



Thank You for Supporting the Multnomah Bar Foundation

by Joseph L. Franco
President, Multnomah Bar Foundation

full year following the end of COVID-19 emergency declarations, I am happy to announce that all three of the MBF's programs are once again in full stride.

The MBF's mission 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." With that mission in mind, I would like to take stock of the progress we have made with the MBF's CourtSupport, CourtConnect and Multnomah CourtCare programs this year, and give special thanks to just some of those who were instrumental in making that progress happen.

CourtSupport provides the Central Courthouse with a bilingual Navigator who staffs the information desk and provides a critical service to the public by answering questions about the court, connecting individuals with needed services or accommodations at the courthouse, and making their experience more welcoming and less intimidating. The Navigator's service to those visiting the courthouse is only possible through your generous support, because there is no funding for the position in the judicial department budget. Along with several members of the judiciary, past MBF Presidents Matt Donohue, Nick Kampars and Jen Wagner were instrumental in developing this program. Their efforts culminated in an initial fundraising campaign led by Jen Wagner in 2020 that - in the midst of uncertainty during the first year of the pandemic - was nevertheless able to raise over \$170,000. Past MBF President Mackenzie Hogan also deserves thanks for helping to hire the initial Navigator and launching the program during his term.

This year, the MBF unveiled a plaque at the courthouse memorializing those who generously contributed to the 2020 CourtSupport campaign. Additionally, 2023 was the first full year in which the MBF expanded the Navigator position to full time.

CourtConnect pairs lawyers and judges to visit community groups and present information about the court system and the rule of law in an effort to forge a better connection between the community and legal profession. In conjunction with CourtConnect, on August 11, Judge Rima Ghandour and Judge Morgan Wren Long held a noontime presentation for the staff of the Immigrant and Refugee Community Organization (IRCO). Many IRCO staff

...in the midst of uncertainty during the first year of the pandemic [the CourtSupport fundraising campaign] was nevertheless able to raise over \$170,000.

attended the presentation live and the presentation was recorded so that IRCO could share it with those whose schedules prevented them from participating in real time. Also, on August 29, CourtConnect - along with Judge Chanpone Sinlapasai, Judge Angela Franco Lucero, and MBF Director Judge Amy Holmes Hehn - brought together members of the bench and bar, consuls and other high-ranking representatives from the Consular Office of Japan in Portland and Consulate of Mexico in Portland, the Japanese American Society of Oregon, Japanese Women's Association, Business Oregon, Partners in Diversity, and Senator Kayse Jama's office for a guided tour of the Central Courthouse followed by a lunch gathering. These are just two examples of CourtConnect's activities in the community, and they would not have been possible without the support of our judiciary and the MBF Public Outreach Committee.

Multnomah CourtCare is the MBF's best known program and holds a special place in the hearts of many of our donors. CourtCare improves access to justice by making free, drop-in childcare available for families who have business at the Multnomah County Central Courthouse. This long-standing program was particularly hard hit by the COVID-19 emergency, which caused many childcare workers to leave the workforce. The MBF and its partner, Volunteers of America, initially struggled to fill the CourtCare positions following the opening of the new Central Courthouse. But by July, the MBF was able to re-open CourtCare with a total of three childcare staff, rather than the two staff CourtCare employed prior to the COVID-19 emergency. This additional investment will allow for greater staffing flexibility and continuity, and enable us to continue to provide this essential service to children and their families. I want to give special thanks to Immediate Past President Victoria Blachly who headed a newly-formed CourtCare task force this year, which was instrumental in getting CourtCare back to serving children and their families.

Most of all I would like to thank you, the members of our legal community and other donors, because the MBF's work is only possible because of you. As I close out my term as MBF President, thank you for your generous support of the MBF in 2023!



mba | CLE

See details on p. 3. To register, visit www.mbabar.org/cle and input your OSB number to register at the member rate.

DECEMBER

12.6 Wednesday
Landlord/Tenant Law Update
Marcel Gesmundo
Emily Rena-Dozier
Leah Sykes

12.12 Tuesday
Ethical Use of Technology: Obligations and Opportunities
Amber Bevacqua-Lynott
Dallis Nordstrom Rohde

12.14 Thursday
Summary Judgment
Wilson Jarrell
Adam Starr

JANUARY

1.18 Thursday
Annual Probate Update
Judge Patrick Henry
Judge Susie Norby
Judge Janelle Wipper
Amy Cross-DeHaven
Jeff Petty

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2024 MBA
Membership**
at
www.mbabar.org



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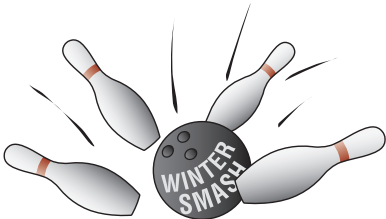
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SAVE THE DATE!

MBA 20th Annual WinterSmash

A Family Friendly Bowling Event
**Saturday, February 10
10 a.m.-1 p.m.
KingPins
3550 SE 92nd Avenue
Portland**



*A Multnomah Bar Foundation Fundraiser for
CourtCare, CourtConnect and CourtSupport*

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DEADLINE for copy: The 10th of the month*
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*or the preceding Friday, if on a weekend.

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LASO Pro Bono Month Clinic a Success

by Brett Cattani
Legal Aid Services of Oregon

Legal Aid Services of Oregon (LASO) was excited to host a free civil legal clinic October 12 in recognition of ABA Pro Bono Celebration month. The clinic was held in East Portland at the Rosewood Initiative. LASO prescreened and scheduled clients for clinic appointments in the areas of Family Law, Criminal Expungements, and Housing. Volunteer attorneys provided legal consultations onsite, and many offered continued assistance following the clinic. Subject matter experts were available on site to provide support to both clients and volunteers.

We want to extend our heartfelt appreciation to all the dedicated pro bono attorneys who participated in this clinic. Your willingness to contribute your time and expertise made a significant difference in the lives of those seeking legal assistance. A big thank you to all those who supported the October Pro Bono Month Clinic.

Alex Hutchinson, Miller Nash LLP
Sarah Flanagan, Intel
Joshua Stadtler, Dunn Carney LLP
Kevin Sasse, Dunn Carney LLP
Joshua Stump, Dunn Carney LLP
Sarah Liljefelt, Dunn Carney LLP
Tiffany Davidson, Tiffany Davidson Attorney at Law PC
Jeannine Ferguson, Attorney at Law
Diane Nguyen, Legal Aid Services of Oregon

Thank you for your strong support of LASO’s pro bono projects and commitment to pro bono service. Together we are increasing access to justice and helping to bridge the gap for those in need.

