which will eventually have 25 attorneys to represent Oregonians statewide in eviction cases. This is incredibly timely and important work - but there will still be unmet need. For example, the latest US Census Bureau data reports that almost 45,000 Oregonians are facing the likelihood of eviction or foreclosure within the next two months. And as the pandemic continues to impact our communities in various ways, housing issues will be only one of the many hurdles facing low-income Oregonians.

While we have worked so hard and you have given so much, we need to continue to strive to do more. I would invite anyone who wishes to learn more about legal aid efforts or how to support the CEJ to visit our website, www.cej-oregon.org, come to one of our virtual events (and hopefully soon, a return to our in-person events), or speak with one of the many lawyers who support the CEJ in various leadership roles to understand why they have chosen to support this organization. There are many worthy organizations and nonprofits across our state, each of which does great things. Ours is among that group. Together, we are making a difference in our communities.

...our lawyers make it a professional priority to support our fellow Oregonians...

...Oregon lawyers did contribute mightily in support of legal aid funding. Upwards of 3,000 lawyers gave, and they gave year after year.

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mba|EVENT

Virtual Bench Bar & Bagels

Tuesday, November 9
Session 1 - 7:30-8:30 a.m.
Session 2 - 4-5 p.m.

The MBA hosts the 12th annual "Bench Bar & Bagels" event on Tuesday, November 9 from 7:30-8:30 a.m. and again from 4-5 p.m. In past years, this event has been sponsored and hosted by Tonkon Torp. We had hoped to be back in person at Tonkon Torp this fall, but didn't feel that we could safely do that yet. Please join your colleagues and members of the judiciary for this event, being held on Zoom. Using breakout rooms, we will assign you to a room with a judge, a member of the Events Committee or MBA Board and a few other lawyers.

This event is offered at no cost to MBA members and judges. Non-members: \$10.

Please RSVP at www.mbabar.org.

mba|CLE

Due to the COVID-19 pandemic, the MBA will be offering all seminars **ONLINE ONLY**. To register for a CLE seminar, please see p. 3 or visit www.mbabar.org/cle and input your OSB number to register at the member rate.

OCTOBER

10.19 Tuesday
Basics of Probate
Sara Butcher

10.29 Friday
Are We All Racists? A Critical Examination and Discussion of Bias in Representing the Asian Community
Ron Cheng
Emery Wang

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DEADLINE for copy: The 10th of the month*

DEADLINE for display ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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Editor: Guy Walden

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Increased Safety Concerns for Older Adults and Disabled Persons During COVID-19

by Brett Cattani
Legal Aid Services of Oregon

It has been well documented that public health emergencies put children at increased risk for abuse. An Associated Press analysis in 2020 found that more than 400,000 fewer child welfare concerns were reported during the COVID-19 pandemic and 200,000 fewer child abuse and neglect investigations and assessments compared with the same period of 2019. That represents a national total decrease of 18 percent in both total reports and investigations. Additionally, during the beginning of the pandemic, the Centers for Disease Control (CDC) reported that the total number of emergency department visits related to child abuse and neglect decreased, but the percentage of such visits resulting in hospitalization increased, compared with 2019. The study cites heightened stress, loss of income and social isolation as factors in the analysis.

Similar safety concerns exist for older adults and persons with disabilities. The National Institute on Aging estimates that one in 10 adults 60 years and older experience elder abuse annually in the United States. This includes physical, sexual, or psychological abuse, as well as financial exploitation or neglect by caregivers. The agency reports that even in the best of times, elder abuse cases are rarely detected, with only one in 24 cases identified and reported to the appropriate authorities.

The National Center for Biotechnology Information cites that while it has been well publicized that older adults are at highest risk of serious illness and death from COVID-19, they may also be at high risk for negative consequences from the measures being enacted to protect them from the virus. Older patients are now particularly vulnerable to social isolation, financial hardship, difficulties accessing needed care and supplies, and anxiety about avoiding COVID-19. Likewise, the caregivers these patients often rely on are also vulnerable to increased stress from financial hardships and competing demands on their time. Unfortunately, all of these factors are known to be associated with increased risk of abuse for older adults and those with disabilities.

LASO's Domestic Violence Project (DVP) continues to provide critical legal assistance to survivors of abuse and stalking and welcomes new volunteers to email probono@lasoregon.org to attend our upcoming Pro Bono Orientation meeting on October 21 from 12-1 p.m. DVP provides representation to low-income survivors of abuse and

stalking at contested restraining order hearings, including, but not limited to, restraining orders under the Family Abuse Prevention Act (FAPA) and restraining orders under the Elderly Persons and Persons with a Disability Abuse Prevention Act (EPPDAPA). These cases tend to have short timelines, involve limited issues and require a court appearance. DVP is an excellent opportunity for new lawyers, lawyers seeking litigation experience, and attorneys who cannot commit to long-term cases. Most volunteers are not family law lawyers and are not expected to assist clients with ongoing family law cases. Training and materials are available.

"An EPPDAPA restraining order can be a really powerful legal tool in protecting survivors of elder abuse and abuse of the disabled. Unlike under FAPA, where the definition of abuse is focused primarily on physical abuse, and fear of physical abuse, the definition of abuse under the EPPDAPA statute is much broader and is really written in a way to take into account the unique vulnerability of these communities," said LASO Staff Attorney Shannon Garcia. "The abuse definition can include actions causing significant emotional harm as well as wrongful taking of property, neglect or failure to provide care or services and abandonment among others. As heartbreaking as it sounds, most often the person abusing the survivor is the person they would have called for help." Garcia further said, "the remedies available under EPPDAPA are also more expansive. In addition to no contact, the court can order the respondent to return money and property to the survivor, divest control of property and to follow instructions of a guardian/conservator for the survivor. Having an attorney on their side can make a real difference."

The need for your help has never been greater. Many thanks to LASO's pro bono DVP volunteers during these difficult times. For more information on volunteering with the Domestic Violence Project please contact Brett Cattani at brett.cattani@lasoregon.org.

- Please note: Oregon attorneys have a mandatory duty to report abuse of the elderly and other vulnerable persons under certain conditions.
- Abuse of seniors and vulnerable adults can be reported through Oregon's toll-free hotline: 1.855.503.SAFE (7233). If it is an emergency, call 911.

Calendar

OCTOBER

20 Wednesday
MBA President's Virtual Listening Session
www.mbabar.org

20 Wednesday
Solo & Small Firm Workshop: Emotional Intelligence
Details on p. 7

22 Friday
St. Andrew Legal Clinic Taste for Justice
www.salcgroup.org/taste

27 Wednesday
Affinity Bar Series for Law Students and Young Lawyers: Setting Boundaries/Avoiding Burnout
www.mbabar.org

28 Thursday
2021 OSB Celebrate Oregon Lawyers
www.osbar.org/osbevents

NOVEMBER

5 Friday
OSB Convocation on Equality
www.2021coe.osbar.org

9 Tuesday
Bench Bar & Bagels
www.mbabar.org

17 Wednesday
MBA President's Virtual Listening Session
www.mbabar.org

25 Thursday-26 Friday
Thanksgiving Holiday - MBA Office Closed

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The MBA will apply for 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.

Basics of Probate

Tuesday, October 19 2-3 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Sara Butcher, Butcher & Smith Law LLC will provide an overview of how to conduct a probate proceeding, from opening to closing. This presentation will help practitioners who are new to the subject and interested in learning how to handle a probate proceeding in Oregon.

For more information: Contact Ryan Flatley, Thede Culpepper Moore Munro & Silliman LLP, at 503.416.6133. For registration questions, contact the MBA at 503.222.3275.

Are We All Racists? A Critical Examination and Discussion of Bias in Representing the Asian Community

Friday, October 29 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Note: One hour of OSB MCLE Access to Justice credit will be applied for.

Please join **Ron Cheng** of Kaplan Law LLC and **Emery Wang** of Vames & Wang for a discussion of the ethical dilemmas, challenges and rewards of representing people from the Asian community. Through the lens of a real-life civil case in Portland, the speakers will address how hate crime, police bias, and cultural values can shape our cases and have lasting societal impacts. Things aren't always what they seem, and this CLE seeks to challenge our understanding of racism.

For more information: Contact Justice Brooks, Foster Garvey, at 503.553.3117. For registration questions, contact the MBA at 503.222.3275.



