



Reflecting Back on 2021 and Moving Forward for 2022

by Jovita Wang
MBA President

Happy 2022! I hope you had a restful holiday season and are ready for the new year.

Before I share what is to come with some anticipated programming this year, I want to reflect on the work of the MBA

and our members in 2021. Although 2021 was still not the year any of us had planned, it continued to demonstrate our community's resilience. It provided many learning opportunities and allowed us to grow and pull together as a legal community.

Our Listening Sessions

In 2021, with the pandemic keeping the majority of events virtual, we began the President's Virtual Listening Session. The purpose of these monthly listening sessions was for members to ask us any questions about the MBA, share any concerns or suggestions, or just have someone to chat with. It has been a pleasure meeting the various members who have attended our listening sessions to date. We heard much praise about our CLE programming and information - all of which is thanks to our volunteers and staff. Members also provided input on future programming ideas and ways to reach out to newer members. I look forward to continuing our listening sessions this year, which are held on the third Wednesday of every month, from 2-3 p.m.

Affinity Bar Series for New Lawyers & Law Students

In finding ways to connect with newer members of our legal community, the MBA worked with the Oregon Women Lawyers (OWLS) and other affinity bars in holding the second Oregon Affinity Bar Association (Virtual) Series for New Lawyers and Law Students. Each month, an affinity bar hosts a panel on timely topics. OWLS took the lead and held a panel on "Negotiating Your Worth at Work," with the MBA and its Young Lawyers Section (YLS) following with a roundtable discussion, "Setting Boundaries and Avoiding Burn Out." The South Asian Bar Association of Oregon (SABA Oregon) closed out the year on the topic of "Build Your Network as a Transplant in Oregon."

Oregon Trial Lawyers Association (OTLA) will host the next panel on "Representing Victims of Police Misconduct and Brutality." It will be held on January 26, from 5-6 p.m., and you can register on the OWLS website. I want to also take this moment to thank OWLS for spearheading the series. I look forward to future panels and hope you will join us and invite your colleagues and mentees.

The 21-Day Racial Equity Habit-Building Challenge

In response to the rise of anti-AAPI (Asian Americans and Pacific Islanders) bias and the continuing efforts to build racial equity habits

crucial to improving the legal profession, the YLS through its Social Justice Task Force partnered with OTLA and the Oregon Asian Pacific American Bar Association (OAPABA) over the ABA's Racial Equity Habit-Building Challenge focused on AAPIs. For 21 days, the group held daily email discussions over various readings, videos, and podcasts, and held weekly informal conversations over Zoom. I had the opportunity to participate in these discussions and was

moved by everyone's willingness to take time out of their busy schedules to learn

and have the uncomfortable but necessary conversations about our society's painful past and shortcomings. In our discussions, we worked to see other's perspectives and found commonality at times. As an Asian

American myself, I also learned a lot from the process and believe it helped us become more aware, compassionate, constructive, and engaged in the quest for racial equity. The challenge has caused me to reflect further on what it means to be an Asian American attorney - both the burdens and privileges it carries.

I want to thank Brad Krupicka (the YLS immediate past president), the YLS and its Social Justice Task Force, OTLA, and OAPABA for providing this opportunity for our members. For those of you who are interested, please check the ABA's website, and consider the ABA's 21-Day Racial Equity Challenge focused on the Black American experience.

Bench Bar & BYO Bagels

The MBA held our second virtual Bench Bar & BYO Bagels, in which Presiding Judge Stephen Bushong again made himself available for both morning and afternoon sessions. In addition, the MBA put forth two "Get to Know Your New Judges" CLEs. I want to thank our judiciary for graciously taking the time to meet members. I also want to thank Judge Bushong for steadily guiding us through these challenging times and welcome Judge Judith Matarazzo as our next presiding judge. Please stay tuned for our next Presiding Court Update.

Thank you to our members who continue to rise to the occasion. At the MBA, we look forward to the new opportunities and growth that 2022 will bring us. And please welcome and congratulate Jacqueline "Jackie" Alarcón as our president-elect for 2021-22. Jackie is a partner at Yates Family Law and has been a champion for diversity, equity, and inclusion in our community.

...we worked
to see other's
perspectives and
found commonality
at times.

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.

FEBRUARY

2.3 Thursday The Surviving Relevance of Restrictive Covenants in Employment

Jeff Edelson
Kim McGair

2.4 Friday Appellate Law Update Judge Steven Powers Judge Katharine von Ter Stegge

2.15 Tuesday Advanced Public Records Techniques

Jon Bial
Adam Gibbs
Jenifer Johnston
Ellen Osoinach

MARCH

3.4 Friday Multnomah County Arbitrator Refresher Judge David F. Rees

3.4 Friday Mandatory Training to Become a Multnomah County Arbitrator Judge David F. Rees

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We look forward to serving you this year.

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Calendar

JANUARY

11 Friday
CEJ 31st Annual Dinner & Gala
www.cej-oregon.org
16 Wednesday
MBA President's Virtual Listening Session
www.mbabar.org
21 Monday
Presidents Day - MBA Office Closed
23 Wednesday
Affinity Bar Series hosted by OFALA
www.bit.ly/OFALAAffinityBarSeries
24 Thursday
YLS Trivia Night
www.bit.ly/YLSTrivia
17 Monday
Martin Luther King Jr. Day - MBA Office Closed
19 Wednesday
MBA President's Virtual Listening Session
www.mbabar.org
26 Wednesday
Affinity Bar Series: Representing Victims of Police Misconduct and Brutality, hosted by OTLA
www.bit.ly/OTLAAffinityBarSeries

FEBRUARY

8 Tuesday
Queen's Bench Monthly Luncheon
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Clark County Washington Bar Association President

DON JACOBS
Trial Lawyer of the Year, Clark County (2015)
Past President, Oregon Trial Lawyers Association

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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.

The Surviving Relevance of Restrictive Covenants in Employment

Thursday, February 3 3:30-5 p.m.

Online Participation Only

Members \$45/Non-Members \$70

Note: 1.25 hours of general and .25 hours of ethics OSB MCLE credit will be applied for.

Jeffrey M. Edelson, Markowitz Herbold and **Kim McGair**, Farleigh Wada & Witt will provide a practical look at drafting, enforcing, and escaping noncompetition agreements, nonsolicitation agreements, confidentiality agreements, and Trade Secrets Act claims. This program will provide tools for practitioners to protect their employer and employee clients. Legislatures in many states, including Oregon and Washington, are amending the laws in this area. We will examine the current status of litigation and legislative developments and discuss how the prevalence of work-from-home employees has created new challenges and opportunities.