For those who may be interested in participating in a future clinic, please consider doing so. Email probono@lasoregon.org or visit www.probonooregon.org for information and upcoming opportunities.

Bench Bar & Bagels

On November 16, members of the MBA and judiciary gathered at Tonkon Torp LLP for the 14th annual Bench Bar & Bagels event. In a relaxed atmosphere, attorneys and judges started their day by catching up with colleagues and making new acquaintances over pastries and coffee.

Bench Bar & Bagels was generously sponsored and hosted by Tonkon Torp.



Judge Andrew Lavin, Mandie Bowers and Judge Jenna Plank



Judge Melvin Oden-Orr and Leslie Boro

Calendar

DECEMBER

1-31 MBF Year-End Appeal
Details on p. 7; see insert

1-31 IRCO Donation Drive
Details on p. 10

13 Wednesday
MBA Solo & Small Firm Workshop: The Business of Law - Trust Accounting
Details on p. 6

25-26 MBA Office Closed

JANUARY

15 Monday
Martin Luther King Jr. Day
MBA Office Closed

18 Thursday
Young Litigators Forum CLE Series begins with Courtroom Nuts and Bolts
Judge Adrian L. Brown
Judge Melvin Oden-Orr
Details on p. 11

FEBRUARY

10 Saturday
WinterSmash
Details on p. 1

19 Monday
Presidents’ Day
MBA Office Closed

There's still time!



Renew your MBA membership for 2024 by December 31 to receive a **FREE \$60 credit** toward MBA CLE programming.

Register to attend an upcoming webcast or watch an archived seminar on your computer or device.

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Terms and conditions apply.
See www.mbabar.org for details.



The MBA will apply for general OSB MCLE credit unless otherwise noted; Washington credit may be obtained independently. Registrants who are unable to attend will receive a link to the archived webcast and written materials. Registration fees are non-refundable.

Unless otherwise noted, all classes are held online.

Landlord - Tenant Law Update: 2023 Legislative Changes
Wednesday, December 6 12-1 p.m.

Remote attendance only via Zoom
Members \$30/Non-Members \$50

Please join **Emily Rena-Dozier**, Statewide Housing Support Attorney at Oregon Law Center, and **Marcel Gesmundo** or **Leah Sykes**, Andor Law PC, a Portland firm serving housing providers, for this one hour, informative CLE covering the following topics:

- Landlord-Tenant law basics: applications, rent increases, termination notices, court proceedings before tenant removal, and interplay between state and federal law.
- Substantive changes resulting from the 2023 legislative session.
- Changes to the FED process resulting from HB2001.
- Changes to rent increases resulting from SB611.

For more information: Contact Ayla Ercin, Campaign for Equal Justice, at 503.295.8442. For registration questions, contact the MBA at mba@mbabar.org.

Ethical Use of Technology: Obligations and Opportunities
Tuesday, December 12 3-5 p.m.

Standard Insurance Building Atrium, 900 SW Fifth Ave., Portland, and Online Participation
Members \$60/Non-Members \$95

Amber Bevacqua-Lynott and **Dallis Nordstrom Rohde**, of Buchalter, will talk about how technology can be both a blessing and a curse. We are required to have a certain minimum competency, and often the more we know, the more our clients can benefit. But there are limitations. Knowing and understanding the rules surrounding the ethical use of technology can both help us perform better as lawyers, as well as identify and prevent misconduct by others.

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

Summary Judgment
Thursday, December 14 12-1 p.m.

Remote attendance only via Zoom
Members \$30/Non-Members \$50

Wilson Jarrell, Barran Liebman and **Adam Starr**, Markowitz Herbold will discuss the effective preparation of summary judgment motions and presentation of oral argument, including what to cover in the motions and arguments, how to organize the arguments for maximum persuasive impact, how and when to use exhibits, best practices for presenting oral argument, responding to questions from the judge, and other useful information for preparing for and arguing summary judgment in state and federal court.

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

Annual Probate Update
Thursday, January 18 3-5 p.m.

Remote attendance only via Zoom
Members \$60/Non-Members \$95

The MBA presents the 2024 Annual Probate Update, featuring **Judge Patrick Henry**, Multnomah County; **Judge Susie Norby**, Clackamas County; and **Judge Janelle Wipper**, Washington County; as well as **Jeff Petty**, Oregon Judicial Department, and **Amy Cross-DeHaven**, Buckley Law PC. The judges will discuss current practices and procedures for each of the tri-county area probate courts. Jeff will provide legislative updates. Amy will provide an update of recent case law. This CLE seminar is a must for all probate practitioners and their staff.

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.

Visit www.mbabar.org/cle to register online
or scan this QR code.



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MBF 2023 Highlights

Thanks to the generous support from the legal and broader community, the MBF has much to celebrate in 2023: the opening and increased staffing of the new CourtCare space, the expanded outreach of CourtConnect, and the ability to provide full-time staffing at the courthouse information desk through CourtSupport.



Cameron Quackenbush, Rep. Lisa Reynolds, Barbara Marcille and Tabitha Pitzer tour CourtCare



Judge Chanpone Sinlapasai, right, leads courthouse tour for IRCO leaders with Tyler Volm, center



CourtConnect event with guests from the Japanese and Mexican consulates



Joe Franco unveils the CourtSupport Founders plaque



Judge Rima Ghandour, Judge Amy Holmes Hehn, Judge Cheryl Albrecht, Mitra Shahri and Presiding Judge Judith Matarazzo



Victoria Blachly and Tim Resch

mba | ANNOUNCEMENTS

Not Receiving MBA Emails?

Members are encouraged to opt in to ensure that they successfully receive MBA email communications. Visit www.mbar.org/opt-in to confirm your email status.

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.

Volunteers Needed for the Children’s Representation Project

The court has an ongoing need for lawyers to volunteer for the Children’s Representation Project, and there is a backlog of requests. The court is seeking CLE credit for this representation. The work is rewarding and volunteers do not need to have a domestic relations practice to participate. Contact Brandy Jones (Brandy.L.Jones@ojd.state.or.us).