CLE Registration Form

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

Photocopy registration and mail payment to:
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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.

10/19 Basics of Probate
Online attendance only - link will be emailed
 Class Registration (\$30 Members/\$50 Non) \$ _____

10/29 Are We All Racists? A Critical Examination and Discussion of Bias in Representing the Asian Community
Online attendance only - link will be emailed
 Class Registration (\$30 Members/\$50 Non) \$ _____

Total due \$ _____

Unable to attend?
 Archived webcast options are available
 at www.mbar.org/cle

mba | ANNOUNCEMENTS

Pledge to Increase Access to Justice

Sign the MBA Pro Bono Pledge at www.mbabar.org/probonopledge and commit to taking at least one pro bono case in 2022.

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

Candidates Announced for Appellate Court Vacancies, Public Comment Invited

Governor Kate Brown announced candidates for vacancies on the Oregon Supreme Court and the Oregon Court of Appeals. Governor Brown invites attorneys and members of the public to comment on the candidates. Comments may be submitted to Dustin Buehler at 503.378.6246 or dustin.e.buehler@oregon.gov. See the news release for details at www.bit.ly/GovNewsRelease

Board of Directors Opportunity

If you have a willingness to participate in discussions and provide your expertise, please consider serving on SunGarden Montessori Children's House Board of Directors. The established Oregon nonprofit organization is dedicated to the education of the whole child within purposeful, respectful environments based upon the insights and inspiration of Dr. Maria Montessori. Board members are invited to take an active role in our organizational governance, and join a community of leaders who are dedicated to the organization's mission. For further inquiry, please connect with Amy Grandia at amy@sungardenmontessori.org.

Office Coordinator Position Available with Classroom Law Project

The Office Coordinator is responsible for the smooth operation of Classroom Law Project's office, administrative, and fiscal functions. They serve as first point of contact for visitors and callers, as well as providing critical support to the CLP Development and Program staff, Board, and accounting team. This is a part-time (average 20 hours/week), year-round position in Portland. Full details available at www.classroomlaw.org/position-open-office-coordinator

Noontime Rides

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



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Ethics Focus



by Mark J. Fucile,
Fucile & Reising LLP

RPC 6.5: Conflict Solution for Pro Bono Clinics

When the ABA Model Rules of Professional Conduct were being comprehensively reviewed 20 years ago by the "Ethics 2000" Commission, it noted a potential disincentive to pro bono service in the conflict rules:

[A] strict application of the conflict-of-interest rules may be deterring lawyers from serving as volunteers in programs in which clients are provided short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program. The paradigm is the legal-advice hotline or pro se clinic, the purpose of which is to provide short-term limited legal assistance to persons of limited means who otherwise would go unrepresented.

ABA, A Legislative History: The Development of the ABA Model Rules of Professional Conduct 1982-2013 at 728 (2013).

The solution the Ethics 2000 Commission proposed - and the ABA House of Delegates adopted - was Model Rule 6.5, which slightly relaxes the conflict rules in the context of short-term advice clinics and their equivalents. Oregon, in turn, adopted the rule as RPC 6.5 in 2005. In this column, we'll survey both the mechanics and limitations of RPC 6.5.

Mechanics

The principal way RPC 6.5 relaxes RPCs 1.7 on current client conflicts and 1.9 on former client conflicts and their imputation to the lawyer's firm as a whole under RPC 1.10 (the "firm unit" rule) is by exempting their application in short-term clinic setting when the lawyer involved does not have actual knowledge of a conflict:

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by

either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Under RPC 6.5, for example, a big firm lawyer could offer on-the-spot advice to a tenant at a pro bono clinic about the tenant's rights vis-à-vis a landlord without first running a conflict check on the landlord as long as the lawyer didn't know that the landlord was a client of the lawyer's firm. Comment 1 to ABA Model Rule 6.5 underscores the rationale:

In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation.

Comment 4 to ABA Model Rule 6.5 balances encouraging pro bono in this context with the continuing duty of loyalty to clients of the lawyer's firm by not disqualifying the lawyer's firm from work that may be adverse to the clinic client through other lawyers at the firm:

By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the

program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

Limitations

Although very useful in encouraging pro bono work, RPC 6.5 is intentionally constructed with three primary limitations.

First, on a practical level, it is oriented around advice-only clinics and similar settings where, in the phraseology of the rule, there is no "expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter[.]" Comment 5 to ABA Model Rule 6.5 observes that if further representation is undertaken, then the conflict rules (and the corresponding need for conflict checks before proceeding) are triggered: "If, after commencing a short-term representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable."

Second, Comment 2 to ABA Model Rule 6.5 counsels that the clients assisted should be informed consistent with all limited scope representations - ABA Model Rule 1.2(c) and RPC 1.2(b) in Oregon - of the limited nature of the representation. The comment then adds: "If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel."

Finally, Comment 2 to the ABA Model Rule notes that, except for the conflict rule exceptions, the balance of the RPCs apply - including those relating to client confidentiality. This recognizes that although the contact with the client is by definition "short-term," attorney-client relationships are nonetheless formed.

Summing Up

Oregon RPC 6.5, like the ABA Model Rule on which it is based, strikes a practical balance on conflicts that encourages lawyers to participate in pro bono clinics and similar venues.

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 Policy Toolkit
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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MBA Mentor Program Frequently Asked Questions

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

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.

Is there a fee to participate?

The MBA Mentor Program is free for all participants.

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 29.

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.



and it's time to renew your MBA membership.

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Solo & Small Firm Committee presents

EMOTIONAL INTELLIGENCE: WHAT IS IT? WHY DOES IT MATTER? HOW CAN YOU IMPROVE IT?

Wednesday, October 20

Noon-1 p.m.

Remote attendance only via Zoom

You can improve your Emotional Intelligence (EQ) throughout your life, but why should you? Because people with higher EQs achieve more professional success and experience more personal happiness. In this interactive presentation **Jo Smith** will briefly define Emotional Intelligence and describe EQ theory. She will break EQ down into its four components and demonstrate how enhanced self-awareness and self-regulation lead to more personal happiness and enhanced social awareness and social skills lead to more professional success. She'll share stories of clients who have achieved more success and happiness by improving their EQ. She'll offer suggestions and provide simple tools to help you improve each area of your EQ. The journey of continuous improvement needn't be arduous; it can be fun and highly rewarding.

You will learn:

- The brief definition and theory of Emotional Intelligence (EQ) and its components
- The benefits of improving EQ
- Practical steps to improve your EQ

Attendees will receive helpful, practical tools and choose two ways to improve their EQ for more professional success and personal happiness.

Jo Smith is a Certified Management Consultant, executive coach and speaker. She helps leaders improve employee engagement, client satisfaction and business profitability. Jo helps organizations develop leadership talent and coaches professionals to achieve their potential.

Cost: Free for members/\$30 non-members.

Register at www.mbabar.org.

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Around the Bar



Annie Vozar

Hart Wagner LLP

Annie M. Vozar has joined the firm as an associate attorney. She joins the firm's medical malpractice and general liability defense teams. Her work on these teams will include personal injury and wrongful death defense, premises and product liability defense, and insurance coverage litigation.

Vozar received her law degree from Northeastern University School of Law, where she served as a senior editor on the Northeastern University Law Review and participated in a clinic where she successfully represented a prisoner serving a life sentence, winning parole on oral argument before the Massachusetts Parole Board. After law school, she gained trial experience as a Deputy Public Defender in Colorado before shifting her litigation practice to civil law. She is admitted to practice in Oregon and Colorado state courts.



Kelsie Crippen

Markowitz Herbold PC

The firm is pleased to announce that Kelsie Crippen has joined the firm as an associate.

Before joining the firm, Crippen served as a clerk with the Oregon Supreme Court. While clerking, she assisted with drafting judicial opinions authored by Chief Justice Martha Walters. She also helped Justice Walters in her efforts to establish statewide policies and procedures for Oregon courts during the COVID-19 crisis. Before clerking, Crippen served as a law clerk for the Oregon Department of Justice Solicitor General's Office. While there, she drafted dozens of appellate briefs and argued cases before the Oregon Court of Appeals.

Crippen graduated from the University of Oregon School of Law among the top three percent of her class. During law school,

she received the Jeannette M. Lavender Exemplary Leadership Award for her work as a Managing Editor of the Oregon Law Review. She also served as the Director of the Oregon Women's Law Forum.