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

Appellate Law Update

Friday, February 4 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Please join the MBA for an update on Oregon appellate decisions for civil law practitioners. Multnomah County Circuit Court **Judge Katharine von Ter Stegge** and Oregon Court of Appeals **Judge Steven Powers** will present an overview of some key civil law decisions from the Oregon Court of Appeals and Oregon Supreme Court from 2020-21. These esteemed speakers will touch on issues relevant to nearly all practitioners.

For more information: Contact the MBA at 503.222.3275 or mba@mbabar.org.

Advanced Public Records Techniques

Tuesday, February 15 1-2:30 p.m.

Online Participation Only

Members \$45/Non-Members \$70

Public records requests can be useful, time consuming, and expensive. What are quick and effective ways of getting information for your client? How do you respond to government delay or claims of exemptions? How do you properly narrow a request? How do you appeal a denial to the District Attorney or the Department of Justice? When should your client pursue a remedy in circuit court? Discussing these important topics is our panel of experts, featuring.

- **Jon Bial**, General Counsel, Oregon Public Broadcasting
- **Adam Gibbs**, Multnomah County District Attorney’s Office
- **Jenifer Johnston**, City of Portland Attorney’s Office
- **Ellen Osoinach**, Reporters Committee for Freedom of the Press

For more information: Contact Jon Strauhull, Multnomah County Attorney’s Office, at 503.988.3138. For registration questions, contact the MBA at mba@mbabar.org.

Multnomah County Arbitrator Refresher Training

Friday, March 4 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

A refresher training for current members of the Arbitration panel.

This program will feature **Judge David F. Rees** and members of the Multnomah County Arbitration Commission, all of whom are experienced arbitrators. The programs will explain and discuss the statutes, rules, case law and ethical issues governing court-annexed arbitration in Multnomah County..

For more information: Contact John Ostrander of Elliott, Ostrander & Preston at 503.224.7656. For registration questions, contact the MBA at mba@mbabar.org.

Mandatory Training to Become a Multnomah County Arbitrator

Friday, March 4 3-5 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Basic training to qualify for Multnomah County Arbitration Panel. Participation is a requirement for inclusion on the list of court-appointed arbitrators.

This program will feature **Judge David F. Rees** and members of the Multnomah County Arbitration Commission, all of whom are experienced arbitrators. The program will explain and discuss the statutes, rules, case law and ethical issues governing court-annexed arbitration in Multnomah County. It will also provide step-by-step advice on scheduling arbitration hearings and dealing with postponements, resolving pre-hearing evidentiary and discovery disputes, handling summary judgment and other pre-hearing motions, conducting arbitration hearings, dealing with attorney fees and costs, and preparing and filing arbitration awards.

The Multnomah County Circuit Court arbitration program provides a faster and more cost-effective path to resolution of civil disputes involving \$50,000 or less. Becoming an arbitrator provides a fantastic opportunity to serve the community and gain valuable insight on effective advocacy. This vital program benefits from arbitrators with experience with the wide variety of disputes addressed in the court’s mandatory arbitration track. The program will also be well-served by arbitrators with life experiences and perspectives that will benefit the Arbitration Program in its service to the broad array of participants.

For more information: Contact John Ostrander of Elliott, Ostrander & Preston at 503.224.7656. For registration questions, contact the MBA at mba@mbabar.org.

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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.

2/3 The Surviving Relevance of Restrictive Covenants in Employment

Online attendance only - link will be emailed

☐ Class Registration (\$45 Members/\$70 Non) \$_____

2/4 Appellate Law Update

Online attendance only - link will be emailed

☐ Class Registration (\$30 Members/\$50 Non) \$_____

2/15 Advanced Public Records Techniques

Online attendance only - link will be emailed

☐ Class Registration (\$45 Members/\$70 Non) \$_____

3/4 Multnomah County Arbitrator Refresher Training

Online attendance only - link will be emailed

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Unable to attend?
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Bodyfelt Mount Welcomes Amber Pritchard

Amber graduated from Lewis & Clark Law School in 2021 and joins the firm with a background in international employment matters.

We are thrilled to have Amber join us as an associate attorney.



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mba | ANNOUNCEMENTS

Update for Panel of Court-Appointed Arbitrators

The court began requiring that new cases assigned to arbitration on or after December 1, 2021 conduct an arbitration hearing within 180 days of the assignment to arbitration in accordance with Multnomah County SLR 13.165. View the full announcement at www.bit.ly/panel_update.

Multnomah County Courts End Social Distancing

Presiding Judge Stephen Bushong has issued a PJO ending mandatory social distancing effective January 3. Masks will continue to be required for the foreseeable future, and judges and court staff are required to be vaccinated unless they’ve been granted an exemption.

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.

Noontime Rides

Join all ages of bicycle riders for noontime hill climbs on Mondays and Thursdays. Assemble at noon at SW Corner of Pioneer Square and leave together at 12:15 p.m. Rain or shine. Frequent regroupings. Mondays include rotating paceline around SW Fairmount; Thursdays go up through Forest Park. E-bikes okay. Great repeating interval workouts. Contact Ray Thomas, 503.228.5222 if you are a new rider or for additional details.



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We are pleased to announce
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Taylor’s practice focuses on defending hospitals, medical clinics, and healthcare professionals in medical negligence lawsuits and assisting medical professionals in licensing board matters. He also represents medical clinics in business disputes and provides advice on regulatory compliance.

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Ethics Focus



This month, we’ll conclude our three-part series on law firm risk management basics with the deceptively simple, but sometimes naggingly difficult, topic of routinely closing files. It is deceptively simple because the task itself usually only involves letting the client know that you have closed your file along with actually closing the file internally. It can be naggingly difficult because closing files typically doesn’t rank high on most lawyers’ daily “to do” lists. But, it should. Closing a file can mean the difference between whether a person is classified as a current or former client. Generally, a current client can “veto” any proposed adverse representation. By contrast, a former client can only “veto” an adverse representation if the matter involved is either the same or substantially related to an earlier matter we handled for the former client or would necessarily involve the use of the former client’s confidential information. Routinely closing files on completion or after a fixed interval, therefore, can go a long way to moving a client from the “current” to the “former” category and allow us to take on new work potentially adverse to the former client.

In this column, we’ll first look at the regulatory underpinning of the distinction between current and former clients. Next, we’ll look at practical ways to incorporate routine file closings into firm file management.

Current or Former?

