



# How I Became Part of the Public Defense Crisis

by John Robb  
MBA Treasurer

*In the March 2022 issue of the Multnomah Lawyer, I wrote about the crisis in indigent defense unfolding in Multnomah County and around Oregon. The crisis continues, and what I wrote*

*in March remains applicable today. This month, I wanted to share my own experience of starting, and leaving, a career as a public defender.*

I still remember getting the call that I was going to become a public defender. I remember where I was standing in my apartment, the way the director of Multnomah Defenders told me I was getting hired, and the feeling of elation I had as I hung up the phone. I was well over \$100,000 in debt and was just offered a job paying \$44,900 a year, but I just landed my dream job.

Public defense was not the career I envisioned when I started law school. In fact, becoming a criminal defense attorney was literally the last thing I wanted. I had no interest in, as I saw it, representing “criminals.”

This changed during an externship with a trial court judge in Maricopa County, Arizona. Given the choice between criminal and civil, I chose civil. I happened to get paired with a judge with a long career as a public defender in Detroit and Phoenix, and one of very few Black judges in Arizona. While I was there, he volunteered to take several criminal trials and other proceedings in addition to his civil assignments and engaged with me in frequent and enthusiastic discussions after court ended.

Seeing the reality of how the criminal justice system operated, and my discussions with the judge, opened my mind to criminal defense. I still vividly recall the trial that ended up making me a public defender.

The defendant was a middle-aged man recently released from prison and facing a substantial mandatory sentence for allegedly taking part in a burglary. He was borrowing clothes from the public defender’s office to wear for court, and my judge let him change clothes in chambers so he wouldn’t have to do so in the public restrooms. I typically let him in and out.

This was my first ever interaction with a “criminal,” and I didn’t know what to expect. The person I experienced was polite, mild-mannered, and, above all, terrified. He testified in his defense, and I believed him. I can still feel the pit in my stomach after the jury convicted.

I spent my final term in law school at the public defense clinic representing people charged with low-level drug felonies. I began hearing countless stories of poverty, trauma and abuse from people facing prison time and other life-altering consequences for offenses such as possessing a marijuana pipe. Afterwards I couldn’t imagine doing anything other than becoming a public defender.

**...becoming a criminal defense attorney was literally the last thing I wanted.**

My public defender origin story is far from unique. The moment I stepped foot into the public defender’s office, it was obvious my colleagues were there for similar reasons. To a person, each brought a tangible passion for the work and willingness to make significant sacrifices to follow that passion.

You don’t become a public defender by accident. You also don’t become a public defender expecting a cushy gig. Stories of low pay, high caseloads, and lack of respect are ubiquitous. It didn’t take long, however, before I realized even these warnings couldn’t do justice to the reality.

A year or two in, I recall feeling underwater and approaching a supervisor with decades of experience for advice about managing my ballooning caseload. He likened the caseloads to trying to drink from a firehose and observed that attorneys would consistently leave after about four years. Not from lack of passion or interest in the job - from burnout and exhaustion. No magic tricks or techniques were forthcoming, just an acknowledgement of what I was experiencing.

I made it five years before I decided to put the firehose down.

This decision was not made lightly or quickly. When I started at the public defender’s office, I had every intention of making that my career. A goal of mine was never having to tell a client I could only take their case if they could afford to pay me. Being a public defender was a firmly established part of my identity.

Five years of drinking from the firehose, however, left me emotionally, mentally, and spiritually crumpled. I felt I either had to leave the public defender’s office or suffer severe personal damage.

I know almost everyone reading this has been working long and hard hours since law school and before. Attorneys in every field have notoriously bad work-life balances. I still feel this in private practice.

But there’s something different about those caseloads. Whenever I would return to the office after being in court I would instinctively look to my inbox and my heart would sink when I saw new files waiting for me, which was almost every time. Too often, these new files went straight to my filing cabinet - I’d look at them if and when my client called, or when I needed to show up to court.

Continued on page 13

**A goal of mine was never having to tell a client I could only take their case if they could afford to pay me.**

## mba | CLE

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

### JANUARY

**1.19 Thursday  
Young Litigators Forum  
Series begins with  
Courtroom Nuts and Bolts**  
Judge Adrian L. Brown  
Judge Eric L. Dahlin  
*See insert for details*

**1.24 Tuesday  
Annual Probate Update**  
Judge Patrick Henry  
Judge Thomas Rastetter  
Judge Janelle Wipper  
Amy Cross  
Bryan Marsh

**1.25 Wednesday  
Landlord/Tenant Law Update**  
Emily Rena-Dozier  
Troy Pickard

### FEBRUARY

**2.6 Monday  
Does My Client Need a  
Parenting Coordinator?**  
Cassandra Marshall  
Charlene Sabin, MD

**2.8 Wednesday  
Mastering Pretrial Motions**  
Nathan Morales

**2.10 Friday  
Appellate Law Update**  
Judge Kristina Hellman  
Judge Katharine von Ter Stegge

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A Family Friendly Bowling Event

Saturday, February 4  
11 a.m.-2 p.m.