Crippen also worked as a judicial extern for Judge Jolie Russo of the United States District Court for the District of Oregon.



Trevor Caldwell

Miller Nash LLP

The firm is pleased to welcome Trevor Caldwell to the Portland office. Caldwell joins the firm's employment law & labor relations practice team where he will focus his practice on representing public and private employers in all areas of labor relations, including negotiating collective bargaining agreements, contract administration, arbitration and representing clients before state and federal agencies. Caldwell also represents clients on general employment matters and provides trainings for business owners, managers, and employees on topics such as harassment and discrimination, documentation practices, and workplace investigations.

Caldwell counsels employers of all sizes and across a variety of industries in Oregon and Washington on a multitude of employment and labor-related issues. He uses a proactive approach, including employment advice, counseling and training, to assist employers in crafting solutions that are best suited to their unique workplaces. He earned his law degree at the University of Oregon School of Law. Caldwell previously served on active duty as a captain in the US Army and has been a member of the Oregon National Guard since leaving active duty. He currently serves as an attorney in the Office of the Staff Judge Advocate (JAG).

Miller Nash is also pleased to welcome Justin Hebenstreit to the firm's Portland office. Hebenstreit joins the firm's financial services department, advising banks, credit unions and other financial institutions on issues ranging from complex strategic mergers and day-to-day regulatory compliance to complex loan recoveries, lender liability claims and consumer class action litigation. Before joining Miller Nash, he practiced in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP where he represented



Justin Hebenstreit

multinational investment management corporations, public and private companies and other financial institutions.

Hebenstreit provides securities law advice and compliance guidance to business development companies, public companies, registered investment companies, investment advisers, real estate investment trusts and their independent directors with a focus on regulation and issues arising under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934. He earned his law degree at Columbia Law School.



Carlie Bacon

Tonkon Torp LLP

The firm is pleased to welcome three new attorneys.

Carlie Bacon has joined the Labor & Employment Practice Group. Bacon has experience representing employers in state and federal court, and before regulatory agencies in jurisdictions including Oregon, California, Washington, Alaska, Idaho, and Nebraska.

Prior to joining Tonkon Torp, Bacon worked at Ogletree Deakins in Portland. She has been recognized in the 2021 and 2022 Ones to Watch rankings published by Best Lawyers for her work in management-focused labor and employment law. During law school, she worked as a legal extern for the Seattle City Attorney's Office and as an intern for the Municipality of Anchorage Legal Department. Bacon earned her JD from the University of Washington School of Law.

Josie Jeremiah has joined the firm as an associate in its Business Department. Jeremiah joins Tonkon Torp from the Port of Portland, where she provided legal support to all divisions of the Port as an Honors Attorney.

Prior to the Port of Portland, Jeremiah worked as a judicial clerk for the Honorable Darleen Ortega at the Oregon Court of Appeals. She also worked as a student associate for the



Josie Jeremiah

University of Oregon business law clinic, served as a judicial extern with the Honorable Ann Aiken at the US District Court for the District of Oregon, and worked at Watkinson Laird Rubenstein, PC as a law clerk. Josie is a 2017 graduate of the University of Oregon School of Law.

Maureen McGee has joined the firm's Government Relations & Public Policy and Government Solutions Practice Groups. Prior to joining Tonkon Torp, she was at the Oregon Office of Legislative Counsel, where she served lawmakers as a Senior Deputy Counsel for nearly nine years. In that role, she provided nonpartisan, policy-neutral legal services to the 90 members of the Oregon Legislative Assembly.

McGee has been lead legislative counsel on a large variety of legally and politically complex legislative discussions, covering everything from carbon cap-and-trade to product



Maureen McGee

stewardship and broadband accessibility. At Tonkon Torp, Maureen's practice will combine legal counsel and government relations advocacy to provide clients with tailored solutions on matters before the Oregon legislature, administrative agencies and local governments.

McGee holds a JD from the University of Oregon School of Law.

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.



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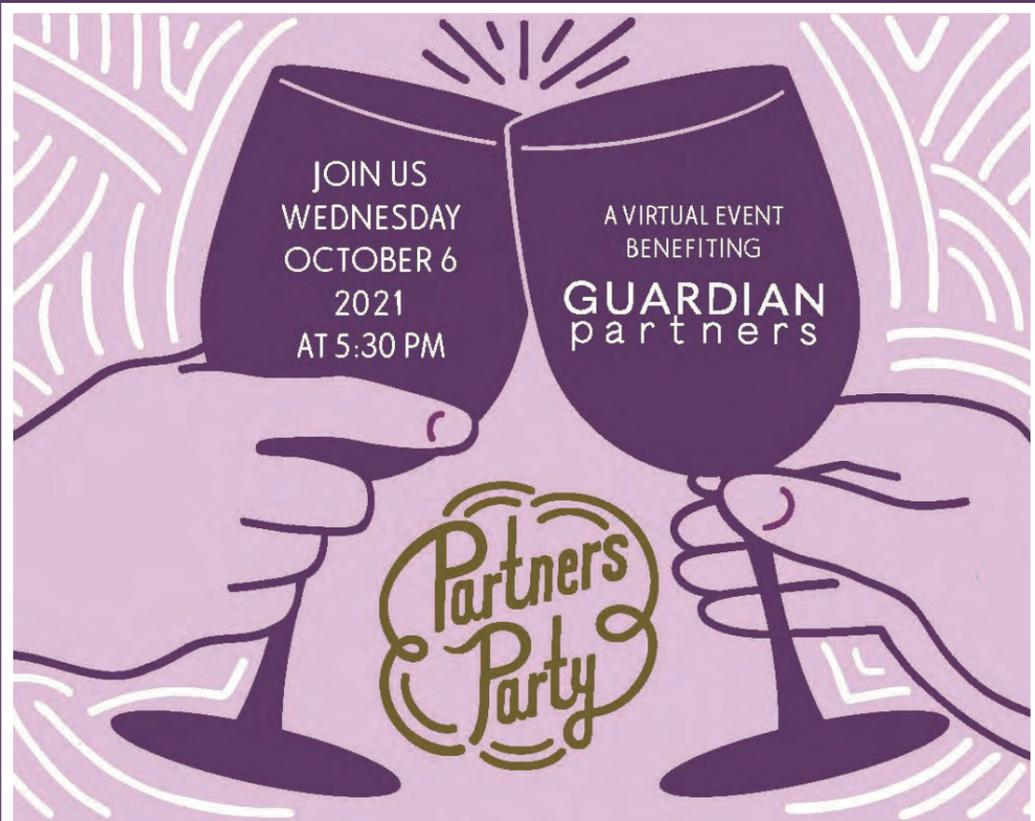
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- PROGRAM UPDATES FROM VOLUNTEERS & STAFF
- CHANCE TO DONATE
- ENTERTAINMENT: We’ll premiere a new song, “Hit the Ground Running,” written especially for Partners Party!

Wednesday, Oct. 6th
5:30 to 6:00pm

Join the event at:
GUARDIAN-PARTNERS.ORG

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marc@guardian-partners.org or 971-409-1358.



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Lawrence P. Blunck

larry@bluncklaw.com

Fluent in Spanish

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• Motorcycle Accidents	• Product Defects
• Breach of Contract	• Sexual Abuse
• Business Disputes	• Fire Loss
• Construction Defects	• Timber Trespass
• Subrogation Claims	• Neighborhood and Homeowner Association Disputes
• PIP/UM/UIM	

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30 years Campaign for Equal Justice JUSTICE ENDURES



THE CAMPAIGN FOR EQUAL JUSTICE
CONSORTIUM OF LEGAL SERVICES

CEJ is created as a project of Oregon Legal Services as one of the first statewide combined fundraising campaigns for legal aid in the country.



CEJ meets Meyer Memorial Trust \$750,000 challenge grant and raises a total of \$1.5 million in 3 years for legal services.

THE CAMPAIGN FOR EQUAL JUSTICE

CEJ is incorporated as a private 501(c)(3).

Oregon Legislature adopts the Legal Services Program and creates standards and guidelines for a integrated delivery system of legal aid in Oregon.

CEJ and the OSB Civil Legal Services Task Force work on gaining filing fee funding for legal aid in Oregon. It is the 1st state to propose this and 2nd to adopt it.