Courts often describe our responsibility to current clients as one of “undivided loyalty”- meaning that we are not free absent a waiver (assuming a conflict is waivable) under RPC

Risk Management Basics, Part 3: Closing Files

by Mark J. Fucile,
Fucile & Reising LLP

1.7 to take on a matter adverse to a current client. Reflecting the sweep of that duty, current clients may generally grant or deny a waiver for a good reason, a bad reason or no reason at all. As noted, our duties to former clients are much more limited under RPC 1.9 and revolve around the specific matters we have handled for them and the associated confidential information we acquired. If we don’t hit one of the two triggers for a former client conflict based on the nature of the matter or the confidential information involved, then we have a former client - but not a former client conflict - and do not have to ask anyone’s permission to proceed. OSB Formal Opinion 2005-146 at 1 (rev 2016) captures this stark dichotomy between current and former clients: “For purposes of analyzing possible conflict situations, the distinction between current and former clients is crucial.”

If a firm has not affirmatively taken the step of turning a client into a former one once a matter has concluded, the firm may find itself grappling with significant ambiguity over whether a client falls into the “current” or “former” category. OSB Formal Opinion 2005-146, for example, addresses situations where a firm sends periodic reminders in areas like lease renewals for otherwise completed work. Determining whether an attorney-client relationship exists is governed by case law rather than the Rules of Professional Conduct. The leading case in Oregon on this point is *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990). In *Weidner*, the Oregon Supreme Court articulated a two-part test: (1) does the putative client subjectively believe that the lawyer is representing the client? and (2) is that subjective belief objectively reasonable under the circumstances? Both elements of the test must be met.

Although the subjective prong of the *Weidner* test is a low bar, the objective prong is not. File-closing letters go to the


objective element of the *Weidner* test. The simple passage of time may imply that an attorney-client relationship has come to an end. A file-closing letter, however, eliminates that ambiguity (assuming the law firm is not handling other active matters for the client and also assuming the lawyer acts consistent with the letter) and provides objective evidence of the relationship’s end. While most often called “letters,” the communication - and the associated record - can be in either paper or electronic form.

File Management

Closing files usually incorporates two distinct approaches. The first applies to representations that come to a definite end. For example, a sale has closed or a case has been dismissed. In those situations, a polite, professional letter to the client thanking them for the opportunity to represent them and letting them know that you have “closed your file” will communicate that your representation has concluded. Although a final bill sometimes accompanies a file-closing letter, the two don’t necessarily need to travel together.

The second applies to representations that do not have a distinct end. For example, advice was given on a possible claim that never occurred. In those situations, it is prudent to systematically review open files at an interval appropriate for particular practices and close those that appear to have concluded. A letter can then be sent - again letting the client know that you have “closed your file.”

With both, internal records should also reflect that the matter has been closed. Ideally, individual matters should be closed in this fashion and once all matters for a client have been closed, any separate internal client status records should be updated to reflect the client’s status as former rather than current. In that way, the firm won’t be left puzzling over a client’s status if it surfaces in a later conflict check.




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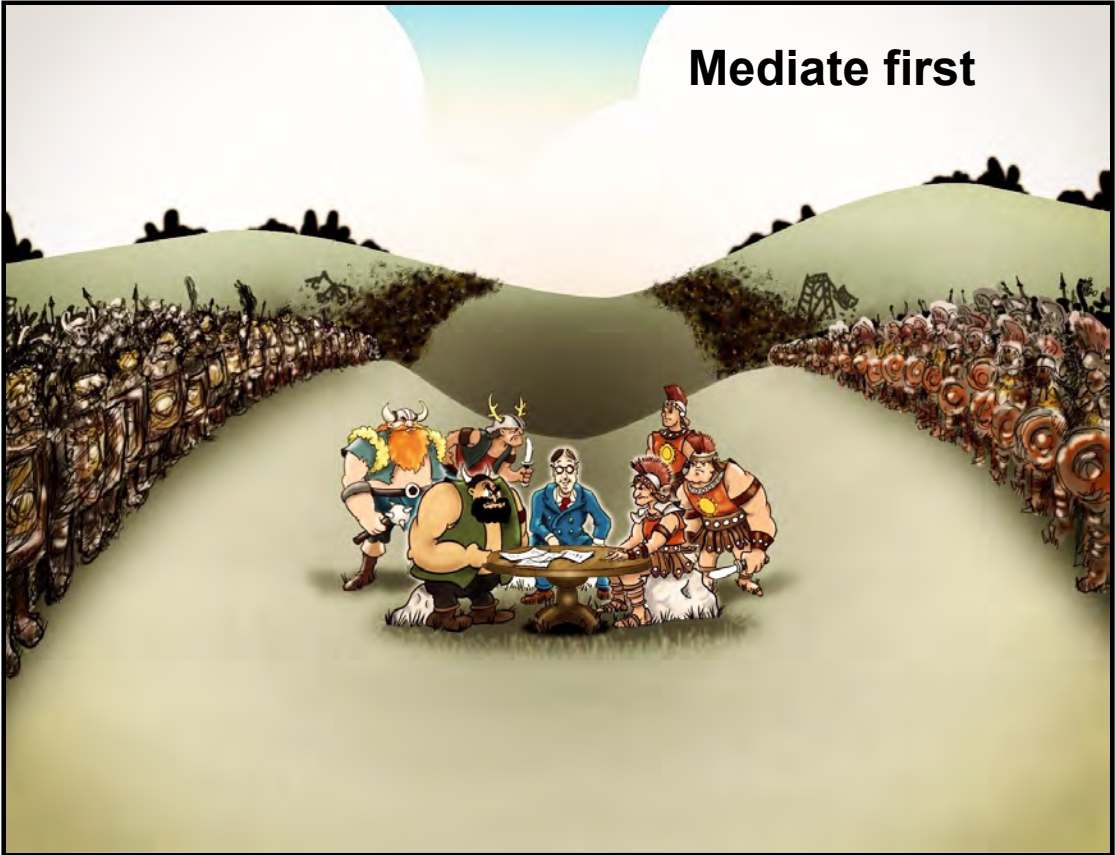
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Around the Bar

Jacqueline Alarcón
Appointed MBA
President-Elect

Jacqueline Alarcón, a partner at Yates Family Law, PC and current MBA Secretary, has been appointed president-elect for the balance of the 2021-22 program year. She will serve as president in the 2022-23 term, leading the MBA into its 117th year. Jacqueline joined the MBA soon after she was licensed to practice in Oregon, and served on committees and in leadership positions for both the YLS and MBA. In addition to her MBA Board



service over the past two years, Jacqueline is currently president of Oregon Women Lawyers (OWLS).

Board since 2015, Ray is excited to further his support of Ronald McDonald House Charities at an even higher level. The Barran Liebman team proudly supports Ray’s commitment to Ronald McDonald House Charities and their important mission of providing housing, comforting meals, and other amenities of home to families traveling for pediatric medical care.