KingPins  
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A Multnomah Bar Foundation (CourtCare,  
CourtSupport and CourtConnect) Fundraiser

See insert and page 2 for details.

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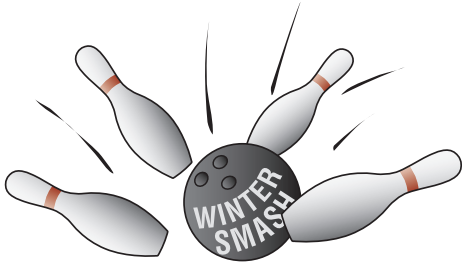
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WinterSmash to Benefit Multnomah Bar Foundation

A Family-Friendly Bowling Event  
Saturday, February 4  
11 a.m.-2 p.m.  
KingPins  
3550 SE 92nd Ave, Portland



The 19th Annual WinterSmash will be held on Saturday, February 4 from 11 a.m.-2 p.m. Lanes will be available exclusively for MBA members and their friends, colleagues and families for an afternoon of fun and food. Bumper lanes will be available for children. The event will help fund the Multnomah Bar Foundation’s CourtCare, CourtSupport and CourtConnect programs.

Multnomah CourtCare improves access to justice by making free, drop-in childcare available for families who have business at the Central Courthouse.

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 the experience more welcoming and less intimidating.

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.

So, come enjoy the company of your colleagues, some good food, play a game you know you

love and support a good cause. Tickets are \$40 for adults and \$15 for kids 3-12 years old. Price includes food, drink, shoes, balls, lane time and the satisfaction of knowing you’re supporting some worthy programs.

Prizes will be awarded for the highest and lowest individual scores, the group with the most participants in attendance and the group with the best bowling shirt. In addition, a traveling trophy will be presented to the group with the highest team score. There is also a Pin Setter registration option for \$20 per person. If you want to cheer on your team and enjoy pizza and drinks but you don’t want to bowl, this one’s for you! Raffle tickets will be sold at the event.

WinterSmash promises to be a good time; don’t miss this opportunity. Register via the insert in this issue or at [www.mbabar.org](http://www.mbabar.org).

Thank you to the WinterSmash sponsors.

King Pin Sponsor



Calendar

**JANUARY**

16 Monday  
Martin Luther King Jr. Day  
MBA Office Closed

19 Thursday  
Painting Party with Bottle & Bottega  
Details on p. 6

**FEBRUARY**

4 Saturday  
WinterSmash 2023  
Details on this page

9 Thursday  
YLS Community Service Opportunity: Blanchet House  
Details on p. 13

20 Monday  
Presidents’ Day  
MBA Office Closed

23 Thursday  
YLS Trivia Night  
Details on p. 13

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The MBA will apply for general OSB MCLE credit unless otherwise noted; Washington credit may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Unless otherwise noted, all classes are held online.

Annual Probate Update

Tuesday, January 24 3-5 p.m.  
Online Participation Only  
Members \$60/Non-Members \$95

The MBA presents the Annual Probate Update, featuring **Judge Patrick Henry**, Multnomah County; **Judge Thomas Rastetter**, Clackamas County; and **Judge Janelle Wipper**, Washington County; as well as **Bryan Marsh**, Oregon Department of Justice. The judges will discuss current practices and procedures for each of the tri-county area probate courts. Bryan will provide legislative updates. **Amy Cross**, Buckley Law PC, 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.

Landlord/Tenant Law Update

Wednesday, January 25 12-1:30 p.m.  
Online Participation Only  
Members \$45/Non-Members \$70

Please join **Emily Rena-Dozier**, of Oregon Law Center and **Troy Pickard**, of Portland Defender PC, for this informative CLE covering the following topics:

- Lifecycle of a residential tenancy: applications, rent increases, termination notices, security deposits, repairs and habitability, reasonable accommodation requests, and charges
- Litigation
- ORS Ch. 90; recent local and state tenant protection laws; COVID-19 fallout
- Federal landlord-tenant laws (PTFA, FHA, FDCPA, CARES Act, federally-backed mortgage rules)

**For more information:** Contact Jon Strauhull, Multnomah County Attorney’s Office, at 503.988.313. For registration questions, contact the MBA at mba@mbabar.org.