Regional Steering Committee in Marion-Polk region is formed. They host an annual event every year to benefit the CEJ and legal aid.



Oregon Legal Needs Study, sponsored by OSB and Office of the Governor, is published. It finds that only 18% of the legal needs of Oregon's poor are being met with available resources. It also finds that perception of the legal system is greatly enhanced when individuals have access to lawyers. This is the first legal needs study since the early 1970s.



Legal services funding increases by \$10 million per year.

CEJ, OLF, and OSB work jointly to establish the Oregon Access to Justice Endowment Fund, part of a long-range plan that also includes legislative advocacy and national grant funding.



THE LAWYERS' CAMPAIGN FOR EQUAL JUSTICE

All members of Oregon's 2003 Federal Delegation support increased funding for legal aid in the federal budget.



CEJ Associates Committee is formed to educate associates and new lawyers about the importance of supporting legal aid.

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As Oregon slowly emerges from more than a year of unprecedented challenges and uncertainty, I am happy to report that with your support, the Campaign for Equal Justice has weathered the storm. Oregon lawyers helped the CEJ commemorate thirty years by doing what they do best—standing up for justice.

During this extended pandemic and ongoing wildfires, legal aid has stepped in to help low-income Oregonians face some of the most difficult challenges of their lives. The generosity of our volunteers and donors has made the CEJ's continued support of our legal aid partners possible.

Thirty years ago, Oregon lawyers launched the Campaign for Equal Justice's first annual fund drive. Since then, the legal community has contributed over \$31 million to the annual fund drive, plus almost \$2 million to CEJ's endowment fund. Last year, you really outdid yourselves, raising over \$1.5 million for legal aid!

Just as legal aid has been an essential part of the response to the twin crises of 2020, legal aid will be a critical component of the economic recovery of our

communities. Prior to the pandemic, we were meeting 15% of the civil legal needs of low-income Oregonians. As these crises continue to increase the poverty population, legal problems will only multiply.

That is why your continued support is so critical. In Oregon, we believe in justice for all, not just for those who can afford it. The 2021-22 annual fund drive kicks off this September. Let's continue to stay connected with each other and with our vulnerable neighbors who have lost so much. Together, we make a difference. Together, we ensure that justice endures.

Sincerely,

Nicholas Kampars
Board President, Campaign for Equal Justice
Wildwood Law Group



Republican Senator Gordon Smith pledges to work with Democrat Senator Ron Wyden to support restoration of legal aid funding at the federal level.

CEJ celebrates its 10th Anniversary!

THE LAWYERS' CAMPAIGN FOR EQUAL JUSTICE
TEN YEARS
OF CHAMPIONING ACCESS TO JUSTICE



First LAF-OFF Lawyer Comedy Competition Event held to support legal aid. It is now a much-loved biannual event.



Oregon receives ABA Grass Roots Lobbying award for federal fundraising for legal aid. Oregon is one of the first states where the state bar association and representatives from legal aid cooperated in these efforts.



CEJ surpasses 3,000 donors in one year for the first time!

OSB & CEJ begin a regional competition for the Justice Cup and Equity Cup, a friendly competition for Oregon's regions to bring in more donors and more donations.



CEJ spearheads the Task Force on Legal Aid Funding with representatives of the bar, courts, Oregon Law Foundation, Governor's office, corporations, legislators, and private foundations. New funding sources recommended include residual class action money and increased pro hac vice fees.



CEJ works with Oregon affinity bar associations to increase the number of groups partnering on CEJ's Call to Action.

CEJ celebrates its 25th Anniversary!



The Lara Skidmore Fund is created. It funds an 8-year staff attorney position in the Portland LASO office.



30 years
Campaign for
Equal Justice
JUSTICE
ENDURES

CEJ's 30th Anniversary year looks different than we hoped, but we pivot with the rest of the world!
CEJ hosts countless virtual meetings, 8 virtual CLEs, 10 virtual special events, and a virtual anniversary gala.

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2021



Regional Steering Committees are formed in Central Oregon, Lane County, and Southern Oregon. They hold annual events to help support the CEJ and legal aid.



The Lawyers' Campaign for Equal Justice



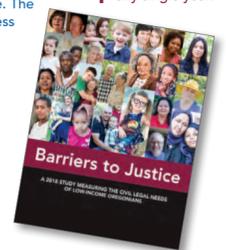
Class action funding bill passes the legislature. By 2021, this will have resulted in an \$80 million increase in legal aid funding. The funds are invested to help support legal aid over decades.

25 YEARS supporting civil legal aid in Oregon



Civil Legal Needs Study is commissioned by OLF, OSB, Oregon Judicial Department, CEJ, Legal Aid Services of Oregon, and the Oregon Law Center with the support of the Oregon Department of Justice. The study finds that Oregon is meeting less than 16% of the civil legal needs of low-income Oregonians. There is still work to be done!

CEJ Endowment Fund surpasses \$1 million. Annual endowment disbursements to support legal aid begin.



CEJ raises 1.8 million dollars - the most raised in any single year.

Tips From the Bench

Additional Thoughts on Awards of Attorney Fees and Costs Under ORCP 68

by Referee Mark A. Peterson
Multnomah County Circuit Court



In the July/August issue of the *Multnomah Lawyer*, I offered some basic suggestions for stating a case for, or an objection to, an award of attorney fees and few suggestions on how that case might be improved. For the sake of keeping that column consistent with the length of “Tips from the Bench” columns, I omitted two areas that deserve coverage, one on the mundane side and one involving strategic choices and planning.

On the mundane side, what expenses are includable in costs and disbursements? The answer is found in ORCP 68 A. That section provides a nonexclusive list and can be augmented by “any other expense specifically allowed by [the underlying] agreement, by these rules, or by any other rule or statute.” Specifically, deposition expenses are not included as allowable costs. I not infrequently see charges included in a statement of attorney fees that comes before me for routine copying of documents that are unrelated to the “copying of any public record, book, or document admitted into evidence at trial.” Postage expenses, other than for securing service of the summons and complaint, parking expenses, and the like are other examples. Although *Willamette Prod. Credit v. Borg-Warner Acceptance*, 75 Or App. 154 (1985), rev. den., 300 Or 477 (1986), supports making costs such as, “secretarial and legal assistant time, photocopying charges, long distance telephone charges and postage” recoverable when such charges are segregated by client matter, are billed to clients, and are not included in the general overhead, it is worth considering whether the accounting costs and effort are worth the reward. Consider when you take your car into a shop, and you are billed full retail for the parts and over \$100 an hour for the mechanic’s time. Are you happy to see an arbitrary figure for “shop materials” added to your bill? Me neither.

Despite my questioning of Willamette Prod. Credit on the issue of seeking recovery of what are basically overhead expenses, my thinking differs when it comes to charging for paralegals’ time at a reasonable rate. Such charges should be recoverable. When a particular task is handled by a

trained paralegal, at the paralegal’s hourly rate, it is often obvious that the fees for the given task seem very reasonable if compared to the same task, had it been handled by an attorney.

Another item of costs that I question is service costs. I have seen charges for serving the summons and complaint range from \$20 to \$120. ORS 21.300 specifies that the county sheriff will serve up to two defendants at one address for \$45, so long as the mileage for the service does not exceed 75 miles round trip. Are attorneys really charging their clients \$120 for the same service that the sheriff would perform for \$45? In any case, should a prevailing party be entitled to foist Cadillac-priced service on the other side when Chevrolet-quality service would do just as well? If the cost of service is high, there should be an explanation of why the higher cost is justifiable.

Let’s move to the strategic choices in pleading as those choices relate to attorney fees. Some claims are subject to fee shifting by statute or by a contractual provision. If your client has more than one possible claim, some of which carry an award of attorney fees, now is the time for strategic thinking. In simpler times, this was not a choice that carried too much risk. If your plaintiff had a claim subject to fee shifting that had a strong likelihood of success, the inclusion of other claims in the complaint that appeared to have only a modest chance of success was not a high-risk proposition. You might suffer to some degree in obtaining your award of attorney fees if the judge questioned the objective reasonableness of the additional claims, the objective reasonableness of your case, and whether denying or reducing the award might dissuade you from bringing claims that the judge felt had little merit. See ORS 20.075(1)(b) and (d). The law was pretty clear and had the benefit of simplicity in its application. See, e.g., *Illingworth v. Bushong*, 61 Or App 152 (1982), aff’d other grounds, 297 Or 675(1984). If both sides had claims that were subject to fee shifting, each side could prevail on that side’s respective claims but the award of attorney fees for the entire case would be in favor of the side that obtained a net judgment after offsetting the other side’s award against the prevailing side’s claims.

