



A Constitutional Crisis in Indigent Defense

by John Robb
MBA Board

Multnomah County Chief Criminal Judge Cheryl Albrecht reached out to the MBA with an urgent request for attorneys to help address a constitutional crisis occurring in indigent criminal defense. Chief Justice Martha Walters issued a similar request statewide. Their

request comes because the number of criminal cases prosecuted in Oregon recently outpaced the pool of attorneys available to represent people who need appointed counsel.

Currently in Multnomah County, there are 25 people charged with a crime who are unrepresented because the Office of Public Defense Services (OPDS) cannot find attorneys able to take their case. Thirteen of those people are in jail. This is a statewide issue, with 56 people - 26 of whom are in jail - without attorneys. Some people have been in jail for more than a month without an attorney.

Although issues with the provision of indigent defense in Oregon is nothing new, the depth of the current crisis is. A backlog of cases created by the pandemic is part of why this is happening now, but that is by no means the only, or even most significant, part of the story. There are many factors that have ultimately led us here, and finding our way out will require understanding and dealing with all of them.

Perhaps the foremost factor underlying this crisis is one I rarely see acknowledged directly. Criminal prosecution is something our society reserves, almost exclusively, for the very poor. OPDS estimates that, in Oregon, around 90% of people charged with a crime are represented by appointed counsel.

Fully addressing the current crisis will require clearly and honestly evaluating why this is the case. While this issue is complex, multifaceted, and often contentious, during this evaluation we should be extremely cautious with arguments that boil down to essentially throwing up our hands and saying that "those people are just the ones who commit crimes."

This is especially true given significant racial disparities also reflected in criminal prosecutions. Black people are significantly more likely than white people to be arrested, prosecuted, and imprisoned in Oregon. When prosecuted, they are also more likely to be unable to afford an attorney. A study in 2019 found that 97% of Black people charged with crimes in Multnomah County were represented by court appointed counsel.

What we call a "crime" - and thus worthy of handcuffs, prison cells, and lifelong collateral consequences - is not an immutable law of nature. Deciding what to criminalize, police, and prosecute are all policy decisions.

The fact that the cumulative effect of past policy decisions is that the targets of criminal prosecution are overwhelmingly poor and disproportionately Black should cause us to ask significant questions about the validity of these decisions. This has already begun to happen, but the depth of the current crisis signals that additional urgency is necessary.

Criminal prosecution is something our society reserves, almost exclusively, for the very poor.

Another leading factor leading to the current crisis is that the systems tasked with providing indigent defense in Oregon, have, as described by OPDS in recent reports, been the subject of decades of neglect.

All of Oregon's trial level public defense services are provided by private contractors. As recently as 2019, OPDS continued to use an outdated contracting model developed before 1983, when counties were responsible for providing trial level indigent defense.

That contracting model relied on a system of "case credits," in which private contractors were paid on a per-case rate, without case limits. At the same time, OPDS lacked the ability to provide meaningful oversight into quality of representation. This created a powerful financial incentive to accept as many cases as possible, without regard to the quality of representation.

In 2019, the Sixth Amendment Center issued a report highly critical of the case-credit system. Highlighting the inherent conflict created between an attorney's financial interest and adequate representation of each client, the report suggested that this likely created a system-wide constitutional violation.

OPDS developed a new contracting model to address these issues and implemented it starting in 2021. Caseload standards were adopted (based on a now out-of-date standard), and payment to contractors was based on an FTE model tied to these caseload standards. Attorneys no longer had an incentive to keep taking on additional cases when asked.

Following this reform, OPDS began having difficulty finding attorneys to handle cases needing appointed counsel. Over time this issue continued, ultimately snowballing into the current crisis.

This was not, however, the development of a new crisis - it was the exposure of a preexisting crisis that had long been papered over by systemic constitutional violations. And even the extent of the apparent current attorney shortage significantly understates the true extent of the problem.

Around the time of the Sixth Amendment Center report, the legislature funded a two-year study by the American Bar Association and accounting firm Moss Adams to determine appropriate caseload levels for indigent defense providers. The results of the study were released a few weeks ago, and they are striking.

According to the report, Oregon only has 31% of the attorneys it needs to provide adequate representation in all the criminal cases prosecuted statewide. With existing caseloads, providing adequate representation to all people being represented by appointed counsel would require each attorney to spend 26.6 hours per working day.

This does not come as news to anyone who has handled these caseloads. I did for five years, and trust me when I say you can feel that 26.6 hours. Imagine having that dream where, as you are starting final exams, you suddenly realize you forgot about one of your classes and are totally unprepared. Only when you wake up, the final starts at 9 a.m. and someone will go to prison if you fail. Now imagine that feeling every day you walk in the office.

As difficult as these caseloads are for individual attorneys and clients, it is worthwhile to pause for a moment and consider the full implications of the Moss Adams findings to the criminal justice system as a whole.

Continued on page 2

...Oregon only has 31% of the attorneys it needs to provide adequate representation in all criminal cases prosecuted statewide.

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. 4 or visit www.mbabar.org/cle and input your OSB number to register at the member rate.

MARCH

3.11 Friday
Get to Know Your Judges - Part 3
Judge Amy M. Baggio
Judge Jenna R. Plank

3.31 Thursday
Free Speech and the Portland Protests
Ashlee Albies
Juan Chavez

APRIL

4.6 Wednesday
Mandatory Mental Health and Substance Use
Kyra Hazilla
Harry Wilson

4.8 Friday
Presiding Court Update
Presiding Judge Judith Matarazzo

4.20 Wednesday
Mastering Applicable Ethics Rules and Risk Management Strategies to Protect and Boost Your Bottom Line
Dayna Underhill

4.27 Wednesday
Implicit (or Unconscious) Bias in Jury Trials: A Discussion of Causes, Effects, and Possible Remedies
Judge Michael Simon
Judge Melvin Oden-Orr
Clarence Belnavis
Beth Creighton
Laura Dominic

4.29 Friday
Employment Law Update: What is the Current Status of COVID-19 Related Employment Law?
Natalie Pattison

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SAVE THE DATE!

MBA 116th Annual Meeting, Dinner & Judges Reception

Tuesday, May 10
5-8 p.m.
Hilton Portland Downtown
921 SW Sixth Avenue

This will be a hybrid event with in-person attendance limited to those who are fully vaccinated.

Sponsorship opportunities available. Contact Kathy at the MBA at 503.222.3275.

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MBF 2021 Year-End Donors



We are grateful to the legal and broader community for their generous year-end support for the Multnomah Bar Foundation and its work. We thank all of our supporters who make it possible for the MBF to staff the information desk at the Central Courthouse with a CourtSupport Navigator, provide free drop-in childcare to parents with business in the courthouse through Multnomah CourtCare, broaden our civic education outreach to the community with CourtConnect presentations, and explore future projects that will support the court and benefit the community.

Contributions of a certain level are acknowledged here and on the MBA website. A special note of thanks to the OCF Joseph E. Weston Public Foundation for awarding the MBF a \$16,000 grant to benefit Multnomah CourtCare.

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Founded in 2005, the Multnomah Bar Foundation is a 501(c)(3) charitable and educational nonprofit. The mission of the MBF is to increase the public's understanding of the legal system, to promote civic education, public participation and respect for the law, to improve the quality and administration of the legal system, and to support programs and projects related to the MBF's purpose. To learn more, contact Pamela Hubbs at 503.854.5237 or pamelam@mbabar.org, or visit www.mbabar.org/mbf.



MULTNOMAH CourtCare

A project of the Multnomah Bar Foundation, in partnership with Multnomah County, the Oregon Judicial Department, the U.S. District Court Attorney Admission Fund and Volunteers of America Oregon

Constitutional Crisis in Indigent Defense

Continued from page 1

The current caseload levels mean that indigent defense attorneys are unable to spend anywhere close to the time necessary to provide adequate representation to each client. These attorneys represent the vast majority of those prosecuted.

This means there are serious reasons to doubt the legitimacy and fundamental fairness of the outcomes of 90% of criminal prosecutions statewide, and in Multnomah County, of 97% of the prosecutions of Black defendants. This has never been lost on the communities most affected.

The report demonstrates more clearly than ever before how critical and urgently reforms are needed, yet if it happened immediately, the current attorney shortage would balloon far beyond what it is now. According to the Moss Adams

report, Oregon needs an additional 1,296 attorneys to be able to provide adequate representation to everyone who qualifies for court appointed counsel. Finding that many attorneys, and finding the funding to pay them, are both monumental tasks.

In the meantime, there are things that can be done to alleviate the immediate crisis. District attorneys can charge their deputies with taking critical looks at their current cases for dismissal or resolution, and their future charging decisions. Judges can assist in case resolution and take a more probing view towards prosecutors' charging decisions and arguments for incarceration.

Attorneys with criminal defense experience who do not or no longer handle appointed cases can volunteer to accept a few cases, and attorneys with family law experience can volunteer to handle juvenile dependency cases. Attorneys interested in accepting appointments on cases can contact

Calendar

MARCH

10 Thursday
Navigating the Future with Interstate Compact Training
www.bit.ly/ICAOSTraining

11 Friday
OWLS Roberts & Deiz Award
www.oregonwomenlawyers.org

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

24 Thursday
YLS Speed Networking
Details on p. 12

30 Wednesday
Affinity Bar Series hosted by OAPABA
www.bit.ly/OAPABAAffinityBarSeries

APRIL

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

30 Wednesday
Affinity Bar Series hosted by OHBA
www.bit.ly/OHBAffinityBarSeries

Welcome to PDX Starting Grounds!