Broadway Rose Theatre Seeks Board Members

Broadway Rose Theatre is seeking lovers of musical theater for its board of directors. The Broadway Rose is Oregon’s premier musical theater company since 1992 and regularly earns national recognition for its commitment to artistic excellence and the development of new works. With an attendance of over 45,000 per year, it remains committed to keeping live theater affordable and accessible to all community members. The company employs over 250 part-time and seasonal staff, artists, technicians, and educators. For information on this commitment to the arts, contact board member Aaron Kirk Douglas at 503.307.7869 or at aaronpdx@outlook.com.

Community Media Nonprofit Seeks Board Members

MetroEast Community Media, a nonprofit providing access to media and internet technology to invigorate civic engagement and inspire diverse voices, is seeking volunteer board members with legal expertise and an orientation to East Multnomah County communities. To learn more, contact Board President Julie Omelchuck (Julie.Omelchuck@gmail.com) or visit www.metroeast.org.

Noontime Rides

Join all ages of bicycle riders for noontime hill climbs on Mondays and Thursdays. Assemble at noon at the 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.

PDX Starting Grounds

The coffee café in the Central Courthouse offers beverages, breakfast, lunch and snack items. Open Monday through Friday, from 8 a.m.-1:45 p.m. See the menu or order online for takeout at www.pdxgrounds.com.

Ethics Focus



by Mark J. Fucile
Fucile & Reising LLP

Over 40 years ago, the Oregon Supreme Court issued an opinion in a disciplinary case involving a successful lawyer who developed what the Court described in the terminology of the time as “burnout.” The lawyer was handling an appeal but was unable to complete the work and gradually stopped responding to the client and others involved. Chief Justice Edwin Peterson in a concurrence agreed with the discipline imposed but empathized with the attorney. He wrote: “The court’s opinion should be required reading for every lawyer, for almost every practicing lawyer becomes involved in situations which create pressures and stresses akin to those which are present in this case.” He continued: “Over the years I have seen a host of intelligent, capable lawyers get into trouble because of their inability to recognize and resolve problems such as faced ... [the lawyer] ... in this case.... The lawyer in that situation often is incapable or unwilling to face the problem ... and has lost the ability to discuss the problem with anyone[.]” (I have intentionally withheld the lawyer’s name. The case is at 292 Or. 806 (1982).)

Both statistical studies and anecdotal evidence suggest that the pressures lawyers face today have not abated since Chief Justice Peterson’s observations over 40 years ago. The ABA Commission on Lawyer Assistance Programs has compiled extensive statistics. The Oregon Disciplinary Reporter, in turn, includes recent examples of lawyers who struggled with problems similar to the lawyer in our opening illustration. Some of the Oregon lawyers had psychological conditions. Others had substance abuse problems. Still others had illnesses that prevented them from continuing

Delicate Subject: Helping Colleagues in Need

to handle client work. Although the specifics varied, a common disciplinary thread was RPC 1.16(a)(2), which requires a lawyer to withdraw when “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client[.]” When client harm resulted, it is not difficult to image that malpractice claims also followed.

In this column, we’ll discuss two questions that law firms confront when a firm lawyer is struggling. First, we’ll examine where firms can turn for resources. Second, we’ll survey the delicate question of whether firms have an obligation to report the lawyer involved and what they can and should tell their clients.

In focusing on lawyers in private practice, we shouldn’t overlook that the same pressures can overwhelm lawyers in corporate or governmental practice but the organizational dynamics are somewhat different in those settings. Similarly, while focusing on firms, OSB Formal Opinion 2005-129 (rev. 2018) suggests that solos have plans in place for trusted colleagues to offer assistance if a solo has a serious health problem that impacts the ability to practice.

Resources

The resources a lawyer may need will understandably vary with the circumstances. In many situations, however, the Oregon Attorney Assistance Program can be a key starting point. OAAP offers help to both lawyers in need and others who are trying to obtain help for a lawyer. The OAAP website - www.oaap.org - offers a comprehensive description of the services available and contact information. Because the OAAP is funded by the Professional Liability Fund, most services are free. Consultations with the OAAP are confidential under both ORS 9.568 and RPC 8.3(c)(3).

Firms should also look inward in the sense of ensuring they have a trusting environment that allows firm lawyers and staff to disclose issues. What was always a good idea has become

even more important to overall law firm risk management in the wake of the COVID-19 pandemic with lawyers and staff now more commonly working in “hybrid” or “remote” arrangements outside the old “brick and mortar” office routine of daily personal interaction.

Reporting and Telling Clients

RPC 8.3(a) generally requires a lawyer to report another lawyer to the Bar when the lawyer knows that the other lawyer “has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s ... fitness as a lawyer[.]” If a condition compromised a firm lawyer’s competence under RPC 1.1 and the lawyer refused to withdraw under RPC 1.16(a)(2), then the duty to report might be triggered if an exception to the reporting rule does not otherwise apply. OSB Formal Opinion 2005-95 (rev. 2014) discusses both the reporting rule and the exceptions. In many situations, however, reporting may not be required if, for example, a lawyer reveals a condition before clients are put at risk and the firm provides appropriate alternate staffing for the matters concerned while the lawyer steps back from practice to receive necessary help.

A serious illness that impacts the ability of the client’s chosen lawyer to continue on a matter, in turn, typically falls within the material events that must be discussed with the client under the “communication” rule - RPC 1.4. ABA Formal Opinion 03-429 (2003) addresses lawyer impairment arising within law firms and suggests that a practical balance can usually be struck between the client’s need to be consulted and the privacy concerns of the lawyer involved. At the same time, Formal Opinion 03-429 and ABA Formal Opinion 481 (2018) counsel that if a material error has occurred as a result of the lawyer’s condition, the client must be informed of the error and the firm will need a conflict waiver to continue.

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Browse the offered seminars at:

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Around the Bar



Mark Johnson Roberts has been given the ABA’s Stonewall Award, which recognizes legal professionals “who have effected real change to remove barriers on the basis of sexual orientation, gender identity or gender expression in the legal profession and the world, nation, state or locale.” The award will be presented at the ABA Midyear Meeting in Louisville in February. Johnson Roberts is a past president of the Oregon State Bar; a past recipient of the MBA Professionalism Award; and a past co-chair of both OGALLA, Oregon’s LGBTQ+ Bar Association; and the National LGBTQ+ Bar Association. After a long career in family law and appellate litigation, he retired in 2019 as Deputy General Counsel to the OSB.