That simplicity no longer reigns. The current approach is to look at each claim (or defense) that carries a potential award of attorney fees and to award fees on each claim or defense. See, ORS 20.077 and *Wilkes v. Zurlinden*,

Continued on page 15

News From the Courthouse



by Bridget Donegan
Court Liaison Committee

Report from Presiding Judge Stephen Bushong

Court Updates

Barbara Marcille, Trial Court Administrator, Multnomah County Circuit Court was awarded the President’s Public Leadership Award by the Oregon State Bar, the highest honor given to a non-lawyer. Barb was nominated by the presiding judges and the chief judges and supported by the full bench.

Governor Kate Brown announced two new judicial appointments for Multnomah County. Judge Chanpone Sinlapasai was sworn in on September 20, and Judge Jenna Plank was sworn in on September 23. These newest judges replace retired judges Angel Lopez and Leslie Roberts. In the interim, their vacancies were filled with retired judges sitting in senior status. Judge Bushong notes that senior-status judges have been helping with the volume of cases at the court, and lawyers may see more retired judges on cases for the remainder of the year.

COVID-19 Updates

Recently, a juror in a two-week criminal trial began experiencing viral symptoms toward the end of the trial, posing the potential for a mistrial if a positive test required that everyone be sent home. Ultimately, the jury rendered a verdict before the test results came back, and the test results were negative.

During a grand jury proceeding, a juror indicated to other grand jurors that he may have been exposed to COVID-19. The grand juror was sent home; his COVID-19 test result came back positive, requiring the court to adjourn the grand jury and notify everyone who came into contact with the grand juror to quarantine. One other grand juror then tested positive.

As a result of these events and the recent surge in COVID-19 cases and hospitalizations, the court decided to take two immediate actions to keep people safe. First, the “Transition Period” defined in a Presiding Judge Order (PJO) dated June 29, was extended until November 1. Second, the requirement for protective face coverings for everyone entering

the courthouse, participating in court proceedings, or working at the courthouse with others, was extended through November 1. These decisions will be re-evaluated; depending on how the pandemic proceeds, it may become necessary to extend the restrictions past November 1.

During the extended transition period, the court will continue to conduct most court proceedings remotely. Many judges and court staff are continuing to work remotely; not everyone returned to work on-site on September 7 as originally planned.

The court will continue prioritizing criminal jury trials, especially cases facing speedy trial deadlines or involving defendants in custody for more than a year awaiting trial. The court also plans to go forward with trials on the misdemeanor docket; misdemeanor trials use a six-person jury and the court can typically safely accommodate them in a single courtroom.

Civil jury trials will continue to be postponed until after November 1 unless the parties convince the presiding judge that there is good cause to proceed with trial during the extended transition period. The court recognizes that every case has some urgency, and Judge Bushong will consider requests for good cause to proceed on a case-by-case basis. There are four options for civil trials currently scheduled in October:

- Postpone trial to a date after November 1 that is acceptable to the parties and the court
- Proceed with a fully-remote jury trial (requires six weeks’ advance notice to presiding court)
- Proceed as scheduled with a bench trial. The court is continuing the pilot program: if lawyers agree on three acceptable judges then the court will assign the bench trial to one of those three judges
- Proceed as scheduled with a six-person, in-person jury trial by stipulation

As the COVID-19 pandemic continues, the court has also been working on procedures to allow online jury selection, where jurors would appear from their homes for the jury selection process while the judge, clerks, lawyers, and all other parties appear in the courtroom.

After the online jury selection is completed, the jurors would appear onsite at the courthouse for the trial. Due to the number of jury trials that are scheduled, the court has been bringing in pools of 200-250 potential jurors multiple times per week. Returning to social distancing of six feet between people requires use of the jury assembly room plus five additional courtrooms to hold all the potential jurors; using online jury selection would eliminate the need for so many people to enter the courthouse and reduce the risk of potential exposure situations. If implemented, the court will accommodate potential jurors who do not have the equipment or technological capability to participate remotely.

Judge Bushong and Barb regularly discuss the pandemic with the presiding judges and trial court administrators from the other Willamette Valley courts (Washington, Clackamas, Marion, and Lane counties). In addition, Chief Justice Martha Walters and State Court Administrator Nancy Cozine regularly meet with presiding judges and trial court administrators statewide to refine responses to the pandemic while continuing to ensure that the public has access to the courts.

Chief Justice Walters resumed mandated social distancing in courthouses and for all court proceedings in CJO 21-035, signed September 7.

Dialogue on Racism and Bias

Judge Bushong notes that judges across the state are reading Robert Livingston’s *The Conversation: How Seeking and Speaking the Truth about Racism Can Radically Transform Individuals and Organizations*. Chief Justice Walters gave copies of the book to all state judges to read before the state judicial conference in October, where Livingston will speak. As a reminder, OJD’s Judicial Conference takes place October 18-20.

Report from Trial Court Administrator Barbara Marcille

Barb noted that even though we are not yet out of the pandemic, the courthouses have been busy during the transition period. Even with a high percentage of Multnomah County residents

Continued on page 17

Streamlining Pro Bono in Oregon

by Jill Mallery
Legal Aid Services of Oregon

Legal aid is excited to announce the development of a new pro bono site, ProBonoOregon. The website will be dedicated to promoting pro bono opportunities throughout Oregon and providing resources to volunteer attorneys. ProBonoOregon is a collaboration between the two statewide legal aid providers: The Oregon Law Center (OLC) and Legal Aid Services of Oregon (LASO) and the regional legal aid office that serves Jackson County: Center for Nonprofit Legal Services (CNPLS).

The overall goal of the website is to make it simple and accessible for attorneys to volunteer with legal aid and to provide high quality pro bono legal services. Janice Morgan, Executive Director of LASO, explains, “pro bono attorneys are key partners for us in providing access to justice for low-income Oregonians. We’re delighted to be rolling out a new website that will help support our volunteers and connect them to clients who need their help.” The site will offer a number of features, including specific statewide pro bono case opportunities, information about legal aid pro bono projects, and a library of resources to assist attorneys in their pro bono case work.

ProBonoOregon will connect volunteer attorneys with pro bono cases by displaying pro bono opportunities referred by legal aid offices throughout the state. A searchable case catalog will be located on the main page that allows volunteers to search, share and offer to help with available pro bono cases and projects. Attorneys from the metropolitan areas are able to assist clients from areas of the state that face additional obstacles to services due to limited resources and geographical barriers.

Legal aid prioritizes supporting volunteer attorneys on their pro bono cases. The new website will assist attorneys by offering an organized and searchable library of quality trainings, resources and materials. The library will be both searchable and filterable so that volunteers are able to quickly locate CLEs and materials that relate to their pro bono casework.

The timing of the new pro bono site coincides with the continued need for pro bono involvement from the legal community due to the ongoing effects of the pandemic. The COVID-19 pandemic has had a devastating and disproportionate impact on low-income people who continue to suffer its economic and social impacts. Researchers at Oregon State University found almost one in four Oregonians experienced food insecurity

in 2020, more than double the previous year. BIPOC households experienced food insecurity at a higher rate of more than 30 percent.¹

Legal aid continues to receive a high number requests for assistance with critical legal needs - food, shelter and protection from abuse. Since the statewide moratorium on eviction for nonpayment ended on July 1, legal aid has seen an increased need for help in landlord/tenant matters. The need will continue to increase as current tenant protections expire and eviction filings spike. Nationally, it’s anticipated the number of eviction filings will increase to roughly double pre-pandemic levels. Legal aid clients cannot afford an attorney, and without legal aid’s assistance are left to navigate the complex legal system on their own. The latest Census Bureau Household Pulse Survey data reports 28.1 percent of adults in Oregon households not current on rent or mortgage are very likely or somewhat likely to face eviction or foreclosure in the next two months.²

In response to the increased need for assistance, legal aid has hired an additional 10 attorneys and two paralegals and anticipates adding approximately 15 more positions statewide as part of an Eviction Defense Project (EDP). All income eligible tenants who contact the EDP are guaranteed a review of their eviction paperwork, and, if a legal defense is present and an attorney is available, the EDP will provide free representation anywhere in the state. Tenants who need representation in evictions can contact the EDP at 888.585.9638 or by email at evictiondefense@oregonlawcenter.org. In addition, LASO continues to coordinate the Housing Notice Clinic. Attorneys volunteer to assist low-income tenants preserve their rights and often their tenancy by advising tenants on the validity of termination notices they have received and drafting demand letters and negotiating settlements when defenses are present. For more information or to volunteer, please email jill.mallery@lasoregon.org.