London Ballard

Morris, Stannard & Batalden
Family Law PC

MSB Family Law is pleased to welcome attorney **London S. Ballard**. Ballard joins the existing attorneys in representing diverse clients navigating complex family law matters. She prides herself on her ability to help clients understand their rights and responsibilities and is a true advocate for families and children. Her approach to family law is

one of thoughtful navigation utilizing her knowledge of the law and legal process, as well as a deep understanding of court procedures, to ensure thorough and researched strategies.

Ballard is a graduate of University of Oregon School of Law. Prior to entering private practice, she had the pleasure of clerking for the Honorable Patricia L. McGuire of the Multnomah County Circuit Court.



Matthew Miller

Carolyn W. Miller, PC

Matthew Miller is an associate attorney focusing on estate administration and planning in Portland. Miller brings energy and broad experience to the service of his clients, looking for common-sense solutions to the challenges of planning for death and administering the estate of a loved one. He benefits from a close working relationship with Carolyn Miller, and from two years’ work

with multiple judges at Superior Court of Los Angeles County.

Prior to returning to Portland, Miller clerked for the Honorable Judge Dalila Lyons, the Honorable Judge David Cunningham III, and the Honorable Judge Rupert Byrdsong. His time in chambers gave him an understanding of how cases move through the courts and how to avoid the pitfalls that delay cases.

Miller earned his JD from the University of Southern California’s Gould School of Law in 2018, and is licensed to practice law in both Oregon and California.

Matthew is proud to continue the tradition of excellent client service at Carolyn W. Miller, PC. In his free time, he is slowly learning how to golf.

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.



Lori DeDobbelaere

Kilmer, Voorhees & Laurick, PC

Kilmer, Voorhees & Laurick, PC (KVL) is pleased to announce that **Lori DeDobbelaere** joined the firm in October. Her 27 years of practice in the complex litigation arena fits well with KVL’s philosophy of service and strong advocacy. Prior to joining the firm, DeDobbelaere was a partner with Heinson & DeDobbelaere.

DeDobbelaere has handled a large variety of cases including premises liability, sex abuse, business disputes, landlord tenant, wrongful death, dog bites (and other animal related matters), RICO, pesticide overspray, defamation, motor vehicle accidents, mold exposure,

asbestos, HOA matters and construction defects. She serves as an arbitrator and is on the panel for the Arbitration Services of Portland. She has handled appeals in the Oregon Court of Appeals, Oregon Supreme Court, Ninth Circuit Court of Appeals and the US Supreme Court.

DeDobbelaere is licensed to practice in state and federal courts in Oregon and Washington.



Sean Ray

Barran Liebman LLP

Sean Ray has joined the Governing Board of Ronald McDonald House Charities of Oregon & SW Washington. Having served on the Young Professionals’ Friends of the House

I N M E M O R I A M

Stephen E. Kantor

May 22, 1949

November 14, 2021

We mourn the passing, and celebrate the life, of a beloved friend and a leader of our Samuels Yoelin Kantor family.

Samuels Yoelin Kantor_{LLP}
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Bodyfelt Mount Welcomes Maryssa Ferries

Maryssa graduated from Willamette University College of Law in 2021 and externed for the Honorable Meagan A. Flynn at the Oregon Supreme Court.

We are thrilled to have Maryssa join us as an associate attorney.

B

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Tips From the Bench

by Judge Patricia McGuire
Multnomah County Circuit Court

Social Distancing

Social distancing ended in Multnomah County on January 2, pursuant to Multnomah County Presiding Judge Order 2101-00000. However, different judicial officers may manage their courtrooms differently (and may continue to require social distancing in their courtroom). When in doubt, ask the judge's judicial assistant or clerk.

Masks

Masks are still required throughout the courthouse.

Remote Appearances

The following family law proceedings will continue to be remote: Trial Assignment, applications for protective orders, contested motions for custody and parenting time evaluations, non-evidentiary discovery motions (including motions to compel), attorney fee petition hearings, form of judgment hearings, contested motions for special setting, status conferences, pretrial conferences, UCCJEA conferences, and motions involving legal argument only. The following juvenile proceedings will continue to be remote: delinquency call, delinquency/dependency ex parte, UCCJEA conferences, and case management conferences. In probate, the short matters docket will continue to be held remotely. If you have any questions about what is remote versus in-person, it's always a good idea to check the presiding judge orders, which can be found here: www.bit.ly/pjo_coronavirus

East County Courthouse

You may already know that one Family Law Judge is assigned to hear cases from the Trial Assignment docket at the East County Courthouse; as of this month, those cases will be heard every Friday. In addition to that, Judge Beth Allen is now permanently sitting at the East County Courthouse and will hear cases there Monday through Friday.

Special Setting (a.k.a. Complex Case Designation)

If you need a full day of court time (six hours) or more, you must file a motion for a special setting. You will then get assigned to a judge and can schedule your case directly with that judge's judicial assistant.

Paper or Electronic Exhibits

Most judges prefer electronic exhibits over paper exhibits, but there are some exceptions (Judges Holmes Hehn, Loy, Torres and Villa-Smith prefer paper exhibits). When in doubt, ask the judge's judicial assistant or clerk!



File & Serve

Remember to relate your filing to your party. Also, Orders to Show Cause (except for modifications) must have a Trial Assignment date before you file. We realize that Trial Assignment dates are scheduled out quite a bit as we work our way through the backlog from setovers due to COVID. Have you considered a judicial settlement conference as you wait for your Trial Assignment date?

Judicial Settlement Conferences

The Judicial Settlement Conference program is back, both downtown and at the East County Courthouse, with experienced and skillful pro tem judges who can help you settle your cases. Please contact Kasey Lundberg (kasey.l.lundberg@ojd.state.or.us) for more information.

Update your Money Award Template

Effective September 25, 2021, the Money Award in your Judgment must state 1) if child support is included and 2) if child support must be paid to the Department of Justice. This helps us identify child support cases where work by the court qualifies for reimbursement under federal law. If you have any questions about how to update your Money Award, please review the statewide judgment forms (it's also a good idea to look at the statewide forms to update your templates annually): www.bit.ly/unmarr_judgment or www.bit.ly/disso_general

Family Law Practitioners' Email Group

Please join this email group to get information, updates and requests for input from Chief Family Court Judge Susan Svetkey. Contact Brandy Jones (brandy.l.jones@ojd.state.or.us) to add your name to the list.