Arbor Employment Law
Arbor Employment Law is excited to announce the addition of **Olivia Hariharan Godt** to the firm as an associate attorney. Hariharan Godt brings experience in employment law along with a passion for problem solving and a commitment to working collaboratively with clients to achieve excellent results.

Brownstein Rask
Blaine Clooten joins Brownstein Rask as an attorney. Clooten spent the last 10 years practicing in Eastern Oregon. He brings with him an extensive background in litigation including trying hundreds of cases. Clooten has substantial experience as a presiding judge for Pendleton Municipal Court, now a Court of Record and is



also an experienced mediator and arbitrator. He helps clients in the areas of personal injury, business, estate planning and domestic relations. Clooten comes from a customer service background, spending time in the business world before returning to law school.



Hart Wagner LLP
The firm is pleased to announce that **Lizeth Marin** has joined the employment litigation team. Marin’s practice focuses on defending claims of discrimination, harassment, retaliation, reasonable accommodations, breach of contract claims, and wage and hour matter in Oregon State Courts. She also provides advice and counseling to employers on a wide range of workplace issues. Marin received her JD from Lewis & Clark Law School and prior to joining Hart Wagner she worked for a national civil litigation law firm. Outside of the office, Marin serves as a board member of Mt. Hood Unida.

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.

Christine Hein Joins MBA Board

Christine (Tina) Hein, Ring Bender LLP, was appointed to the MBA Board of Directors to replace Hon. Aruna Masih, who resigned in September. Tina is the managing partner at Ring Bender and represents businesses, municipal entities and individuals in regulatory, permitting and litigation matters involving a broad range of environmental, natural resources, tribal, energy, land use, facility development and occupational health and safety issues. Prior to joining the firm, Tina practiced

environmental and natural resource law at Bateman Seidel Miner Blomgren Chellis & Gram and K&L Gates. Tina began her legal career at the New York City firm of Seward & Kissel. Prior to law school, Tina worked as a Development Officer at the Rainforest Foundation in New York and also served as an agriculture extension volunteer in the Peace Corps in Guatemala. Tina’s volunteer experience with the MBA includes serving on the MBA Young Lawyers Section CLE Committee and on the Multnomah Bar Foundation Board.



Christine Hein
The MBA welcomes Tina to the board. The MBA Board would also like to thank Justice Masih for her service.

Happy Holidays!

The MBA staff wishes you a happy holiday season.

In 2023, law firms, attorneys, judges, and legal staff, as well as outside organizations, donated over \$74,000 to the Multnomah Bar Foundation for the operation and growth of CourtConnect, CourtSupport and Multnomah CourtCare.

Hundreds of our members dedicated their time and talents to serve on our boards and committees, or helped with projects and events, and countless others contributed their time and resources to support pro bono efforts.

The generous charitable and pro bono support from our members is inspiring. We are thankful to the MBA membership and the Portland legal and broader community for helping to make our community and our state a better place.

We wish you peace, health, happiness and prosperity, and look forward to serving you in 2024.

Solo & Small Firm Committee presents

THE BUSINESS OF LAW:
TRUST ACCOUNTING

Wednesday, December 13
12-1:30 p.m.
Remote attendance only via Zoom

Sarah Prevost, a professional bookkeeper with Mintage Labs, and Monica Logan, a PLF practice management attorney, will delve into key trust accounting principles to set your firm up for success. Because of their work with attorneys, they will shed light on prevalent errors they encounter, such as co-mingling, overdrafts, unclaimed funds, and fraud. Each will provide valuable insight on how to steer clear of these pitfalls in your firm. Attendees can expect to leave with practical strategies to safeguard against malpractice and ethics violations while managing trust accounts.

Cost: Free for members/\$30 non-members
The MBA will apply for 1 hour of General OSB MCLE credit

Register at www.mbabar.org

Support the Courts and the Community with Your Charitable Donation

As we approach year end, please consider making a tax-deductible charitable donation to the Multnomah Bar Foundation to support program operations and growth.

Multnomah CourtCare improves access to justice by making free, drop-in childcare available for families who have business at the court. **CourtSupport** improves the quality and administration of the legal system by providing a bilingual Navigator to staff the information desk, answer questions and connect individuals with needed services or accommodations at the courthouse. **CourtConnect** promotes civic education and understanding of the rule of law by engaging community groups in

dialogue about the courts and the rule of law.

Your support allows us to continue this vital work and fund future projects that support the court and benefit the community.

Donations received by December 31 receive special recognition. To donate, or for details, see the insert in this issue, visit www.mbabar.org/mbf, or call 503.222.3275.

To learn more about the work of the MBF, contact Pamela Hubbs (503.854.5237, pamela@mbabar.org).



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Tips From the Bench

Avoiding Common Pitfalls at Trial

by Judge Christopher A. Ramras
Multnomah County Circuit Court



A lot of trials are going out these days. A surprise will arise in each of them. The following article offers common sense advice on avoiding common pitfalls. Some may seem obvious, but these mistakes happen with great regularity.

Trial Length Estimation

“Under promise and over deliver.” Attorneys are notorious for underestimating trial length. Doing so leads to stress, especially when jurors have expressed concerns about participating past a certain date or the judge’s schedule prevents it going past a certain day. Making every effort to be realistic will put you in good stead with judge and jury alike, *especially* if you finish sooner than predicted.

So how do you do this, especially if you haven’t been in trial for a while?

It’s important to remember the only thing predictable about trials are their unpredictability. *Anticipate problems.* Witnesses will have transportation issues the day they’re supposed to testify; opposing counsel will raise objections requiring the judge to hear arguments and read case law; you may run into technical difficulties playing/ showing exhibits; going over jury instructions will take longer than you think. While not scientific, I’d suggest building in a cushion by adding one-half to a full day to your estimate for trials three days or longer, and maybe up to two days extra for trials beyond 10 days. It is also important to sit down with opposing counsel and hash out as much of what you can agree to as possible for jury instructions.

Don’t Insert Yourself into the Case

The jury gets instruction that the questions and statements of attorneys are not evidence. Nonetheless, attorneys often have difficulty avoiding inserting themselves. This often happens in either opening statements or closing arguments. Examples include comments about how opposing counsel’s argument “doesn’t make sense to me,” or “I didn’t believe witness X, and neither should you,” or something along these lines. Such statements are improper because they are a form of vouching; the attorney is

interjecting their *personal opinion* regarding the credibility of a witness. *See, for example,* Heroff v. Coursey, 280 Or. App 177, 194-195 (2016). It is perfectly fine to argue that the *evidence* indicates a witness is credible/non-credible as long as it is not fashioned as your personal belief.