This year, legal aid will provide free legal services to about 24,000 low-income people and the elderly in Oregon. Although legal aid assists thousands of clients each year, the need for assistance simply exceeds our resources. Through coordinated efforts between legal aid and the private bar, pro bono attorneys help increase access to justice for low-income people by working with legal aid offices around the state.

1 www.bit.ly/hunger_or

2 www.bit.ly/evict_or

Volunteer Attorneys Help Eliminate Barriers for People in Oregon

by Tiffany Smith
Legal Aid Services of Oregon

Approximately 1.4 million people in Oregon have criminal records, according to research by the Paper Prisons Project.¹ Oregon has over 400 laws that create collateral consequences for a criminal record that impact a person’s quality of life, including employment, education, and housing opportunities.² Arrests, dismissals, acquittals, and convictions all show up on a criminal record check. Even if someone with a criminal record is hired, they make significantly less money than someone without a criminal record, and between 30-50% of all formerly-incarcerated people are houseless due to these barriers.

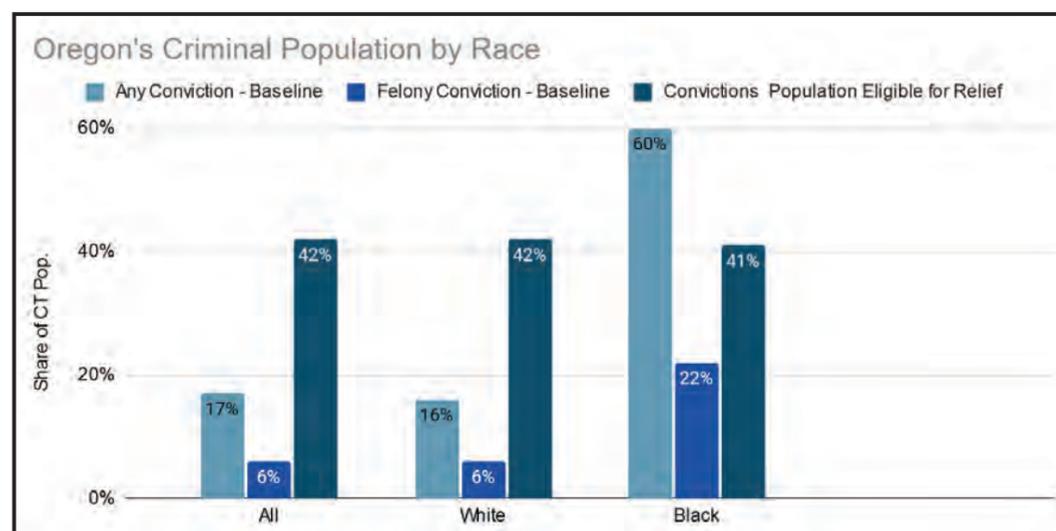
Further harm is caused by the evident racial disparities in the numbers. According to

that you were not arrested or convicted for those matters and they shouldn’t show up on a background check.

An estimated 695,000 records are eligible for expungement. To date, less than 6% have received relief. At the current rate, it would take 77 years to clear the backlog. However, SB 397 is expanding eligibility for expungement. Beginning in January 2022, many Class B felonies will be expungable beyond just drug crimes, the waiting periods will be reduced, and no more filing fees. Additionally, the new rule only allows the prosecutor 120 days from filing of the motion to object and establishes a more stringent judicial standard for rejecting an expungement.

clinic has been strongly supported by volunteer attorneys and has provided critical assistance to clients. Being able to provide access to justice is very important to the Clackamas County legal community.”

During the pandemic, LASO switched to a virtual model to continue our work on expungements. The Virtual Expungement Clinic launched in August 2020 as a collaborative effort with Intel Corporation and has been steadily growing thanks to Intel’s strong commitment. Intel attorneys work with clients over the phone to provide the forms and information clients need to file for expungement. Intel’s Racial Justice Counsel Su Suh says, “We are pleased to partner with LASO to deliver impactful pro bono services such as the expungement clinic. For a few hours of volunteer time, you can help change the trajectory of an Oregon family because an expungement can mean greater access jobs, housing, and many of the rights/opportunities we take for granted.” One of our first clients assisted through the Virtual



Graph created by Paper Prisons - www.paperprisons.org/states/OR.html

the US Census, approximately 2% of Oregon’s population is Black;³ however, 60% of that population has a criminal record, as opposed to only 16% of Oregon’s white population.⁴

Expungement creates an opportunity for some crimes to be removed from your record. For the purposes of the law, a person who has been granted an expungement can tell potential employers, landlords, and others

- 1 Paper Prisons, available at www.paperprisons.org/states/OR.html
- 2 National Inventory of the Collateral Consequences of Conviction (NICCC), available at www.bit.ly/niccc_or
- 3 US Census Bureau, www.census.gov/quickfacts/OR
- 4 Paper Prisons, available at www.paperprisons.org/states/OR.html

Legal aid truly appreciates the strong commitment of the legal community and the significant contributions pro bono attorneys make each year through their volunteer work. We at legal aid believe that access to the legal system is a right for everyone and thank you for your partnership towards making this a reality for low-income people.

Legal aid coordinates clinics where volunteer attorneys meet with clients to review their criminal record, determine eligibility to have their records cleared, and fill out the forms necessary to file for expungement. Legal aid also pays the required \$80 fee to the Oregon State Police when necessary, reducing yet another barrier for our clients.

Legal Aid Services of Oregon (LASO) offers both in-person and virtual expungement clinics. Pre-pandemic, LASO offered an in-person expungement clinic in partnership with the Clackamas County Bar Association (CCBA) and Clackamas County Law Library; those clinics will re-open when safe to do so. Attorney and immediate past president of the CCBA Kathleen Baker says, “I am excited to re-open the Clackamas Expungement Clinic soon. This

Expungement Clinic was recently granted his expungement, seven months after filing.

Most recently, volunteer attorneys have also been helping clients in Deschutes County. Our virtual model which allows us to have a statewide presence, so we can assist clients who contact a legal aid office outside the Portland metro area. For more information or to volunteer with one of LASO’s expungement clinics, contact Tiffany Smith at tiffany.smith@lasoregon.org or probono@lasoregon.org.

Oregon Law Center offers Project SCRUB Expungement Clinic to serve those in Washington County. For more information or to volunteer with Project Scrub, please contact Heather Kemper at hekemper@oregonlawcenter.org.

YLS CLE Preview

by Michael Schaefer
YLS CLE Committee Chair



It is my pleasure to serve as the chair of the YLS CLE Committee this year. This year's committee is comprised of 12 volunteer YLS members who will organize MCLE-accredited seminars for 2021 and 2022. Our Fall "Practical Trial Skills" Series is already underway, but it is not too late to 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 throughout the upcoming year.

I want to commend this committee, as well as the MBA and YLS as a whole, for effectively and seamlessly adapting to the challenges of COVID-19. Last year we transitioned our committee meetings and CLEs to be held via Zoom. While we miss seeing everyone in person, this remote format provides both safety and flexibility. With over a year of remote presentation experience under our belts we look forward to putting on more frequent CLEs this year and covering a wider range of topics.

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 experience, and create a forum where attorneys can meet one another and build professional relationships. Most of our seminars will occur on Thursdays during the lunch hour. Although our seminars are currently being held over Zoom, we are exploring options for returning to in-person events once it is safe to do so. We are also exploring options for hybrid presentations in the hopes of utilizing the best of both worlds.

The YLS CLE Committee has for years made conscious efforts to expand and diversify our pool of CLE presenters. We will continue this commitment by securing quality, experienced speakers with attention to diversity and inclusion. The committee listens to feedback from the YLS Board, our speakers, CLE attendees, and the legal community at large 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, including topics you wish you had access to in your first years of practice, please contact me at mike@holteylaw.com.