The next time you're in the Central Courthouse, we invite you to stop by PDX Starting Grounds café on the third floor. Our core values are great coffee, food and snacks with superb service. Our goal is to provide this through suppliers that share these values. Our coffee roaster is Portland's own Happy Cup Coffee, which has garnered high praise for quality coffee and excellent service. Breakfast and lunch

items are delivered fresh from Artisan Premades, a Pacific Northwest company that uses the finest ingredients in its sandwiches and salads. We offer candy, chips, cheese and other snacks. If you don't find what you're looking for, ask us. We always welcome suggestions to add to our portfolio of offerings. We hope to see you soon for a well-earned coffee or bite to eat!



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Billy Strehlow at billy.j.strehlow@opds.state.or.us, or 503.910.5049.

Please keep in mind, however, that criminal defense work is a highly specialized and complex practice, and the stakes for clients are exceptionally high. The most critical need involves difficult cases with clients facing significant sentences. This crisis cannot be solved by attorneys stretching beyond their skill set, no matter how well intentioned.

While attempting to alleviate the immediate crisis, it will also be critical to acknowledge and begin to take significant steps towards dealing with the root causes.

Over the years, repeated policy choices have caused our public defense system to languish while police and prosecutors have received healthy funding. In an adversarial legal system designed around the idea that conflict between two interested opponents is the best way to reveal the truth, significantly out-resourcing one side is akin to purposefully putting a heavy finger on the scale of justice.

Right now, the weight of that finger falls heavily against the side of poor and disproportionately Black Oregonians. It is imperative we begin to work to even the scales.



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.

E-Discovery: Recent Developments and Best Practices

Thursday, March 3 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

Electronic discovery often presents some of the most significant pre-trial expense and risk in contemporary litigation. This program will explore recent developments in electronic discovery law and practice - including emerging trends flowing from the mass transition to remote work in many industries - and present practical approaches to common problems. **Edward Decker**, Miller Nash LLP and **Joanna Harrison**, Epiq eDiscovery Solutions, will discuss recent case law and offer tips for managing preservation, collections, review, production, and discovery motions in a cost-effective and efficient manner.

For more information: Contact Ian Christy, Miller Nash LLP, at 503.205.2416. 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.

Get to Know Your Judges - Part 3

Friday, March 11 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Join some of the newest Multnomah County Circuit Court Criminal/Civil Judges - **Hon. Amy M. Baggio** and **Hon. Jenna R. Plank** - for essential tips on how best to advocate in their courtrooms. Learn what these new judges find to be the most - and least - effective advocacy strategies, their courtroom preferences, and what they wish they had known before they took the bench. This will be informative and valuable for all Multnomah County litigators, and an excellent opportunity to hear from some of our newest judges. **Hon. Angela F. Lucero** will moderate the panel. Please join us for this unique opportunity and bring your questions.

For more information: Contact Justice Brooks, Foster Garvey, at 503.553.3117. For registration questions, contact the MBA at mba@mbabar.org.

Free Speech and the Portland Protests

Thursday, March 31 3:30-4:30 p.m.

Online Participation Only

Members \$30/Non-Members \$50

The Portland protests of 2020 led to many controversies involving free speech rights, ranging from filming and broadcasting protesters who are not suspected of criminal activity, surveillance tactics and use of force, and discriminatory treatment of protesters given the views they espoused. **Ashlee Albies**, Albies & Stark LLC and **Juan Chavez**, Oregon Justice Resource Center will discuss the issues that arise under state and federal law and review pending litigation.

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

Mandatory Mental Health and Substance Use CLE

Wednesday, April 6 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Note: One hour of Mental Health and Substance Use OSB MCLE credit will be applied for.

A landmark 2016 ABA/Hazelden Betty Ford Foundation national study found that attorneys are more than twice as likely as the general population to experience problematic alcohol use, and attorneys under 30 are more than three times as likely. Reported levels of depression, anxiety, and stress were also significantly elevated among attorneys according to the study. All of these challenges have been exacerbated by the COVID-19 pandemic. The speakers in this CLE will talk about when to ask for help for yourself and for colleagues, and how to recognize when someone needs help. You will also hear a personal story of recovery. This CLE will be presented by **Kyra Hazilla**, Oregon Attorney Assistance Program and **Harry Wilson**, Markowitz Herbold.

For more information: Contact Mary Tollefson, Brindle McCormack, 503.224.4825. For registration questions, contact the MBA at mba@mbabar.org.

Multnomah County Presiding Court Update

Friday, April 8 Noon-1 p.m.

Online Participation Only

FREE for Members & Non-Members

Judge Judith Matarazzo's first day as presiding judge of Multnomah County Circuit Court was January 3. She will present an update on the state of the court and court operations in light of recent COVID-19 developments. This seminar is designed for attorneys at all levels of experience and questions are strongly encouraged.

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

Mastering Applicable Ethics Rules and Risk Management Strategies to Protect and Boost Your Bottom Line

Wednesday, April 20 Noon-1 p.m.

Online Participation Only

Members \$30/Non-Members \$50

Note: One hour of ethics OSB MCLE credit will be applied for.

Getting paid for your hard work is itself hard work. Doing it ethically and in a way that maximizes your chances of getting paid is the goal. Using "ripped from the headlines" examples, this program will provide real-world scenarios of how to master ethical and effective timekeeping practices, client billing and fee collection. With a focus on the Oregon (and Washington) Rules of Professional Conduct and practical tips, this CLE will discuss what the ethics rules permit, require and prohibit attorneys from doing when pricing services, documenting fee arrangements, billing clients, and collecting fees.

Join attorney **Dayna Underhill** of Holland & Knight for a detailed primer on ethical billing practices and maximizing your opportunities to get paid.

For more information: Contact Justice Brooks, Foster Garvey, at 503.553.3117. For registration questions, contact the MBA at mba@mbabar.org.

**To register, see page 4 or visit
www.mbabar.org/cle.**

Implicit (or Unconscious) Bias in Jury Trials: A Discussion of Causes, Effects, and Possible Remedies

Wednesday, April 27 3-5 p.m.

Online Participation Only

Members \$60/Non-Members \$95

Note: Two hours of Access to Justice OSB MCLE credit will be applied for.

“Of course I can be fair.” As rational human beings we think we can be fair, and we want to be fair. But what we may not realize is that deep down, all of us have implicit biases that impact our understanding, evaluation, and decisions about the world around us. So, if these biases are below the surface, how can we unearth them and reduce their negative effects? This panel of judges, lawyers and a jury consultant - **Judge Michael Simon**, US District Court, **Judge Melvin Oden-Orr**, Multnomah County Circuit Court, **Clarence Belnavis**, Fisher & Phillips LLP, **Beth Creighton**, Creighton & Rose PC and **Laura Dominic**, Tsongas Litigation Consulting - will discuss what is currently being done in Oregon to address implicit bias in our jury system and explore the ways to combat the negative effects throughout trial. This presentation will look at implicit bias in both jurors and attorneys. We will focus on what can be done in pre-trial instructions, voir dire, trial presentations, closing argument, and final instructions to address implicit bias in the jury decision-making process and in the attorney strike process. Come join us to continue this important conversation.

For more information: Contact Rudy Lachenmeier, Attorney at Law, at 503.207.6932. For registration questions, contact the MBA at mba@mbabar.org.

Employment Law Update: What is the Current Status of COVID-19 Related Employment Law?

Friday, April 29 Noon-1 p.m.

Online Participation Only

FREE for Members & Non-Members

As the COVID-19 pandemic continues to loom large over the employment sector, it is important for attorneys to stay abreast of the ever-changing landscape of employment law. This CLE will provide a legislative update (both federal and state) on COVID-19 related topics including, vaccine mandates, workplace rules, and remote work. **Natalie Pattison**, of Barran Liebman LLP, will present this informative CLE that is a must see for attorneys in all practice areas.

For more information: Contact Justice Brooks, Foster Garvey, at 503.553.3117. For registration questions, contact the MBA at mba@mbabar.org.

CLE Registration Form

NAME _____			CARD NUMBER _____
FIRM _____			EXPIRATION DATE AND SECURITY CODE _____
ADDRESS _____			SIGNATURE _____
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PHONE _____			
OSB# _____			

Member Status:

- MBA Member
- Non-Member

Payment Options:

- Check
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- American Express

Online CLE registration strongly encouraged. Visit www.mbabar.org to register online. Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed 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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Unable to attend?
Archived webcast options are available
at www.mbabar.org/archivedcle

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.