Don’t Beat a Dead Horse

It is normal to worry that the jury might miss an important point or forget information over the course of a trial. To avoid this, attorneys often over try what they view as important. This is done by asking slightly different questions of a witness to elicit a repeated response or by using multiple witnesses for the same point.

It is true that repetition aids memory, but jurors don’t appreciate being treated as simpletons. We receive consistent juror feedback that they feel insulted when an attorney continually hammers the same point. So, what should you do?

The answer may vary depending on the length and complexity of the trial, but I suggest familiarizing yourself with the “Rule of Three.” An internet search will list a variety of sites that explain the concept. It is essentially a method to make presentations more memorable by breaking them into a core beginning, middle and end, the key components of any story. The repetition of concepts/information occurs mostly during the bookends of opening and closing argument, without the need to do as much during witness testimony.

Practice Using Courtroom Displays Ahead of the Actual Trial

The courthouse has large display screens - visit ahead of time to make sure you have the right HDMI cable to hook your laptop to them. Pull up exhibits that have small text and then walk to the jury box to see whether they will be able to make it out. Make sure your exhibits fill the *entire* screen. Too often juries are exposed to unrelated material, such as partial emails, on your computer. Lastly, experiment with video volume so you know what it will sound like during trial.

Expect the Unexpected

Your witness may get sick or miss their ride to court. Their testimony will take longer than you think, making it difficult to call that second witness who can only appear *today*. You may be forced to take witnesses out of order such that the story is less chronological. Your computer may run out of power midway through.

Whatever it is, *something* will go wrong. Be prepared to pivot. Knowing this in advance will make it less stressful, if even only somewhat, when that thing goes wrong. If you can, practice

News From the Courthouse



by Ramon Henderson
MBA Court Liaison Committee

Trial Court Administrator Barbara Marcille provided an update on the court’s capacity, trials and timely case disposition, a statewide injunction impacting unrepresented criminal defendants, the public defender shortage, and downtown courthouse safety.

Court Capacity, Trials and Timely Case Disposition

Senior judges who have retired from the Oregon Judicial Department (OJD) have been assisting the court with motions and increasing capacity for hearings and trials. Presiding Court is working on securing senior judges to provide more capacity for next year, but the schedule is not yet established. The Multnomah Circuit Court has senior judges scheduled through this year and is hoping for additional commitments for next year but recognizes that senior judges are resources that are shared with the entire state.

The court’s trial schedule continues to be busy. Presiding Judge Judith Matarazzo wants counsel to be aware that trial dates cannot just be set over for a few months. Any setovers or continuances risk putting your case in jeopardy of longer time to disposition. If you move your trial date, you may not be able to get a new trial date for many months due to the number of longer specially set trials already scheduled throughout next year, and 2025 calendars are already filling up. Furthermore, the court is receiving a lot of interest from the legislature and other interested parties regarding timely disposition standards adopted by the OJD. Oregon’s Chief Justice previously established timely disposition standards for all types of cases that set goals for what percentages of each type of case should be resolved within the allotted times. Since the pandemic and the defense attorney shortage, cases have

your closing argument by giving it to a friend or loved one and instruct them to interrupt you as you speak to ask questions. This will be irritating, but it will also help you practice picking up your thread again when something unexpected occurs.

been taking longer to resolve. The court’s goal is for attorneys to either go forward with trials as scheduled or negotiate plea agreements. On a related note, the court is requesting attorneys to timely report when their cases have settled. This is helpful because it frees up court time and increases the court’s capacity. The sooner attorneys let the court know, the better.

Statewide Injunction Impacting Unrepresented Criminal Defendants

Case Information: US District Court Case No.: 3:23-cv-01097-CL, *Walter Betschart, et al. v. Sheriff Patrick Garrett, et al.*

This case involves a mandatory, preliminary injunction directing all sheriffs statewide to release unrepresented defendants who have been in custody for seven days or more. The prior order and injunction only applied to Washington County, and it applied to unrepresented defendants in custody for 10 days or longer.

The new injunction directs sheriffs to release individuals without appointed counsel who have been held in custody for seven days or longer. Another hearing took place on November 7 in front of Judge Michael McShane to provide clarification on how the injunction applies to various circumstances, who makes decisions about timing, and to address questions raised by all interested parties. Current questions and concerns include:

- Issues regarding preventative detention. If a defendant is placed in preventative detention by a judge, would the injunction apply or is there a carve out?
- How is the determination made as to which individuals are unrepresented for purposes of the preliminary injunction?
- Who determines the start and end time and calculates the

length of time to apply the injunction: the courts or sheriffs? OJD is not a party to the federal case and the sheriffs are being directed by the injunction. Interpretation is still needed to understand how this will apply and who makes each determination along the way.

- Will notice regarding whether and when a determination is made be provided so the public is aware when criminal defendants are released? If so, will the district attorney be given notice of the person being released (victim’s rights, conditions of release, etc.)?
- In Multnomah County there continues to be very few defendants held in custody without representation, and those defendants who are in custody without appointed counsel were all previously represented but filed motions for substitution of counsel and are waiting for a new attorney to be assigned to the case. Due to the seriousness of the pending charges and the shortage of attorney capacity as well as conflicts for available attorneys, it sometimes takes months to identify another attorney who can take the case. At the time of this court report, it is unclear how the injunction will apply to these circumstances.

Public Defender Shortage

For the past two years, the Multnomah County Circuit Court has been prioritizing defense counsel appointments for the defendants who have been held in custody due to being charged with more serious and/or violent crimes. There has been a lot of engagement and collaboration from all our local criminal justice stakeholders to

Continued on page 12

Question for the Court?

If you have a question for the court or would like to share feedback about court practices through the Court Liaison Committee, please send your questions or comments to Pamela Hubbs, pamela@mbabar.org, with “Question for the court” in the subject line.