Does My Client Need a Parenting Coordinator?

Monday, February 6 3-5 p.m.  
Online Participation Only  
Members \$60/Non-Members \$95

This presentation by **Charlene Sabin**, MD and **Cassandra Marshall**, JD will define the role of a Parenting Coordinator (PC). They will provide practical information for you and your clients, including a sample order for appointing a PC. They will highlight the benefits and limitations of using a PC, discuss which cases are best served by using a PC, and answer common practical questions about this role.

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

Mastering Pretrial Motions

Wednesday, February 8 12-1 p.m.  
Online Participation Only  
Members \$30/Non-Members \$50

Pre-trial motion practice can make or break your case. In this presentation, **Nathan Morales** of Stoel Rives will present best practices and his tips and tricks for motions to dismiss, motions to compel discovery, and motions for summary judgment in state and federal court.

Nathan is an experienced trial and appellate attorney. In his career, Nathan has navigated a variety of complex business disputes on behalf of clients, focusing primarily on privacy and data security, class-action defense, and policyholder-side insurance litigation. As an appellate lawyer, Nathan successfully has briefed and argued in the Oregon Court of Appeals, Oregon Supreme Court, and Ninth Circuit Court of Appeals.

**For more information:** Contact Jamison McCune, Driggs Bills & Day PLLC, at 503.212.4475. For registration questions, contact the MBA at mba@mbabar.org.

Additional class descriptions on page 4

CLE Registration Form

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

**1/24 Annual Probate Update**  
**Online attendance only - link will be emailed**  
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**1/25 Landlord/Tenant Law Update**  
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**2/6 Does My Client Need a Parenting Coordinator?**  
**Online attendance only - link will be emailed**  
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**2/8 Mastering Pretrial Motions**  
**Online attendance only - link will be emailed**  
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**2/10 Appellate Law Update**  
**Online attendance only - link will be emailed**  
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**Total due**.....\$\_\_\_\_\_

*Online CLE registration strongly encouraged. Visit [www.mbabar.org](http://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](http://www.mbabar.org/archivedcle)



**Appellate Law Update**  
**Friday, February 10 12-1 p.m.**  
**Online Participation Only**  
Members \$30/Non-Members \$50

Please join the MBA for an update on Oregon appellate decisions for civil law practitioners. Multnomah County Circuit Court **Judge Katharine von Ter Stegge** and Oregon Court of Appeals **Judge Kristina Hellman** will present an overview of some key civil law decisions from the Oregon Court of Appeals and Oregon Supreme Court from 2021-22. These esteemed speakers will touch on issues relevant to nearly all practitioners.

**For more information:** Contact the MBA at [mba@mbabar.org](mailto:mba@mbabar.org).

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# We Are Growing

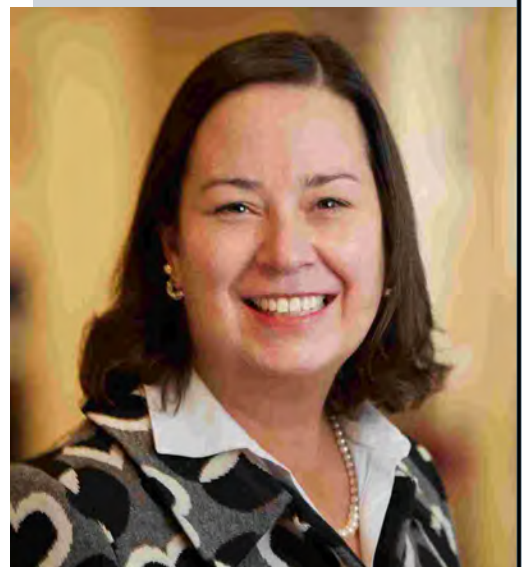
Welcome 2023 with our new Partner and a new outlook

Samuels Yoelin Kantor is pleased to announce Elizabeth Munns has joined the firm as its newest Partner.

Ms. Munns’ practice focuses on Estate Planning, Probate & Trust Administration, Business, and Taxation.

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mba | ANNOUNCEMENTS

Pledge to Increase Access to Justice

Sign the MBA Pro Bono Pledge at [www.mbabar.org/probonopledge](http://www.mbabar.org/probonopledge) and commit to taking at least one pro bono case in 2023. Visit [www.mbabar.org/probono](http://www.mbabar.org/probono) to discover pro bono opportunities in Multnomah County.

21-Day Racial Equity Habit-Building Challenge

Beginning January 18, join the Oregon Trial Lawyers Association for this 21-day challenge focusing on Hispanic/Latinx issues. The goal of the challenge is to assist each of us to become more aware, compassionate, constructive, and engaged in the quest for racial equity both personally and professionally. Visit [www.bit.ly/otla-challenge](http://www.bit.ly/otla-challenge) for details and to participate.