3/3 E-Discovery: Recent Developments and Best Practices

Online attendance only - link will be emailed

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

3/4 Multnomah County Arbitrator Refresher Training

Online attendance only - link will be emailed

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

3/4 Mandatory Training to Become a Multnomah County Arbitrator

Online attendance only - link will be emailed

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

3/11 Get to Know Your New Judges - Part 3

Online attendance only - link will be emailed

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

3/31 Free Speech and the Portland Protests

Online attendance only - link will be emailed

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

4/6 Mandatory Mental Health and Substance Use CLE

Online attendance only - link will be emailed

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

4/8 Multnomah County Presiding Court Update

Online attendance only - link will be emailed

Class Registration (FREE) \$ _____

4/20 Mastering Applicable Ethics Rules and Risk Management Strategies to Protect and Boost Your Bottom Line

Online attendance only - link will be emailed

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

4/27 Implicit (or Unconscious) Bias in Jury Trials: A Discussion of Causes, Effects, and Possible Remedies

Online attendance only - link will be emailed

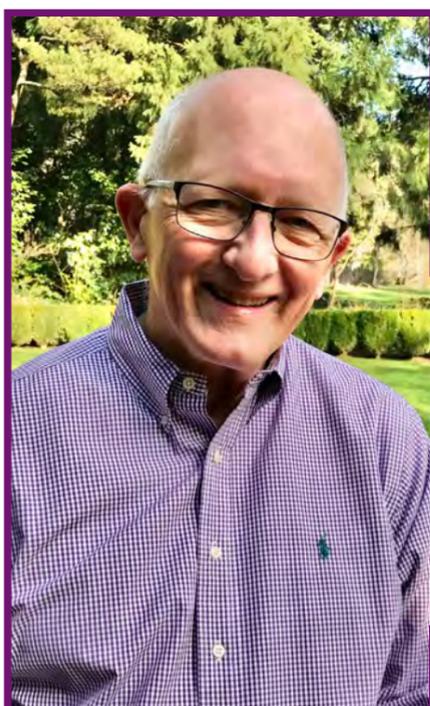
Class Registration (\$60 Members/\$95 Non) \$ _____

4/29 Employment Law Update: What is the Current Status of COVID-19 Related Employment Law?

Online attendance only - link will be emailed

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mba | ANNOUNCEMENTS

Interstate Compact Training

The Oregon Judicial Department (OJD) will host this free virtual seminar on Thursday, March 10 from 12-1 p.m. via Webex. The information and training presented can be useful to many attorneys who find they are representing clients who are required under the Interstate Commission for Adult Offender Supervision. Presenters include **Mark Patterson**, Deputy Compact Administrator Oregon Interstate Compact Office, Department of Corrections; **Heather Fowler**, Lead Probation/Parole Officer for the Multnomah County Department of Community Justice (DCJ) Assessment and Referral Center, Interstate Compact Coordinator for the DCJ; and **Linda Warner**, Interstate Bench Compact Coordinator, OJD.

CLE credit for the training is pending. Register at www.bit.ly/interstate-training.

MBA LSAT Preparation Course Scholarship - Apply by March 11

To help achieve the goal to foster and expand diversity in the Multnomah County legal community and the state of Oregon, the MBA Equity Diversity & Inclusion Committee awards scholarships for LSAT preparation courses to law school applicants whose future involvement in the law will enhance the diversity of our bench and bar. Applications are due March 11. Details available at www.bit.ly/mba_lsats.

Commitment to Professionalism

The MBA Professionalism Statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free Professionalism Statement at www.bit.ly/prof_statement.

Noontime Rides

Join all ages of bicycle riders for noontime hill climbs on Mondays & 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 pacerline 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.

Coffee Café in the Central Courthouse

PDX Starting Grounds is located on the third floor of the downtown courthouse, offering beverages, sandwiches, salads and snacks. Hours are Monday through Thursday, 8 a.m. to 12 p.m. Visit www.pdxgrounds.com for details or to order online.

mba | EVENT

Painting Party with Bottle and Bottega

Thursday, April 7
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Ethics Focus



No Law Firm Lawyer Is an Island Imputed Conflicts under RPC 1.10(a)

by Mark J. Fucile,
Fucile & Reising LLP

With apologies to 17th Century English poet John Donne, when it comes to law firm conflicts, “no law firm lawyer is an island.” By that I mean that under RPC 1.10(a), which is sometimes called the “firm unit rule,” one law firm lawyer’s conflict is ordinarily imputed to the lawyer’s entire firm. As lawyers’ practices have grown more specialized, they sometimes assume that if they do not personally have a conflict, they can simply go on about their business. In the law firm context, however, we are decidedly not “islands” and imputed conflicts can have important ramifications for both the individual lawyers involved and the firm as a whole. In this column, we’ll first survey RPC 1.10(a) and then turn to its implications for law firm risk management.

The Rule

RPC 1.10(a) reads:

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or on Rule 1.7(a)(3) and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

RPCs 1.7 and 1.9 address, respectively, current and former client conflicts - and, therefore,

sweep virtually all conflicts within the accompanying imputation. The “personal interest” exception is narrower than it sounds. OSB Formal Opinion 2005-91 (rev 2016) notes that it applies to things like political views and not matters that involve a lawyer’s financial interests that are tied to the lawyer’s firm. Similarly, RPC 1.7(a)(3) deals with conflicts arising when opposing counsel is a lawyer’s parent, spouse or child.

RPC 1.8, which is entitled “Conflict of Interest: Current Clients: Specific Rules,” is generally considered a collection of specific instances of “material limitation” conflicts under RPC 1.7(a)(2). The bankruptcy court in *In re Smith-Canfield*, 2011 WL 1883833 (Bankr D Or May 17, 2011) (unpublished), for example, made this point in ordering a lawyer to disgorge his fees as a sanction for an unwaived conflict under both RPCs 1.7(a)(2) and 1.8(a) stemming from a business transaction with a client. Moreover, RPC 1.8 includes its own imputation provision - RPC 1.8(k) - that imputes its collection of conflicts to the firm, except RPC 1.8(j) that addresses romantic relationships with clients.

RPC 1.10(a) is neither new nor novel. Imputed conflicts were handled similarly under former Oregon Disciplinary Rule 5-105(G) and the current Oregon rule is patterned generally on its ABA Model Rule counterpart. RPC 1.10(a) also echoes the principle from malpractice case law that law firms are ordinarily vicariously liable for their lawyers’ legal work. RPC 1.0(d), in turn, defines the term “law firm” broadly to include all lawyers who are practicing together as a single unit regardless of the statutory form under which the firm is organized.

Individual lawyers within a firm representing conflicting interests without appropriate waivers are subject to regulatory discipline. *In re Schmeits*, 12 DB Rptr 195 (Or 1998), and *In re Vaughn*, 12 DB Rptr 179 (Or 1998), for example, involved law firm partners who were each disciplined for taking the opposing sides of a business transaction. RPC 1.10(a) is also frequently cited in analyzing whether a law firm should be disqualified for potential conflicts arising from the work of individual firm lawyers, with *Roberts v. Legacy Meridian Park Hosp., Inc.*, 2014 WL 294549 at *17 (D Or Jan 24, 2014) (unpublished), a local example.

Risk Management Implications

Because in most situations one law firm lawyer’s conflict will be imputed to the firm as a whole, all the firm’s lawyers play a role in avoiding “bad things” happening to the firm as a result of a lawyer’s conflict. Two of the primary tools of law firm risk management loom large in this effort: running thorough conflict checks and routinely using engagement agreements. A Seattle federal court disqualification ruling with Portland overtones offers a telling illustration of both.

In *Atlantic Specialty Insurance Company v. Premera Blue Cross*, 2016 WL 1615430 (WD Wash Apr 22, 2016) (unpublished), a lawyer in the Portland office of a law firm took on a coverage case for an affiliate of a large insurance group in federal district court here. Although the affiliate sent the Portland lawyer “corporate counsel guidelines” containing a list of related companies that included a provision to the effect that representation of the affiliate constituted representation of the entire insurance group, the Portland lawyer did not enter the other affiliates in the firm’s conflict system or send the affiliate an engagement agreement limiting his representation to that specific entity. Later, the firm’s Seattle office took on a separate insurance coverage case in federal court there for a longtime corporate client against another affiliate of the same insurance group. The carrier moved to disqualify the law firm for a multiple client conflict because the Oregon matter was still ongoing. The court in Seattle granted the motion. In doing so, the judge noted that the law firm had both a sophisticated conflict system and standard form engagement agreements - but the Portland lawyer did not take advantage of either. The result starkly illustrates that a firm is more than a loose collection of individual islands.

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FWW is Pleased to Welcome Kelley C. Hodney as a Shareholder

Farleigh Wada Witt is pleased to announce that Kelley Hodney has become a shareholder of the firm. With a background in banking and business, Kelley brings considerable experience and working knowledge in the areas of consumer and commercial law relevant to assisting financial service providers.

Kelley is licensed in Oregon and California and has seen the financial services industry from all angles: she worked on the regulatory side at the Oregon Department of Justice in the Consumer Protection & Financial Fraud Division, the internal and operational side with a national bank, and now the advisor side as a financial services attorney.

Kelley attended law school at Willamette University College of Law. She is currently a member of the Consumer Financial Services Committee of the American Bar Association.

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Around the Bar



Vanessa Triplett Kuchulis

Miller Nash LLP

Attorney **Vanessa Triplett Kuchulis** was recently invited to join the Executive Committee of the Construction Law Section of the OSB. Kuchulis joins Miller Nash construction attorneys Stacey Martinson and Jacob Zahniser who also serve as executive committee members. The Executive Committee helps drive the strategic initiatives of the Construction Law Section, including providing opportunities for attorneys to discuss and learn about the important issues facing Oregon construction law.