The Honorable Kelly Skye Judicial Profile

by London Ballard
MBA Court Liaison Committee

This year marks Judge Kelly Skye’s 30th year as a lawyer, the last 14 of those years serving as a trial judge. She says the 30th anniversary emails she receives from her law school and from Martindale Hubbell are hard to take seriously - quite sure that she has not been out of law school for *that* long. But, when reflecting on the practice of law, the bench, the city, and the work culture in general, she recognizes how much has changed in those 30 years. Since her admission to the bar in 1993, she notes that the legal community’s priorities have evolved to include greater efforts to attain a more diverse and inclusive bench and bar, with a focus on access to justice, procedural fairness and criminal justice reform. Finally, public defenders are appreciated for the work they do, the makeup of the bench more accurately reflects the population it serves, and the courthouse will no longer be the first building to fall in an earthquake. “I am fortunate to have had a career that fulfills me personally and has placed me in the midst of efforts to improve the justice system,” said Skye.

As a sitting trial rotation judge, Skye values the variety of work that comes before her,

which includes handling civil and criminal cases as assigned. Judge Skye’s favorite trials are those with skilled, professional lawyers; she views good lawyers presenting a case to a jury as an art form. She firmly believes that truth is stranger than fiction and marvels at some of the cases that come before her.

Judge Skye presided over the STOP drug treatment court (Sanctions, Treatment, Opportunities and Progress) for three years, leading a team that included treatment providers, peer recovery mentors, probation officers, prosecutors, and defense lawyers, all working collaboratively to help those struggling with substance abuse obtain treatment and support as they attempt to achieve and maintain sobriety. STOP court was one of the first drug treatment courts in the nation more than 30 years ago. Now, treatment courts are standard practice around the country. Judge Skye said having been trained and having worked as a treatment court judge absolutely made her a better judge.

Hiring recent law school graduates with varying backgrounds as clerks has further enriched Judge Skye’s experience

as a judge. Bringing new lawyers into her department annually gives her the opportunity to mentor, and she feels fortunate to learn from each of them. She maintains relationships with former clerks and enjoys watching their careers. When asked about the skills obtained in a judicial clerkship, Judge Skye emphasized that the experience of a clerk, working closely with the judge and watching lawyers of all skill levels in the courtroom, is invaluable.

Outside of the courtroom, Judge Skye devotes her time and stays involved in the legal community in a variety of roles. She served for nine years on the OSB Board of Bar Examiners, she is a regular judge for Civics Learning Project competitions, and mentors law students yearly. She serves on numerous committees, including but not limited to, the Multnomah County Circuit Court Executive Committee and the Judicial Leadership and Education Committee.

Judge Skye is a native Oregonian and enjoys spending time with her family and two dogs outdoors, running, cycling, skiing, hiking, and floating rivers on a raft or paddle board. An avid soccer fan, she follows the Timbers and Thorns, and has even performed wedding ceremonies for two Timbers players. She has a journalism degree from the University of Oregon and obtained her law degree at Northeastern University School of Law in Boston.

Judge Skye began her career as an attorney at the Metropolitan Public Defender, where she represented indigent clients in criminal and juvenile matters for 12 years. Her experience and expertise quickly led to promotions to senior attorney, and Chief Misdemeanor Attorney, where she supervised and trained new lawyers and law clerks and served as adjunct faculty at Lewis & Clark Law School teaching the criminal clinical internship program.

During the 2003 and 2005 Oregon legislative sessions, Judge Skye took a step back from the courtroom and worked as the legislative liaison for the Oregon Criminal Defense Lawyers Association. On their behalf, Judge Skye advocated for criminal justice reform, “but I mostly played defense,” said Skye. Her work in the capitol piqued her interest in policy work, and in 2005 she joined the staff of Governor Ted Kulongoski as his legal counsel. “Governor’s legal counsel is the best job in the state,” says Judge Skye, who treasures the time she worked with Kulongoski. “He is one of the smartest, most generous and humble people I know,” she said. As governor’s legal counsel, Judge Skye worked on a range of legal issues and served as the governor’s liaison to Oregon’s nine federally recognized tribes. As a tribal member herself, Judge Skye valued the opportunity to learn about Oregon’s tribes, their governance, and challenges they face. While working for



Hon. Kelly Skye

Kulongoski, she also ran his judicial appointment process for many of her current colleagues. Kulongoski appointed her to the bench at the end of 2009.

In closing, I asked Judge Skye if she had any advice for young lawyers, and she smiled, reflected, and with grace she provided the following: “Do not be afraid to make mistakes, just do it with a smile and humility. It is okay to be new in court and it is okay to appear new. But in doing so, have some humility and remember you are there for your client. And, always remember that professionalism is key.”

Prepared, professional and with a dose of humor. That is Judge Kelly Skye. And, like so many who have appeared before her, we know when we are before Judge Skye, we will be treated with kindness, respect, compassion, and humility.

Absolutely Social Held at the Ecotrust Building

Lawyers, judges, sponsors and law students gathered at the Ecotrust Building on October 24 for the fall Absolutely Social. Attendees were encouraged to donate food for the Oregon Lawyers Against Hunger, and 280 pounds of canned food was collected for the Oregon Food Bank. Thanks to all those who contributed!

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See photos from the evening at www.bit.ly/abs-soc-23



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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 worried about my environmental impact, but I do not know how to make my legal practice more sustainable. Please help!
-Tree Hugger 4 Life

Dear Tree Hugger,

You are not alone, and there are plenty of small, incremental changes that you may easily make in your day-to-day practice. Some of the suggestions below are bigger, office-wide changes, and some you may implement in your own life both at the office and at home.

One of the more recent changes in the UTCR is in Chapter 21, which allows service via Odyssey and email, thereby avoiding conventional mail. UTCR 21.100(a) states that a filer who appears by filing a document in Odyssey is deemed to consent to e-service of any document unless service is required under ORCP 7. If the signature is not the filer, be sure to review UTCR 1.110 which outlines the difference between an authenticated and electronic signature. UTCR 21.090 outlines when different electronic signatures may be utilized, though generally electronic signatures are accepted for any e-filing. If your office uses Adobe, signatures may be saved in the program and may be affixed to pleadings with ease without printing the document for an original signature. In many cases, service is effected via email and Odyssey, and this process may be used for service of pleadings that are not e-filed, such as Requests for Production.

Another small change may be to take notes in a Microsoft Word document, or similar, rather than a legal pad. One benefit of taking notes in this manner is it can be helpful for drafting declarations and memoranda as well as general trial preparation. I like to save important emails into the client file and reference them in the Word document for easy access later on. Often I know that I will want the specific information in the email for my trial or deposition preparation I also find this to be particularly helpful when drafting attorney fee requests.