News From the Courthouse



by Leslie Johnson
MBA Court Liaison Committee

Report from Presiding Judge Stephen Bushong

Social Distancing and Remote Jury Selection

Multnomah County Circuit Court ended social distancing on January 3, in light of Chief Justice Order (CJO) 21-050, dated November 15, 2021.

For most courts, social distancing requirements were lifted effective November 29, 2021, but the CJO also authorized the presiding judge in a judicial district to continue the social distancing requirement until January 3. Judge Bushong issued a new Presiding Judge Order (PJO) on November 16, 2021, maintaining social distancing requirements for the remainder of 2021.

With the end of social distancing requirements, all courts will be able to conduct more in-person court proceedings, including jury trials in criminal and civil cases. Judge Bushong acknowledged that, while remote trials and remote jury selection have allowed the court to conduct some jury trials during the pandemic, the court is still facing a significant workload of pending criminal and civil cases. The court may seek the assistance of retired judges to help with this workload, but the court needs the assistance of the civil bar to ensure that the court is able to handle the workload effectively. While the court will do its best to ensure that all civil trials scheduled in 2022 occur as scheduled, attorneys with trials early in the year should consider rescheduling for later if at all possible.

The remote jury selection process is working very well, although there has been opposition from some lawyers and the remote selection process generally adds an additional day to each trial. With social distancing lifted, the court is returning to in-person jury selection for all criminal cases and for civil trials scheduled for four days or less.

The court will continue to use remote jury selection for civil jury trials expected to last more than four days. Under SLR 7.055(14), if a trial is expected to last four days or more, the practitioners are required to send a letter to

the court well in advance to add planning time for longer settings. Upon receiving that letter, the court will summon jurors to appear remotely for jury selection for those trials. The court has received a great deal of positive feedback from citizens in this community about the advantages of selecting a jury remotely, thereby avoiding the need for hundreds of people to come downtown for the jury selection process. Under the circumstances, the court has decided to continue using remote jury selection for the longer civil jury trials. The trial practitioners for those cases will have to plan for that time in advance of trial. Jury selection will likely occur on a Thursday, with jurors coming into the courthouse in person on the following Monday for opening statements.

Although the social distancing requirement ended January 3, protective face coverings will still be required for all court proceedings for the foreseeable future. In addition, all judges and court staff are required by CJO to be vaccinated. Some exemptions have been granted and those people are tested twice a week, with the cost for testing covered by the court. The statewide policy of the judicial branch does not require people - including jurors - to be vaccinated to enter the courthouse. Fortunately, Multnomah County has a high rate of vaccinations among the public.

Scheduling Civil Trials

Trial dates for civil trials are selected by the parties and scheduled by the court in a trial readiness conference (TRC) with a judge. The TRC is typically scheduled by the court about eight months after the complaint was filed, though the parties can request an earlier - or later - TRC date if appropriate. The parties should confer with each other and with their clients and key witnesses before the TRC and come to the conference with a date that works for everyone. The trial date set at the TRC is then considered firm. Normal trial days are still Monday through Thursday. The court reserves Friday for motions, judicial settlement conferences, and other short matters. Most jury trials should be scheduled to start on Monday, which is when jurors are summoned.

As parties discuss dates in advance of the TRC, it is best to have more than one available date, and to plan for the time you need for discovery, motion practice, and alternative dispute resolution (ADR) processes. After a trial date is set at a TRC, the trial will be rescheduled only for unforeseen circumstances. The need to conduct additional discovery or engage in further settlement negotiations is not an unforeseen circumstance that would justify postponing a trial in most cases. The only way to move the trial date after it has been scheduled at a TRC is to have a scheduling conference with the presiding judge. Attorneys should not request a trial set over at ex parte or wait until morning call to request a set over. Again, a set over request should only be for unforeseen circumstances, not to complete discovery or engage in ADR.

To schedule a scheduling conference, email the Multnomah County Presiding Court clerks at mulpresiding@ojd.state.or.us. These conferences are usually set for 10 minutes and are typically held on a Wednesday or Thursday afternoon. Again, it is critical that the parties confer in advance of a scheduling conference and have more than one date in mind. It is not sufficient to just report an "agreed" date because the court needs to review its calendar for availability before any setting.

Report from Trial Court Administrator Barbara Marcille

Trial Scheduling

The court is working to maximize the number of trials it will be able to get out. In 2020, the focus was on priority cases (e.g., criminal trials reaching constitutional or statutory speedy trial limits, involving a defendant held in custody awaiting trial for months or even years, or other cases involving a similar level of urgency). In 2021, the court refined its new processes and became more productive while still limited by social distancing. In 2022, the court anticipates being able to conduct most, if not all, trials and other court proceedings on their scheduled dates. However,

Continued on page 11

The Honorable Jenna Plank Multnomah County Circuit Court

by Amanda Nadell
Chair, MBA Court Liaison Committee

The Multnomah County Circuit Court is currently experiencing an unprecedented backlog of criminal and civil cases due to the COVID-19 pandemic, and newly appointed Judge Jenna Plank wants to do her part to help clear the volume of cases waiting to get to trial or other resolution.

Judge Plank, sworn in as a member of the bench on September 23, 2021, brings with her an extensive 16-year career as a Multnomah County prosecutor. While becoming a judge has been a career aspiration of hers for a long time, Judge Plank values how important it was for her to have a deep foundational base of knowledge in actual legal and trial practice first. In her time at the Multnomah County District Attorney’s Office, Judge Plank represented the State of Oregon in nearly every type of criminal case, including aggravated murders, murders, robberies, firearm offenses, domestic violence, sexual assaults, property crimes, and drug crimes. She led over 70 cases to verdict (jury or court trials), including two complex homicide cases. For more than five years, she supervised misdemeanor criminal operations for the DA’s Office, providing training to new prosecutors and law student interns on a variety of legal topics. This included trial advocacy, motion practice, Oregon Rules of Evidence, Fourth and Fifth Amendment jurisprudence, ethical rules and considerations, and in-court professionalism.

Judge Plank enjoyed the opportunities being a prosecutor provided to interact directly with members of the community, rather than representing a corporation or business entity. As a judge, she looks forward to continuing those interactions within the court system. Judge Plank appreciates the direct impact judges can have within the system and how a judge’s role differs from an attorney representing a litigant. She recognizes that how a judge handles his or her courtroom can be impactful on members of the

community, witnesses, jurors and the parties, and she wants to be a positive part of that important interaction.