Kuchulis focuses her practice on construction defect litigation, real estate disputes, ADA defense and commercial construction contract drafting and negotiation. She represents public and private owners, general contractors, developers and subcontractors on projects that span a wide range of industries, including education, technology, manufacturing, healthcare and hospitality. Kuchulis is active in her community and has served on the Pacific Northwest College of Art Board of Directors, the Oregon Asian Pacific American Bar Association and the Oregon New Lawyers Division Executive Board. She received her law degree from the University of Michigan Law School.



Naomi Haslitt

Partner **Naomi Haslitt** has recently joined the Willamette University College of Law Leadership Cabinet (LC). The

LC is a group of alumni leaders committed to advancing the mission of the College of Law and charged with focusing on cutting-edge issues that impacts the evolution and future of the law school, both in the present and in the years ahead. LC members are appointed by the dean and serve three-year terms.



Eva H. Novick

Foster Garvey PC

Foster Garvey has welcomed **Eva H. Novick** as Of Counsel in the firm's Commercial, IP & Technology Transactions practice in Portland. She joins the firm from the Oregon Department of Justice where she previously served as Senior Assistant Attorney General in the Financial Fraud/Consumer Protection Section and the Civil Litigation Section. Novick will focus on advising business and individual clients on a variety of privacy and data security matters, including in the prevention of data breaches.



Christine Zinter

Bullard Law

Christine Zinter joins Bullard Law's Employee Benefits practice. Zinter arrives with extensive knowledge in the employee benefits field having spent over 20 years working as an employee benefits consultant before obtaining her law degree and a certificate in Health Law from St. Louis University's nationally recognized Health Law Program. Zinter's legal

experience includes serving as a compliance attorney for a Fortune 100 pharmacy benefit management firm specializing in Medicaid and Exchange products, and more recently as an ERISA and employment law attorney for a boutique law firm in Eastern Washington.



Ellen Rall

Hart Wagner LLP

Ellen Rall has joined the firm's medical malpractice litigation team. Prior to joining Hart Wagner LLP, Rall worked for a local small insurance defense firm where she honed her litigation skills. She is a graduate of Gonzaga University School of Law, and is licensed to practice in Oregon and Washington. Rall is a member of the MBA, Oregon Association of Defense Counsel, and Oregon Women Lawyers.

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.

MBA Health Plan Update Open Enrollment Begins March 1

by *Jeff Crawford*
Chair, MBA Group Health
Insurance Board of Trustees



Access to affordable, high-quality health insurance coverage is a unique and valuable benefit of MBA membership. Like other small businesses in Oregon, the cost of health coverage is a significant expense for MBA member firms. Now more than ever, as firms face challenges in recruiting and retaining good employees, the ability to offer access to economical and flexible healthcare is critical.

Since the MBA began offering group health insurance plans to its members in 1985, member participation and plan choices have grown and evolved. The healthcare landscape has also changed dramatically and the cost of health insurance has risen significantly. While the MBA cannot influence healthcare costs, through the collective strength and bargaining power of the MBA group health plan, we can provide access to coverage that is innovative and affordable compared to the offerings available on the open market.

For example, a few years ago the MBA shifted to an underwriting model in which premiums are determined by the age and gender demographics of

the individual firm, in addition to the group's claims experience as a whole. As a result, premium rates are now much more competitive for many member firms.

The MBA's health plans renew on April 1, but new firms can join at any time. This year, the MBA will offer a choice of 15 medical plans, including a full range of healthcare coverage options. The plans, offered by Kaiser and Providence, include many flexible benefit options for premiums, deductibles, and provider networks. Dental and vision coverage is also available. What makes the MBA coverage unique is the ability of member firms to either offer a limited combination of plans from Kaiser and Providence or allow the individual employee access to all of the plans from both insurers. Firms seeking coverage in the open market are usually limited to a single carrier and restricted benefit choices.

In order to participate, an employer must have at least one W-2 employee. We look forward to offering the plan to sole practitioners, as we once did, but for now group plans like ours are only allowed to offer coverage to employers and not to sole practitioners.

Of course, we recommend member firms shop around and explore all of the options available, including the MBA plan. You can view available MBA plans and application information at www.mbabar.org/benefits. Or, contact Tracey Davis or Stephanie Carpentier of Aldrich Benefits, at 503.485.2482.

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Tips From the Bench

Remote Jury Selection: Hope for the Best but Plan for the Worst

by Judge Eric L. Dahlin
Multnomah County Circuit Court

It is my fervent hope that there is no need for you to read beyond this first paragraph. Because that would mean that COVID-19 is under control and there is no need to continue with remote jury selection. But if that hope is not realized, and the Multnomah County Circuit Court is still doing remote jury selection for all trials, or has to resume remote jury selection in the future, this article contains some tips to help make that process run smoother for attorneys.

First, some history. Multnomah County switched to remote jury selection for all trials in October 2021 because of the increase in COVID cases and risks and difficulties involved with having hundreds of jurors in the courthouse for jury selection. The plan was to resume in-person jury selection at the beginning of January 2022 when COVID case counts were expected to have dropped. But then the Omicron variant reared its ugly head. So, after three weeks of in-person jury selection in January (for cases where summonses had already been sent out for in-person jury selection), we switched back to remote jury selection. We will be doing remote jury selection until further orders of the Chief Justice and Presiding Judge.

All signs suggest we will be out of the woods soon, perhaps even by the time this article is published. But we've been down the path before of dropping masking and social distancing requirements, thinking the worst of COVID was behind us, only to have to implement such requirements again. So, it would not be a complete surprise if we had to go back to remote jury selection at some point. If we hope for the best but plan for the worst, we will all be in a better place for handling jury trials if COVID blows up again.

Following are some hints to make remote jury selection more efficient and effective.

Talk to your judge before trial. As soon as your trial judge is assigned you may want to contact the trial judge to talk about logistics and to ask any questions you might have about the judge's preferred practices for remote jury selection, especially if you have not done remote jury selection before. Waiting until the day of trial to talk might be too late to make any needed adjustments.

Use two devices. I strongly recommend that you use two devices for jury selection, with one device set to grid view to see the entire panel at once and one set to stage view so that you



can see whoever is speaking in a larger view. Ideally you would have two full-size monitors for better viewing, but even if you don't have a second monitor, a tablet or smart phone in stage view is sufficient. You will need to log in separately for each device and will also need to turn your camera off and mute yourselves on one of the devices.

Have a plan to track jurors.

One of the biggest adjustments for remote jury selection is learning how to keep track of jurors because they will not always be in the same position on the screen due to the Webex algorithm that re-orders participants' locations. If you are aware of this ahead of time it won't be disorienting, and you can have a plan in place to address it. My simple suggestion is that you take more notes than you would in person so that you can rely on your notes as opposed to going off your memory of where the jurors are sitting like you might do in person. It is possible to lock up to five participants to a location, so you may want to consider locking jurors 1-5 in place so that at least limits the number of people moving around (you will need to re-lock jurors whenever they come back from a breakout room or if they logged off).

One benefit of remote jury selection is that you will be able to take more notes when questioning the jurors, and that might help you do a better job of deciding who to strike. First, because you will be sitting down as opposed to standing, it is physically easier to take notes. Second, taking notes while questioning a juror in-person makes it harder to connect with jurors, and frankly looks bad because the lawyer is not making eye contact. But when the remote juror is talking it does not feel awkward to have the person on the other end of the screen looking down and writing notes, at least in my experience.

Show all names. Make sure to select the option to show the names of everyone in their video box so that you don't have to hover your mouse over a particular person's screen to see the name. You may have to

Continued on page 11

News From the Courthouse



by Bradley Krupicka
MBA Court Liaison Committee

Report from Presiding Judge Judith H. Matarazzo

Judge Matarazzo's goal is to slowly get everyone back to work at the courthouse and figure out systems for moving cases along. There is a backlog of cases that will need to be resolved. She is focused on getting trials out without a reset or with a shorter reset.

Civil Cases Scheduled for March

The court has judges and courtrooms available and is ready to try cases. Civil trials in March do not need to be automatically reset. Trials should go out, especially the two- to three-day trials.

It makes sense for some witnesses to appear remotely. A motion should be filed with the judge, and the rule requires the consent of both parties. The court has heard feedback from jurors who preferred remote witnesses because they could see the person better on the screen and unmasked. The witness boxes in the Central Courthouse are across the room from the jury and are not raised.

The court will continue remote jury selection for 12-person juries as long as social distancing is needed. However, the court anticipates that if the COVID-19 numbers continue to drop, in-person jury selection may resume in April.

The court is looking at new methods of scheduling cases, both initially as well as postponements, and should

have more information next month. Resetting of trials usually involves a trial scheduling conference. The court is working on a form that can be submitted in place of a trial scheduling conference for a stipulated trial set-over that occurs within eight months of the trial date.

Judge Beth Allen is now at the East County Courthouse and will hear a combination of family matters as well as general bench cases. This is a new model for the court. In April, when a new family law judge has been appointed to the bench, Judge Allen will be able to hold three- or four-day civil trials and jurors will be summoned to the East County Courthouse on a weekly basis.

Courthouse Update from Trial Court Administrator Barbara Marcille

The court is seeing the impact of the Omicron variant. In-person jury selection resumed effective January 3, and the court changed back to remote jury selection starting on January 24. Summonses are mailed three to four weeks prior to the jury appearance, so quick pivots are challenging when jurors have been summoned already. Remote jury selection takes longer than in-person selection and there are more technical challenges to contend with. On the other hand, the remote selection process allows the court to have more jurors available than can be accommodated in the jury assembly room in person, and thus can fill more trials through remote selection. And jurors highly favor being able to appear for jury selection from their homes.