I advise checking local rules, and with a local attorney if there is no rule on point, before attending ex parte in a county in which you are unfamiliar. For example, in Washington County, when attending ex parte, the court no longer requires (or wants) copies of pleadings - the staff scan in the original and the court reviews and signs and prints service

copies. Multnomah, conversely, does require additional copies for service. While either courthouse ultimately uses the same amount of paper, by knowing ahead that Washington County does not need the copies, that paper is not wasted.

A big change, with lasting impact, is to move to a cloud-based system for client files. This system ensures that employees are still able to work from home whether it be for a snow day or minor illness. While it seems onerous at first, access to the entire client file, and all notes, during a contentious court proceeding is a much faster avenue to find that one bit of evidence than flipping through a cumbersome notebook (or several evidence notebooks). Pragmatically, it also allows for easy back and forth at mediation since the agreement may be sent back and forth and edited in real time rather than printed, written on, edited, and reprinted.

Try to bring your own water bottle and reusable food containers where and when possible, with a focus on glass and silicone. Glass is long-lasting and is not porous so it will not absorb bacteria over time and unless broken will far outlast any plastic. Glass may also be used in the oven and microwave which makes it an easier choice for reheating food. Silicone is safe up to 425 degrees and can be boiled (i.e. sous vide), used in the freezer, microwaved, and used in the oven so long as it is placed on a sheet pan or similar. While expensive, Stasher bags (www.stasherbag.com) are the best I have found for silicone reusables. Plastic Tupperware, while still better than single-use disposables, sheds microplastics when washed.

Use a dishwasher instead of handwashing if one is available at your office as it saves a substantial amount of water (though note it does not solve the microplastic issue!). If you want to go the distance, consider subscribing to Ridwell, a service that comes to your home bi-weekly to collect plastic film, multi-layer plastic (think granola bar wrappers, chip bags, and the like), light bulbs, batteries, clothes/shoes/textiles, plastic clamshells, Styrofoam, and a rotating category such as medicine bottles, bottle caps, used holiday décor, and a number of other choices. It's customizable and is around \$18 per month. Think of all of the plastic bags under your sink to be used

Children's Book Bank

by Nick Ball and Mark Hansen
YLS Service to the Public Committee

On October 30, volunteers assembled to repair and refurbish books for the Children's Book Bank at SMART Reading. The book repair event, coordinated by the YLS Service to the Public Committee, gave volunteers the opportunity to connect with each other while helping SMART Reading support young readers around Multnomah County. Our volunteers made donated books look as close to new as possible with a variety of repair

techniques, so young readers would be proud to add them to their developing personal libraries. While doing so, we got to exchange stories of our favorite children's books and learn more about what books kids are reading today.

Since 2008, Children's Book Bank has supplied over 100,000 children in the Portland-Metro area with more than 1,000,000 books. One of the organization's goals is to promote diversity

and inclusion by giving every child access to a book starring someone who looks and speaks like they do. You can learn more about the organization at www.childrensbookbank.org.

For many of us, becoming a lawyer would not have been possible without someone helping us develop a love for reading, and we look forward to helping MBA members find more opportunities to support our community's young readers.



IRCO Donation Drive

by Marry Karam
YLS Membership Committee Chair

The YLS Membership Committee is proud to support the Immigrant and Refugee Community Organization (IRCO) via a donation drive again this year. Please join your colleagues this winter in donating some of IRCO's most requested items: towels, pillows, sheets and pillowcases, blankets and comforters, shower curtains, and bathmats. This donation drive will run through the end of December.

Participating in a donation drive has never been easier! Our Amazon Wishlist helps you easily order and send

the items directly to IRCO, which will distribute them to families in need. For Amazon orders, please include delivery instructions specifying delivery on Monday-Friday from 8:30 a.m. to 5:00 p.m. only.

Donations can also be dropped off in person in downtown Portland. Contact Marry Karam at Marry@LissaKaufmanLaw.com to coordinate.

If you would like a tax receipt, please email Fundraise@IRCO.org.

Thank you for your commitment to helping others in your community.

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“someday,” because you just cannot throw them in the trash, or the multitude of clamshells from salad greens and fruit that **are not recyclable** that go in the landfill each month - while it has a cost, knowing your plastic bags and clamshells are not in the landfill or ocean should help bring peace of mind.

While Ridwell currently only offers residential services, recycling at the office is important too. If your office does not already have a recycling system in place, advocate for one. Check with Metro at www.bit.ly/recycle-at-work to see what may be the best fit for your office.

I hope this helps you and your office move to a more sustainable legal practice.

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Questions? Contact Chris Parrucci
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Pumpkin Patch Social

On Sunday, October 22, 50-plus MBA and YLS members, their families, and friends participated in the Pumpkin Patch Social at Plumper Pumpkin Patch & Tree Farm in Northwest Portland. Organized by the YLS Membership Committee, the family-friendly event offered attendees the opportunity to enjoy refreshments and socialize before exploring everything the venue had to offer.

Thank you to the organizing volunteers and everyone who participated.



YLS Membership Committee Chair Marry Karam



YLS Membership Committee member Aime Lee Ohlmann

Young Litigators Forum

Winter CLE Series begins January 18

The YLS CLE Committee presents a nine-part CLE series on basic litigation issues intended for newer attorneys. Nine hours of Practical Skills and one hour of Ethics OSB MCLE credit will be applied for in total. Series registration \$150 for members, \$250 for non-members. Seminars held remotely via Zoom.

Register to attend at www.mbabar.org/cle

Courtroom Nuts & Bolts

Thursday, January 18
12-2 p.m.

Judge Adrian Brown and Judge Melvin Oden-Orr,
Multnomah County Circuit Court

Complaints, Answers & Pre-Answer Motions

Thursday January 25
12-1 p.m.

Trish Walsh, Farleigh Wada Witt

Mediation, Settlement & Judicial Settlement Conferences

Thursday, February 1
12-1 p.m.

Judge James Edmonds, Marion County Circuit Court

Discovery

Thursday, February 8
12-1 p.m.
TBA

Depositions

Thursday, February 15
12-1 p.m.

Laura Salerno Owens, Markowitz Herbold PC

Arbitration

Thursday, February 22
12-1 p.m.

Kevin Eike, Eike Law PC

Summary Judgment

Thursday, February 29
12-1 p.m.