Judge Plank spent some of her first days on the bench presiding over landlord/tenant court, which is largely held remotely due to the pandemic. This particular docket also has many litigants appearing pro se. As a former prosecutor, Judge Plank had many opportunities to work with crime victims and lay witnesses, and to develop a strong understanding of trauma-informed practices. In landlord/tenant court, she applied that knowledge to improve her interactions with litigants appearing before her. She explained that the ability to actively listen to parties and calm people down is of critical import to the role of a judge. Many, if not most, of the people accessing the court system are there because something bad has happened to them, and a judge needs to be able to deal with the stress and emotions people bring with them while also bringing closure and finality to the situation. Judge Plank is committed to ensuring procedural fairness at all times for all parties that appear before her. While effective time management is essential to navigating large dockets, she does not want that to limit the ability of parties to ask questions, and ensure litigants understand the proceeding happening around them.

One of her long-term goals as a judge is to assist the Multnomah County bench with how it interacts with people experiencing mental health challenges. Through her work as the supervisor of misdemeanors in the DA’s Office, Judge Plank possesses a unique perspective to assist with this endeavor because many community members experiencing mental illness interface with the court system on low-level misdemeanor cases. In her experience, the prevailing



Hon. Jenna Plank

issue for many people involved in the justice system was mental health and not criminality. She credits the Multnomah County Court for being a leader in this area and she is grateful to play her part in this endeavor in the coming years.

When asked what lawyers who appear in front of her should know about her, she highlighted that she has tried many cases and because of this has a thorough understanding of trial practice and the evidence code. She asked that parties provide briefing of legal motions ahead of time, noting that she will read everything put before her, that hearings will move more quickly, and that her decision will be better informed if materials are provided in advance.

Judge Plank earned her Bachelor of Arts degree in Communication Studies from the University of Portland in 2001 and earned her Juris Doctorate degree, with a certificate in criminal law, from Lewis & Clark Law School in 2005. In law school, she was on the Dean’s Fellowship list, was named Best Oralist in the first year appellate argument project, earned the title of Best Oral Advocate in mock trial, received the Pro Bono Honors Award, and was a member of the Regional Mock Trial Team and the Cornelius Honor Society. Beyond her work on the bench, Judge Plank remains involved in the legal community by serving on the OSB House of Delegates and writing for the OWLS *AdvanceSheet* newsletter. Additionally, she recently joined the Owen M. Panner American Inn of Court. In her spare time, Judge Plank enjoys running, cross-country skiing, and spending time with her husband and kids.

Portland-Area Support Staff Salary Survey

by Christy Holland
Marketing Director, Legal Northwest

Please see the enclosed insert for this year’s salary survey for legal support staff. This information is provided by Legal Northwest as a service to MBA members.

The job outlook for legal support positions remains strong. Nationally, employment of paralegals and legal assistants is projected to grow 12% from 2020 to 2030, faster than the average for all occupations (Occupational Outlook Handbook, Bureau of Labor Statistics). With this in mind, let’s look at three dominant labor market trends we’ve seen locally, that took shape last year and have continued through 2021:

A highly competitive talent pool. Despite historically high quit rates that have defined the second half of this year, highly qualified job seekers remain difficult to come by. This is the result of several factors, including: accelerated rates of retirement (across all industries), a statewide net in-migration rate that has been in continual decline since 2017, and, throughout 2021, a statewide unemployment rate lower than the long-run average of the past two decades.

The need for hiring decisions to be both decisive and flexible. The competitive talent pool has necessitated an urgency in hiring decisions that

we’ve not seen in the past. And, considering the limited pool of experienced legal candidates, firms are more open and willing to consider individuals with atypical prior work experience, focusing instead on transferable skills and growth potential.

An increase in firms implementing a permanent hybrid work policy. Firms that can offer a progressive company culture and industry-leading benefits are most attractive to active job seekers, and thus have the advantage when it comes to securing top talent. Allowing for flexible work schedules including a permanent hybrid policy is one of the most sought-after benefits.

As hiring needs continue to increase, we are happy to be a resource for you, for temporary staffing, project work, or assisting with direct placement positions. Legal Northwest has been a partner to the MBA for over 20 years. Members receive discounted pricing on direct placement and temp-to-hire positions, as well as a quality-of-service guarantee.

For more information, contact Anneke Haslett, Legal Northwest Account Manager at 503.242.2514 or ahaslett@nwstaffing.com. Visit us online at www.legalnw.com.

2022 LASO/OLC/MBA PRO BONO AWARDS

Pro Bono Awards recognize attorneys who provide pro bono assistance to low-income and underserved members of our community to reduce barriers to justice and increase access to the legal system.

Visit www.bit.ly/probonoawards22 or see the enclosed nomination flyer for details.

Nominations are due by January 21. Awards will be presented on May 10 at the MBA Annual Meeting.

News From the Courthouse

Continued from page 10

even without social distancing, there is still a limit on the number of prospective jurors that can be accommodated in the jury room, thereby limiting the number of trial panels that can be seated in any given week.

Continuing remote jury selection for trials providing the notice required by SLR 7.055(14) will mean more trials going out because remote selection avoids the physical space limits in the jury room. Remote selection puts a greater demand on the court’s resources - and sometimes there are technical difficulties - but it does increase the court’s capacity to conduct jury trials.

Courtroom Technology

The court’s technology team has been testing the camera angles in the courtrooms. All courtrooms were equipped with cameras and large dual display monitors to allow for digital evidence presentation and for witnesses to testify remotely. It was not anticipated that the audio visual (AV) system would be used for fully remote court proceedings where all or most of the parties except for the judge are appearing on video monitors. As configured, the cameras are located on one side of the courtroom, with the monitors mounted on the opposite wall. This works well during a traditional in-person proceeding so that a witness appearing by video can see the full courtroom. However during

a matter where more people are appearing remotely than in the courtroom, it means that the judge or participants seated at counsel tables in the court proceeding cannot look at the monitor and the camera at the same time when participants are appearing by video.

The court has had the cameras in two courtrooms relocated so that participants face the camera and the monitor at the same time but has had mixed feedback on this change so far. Because of the expense involved in moving the cameras in the other 42 courtrooms in the Central Courthouse, the court is gathering input on the preferences of judges and lawyers before reconfiguring all courtrooms. The courtrooms need to be functional for both in person and for remote

proceedings, and it is important to have the same AV setup in all of the courtrooms for maximum flexibility in assigning matters to judges throughout the building, and so that judges, court staff, and attorneys know what AV configuration to expect when they are assigned to a courtroom.

Judges and a group of lawyers who have volunteered have been participating in practice runs and providing feedback.