In January and early February, the court was heavily impacted by COVID even with social distancing in place, masks required, and most judges and staff fully vaccinated. The court will likely continue to require masks in the courthouses for the foreseeable future. Anyone coming to court is encouraged to wear a three-ply mask, medical procedure mask, or high-filtration KN95 or N95 mask as they are far more effective than cloth masks. The court continues to provide masks if people arrive without them and to encourage people to monitor their health and symptoms and refrain from coming to court if they are ill. If someone is symptomatic, they'll be asked to leave the courtroom.

The court is working with judges and lawyers who have volunteered to provide feedback on the location of the camera setup in the courtrooms. The court's technology team has been testing the camera angles in two Central Courthouse courtrooms to determine the most successful setup to accommodate a hybrid of both remote and in person proceedings.

The CourtSupport Navigator position is currently vacant and the court is feeling the loss of having a friendly, bilingual person staffing the information desk to help the public. The court is working with Volunteers of America Oregon and the Multnomah Bar Foundation to hire a replacement as quickly as possible.

Join a Committee for the Upcoming 2022-23 Program Year Terms Begin this Fall

To volunteer for a committee, complete the online survey at:

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Presiding Judge Judith H. Matarazzo Judicial Profile

by Gloria Trainor
MBA Board

The Honorable Judge Judith H. Matarazzo became Presiding Judge of the Multnomah County Circuit Court in January, after having served since 2006 on the general civil bench. As a long-time Portlander, she is excited about getting started in her new role of service to her beloved city.

Judge Matarazzo was born in Nashville, Tennessee, then lived in various cities in the American South before settling in on the West Coast, in California, with a stint in Heidelberg, Germany between California cities. Judge Matarazzo attended college at Hamline University in St. Paul, Minnesota before moving to Salem, Oregon, where her parents had relocated.

In Salem, Judge Matarazzo met a legislator who was looking for an aide, and he offered her the job. That legislator was former Governor John Kitzhaber, and while serving as his aide was a formative experience for Judge Matarazzo, it was also but a stepping stone. She was inspired by the law and legislative process, and soon enrolled at Willamette University School of Law, where she earned her JD.

While in law school, Judge Matarazzo met her husband of 35 years, Harris, on a blind date arranged by a mutual friend. A native to Portland and lover of the Rose City, Mr. Matarazzo convinced his wife to purchase a home on the very street on which he was raised. Together, they raised their only son, Harrison, there. Now an adult, Harrison - who clearly inherited his mother's love of travel - worked for a major airline and visited dozens of international cities before deciding to live and work in Bangkok.

I had the pleasure of interviewing Judge Matarazzo recently, by Zoom of course, as the Omicron variant had not yet begun to wane at the time of our meeting. The judge was warm,



Hon. Judith H. Matarazzo

approachable, and generous with her time, despite having just assumed the busy role of Presiding Judge. I asked her if she was ready for the challenge that lay ahead. She answered the question with enthusiasm and optimism. With 18 Multnomah County Circuit Court Judges having been on the bench for fewer than five years each, Judge Matarazzo said she looks forward to a legacy of leadership and innovation and making sure the judges she supervises find joy in their assigned work. Not an easy task, as she also simultaneously leads the court through and hopefully out of a steady two years of pandemic ups and downs.

Judge Matarazzo was also clear about her intent to ensure that the commitment to procedural justice stays at the forefront of the court's concern. Trust is the foundation of our Democracy, she said. Judge Matarazzo's goal is to preside over a court that offers respect and an opportunity for all litigants to be truly heard. If this commitment is absent or overlooked, she noted, the detriment to the community is deep.

When she's not at the courthouse, Judge Matarazzo is likely to be jet-setting or planning her next trip. As an avid traveler, she is just as energized by exploring domestic destinations as she is the far reaches of the world.

We the People Competition

by Tyler Volm
MBF Board

On January 22, students from high schools across the Portland metropolitan area participated in Classroom Law Project's (CLP) "We the People: The Citizen and the Constitution" regional competition. At stake was a chance to advance to the state finals on February 5. Students prepared oral testimony in response to several different constitutional questions in a simulated congressional hearing. Students then fielded follow-up questions from the judges.

After serving as a judge for the afternoon session, I am pleased to report that the future is bright. Students were well-prepared, well-spoken, and comfortable with the constitutional principles. For many of the participants, CLP provides their first exposure to the legal profession and its core constitutional principles. To be sure, there were some nerves on both sides of the screen, but once the students settled in, it was nothing short of inspirational.

CLP is a nonprofit organization of individuals, educators, lawyers and civic leaders that brings vital and engaging civics education programs into Oregon schools, teaching students at all grade levels the values and skills essential to participating in our democracy. Working with over 900 teachers and other volunteers, the program reaches more than 110,000 students across Oregon, helping prepare them to become (or in many cases remain) active, engaged, and informed participants in our democratic society. Other CLP programs include Mock Trial, the Law Day Conference for Students, courthouse experience tours, and other programs that make the legal system more accessible and approachable.

"Across all of our programs, our goal is to provide students with realistic, hands-on experiences that demonstrate how our democratic process, legal system, and government are designed to work," notes Erin Esparza, CLP's Executive

Director. "We the People" provides an amazing opportunity for them to learn how to engage in constructive civic dialog, how to speak with respect for opposing points of view, and how to advocate for their own views with conviction and clear thinking."

Late last year, on behalf of the Multnomah Bar Foundation, I had the opportunity to testify in front of the Oregon legislature regarding the importance of these programs. It was delightful to share my firsthand experience of how a group of attorneys from Davis Wright Tremaine took my senior civics class from Grant High School, and transformed many of us into contemplative, engaged citizens. Over the course of those six months, the attorneys worked patiently with us, taking the time to work through the principles, but also exposing us to the practice of law, professionalism, and their snack cabinets. Ultimately our start-up team ended up just missing out on a trip to nationals, taking second at the state competition that year to a perennial powerhouse. Students had the chance to opt-out of this senior class. None did, and we were all better for it. While we were disappointed we were not continuing on to Washington DC, I understand more and more every year, that just by participating in the program, we had all won.

Participating in the CLP program solidified my desire to become an attorney, developed my advocacy and public speaking skills, and introduced me to mentors like Tim Volpert, our



Multnomah Bar
Foundation

unit's coach back in 2001. Tim and I met up on the steps of Grant High School 13 years later to celebrate the success of the program, including its first national championship of many for the Grant Generals.

In recent years, our democracy has been tested like few times before. As the CLP homepage reminds us: "The best way to preserve democracy is to teach democracy." To those who have volunteered, to those who will surely volunteer after reading this article, and to the staff at CLP, thank you for all you do in defense of our democracy and in training the next generation



Shelley Larkins, co-founding coach of the Grant WTP team, Tyler Volm and Tim Volpert, Grant High School, 2014

to do the same. If you find yourself in need of reassurance of the strength of our democratic fiber, inspiration from the next generation, or a gentle reminder of key constitutional principles and can't find your Chemerinsky treatise, CLP is always looking for judges, coaches, and other volunteers. For more information on CLP programs, events, and volunteer opportunities, or to make a donation, please visit www.classroomlaw.org.

Tips From the Bench

Continued from page 10

select this option each time you join Webex (though by the time you read this article Webex may have changed its settings to make this the default option, or at least will make your selections stick so you don't have to reset each time you join).

Hide participants with cameras off. Be sure to change your settings to "hide participants with cameras off" so that you are not wasting space on your screen with non-jurors who have their cameras off, such as the clerk and observers.

Be prepared for 24 jurors on screen. I recommend that judges shoot to have at least 24 jurors per panel, after excusing any jurors for hardship, to

increase the chance of selecting a jury from one panel for civil cases and misdemeanors, and to increase the chance that for felony trials only two panels will be needed. Webex can show a maximum of 25 people on one screen, so this would mean that everyone but the person speaking will need to have their camera off in order to show all 24 jurors on the same screen. That includes the judge turning off their camera while an attorney is asking questions. If the jurors are using stage view, as I recommend, so that they can see the person speaking in a larger view they are not going to be able to see all the other participants anyway, so it doesn't matter if a non-speaker has their camera off. Considering that in-person jury selection requires managing up to 40 jurors per panel, 24 remote jurors is quite manageable.

Think "TV show" instead of "play." The difference between remote and in-person jury selection is like the difference between a TV show and Broadway play. In a play, it is natural when an actor is loud and uses exaggerated body language, but on TV wild hand gestures and loud tone can be jarring. So be aware of the medium you are using. Also, it is distracting when a person leaves the screen, so be sure to have everything you need within arm's length so you don't need to leave the screen.

Every word should be part of a question. It is important to get the jurors talking, so almost every word that comes out of a lawyer's mouth should be part of a question. The lawyer shouldn't make long-winded statements or spend time trying to explain

various court processes. That is true for in-person selection but seems especially important for remote. Remote jury selection can be more intimate and robust than in-person jury selection because jurors may feel more relaxed and comfortable being at home and may not feel awkward talking in front of strangers because it doesn't feel as if others are around. But this requires the lawyers to draw them out with good questions.