I look forward to another excellent year of insightful and informative CLEs!

Jeannine Ferguson Pro Bono Volunteer Spotlight

by Tiffany Smith
Legal Aid Services of Oregon

Jeannine Ferguson is living her dream. Jeannine always thought about being an attorney and says, "I just felt there was a lot of injustice in the world." At 30, she decided to go to law school. Spending her entire life in Eugene, she attended the University of Oregon School of Law, while juggling the demands of parenthood. During law school, she interned at Lane County Legal Aid and the National Committee Against Discrimination in Housing in Washington, DC. This is how she decided a career in legal aid was for her.

Because she enjoyed her time in DC, Jeannine decided to head back east after graduating from law school. Her first job was with Legal Aid of Baltimore. After a few years, she decided to come back "home" to the Pacific Northwest and worked for Legal Aid Services of Oregon for five years. She then accepted a managing attorney position with Idaho Legal Aid Services. Because it was a very small legal aid office, Jeannine did pretty much

everything. That knowledge has served her well. Jeannine is always looking for ways to help people. From 2004-07, Jeannine took a break from the law and traveled to Romania with the Peace Corps where she taught English and Drama to high schoolers.

In 2016, Jeannine retired from the law and put her Oregon license in Pro Bono status. When she first retired, she felt something was missing. "There was a big blank for a while, but I was still committed to poverty law." In her retirement, she enjoys spending time with her two children and four grandchildren, as well as continuing her lifelong passion of helping others. Jeannine volunteers for many of LASO's pro bono projects, including: Housing Notice Clinic, Domestic Violence Project, Expungement Clinic, Family Law Forms Project, and the Senior Law Project (SLP). She says, "I feel like I am able to use the knowledge I've gained through my legal career in a meaningful way, especially with SLP." Jeannine

volunteers on a monthly basis for SLP assisting as many as six clients per clinic, often at more than one clinic a month. Jeannine is always willing to volunteer and will fill in the open shifts for SLP to ensure that our Multnomah County seniors receive the help they need. Jeannine's clients are extremely grateful for her assistance. More than once, clients have said of Jeannine, "You are literally an answer to my prayers." Not only does Jeannine volunteer with numerous pro bono projects, she recently accepted a pro bono referral from Deschutes County ensuring a senior received the benefit of legal counsel.

LASO is fortunate to have an experienced dedicated attorney willing to volunteer with so many projects. Since 2018, Jeannine has assisted more than 145 low-income clients on a variety of issues, from dissolution and custody to wills and powers of attorney to landlord-tenant disputes and consumer issues. Jeannine says, "I've always been a legal aid attorney. Looking back, I believe I've helped a lot of people who really needed help." LASO couldn't agree more and thanks Jeannine for her outstanding commitment to providing pro bono legal assistance to low-income Oregonians.

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PRO BONO SERVICE OPPORTUNITIES

Complete our brief, online Pro Bono Attorney Form to volunteer with Legal Aid Services of Oregon, the Oregon Law Center, Oregon State Bar and Multnomah Bar Association.

View available opportunities at:
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CourtConnect is Back This Fall!



Many people talk about the law, but don't always understand the justice system.

CourtConnect, the MBF's primary public-facing project, teams a judge and lawyer to visit a community or student group and share their knowledge of the rule of law. The civic education program, which has been on pause since the pandemic, is coming back online this fall to offer virtual presentations on the courts and judiciary. New this year, an added listening component provides audiences with an opportunity to share their experiences in the justice system.

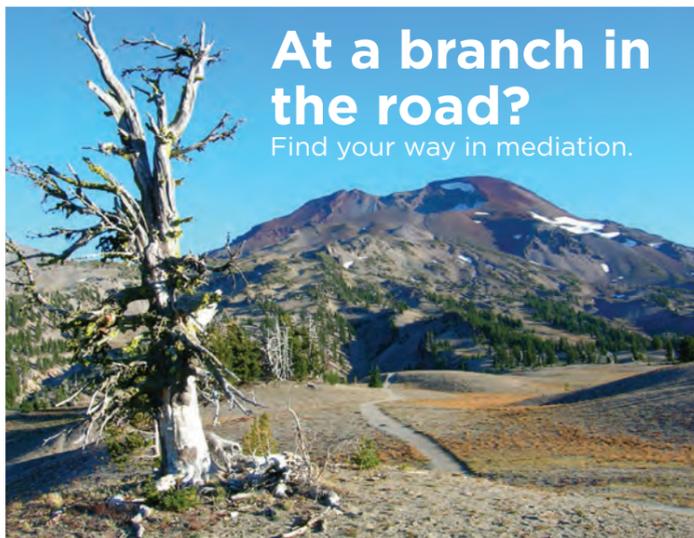
The MBF is partnering with SOAR Immigration Legal Services (Sponsors Organized to Assist Refugees) to present at their citizenship classes, which are being offered online during the pandemic.

The foundation's partnership with SOAR began in 2011 when the MBF awarded SOAR a \$5,000 civic education grant to create the Voter Education Project, which offers citizenship courses to immigrants, refugees and asylees.

Thank you to the 35 judges and 24 lawyers who make up our volunteer pool of CourtConnect presenters! We appreciate your willingness to serve.



To learn more about CourtConnect, visit www.mbabar.org/courtconnect or contact Pamela Hubbs (503.854.5237, pamela@mbabar.org).



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Tips From the Bench

Continued from page 12

328 Or 626 (1999). (Of course, any claims or defenses that do not carry an award of attorney fees do not figure into the comparison of claims won versus claims lost.)

The same strategic considerations apply in defending an action where several affirmative defenses or counterclaims with the potential for an award of fees present themselves. Consider a defendant facing a claim for which attorney fees are awardable and that claim appears to be clearly flawed. Add some affirmative defenses and sprinkle in a couple of counterclaims, all with the potential for fees. If you file an answer simply denying the claim, you feel that you will certainly win and, accordingly, you will be awarded attorney fees. Suppose that your client really wants to pursue the various counterclaims, all of which have a significant likelihood of losing. Who determines what claims and defenses to assert? ORPC 1.2(a) puts the client in control of these decisions, with attorney guidance as provided in ORPC 1.4(b). If the defense attorney is left with the choice of a sure win and a certain award of attorney fees ceded to the client's choice of a sure win defending the claim and likely losses on the

counterclaims, what should the attorney do? One choice for the attorney, if not already committed in the representation, is to decline representation and to leave the client to the uncertainties of navigating the case pro se. Of course, the client now has also lost one of his or her best weapons, the threat of an award of fees. The ORS 20.077 approach to awarding fees can clearly have a chilling effect on litigating available claims and defenses.

One must factor into the analysis the amount of time and other expense that is reasonably foreseeable in litigating each claim and defense. A plaintiff may prevail on the main claim but, if that claim is straightforward and will require little attorney time in its prosecution, the plaintiff's award of attorney fees may be swamped by the fees awarded on a counterclaim that is complicated in its proof or in the application of the law to the claim and will, therefore, require the expenditure of much more attorney time in getting to a judgment.

Further, one should not assume that the ORS 20.075(2) (d)'s "the amount involved in the controversy and the results obtained" criterion will necessarily result in a claim carrying only a modest monetary award being seriously discounted when it comes to awarding a fee on that claim. Particularly claims

to vindicate various consumer and civil rights statutes may be rewarded with attorney fees disproportionate to the amount of the award secured on the underlying claim. See, *Barbara Parmenter Living Trust v. Lemon*, 345 Or 334 (2008).

Finally, when prosecuting or defending a case involving more than one claim for which attorney fees are awardable, it is particularly important to note the time spent on the various tasks with even greater care. Assume that you will receive what amounts to a split decision in the boxing world; you win some and lose some. How is the judge to know which of your claimed hours were devoted to the claims on which you prevailed and what hours were spent on the claims where the other side prevailed? Even if the hours are delineated with care, how should the judge allocate, say, an hourlong client interview when you won on the complaint while losing on two counterclaims? You should present an argument that the time spent on those tasks that were undertaken that could be attributable to a claim on which you won, as well as on a losing claim, was necessary to secure the favorable result on the winning claim, despite the fact that those hours were also arguably expended in pursuing or defending the losing claim.