Diversity, Equity and Inclusion Work

Court staff are working with an experienced consultant on improving the customer experience in the courthouse from start to finish. Staff and judges continue to participate in “Lunch and Learn” programs that are arranged by the court’s

Diversity, Equity, and Inclusion (DEI) committee. Recent presentations have focused on Portland’s homelessness crisis, inclusion of transgender and gender non-conforming individuals, racism confronting Asian Americans and Pacific Islanders, Chuukese culture, and the stigma of substance use disorders. In January and February, the court will be facilitating a four-part lunch and learn series on interrupting racism. The Multnomah Circuit Court is prioritizing DEI education, training, and outreach, consistent with Chief Justice Martha Walters’ focus on racial equity within the Oregon Judicial Department.

mba

Young Lawyers
Section

What is the YLS?

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

Ask the Expert

Dear Expert:
I'm new to my firm, but I am working with a long-time client who has strong opinions about how our current matter should be resolved. I think the client is wrong about how to resolve this particular matter, but I know they work with us on many issues. How can I manage expectations for this matter without alienating them?
-Nervous Newbie

Dear Nervous:
Don't be! You are already on the right track. Managing expectations is key, whether working with a long-term client or a client you'll only work with once.
We have a duty as advisors to our clients to use our independent judgment and inform clients candidly about the risks and rewards for any potential course of action.
You have to be prepared to have some tough conversations when the circumstances so warrant. Oregon Rule of Professional Conduct 2.1 states:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Unlike other professions or industries where it's often said that the customer is always right, there is a little more nuance to being a good lawyer.
Setting expectations for a client has to start from the beginning. When beginning a new matter, make sure you are asking the client what their

goals are and what success looks like to them. You may be surprised to learn that what they think is a successful outcome is very different from your own assessment of the case. You may be thinking in terms of a particular litigation strategy, when what the client really wants is an efficient way to resolve the litigation, or vice versa.
It's also important to be mindful of what you are promising to the client. If you are going into a contentious and novel motion hearing and telling your client there is no way you can lose, you are setting the stage for disaster. That may seem an obvious example, but the same philosophy applies to managing expectations for everything you do for the client. When will a demand letter go out? How quickly does your client expect responses to emails and phone calls? What are the potential outcomes of a mediation?
These are all situations where expectations should be set beforehand. And as much as possible, you should under-promise and over-deliver.
Finally, it is important to try to put yourself in your client's position, especially for clients with ongoing relationships. Is this a case where you need to cut your losses to allow putting resources into other matters? Or perhaps this case will set a precedent for other matters and so it is important to get a specific ruling. Are you truly giving your client value for the fees they are paying or are you going through the normal life cycle of a case just to go through it?
If you think your client is wrong about this particular matter, you should tell them that (politely and with a principled and well-reasoned explanation). If you do it right, they should respect you and want to continue working with you on other matters.

Lewis & Clark Small Business Legal Clinic Pro Bono Spotlight

by Caulin Price
YLS Pro Bono Committee

Lewis & Clark Law School's Small Business Legal Clinic (SBLC) started in 2006 with the intern program as a way to expose law students to real-world, practical law experiences. At the same time, SBLC launched the pro bono project in an effort to provide high-quality business transactional representation to low-income and under-represented small business owners. Those ideas form the foundation of SBLC's mission.
To accomplish that mission, SBLC connects low-income small business owners to local attorneys with diverse skill sets. SBLC works with attorneys that have expertise in entity formation, trademark and intellectual property law, real estate, employment law, and other business-related fields, allowing SBLC to provide five core services: 1) basic entity advice, selection, and formation, 2) contract drafting and review, including lease review, 3) front-end employment law matters such as drafting employee handbooks, 4) basic intellectual property matters, and 5) regulatory compliance. That partnership with local attorneys and the ability to provide so many services allows SBLC to serve its clients with most, if not all, matters that a small business or emerging start up needs assistance with, and it expands the field of small businesses that SBLC is able to serve.
Over the last decade, SBLC has increased the number of clients it serves annually from roughly 200 to around 375. During that time, SBLC tried to reach under-represented individuals with multiple barriers. All the clients served by SBLC are low-income, and many of them express that without the pro bono program, they would not have been able to afford legal representation or start their business. But more importantly, SBLC wanted to reach additional

underrepresented communities, and it accomplished that, increasing the share of people of color and recent immigrants served by SBLC over the last decade. Most clients currently served by SBLC are people of color - around 60% of total clients served. Twenty to 25% of clients are recent immigrants, and the majority are women.
Asked what the highlight of SBLC was, Julieanna Elegant, SBLC's Executive Director, spoke about the ability to give law students practical experience and a sense of community in the locale that they hope to one day practice in. But more than anything, she explained that the highlight of SBLC is the clients: "It's awesome when you go to the grocery store and you see a client's products or when you go out to eat at their restaurant." SBLC's pro bono program, and its ability to serve a diverse client base with diverse legal needs, helps build wealth and expertise within the community.
If you are interested in volunteering with SBLC or finding out how best you can become involved with SBLC, you can visit its website at www.bit.ly/lcsblc. You can also reach out to Julieanna Elegant at jelegant@lclark.edu.

Using a Kanban Board to Manage Workflow

by Sophie von Bergen
YLS CLE Committee



One hurdle as a new lawyer is finding a project management system that works for you. Although the to-do list is a classic, it might not work for everyone. I recommend using a Kanban board. A Kanban board allows you to visualize your work

and workflow. Instead of writing a task on a list, you write it on a sticky note. You move the task across the board from left to right as you progress from "to do" to "doing" to "waiting" to finally "done."

Some Background
Translated from Japanese to English, "kanban" means "signboard" or "billboard." Taciichi Ohno developed the Kanban system in the 1950s as an engineer at Toyota to track manufacturing processes. (*History of Kanban*, www.bit.ly/kanban_hist). I learned about the Kanban system from John Grant, an attorney in Portland who consults with lawyers on using Kanban. John has published chapters from his book *Kanban for Lawyers* - free

to read online - which I highly recommend and cite below, available at www.bit.ly/kanbanforlawyers.

Getting Started
Starting a Kanban board is easy and inexpensive. Here are the essentials:

- Sticky notes (I prefer extra sticky);
- Pens (I like permanent markers); and
- A wall with empty space or a corkboard/whiteboard.

Divide your board (wall, corkboard, or whiteboard) into several columns. You can use tape to divide and sticky notes to label the columns. I recommend starting with the columns, from left to right: "to do," "doing," "waiting," and "done." See Grant, Chapters 1 & 4. As you get more comfortable, you can add more columns to track various stages of a task.