Remote jury selection is a good option. For those who are concerned, or even fearful, about remote jury selection, I used to share your concerns. But I will say that after having recently selected seven juries using fully remote means, as well as selecting three other juries with jurors masked and socially distanced, remote jury

selection is a good substitute to regular jury selection. In fact, in my opinion, remote selection is better than the alternative of in-person selection with socially distanced and masked jurors because you can see the jurors' full faces close up as opposed to seeing just a tiny, unmasked portion of their faces from a distance. I've also found that remote jury selection gets better and more natural for all involved each time we do it, and that the attorneys are adapting quite well to this new reality (even those who initially expressed concern). So even though I hope we are back to regular jury selection soon, remote jury selection is a good way to keep the wheels of justice moving for now.

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!

YLS Director Nominees

The YLS Board has approved a slate of three director nominees to join the board for a three-year term beginning June 1.



A.C. Estacio-Heilich

A.C. Estacio-Heilich is a graduate of Lewis & Clark Law School and was admitted to the OSB in 2018. A.C. is an associate in the Portland office of Lewis Brisbois and a member of their labor and employment group.

A.C.'s involvement with the YLS began when she joined the CLE Committee in 2018. She joined the YLS Membership Committee in 2020, where she serves presently as co-chair. A.C. is also Director At-Large on the board of the Oregon Filipino American Lawyers Association.



Wilson Jarrell

Wilson Jarrell earned his JD from the University of Oregon School of Law and was admitted

to the OSB in 2018. He practices employment law at Barran Liebman LLP.

Wilson joined the YLS Service to the Public Committee in 2018, and presently serves as co-chair. Outside of his MBA involvement, Wilson serves on the board of the Oregon Chapter of the Federal Bar Association.



Christine Sargent

Christine Sargent attended Lewis & Clark Law School, receiving her JD and joining the Oregon bar in 2017. She practices employment law at Littler Mendelson PC.

Christine's earliest participation with the YLS was a two-year term on the CLE Committee beginning in 2017. She later joined the YLS Membership Committee, and served as co-chair for the 2020-21 program year.

In addition to her MBA involvement, Christine serves as Vice Chair of the Employment Law Practice Group at the Oregon Association of Defense Counsel. She is also a member of both the Associates Committee of the Campaign for Equal Justice and the Gus J. Solomon Inn of Court Executive Committee.

Kaith Sheikhly
YLS Member Spotlight

by Peter Tran
YLS Board Secretary

Before starting his business law firm in Oregon, Kaith Sheikhly lived in various states and countries, including Iraq, Jordan, the United Arab Emirates, Oregon (previously), and California. Kaith attended Portland Community College and Portland State University for his undergraduate studies. Kaith's education continued in Portland at Lewis & Clark Law School. After graduating from law school, Kaith worked at an investment bank in Los Angeles before returning to Oregon.

Kaith's legal career began when he started clerking at the Multnomah County Circuit Court. Kaith served as a "floater clerk" for most of his two-year clerkship, clerking for various judges and thereby gaining experience in a variety of practice areas and developing

working relationships with many judges. Kaith's experience as a clerk allowed him to gain insight into how everyday people are affected and impacted by the court system. After Kaith's clerkship, he assisted clients with landlord-tenant matters while working as an attorney at a national law firm.

Kaith's diverse life experiences and legal experiences compelled him to open his own law firm in the midst of the COVID-19 pandemic, as he witnessed first-hand how many individuals, particularly immigrants and diverse communities, often navigate legal issues without legal representation. Kaith has taken it upon himself to be an advocate for underserved communities, including recently putting on a landlord-tenant webinar, providing information

about tenant rights, aimed at Arabic speakers. Kaith's desire to assist underserved communities also underlies his involvement with the YLS Membership Committee, where he has helped with projects targeted at serving diverse demographics.

Kaith's experience with the YLS Membership Committee has been a positive one. He has worked with other committee members to put on a successful toy drive to benefit the Immigrant & Refugee Community Organization. He helped to publicize and volunteered as a representative of the YLS Membership Committee at monthly Arab American Cultural Center of Oregon food drives. Kaith has also been grateful to have the opportunity to provide a different perspective and lens on other committee events.

Aside from Kaith's involvement in the legal community, he enjoys watching movies (especially Marvel films), working out, hiking and generally exploring Oregon, and rooting for the Portland Trail Blazers.

Young Lawyers Section Upcoming Spring Series

CONSUMER LAW

A series of seminars exploring what you need to know about consumer law. Seven hours of practical skills MCLE credit and two hours of Access to Justice MCLE credit will be applied for in total. To register for individual classes, please register at www.mbabar.org/cle.

Date/Time: Nine weekly seminars from 12-1 p.m. beginning Thursday, April 7.

Location: Remote attendance only via Zoom.

Cost: \$135 for members (or \$30 per individual seminar); non-members \$225 (or \$45 per individual seminar). See flyer for details.

Oregon Unlawful Trade Practices Act | Thursday, Apr. 7

Consumer Credit | Thursday, Apr. 14

Debt Collection - Protecting Clients and Yourself | Thursday, Apr. 21

Bankruptcy | Thursday, Apr. 28

Data Privacy and Identity Protection | Thursday, May 5

State & Federal Enforcement of Consumer Protections | Thursday, May 12

Landlord-Tenant Law | Thursday, May 19

(One hour of OSB MCLE Access to Justice credit will be applied for)

Financial Abuse of Vulnerable People | Thursday, May 26

(One hour of OSB MCLE Access to Justice credit will be applied for)

Attorney Fees | Thursday, Jun. 2

Register at www.mbabar.org/cle

mba yls | EVENT

Speed Networking
Thursday, March 24
6-7 p.m.

Prepare your elevator pitch and come ready to take part in a structured and fast-paced networking event allowing participants to interact with one another in a series of brief informational exchanges. Conversation topics will be provided in advance with participants free to engage wherever the conversation takes them. Registration is free.

Register at www.bit.ly/YLSSpeedNetworking

What Happened After the February 2020 Bar Examination

by Brittan Spencer
YLS CLE Committee Member

In February 2020, I sat for the Oregon bar exam, but what no one knew at the time was this would be the last traditional bar exam in the state and nation for at least the next 24 months (and possibly the foreseeable future). Nationwide, the tradition in each jurisdiction is to offer an in-person exam in February and July, but due to COVID-19 and the subsequent shutdown in March 2020, jurisdictions had to re-examine their testing and licensing procedures.

Now two years later, I thought it would be interesting to summarize, through the accompanying tables below, how not only Oregon, but our neighboring jurisdictions (Washington, California, Idaho, and Nevada), have approached the exam and licensing.

As a little background, the Uniform Bar Exam (UBE) is an exam provided by the National Conference of Bar Examiners and 41 jurisdictions have adopted the UBE (including Oregon). One

of the benefits of passing a bar exam in a UBE jurisdiction is a portable score that allows you to seek admission to another UBE jurisdiction within a certain time after the UBE score was earned. Oregon shares its borders with two of the nine jurisdictions that administer their own bar exam, California and Nevada.

Starting in July 2020, jurisdictions across the country participated in various testing/licensing accommodations including in-person (with limited seating), remote, and off-cycle examinations, in addition to offering diploma privilege, and lowering passing scores.

Remote examinations presented their own set of challenges such as issues with the facial recognition software and overall issues with the exam software during the exam. These issues resulted in loss of testing time, unnecessarily increased stress and anxiety, and in some extreme cases, applicants were

unable to finish the exam or had to use/buy another computer due to unresolved technical issues.

The momentum of diploma privilege initially started in Wisconsin and many jurisdictions voted on it as a licensing option once it became apparent that administering an in-person exam during the height of a pandemic would not be a good option.

Generally speaking, jurisdictions that offered diploma privilege did it solely in 2020, and in order to apply for it you had to meet a narrow set of qualifications which included being a 2020 law school graduate who had applied for the July 2020 exam, and had graduated from a law school that had a certain bar exam pass rate (in Oregon's case, 86%) in 2019.

Although many jurisdictions are returning to in-person exams in 2022, there is still nothing traditional about it. Limited seating, proof of COVID-19 vaccination or a negative test, and double masking make the preparation and execution of a difficult exam that much more stressful. I am grateful for my stroke of luck on the timing of my exam, applaud the jurisdictions on adapting and overcoming to provide options, and commend all the applicants who navigated the new parameters and didn't give up!