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Effort to Expand Services in Rural Oregon Continues

by Kristy Wood
Oregon Law Center

Oregon Law Center and Davis Wright Tremaine have worked closely for the past year to identify and place pro bono cases from clients living in rural parts of Oregon. Maria Romero, Ontario Regional Office Administrator shared, "The Ontario office receives far more requests for help than we can accommodate. We appreciate the assistance of DWT to help meet the need in Malheur, Baker, Grant and Harney counties."

Recently, the Oregon Law Center Ontario office worked with the DWT Portland team on a pro bono case with a client in need of a will. DWT provided the legal assistance and the Ontario office coordinated the logistics of the client signing the documents. "I love being able to work with pro bono clients - it makes me feel better about being in the corporate law world,

and allows me to give back with my legal skills," said Maggie Vining, the DWT attorney who handled this case. And as Rachel Brown, DWT's Senior Pro Bono Program Manager, told us, "It is so incredibly important to support legal service organizations. Through them, individuals in rural counties receive access to justice when they otherwise wouldn't have the resources to do so. DWT is an enthusiastic supporter of the Oregon Law Center and Legal Aid Services of Oregon and the incredible work both agencies do to support those who need it the most - wherever they reside."

Oregon Law Center and Legal Aid Services of Oregon are grateful to Davis Wright Tremaine for their continued commitment to developing new strategies for assisting clients throughout Oregon.

Engaging Students in Civics & US History

Sunday, October 24

The Laurelhurst Club, 3721 SE Ankeny St., Portland

Program: 1:30-3 p.m.

Audience Discussion: 3:15-4:15 p.m.



The League of Women Voters of Portland is offering a free program on using the case method to improve civics education for high school students. The case for this program is the story of Dr. Martin Luther King, Jr. and the struggle for Black voting rights. The case method can bring civics and history to life; it excites and engages students by asking them to step into the shoes of the decision-makers who were faced with a particular challenge and had to deal with it based on the information available at that time.

Registration is required.

www.lwvpdx.org/engaging-students-in-civics-us-history

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For full job details, visit www.osbar.org/osbcenter/openings.html
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Oregon State Treasury is recruiting for the newly created position of Associate General Counsel. The primary purpose of this position is to perform authorized legal work for Oregon State Treasury, overseeing a broad range of investment issues and transactions. This position is based out of our Tigard office. For more information, please click on the following link: bit.ly/OSTJobListing

Associate Attorney

Williams Kastner is looking for an associate attorney with 5+ years litigation experience, preferably in the areas of business, real estate, and/or insurance defense. Candidates must be licensed in Oregon, licensed in Washington state a plus. Please see our posting: www.applicantpro.com/openings/wkg/jobs

Civil Attorney

McEwen Gisvold LLP is hiring. We are looking for an attorney with 2-3 years of experience in civil litigation. Ideally the candidate has at least enough experience to handle smaller

matters on their own and larger matters with some mentoring/coaching from the rest of the team. It is very important to us that candidates are positive and pleasant to work with and who are good with people. This is intended to be a long-term/career hire. We are a good fit for someone looking to downsize from a big firm or have more peer interaction than working solo.

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Pro Bono Volunteers

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

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

Rayna Appenzeller • Squire Bozorth • Brett Carson • Celia Fitzwater • Anne Foster •

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News From the Courthouse

Continued from page 12

being fully vaccinated, the Delta variant has dramatically increased the number of reports of infections, breakthrough cases, and potential exposures to COVID-19. Every confirmed COVID-19 case results in a very staff-intensive effort to conduct contact tracing and notify everyone of necessary steps. In spite of pandemic-related limitations, the Multnomah County Circuit Court continues to strive for improved service to court customers.

Ours is one of 12 courts in the country participating in a research project (“Court Voices”) funded by the State Justice Institute. The researchers are gathering feedback from court staff and court customers about the modality of different proceedings during the last year and identifying both gaps and benefits. Kiosks are stationed in high-volume areas in the Central

Courthouse with a touch-screen survey for feedback on whether the person would have preferred to handle their business differently.

In July, the court held a “Signature Counter Experience” (SCE) training at the Central Courthouse for over 100 staff and judges. The SCE training was developed by the state court in Massachusetts, and was a pilot for an educational program OJD hopes to roll out statewide for all court staff and judges. A person’s experience with the court begins immediately upon entering the courthouse, and every step in the process impacts that person’s perception of the justice system. The SCE training emphasizes the impact of words, tone, and body language on communication, and provides strategies and tools for improved engagement and for de-escalating tense situations. Continuation of the training at the Multnomah County Circuit Court was postponed due to the COVID-19 surge, but has been rescheduled for October.

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Resources for Pro Bono Attorneys

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www.mbbabar.org/probono
Take the Pro Bono Pledge and find information on local pro bono opportunities and how to create a customized pro bono policy for your office.

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 Renters' Rights

www.oregonrentersrights.org
Legal information and self-help guides about renters' rights in Oregon. Topics addressed include the latest on emergency protections for renters related to the COVID-19 pandemic and information on eviction defense.

Oregon Law Help

www.oregonlawhelp.org
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.

211 Social Services Referral

www.211info.org
211 provides assistance in finding health and community organizations in Oregon and SW Washington. Professional intake staff is available 24 hours a day by dialing 211 on your phone, or access the referral system through the website.

NATIONAL RESOURCES:

American Bar Association

www.americanbar.org/groups/probono_public_service
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.

The Pro Bono Institute

www.probonoinst.org
The institute specializes in supporting the pro bono work of law firms and corporate legal departments.

Pro Bono Net

www.probono.net
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Volunteering with Legal Aid in Oregon**

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1 hour Access to Justice credit will be requested.

LEGAL AID provides free civil legal services to low-income and elderly Oregonians and uses its limited resources to serve only the most critical legal needs - food, shelter, basic medical care, and physical safety - throughout the state. The need for legal aid is far greater than the resources available to provide help to those who need it.

Prior to the COVID-19 pandemic and economic crisis, Oregon legal aid programs only had resources to meet 15% of the civil legal needs of low-income Oregonians. Volunteer lawyers help legal aid meet the needs of low-income Oregonians by volunteering with legal aid offices around the state.

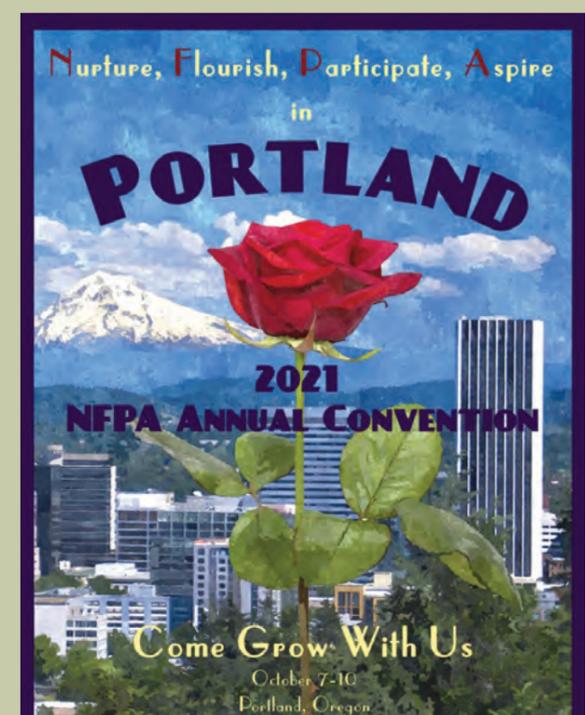
Please join us for an upcoming New Volunteer Orientation to learn about pro bono volunteer attorney opportunities and how you can help increase access to justice.

Please email: probono@lasoregon.org to RSVP for the orientation or if you have any questions. Thank you for your interest in volunteering with legal aid.




National Federation of Paralegals Association Annual Convention

The Oregon Paralegal Association is proud and excited to host this year's National Federation of Paralegal Associations' Annual Convention to be held virtually October 7-10. The Annual Convention provides an opportunity to attend CLE sessions, workshops, network with paralegals from across the country, and advance the paralegal profession during the policy meeting. After attending a NFPA convention, many paralegals find they have a significantly renewed passion, and an increase in their knowledge and confidence in building their profession. We are fortunate to have Chief Justice Martha Walters as the keynote speaker, and the charity spotlighted will be the Multnomah Bar Foundation's CourtCare Program.



For more information on this event, please visit www.paralegals.org.

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