Josh Stump, Dunn Carney LLP

Trial and Post-Trial Matters

Thursday, March 7
12-1 p.m.

Sandra Gustitus, Chenoweth Law Group PC

Professionalism and Ethics

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

Thursday, March 14
12-1 p.m.

Nellie Barnard, Schwabe Williamson & Wyatt PC

First Gen Week at Portland State University

On November 9, members of the YLS Membership Committee were featured on a panel at Portland State University for First Gen Week. Students interested in pursuing a legal career heard the stories and experiences of first-generation college graduates as they navigate their post-graduation lives. The committee's continued collaboration with PSU is one of the ways the YLS is seeking to increase the diversity of the Oregon bar.



News From the Courthouse

Continued from page 8

ensure that in custody defendants receive appointed counsel as quickly as possible.

Statewide there has been an ongoing debate about what constitutes an adequate and/or maximum case load for public defenders. In Multnomah County, the court has relied on what the public defense leadership reports their capacity to be. Ultimately, capacity has to increase for the court to appoint attorneys to every eligible defendant who is facing criminal charges. While the court is unable to determine how capacity could be increased within the public defense firms, some possibilities may include additional training for the lawyers

and adding case managers to assist the lawyers, as well as funding more attorneys for public defense work in this county.

There have been studies about the Multnomah County shortage and number of people impacted. In this county, there have been approximately 500 unrepresented defendants who qualify for public defenders, with 10-20 unrepresented individuals in custody awaiting substitution of counsel at any given time. While the number looks static on paper, it does not represent the same 500 people over time. It is a rolling number as previously unrepresented individuals receive appointed counsel but newly charged defendants who are eligible for public defenders must wait for additional capacity to become available.

Downtown Courthouse Safety

The court is actively working to improve safety around the Central Courthouse and Justice Center. There have been far too many reports from court staff, judges, attorneys, and jurors of threats and actual assaults outside the courthouses and the court cannot effectively serve the community if employees or prospective jurors are unwilling

to come downtown. The court is working with elected city and county officials to address the safety concerns. One particular area of concern is the early morning on Mondays and Wednesdays when the largest pools of jurors are reporting to the Central Courthouse and are waiting for the courthouse doors to open, especially now that the days are shorter and it is dark

outside, as the crowd often spills onto the sidewalks near busy intersections. The court is working with Multnomah County and the Multnomah County Sheriff’s Office to get people into the building more quickly. The court’s priority is to make the area safer and for people to feel more comfortable coming downtown to the courthouse.



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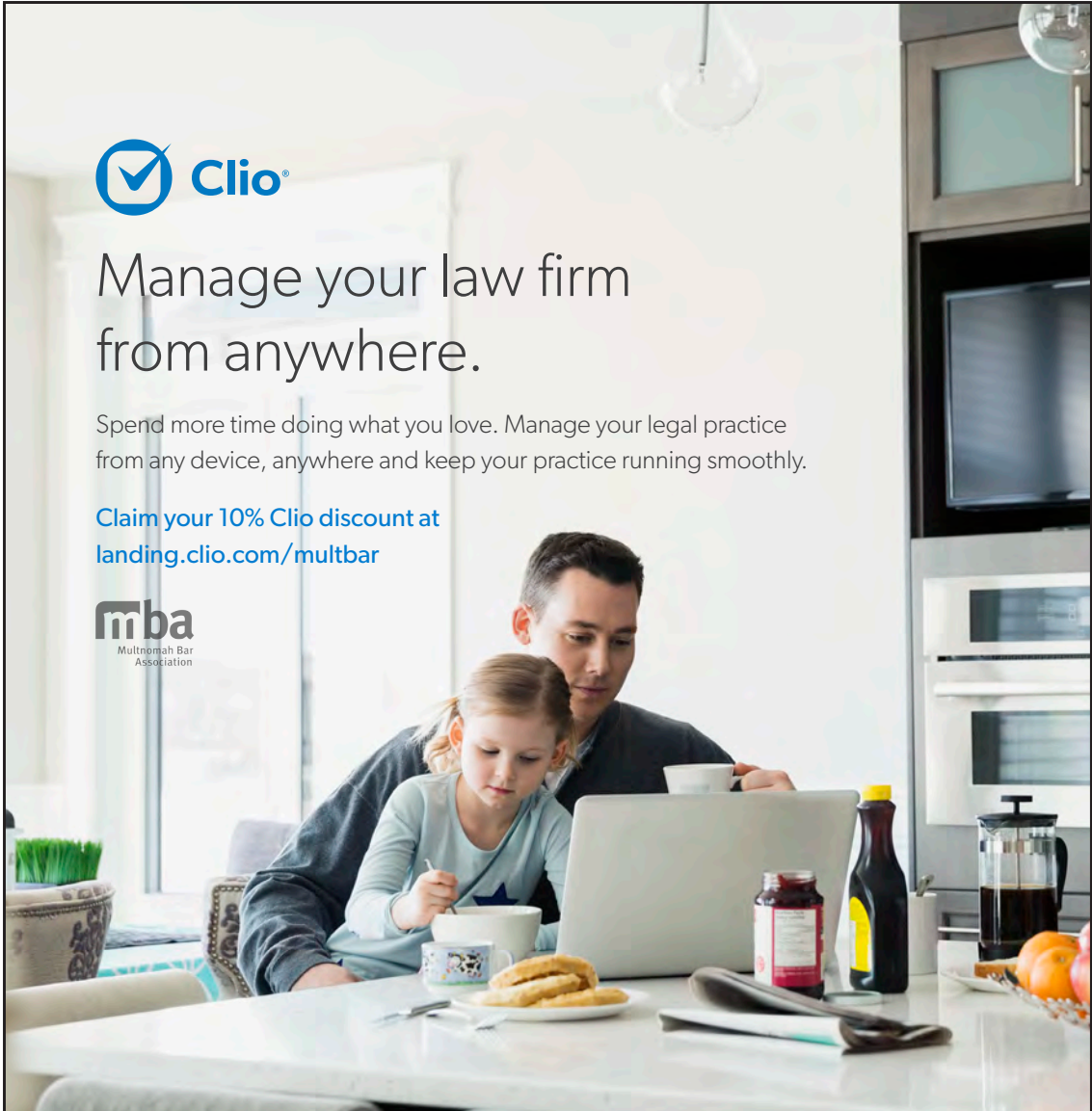


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