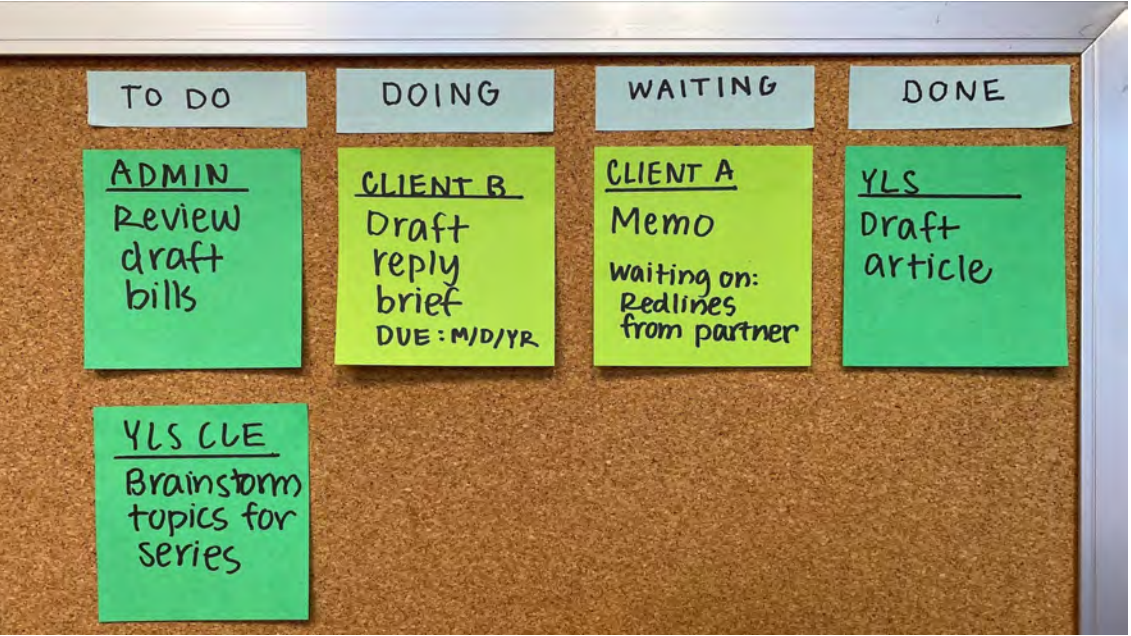
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mba yls | EVENT

YLS Trivia Night
Thursday, February 24
5:30-7 p.m.
Please join the YLS Membership Committee and trivia host Graham Brown of Stumptown Trivia for a fun evening of virtual trivia. Prizes are sponsored by Maune Raichle Hartley French & Mudd, LLC and support local BIPOC-owned businesses. Graham will be quizzing the whole group, but there will be only one Trivia Champion! Registration is free.

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Register at www.bit.ly/YLSTrivia



Announcing a January donation drive to benefit

Transition Projects

In support of Transition Projects, the YLS Service to the Public Committee has organized a donation drive January 3-17. Transition Projects specializes in transitioning people from homelessness and living on the streets into housing. Visit www.tprojects.org for more information about the organization.

How to Participate in the January Donation Drive

1. Select new and gently-used items to donate from the list (www.bit.ly/tprojects). Please ensure all used items are clean (free of stains, tears, and pet hair), from a non-smoking household and ready-to-use by another person.
2. Between January 3-17, drop off your donations during business hours (9 a.m.-5 p.m.) at either of the two locations below:

D'Amore Law Group, PC
4230 Galewood Street, Ste. 200
Lake Oswego, Oregon 97035

DBMA Family Law Group PC
1140 SW 11th Avenue, Ste. 100
Portland, Oregon 97205

Monetary donations are also welcome:
www.tprojects.org/donate

Using a Kanban Board to Manage Workflow

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Once you have your board arranged, write a task on a sticky note. I recommend noting the client's name and matter number and any deadlines. You can get creative with the shape, size, or color of sticky notes - maybe use one color for clients and another for administrative work.

Now, move your task to the "to do" column.

"To Do." The "to do" column is what it sounds like. Once you add more tasks to your board, you can arrange higher priority tasks above lower priority ones. You can also break up the "to do" column into different columns to signal when you plan to complete a task, for example, "backlog," "tomorrow," and "today." See Chapter 3.

Once you start a task, move it from "to do" to "doing."

"Doing." The "doing" column is helpful because, unlike in a to-do list where you can only evaluate whether you need to start or have completed a task, you can track what tasks are in progress. Ideally, you limit the number of tasks that you are "doing." John recommends only placing tasks into the "doing" column that you have started working on, are capable of finishing without any outside help, and intend to finish before moving on to another task. See Chapter 6. One tip is to break up a large task into smaller pieces; for example, you could break up "write brief" into "outline," "draft," "proofread," and "file." See Chapter 6A.

Once you complete your task, move it to "done." But sometimes (oftentimes) you need something else to happen before you can move forward and complete a task. In that case, move the task to the "waiting" column. See Chapter 5.

"Waiting." A lot of our work requires waiting, and that is not always a bad thing. When you move a task to the waiting column, you can turn to other tasks and keep a reminder for yourself and your team of how things are moving. You can add a note to yourself of what you are waiting on, for example, "redlines from colleague" or "information from client," and include a date. You can also move the most important tasks to the top of the column. See Chapters 5 & 6A.

"Done." A lot of our work is virtual, and, unless you print off every email, brief, or contract that you finalize, "invisible." When you write a task on a note and move it across a board, your otherwise invisible work becomes tangible. You can recognize what projects are on deck, how tasks are progressing, and any patterns that arise. And when you move your task to the "done" column, you can appreciate what you accomplish. See Chapter 2.

Overall, make your board something that will work for you and that you will enjoy viewing every day. And because your board will be on display, remember to keep your board free of confidential information.

Benefits

In summary, there are several benefits to using a Kanban board:

- You can see your projects and capacity for other work.
- You can track the progress of your tasks beyond "to do" and "done."
- Your work becomes tangible.
- You can customize your board.

I find that using a Kanban board helps me see what I am doing, assess my capacity, and work more efficiently. Give it a try. If you want to learn more, there are plenty of free resources available.

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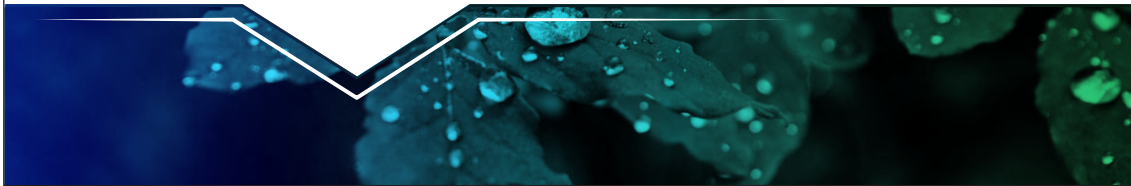
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