OREGON – UBE				
MONTH/YEAR	EXAM FORMAT	TAKERS	PASS %	NOTE
July 2020	In-Person (limited seating)	210	93%	Diploma privilege offered; passing score lowered from 274 to 266
October 2020	Remote	71	68%	Not considered a UBE exam and passing applicants could only apply for licensure in Oregon
February 2021	In-Person	132	64%	
July 2021	In Person	370	79%	Passing score permanently lowered to 270
February 2022	In-Person (limited seating)	TBD	TBD	

WASHINGTON – UBE				
MONTH/YEAR	EXAM FORMAT	TAKERS	PASS %	NOTE
July 2020	In-Person	71	86%	Diploma privilege offered; passing score lowered from 270 to 266
September 2020	In-Person	37	38%	Diploma privilege offered; passing score lowered from 270 to 266
February 2021	Remote	209	63%	Passing score lowered from 270 to 266
July 2021	Remote	653	74%	Passing score lowered from 270 to 266
February 2022	In-Person	TBD	TBD	Passing score reinstated to 270

IDAHO – UBE				
MONTH/YEAR	EXAM FORMAT	TAKERS	PASS %	NOTE
July 2020	Remote	117	77%	No diploma privilege
October 2020	Remote	27	29%	Not considered a UBE exam and passing applicants could only apply for licensure in Idaho
February 2021	Remote	Unknown	63%	
July 2021	In-Person	Unknown	66%	
February 2022	In-Person	TBD	TBD	

CALIFORNIA – NOT UBE				
MONTH/YEAR	EXAM FORMAT	TAKERS	PASS %	NOTE
July 2020	No Exam	N/A	N/A	No diploma privilege
October 2020	Remote	8,723	61%	
February 2021	Remote	3,098	37%	
July 2021	Remote & In-Person	7,536	53%	
February 2022	In-Person (limited seating)	TBD	TBD	

NEVADA – NOT UBE				
MONTH/YEAR	EXAM FORMAT	TAKERS	PASS %	NOTE
July 2020	No Exam	N/A	N/A	No diploma privilege
August 2020	Remote	304	64%	No MBE administered
February 2021	Remote	Unknown	60%	No MBE administered
July 2021	In-Person	Unknown	62%	
February 2022	Remote	TBD	TBD	No MBE will be administered

Joan Snyder: Giving Back Through Pro Bono Work Pro Bono Spotlight

by Tiffany Blackmon
YLS Pro Bono Committee

While many people focus their retirement planning on financial matters, Joan Snyder has included planning ways to give back and stay involved in the legal community as she heads toward retirement. Joan has been an environmental and insurance coverage lawyer for 35 years at Stoel Rives LLP. She is currently Senior Counsel with the firm, and she is transitioning to serving as an arbitrator and mediator.

As she began decreasing her workload during semi-retirement, Joan wanted to spend more time giving back. Legal Aid Society of Oregon (LASO) has many different legal volunteer opportunities, and Joan became a volunteer with the Housing Clinic. She was initially a little worried that she may not know how to handle housing cases due to her lack of experience with housing law. However, there was no need to be worried. Joan attended LASO's online training and had access to LASO's online resources. LASO sends updates to volunteers regarding any changes in landlord/tenant law and staff lawyers are available to consult with volunteers.

A typical Housing Clinic case only requires five to 10 hours of volunteer work. Volunteers communicate with clients by phone and email to gather the facts and prepare a response to an eviction notice. They review the draft with the client, and complete their work on the response, and their role in the case is typically concluded at that point. There is no minimum time commitment for volunteers, and they can decide when they take on new cases.

Joan shared that she has found her volunteer work with the Housing Clinic to be very rewarding. She has helped clients get the time they needed to obtain other housing, to raise habitability issues that resulted in the landlord replacing non-functioning stoves and heaters, and helped prevent clients from losing their housing. One particularly rewarding moment Joan recalled was when a client told her that her disabled son finally felt like someone had his back.

Joan now also volunteers with the CLEAR Expungement Clinic at PCC's Cascade campus. At the Expungement Clinic, she helps individuals who qualify under



Joan Snyder

the Oregon Expungement Law complete the paperwork to remove prior offenses from their records. She has found the work to be very rewarding, as she has been able to help individuals erase records that were limiting their employment and other opportunities.

Volunteering has fit well in Joan's life as she has shifted to semi-retirement, and she plans to continue volunteering as long as she can. The ability to volunteer virtually has also enabled her to help clients all over Oregon. She encourages other lawyers heading toward retirement to consider volunteering. Retired lawyers can become Active Pro Bono members, which allows them to continue volunteering with OSB Certified Pro Bono Programs like LASO. You can find information about Active Pro Bono status and OSB Certified Pro Bono Programs on the OSB website, www.osbar.org.

THE NEW AGE OF SPORTS YLS CLE

Friday, March 11
2-3 p.m.

\$30 for MBA members | \$45 non-members
1 hour of general OSB MCLE credit
Remote attendance only via Zoom

Whether it's the growing debate about justly compensating student-athletes, the expansion of legalized sports betting, or the growing tension between professional player unions and the major sports leagues, the world of sports is currently undergoing rapid change. This course, intended for a general audience, will provide a practical overview of the tensions surrounding the NCAA and name, image, and likeness questions, the employment status of student-athletes, the future of sports betting, Portland Thorns' Olivia Moultrie's fight against the National Women's Soccer League, and the emergence of athlete non-fungible tokens. Join **Anthony Blake**, Stoel Rives LLP, and **Max Forer** and **Nic Mayne** of Miller Nash LLP as they offer insights into these issues that are transforming the sports arena, just in time for the NCAA's March Madness tournament.

Register at www.mbabar.org/cle

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.

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by Amy SantaMaria
Vice President and Wealth Advisor
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Amy SantaMaria is a Vice President and Wealth Advisor for Columbia Bank Wealth Management, serving Southwest Washington and the Portland Metro markets. SantaMaria's expertise spans wealth management, financial planning, investment management and strategies for wealth transfer. She can be reached at 360.906.4289 or asantamaria@columbiabank.com.

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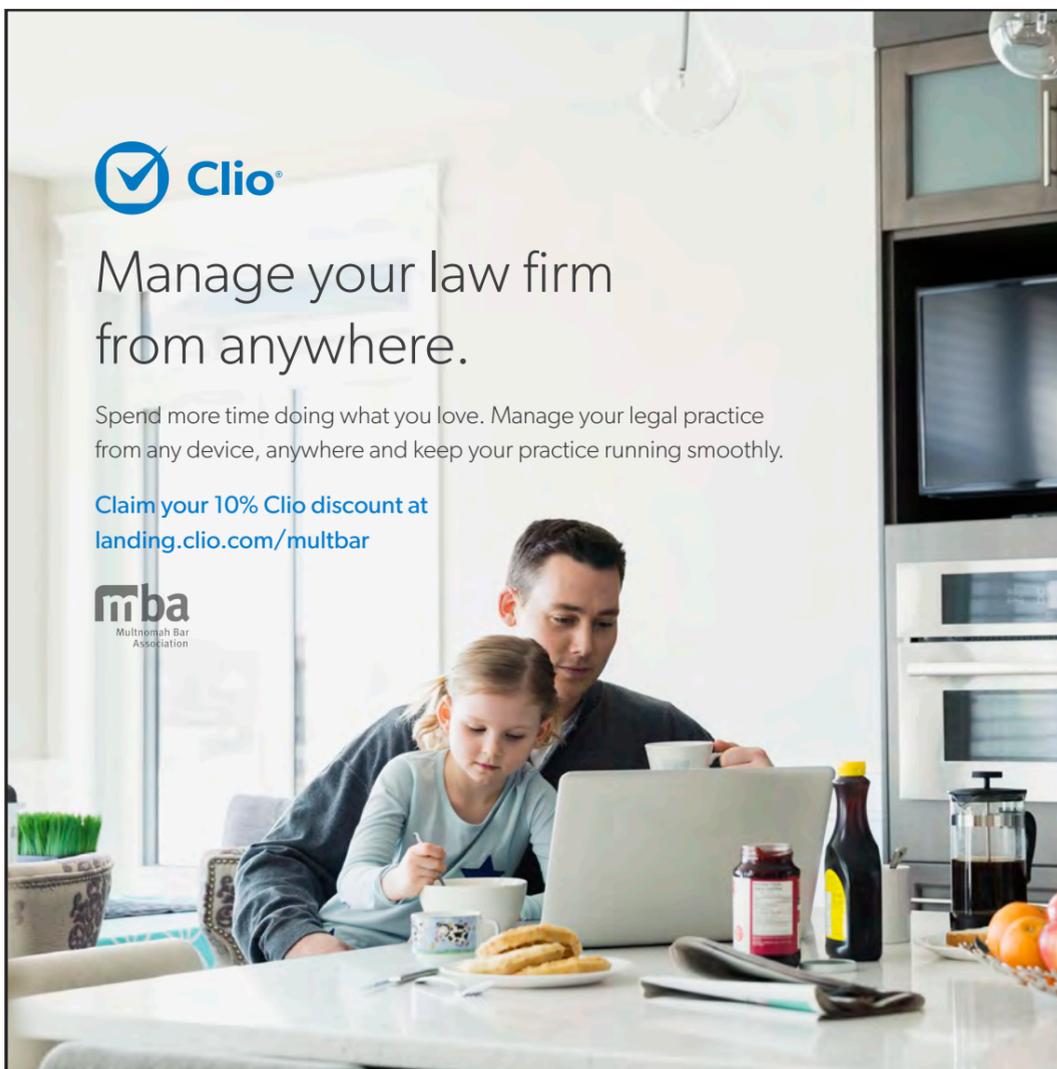
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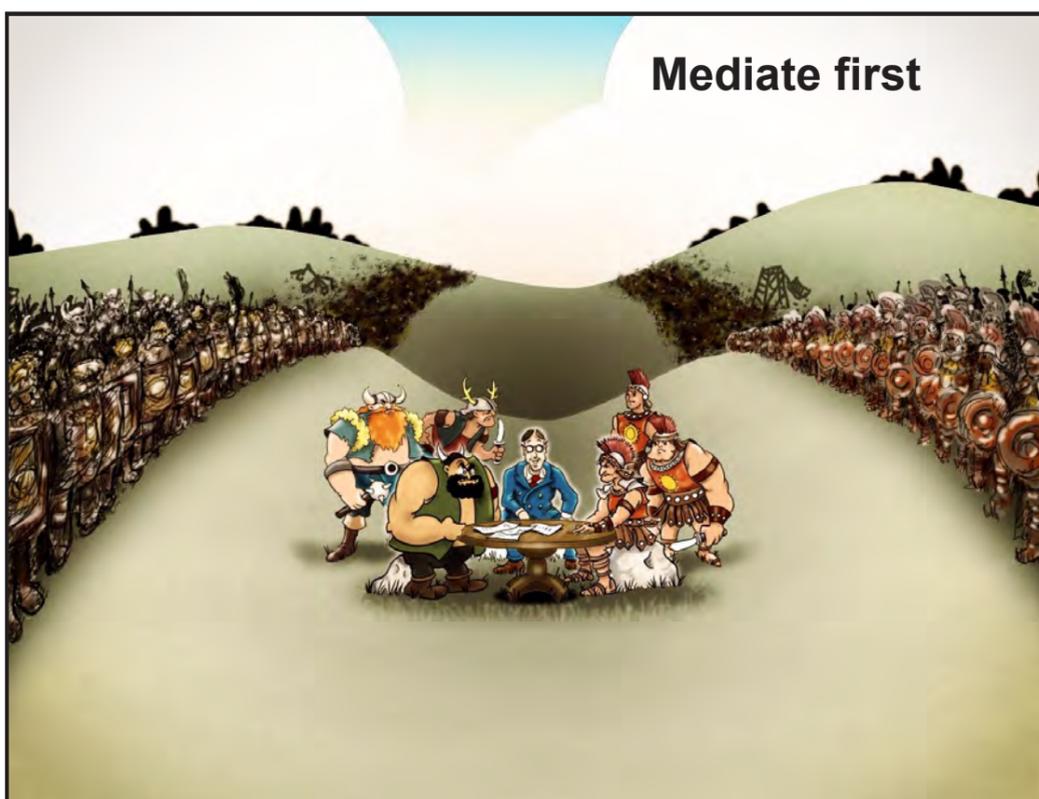
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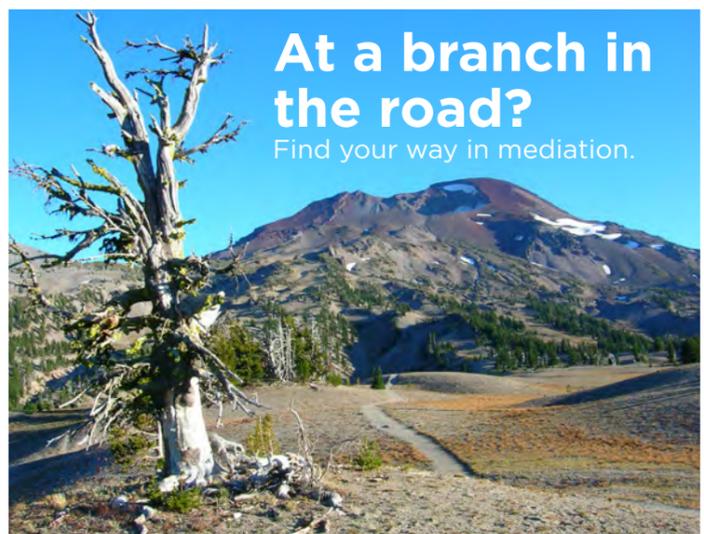


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The Corner Office PROFESSIONALISM

Lawyer Wellness, Part 2 Spotting Substance Abuse Problems and What to Do

The February “Corner Office” article examined professionalism concerns as they apply to lawyers with potential mental health issues. Now we turn to potential substance abuse challenges causing a lawyer to fail to fulfill professional responsibilities.

Is this a problem?

Substance abuse has been and continues to be a significant problem among lawyers. Most of the research has taken place prior to 2020 and emerging data suggest that the professional, social and family disruptions of the last two years may well have exacerbated these challenges.

For years Oregon has ranked near the top of states with the highest rates of drug and alcohol addiction and remarkably, at the same time, Oregon stubbornly remains near the very bottom nationally in access to recovery services. Even more concerning, over the last decade the trend has been for recovery treatment programs to close and not reopen. So, rates of addiction are rising, and treatment resources are becoming more difficult to access.

Additionally, current surveys of individuals and treatment programs report that during the last two years, more and more people have moved from substance abuse to addiction due to the myriad of problems exacerbated by the pandemic. In 2020, annual Oregon deaths caused by overdose rose by a staggering 70%.

Oregon lawyers are not exempt from substance abuse trends which poses a significant potential for harm to the struggling individuals themselves, and to individual clients, communities, government, economy, and society. Prior to 2020, depending on how survey participants were asked the questions, somewhere between 21-36% of attorneys were problem drinkers. In one of the few substance abuse studies specifically involving lawyers, men and younger lawyers were found most impaired with the lower rate of older and other gender identified lawyers bringing the rate of impairment down to 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking. *Journal of Addiction Medicine: January/February 2016 - Volume 10 - Issue 1 - p 46-52.*

So, of the more than 3,700 members of the MBA, from 900 to over 1,300 of us may be struggling with substance abuse. Drugs and/or alcohol may be impairing our judgment, abilities, and performance of our professional obligations.

For all practicing lawyers and judicial officers, we have personal and professional obligations that are triggered when we encounter an impaired member of our profession. The signs include:

- Chronic unexplained lateness in responsiveness, work product, discovery

- Repeated late appearances in court or meetings
- Conflictual behaviors which are out of context or exaggerated in response to the situation with unusually high levels of frustration and anger
- Changes in behavior from an attorney known to you
- Lack of personal hygiene, looking disheveled and out of place
- An improper outlook on drugs and alcohol

What are your professional obligations when encountering a colleague demonstrating some or all these signs and symptoms? Rule 8.3 states:

“A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s...fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.”

“Knows” is defined in Rule 1 as denoting “actual knowledge of the fact in question.... A person’s knowledge may be inferred from the circumstance.”

Frequently, your level of knowledge may not raise to the “knows” standard, but your radar tells you something is amiss - especially when you have had previous encounters where such signs were not present. Reach out. A direct

conversation may open a door to action. The Oregon Attorney Assistance Program (OAAP) (503.226.1057) can help you craft your message and give your ideas for suggestions.

The February “Corner Office” gave an excellent description of the OAAP and its services. But given the increasing need for substance abuse help in the legal community, some information bears repeating.

The OAAP can provide short-term confidential counseling, support, and referrals for all members of the legal community. It can be accessed 24 hours a day, seven days a week, whether you’re concerned about yourself or someone else. To protect confidentiality, the OAAP offices are not located in the OSB Center. Your contact with the OAAP cannot be disclosed to the PLF or to discipline. (There are two statutory exceptions to confidentiality, one for a threat to personal safety and one for child and elder abuse.)

When you call concerned about another lawyer, an attorney/counselor will help to strategize how best to help. Your identity will not be disclosed to the potentially impaired lawyer. You can be coached on how and when to talk to the affected lawyer yourself, or a plan will be made for OAAP to make the contact. To protect

confidentiality, the OAAP will not follow up with concerned colleagues after making contact with the lawyer.

OAAP Attorney Counselors work with people experiencing myriad challenges. Sometimes people are looking for strategies to continue thriving professionally, some to access support for family distress or a traumatic event. If a person is experiencing a mental health or substance abuse crisis, the OAAP can work with that person to develop a plan to help. In addition to individual and group services, the OAAP helps to connect lawyers, judges and law students to community resources, treatment, and other appropriate services.

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



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Assistant Disciplinary Counsel - Litigation

The Oregon State Bar is looking for someone to provide counsel to the Bar in the evaluation, investigation, and litigation through trial of ethics complaints made against Oregon lawyers.

Visit www.osbar.org/osbcenter/openings.html for job details.

Equal Opportunity Employer

Legal Publications Research Editor

The Oregon State Bar is looking for someone to provide legal analysis, editing, research, and cite checking services to ensure the quality and legal accuracy of a library of over 40 comprehensive legal reference books and complementary products.

Part-time position - 20 hours per week - this is not a remote position

Visit www.osbar.org/osbcenter/openings.html for job details.

Equal Opportunity Employer

Member Services Specialist

The Oregon State Bar is looking for someone to provide detailed administrative and planning functions working directly with committee and section volunteers, Oregon New Lawyers Division (ONLD) leadership, and the Member Services Department.

Visit www.osbar.org/osbcenter/openings.html for job details.

Equal Opportunity Employer

OAAP Attorney Counselor

The Oregon Attorney Assistance Program (OAAP) is hiring a full-time attorney counselor to join its unique, well-established, and nationally recognized program. The OAAP is a free and confidential service providing assistance to all members of the Oregon legal community with well-being, personal challenges, and crisis support. As an attorney counselor, you will have the opportunity to make a meaningful and lasting contribution to the Oregon legal profession. We offer a competitive salary and an excellent benefits package, including participation in the Oregon PERS/OPSRP retirement program, health insurance, and other benefits. This position is based at the OAAP office in Portland with a hybrid remote work setup and requires travel throughout Oregon when COVID restrictions are lifted. For details about this position and to apply, we invite you to visit www.osbplf.org > About > Job Opportunities > Attorney Counselor.

Executive Director

Youth, Rights & Justice, an innovative nonprofit law firm based in Portland, Oregon, is seeking its next Executive Director. \$125-150k plus excellent

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