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 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.

Volunteers Needed to Serve as Courthouse Experience Tour Guides

Classroom Law Project is seeking volunteers who can dedicate at least one weekday morning a month to guide teachers, students, and chaperones on courthouse tours. Training and support will be provided. Recruitment for volunteer judges for the 2023 Mock Trial and We the People Constitution Team competitions has also started. Email Christopher Parrucci at [cparrucci@classroomlaw.org](mailto:cparrucci@classroomlaw.org) for more information.

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.-2 p.m. See the menu or order online for takeout at [www.pdxgrounds.com](http://www.pdxgrounds.com).

Ethics Focus



by Mark J. Fucile  
Fucile & Reising LLP

When I started practicing, law firm names often followed a predictable progression: as name partners retired, firms adjusted their names by moving the next most senior lawyer into the lead position and often added a more junior partner at the end. As law firms grew in size and geographic scope, however, that time-honored pattern began to ebb in favor of more constant and generally shorter firm names. In doing so, law firms were following economic trends that other businesses had long adopted to capitalize on “brand names.” The rules governing law firm names have also evolved to reflect the changing nature of law practice and associated marketing. In this column, we’ll first survey Oregon’s rules for law firm names. We’ll then look at how those rules apply to trade names and when lawyers retire, die or otherwise leave a firm.

The Rules

Oregon RPC 7.5 governs law firm names. RPC 7.5(a) sets the basic marker for law firm names by cross-referencing RPC 7.1, which requires truthfulness in all marketing communications - including law firm names. RPC 7.5(b) permits multi-state law firms to use the same firm name across jurisdictional boundaries. RPC 7.5(c) prohibits using the name of a lawyer holding public office “during any substantial period in which the lawyer is not actively and regularly practicing with the firm.” Finally, RPC 7.5(d) allows lawyers to state that they are practicing in a firm only when that is accurate. The emphasis on accuracy underlies each facet of the rule. OSB Formal Opinion 2005-109 (rev 2015), for example, concluded that under RPCs 7.5(a) and (b), an Oregon

What’s in a Name? Rules Governing Law Firm Names

law firm could include the name of a Washington law firm alongside its own as an “associated office” because the two firms had a contractual relationship to handle work for each other in their respective states. By contrast, the lawyer in *In re Reed*, 21 DB Rptr 222 (Or 2007), was disciplined under RPC 7.5(d) for including the term “& Associates” after his name because he was a solo practitioner. OSB Formal Opinion 2005-12 (rev 2015) reaches a similar conclusion where lawyers are simply sharing office space rather than practicing as a single firm. Oregon’s rule is patterned on an earlier ABA Model Rule and its Oregon predecessor, former DR 2-102. Importantly for lawyers whose practices take them beyond Oregon, the ABA in 2018 substantially revised the Model Rules on lawyer marketing. In that process, ABA Model Rule 7.5 on firm names was deleted in its entirety and the concepts moved to comments under ABA Model Rule 7.1 - again reflecting the fundamental focus on truthfulness. Because Oregon does not have comments to our rules, we could not follow the ABA’s structural change. Substantively, however, Oregon remains largely in sync with the ABA Model Rule comments on firm names. Trade Names Oregon RPC 7.5(a) specifically permits trade names: A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. The Oregon Supreme Court in *In re Shannon*, 292 Or 339, 342, 638 P2d 482 (1982), concluded that the term “trade name” in the then-current professional rule was used in its general sense as an

assumed name for a business. Comment 5 to ABA Model Rule 7.1 is similar and finds that geographic trade names are also permitted as long as they do not suggest that they are a public legal aid organization. OSB Formal Opinion 2005-101 (rev 2016) takes this same approach with trade names based on practice areas. Departed Lawyers Lawyers included in a firm’s name will eventually depart the firm. When that occurs through retirement, OSB Formal Opinion 2005-169 (rev 2016) finds that generally a firm may still use a retired lawyer’s name in the firm name as long as the retired lawyer is not practicing elsewhere. Formal Opinion 2005-169 also notes that firms have long continued to use the names of deceased lawyers in firm names. Both situations implicitly rely on the retired or deceased lawyer’s association with the firm. The situation is more nuanced, however, when a lawyer has simply left a firm. If the lawyer has a continuing connection to the firm, such as an “of counsel” relationship (which is surveyed in OSB Formal Opinion 2005-155 (rev 2014), then the lawyer’s name may remain in the firm name. The OSB Ethical Oregon Lawyer (at 2-40), however, reasons that if one of the exceptions discussed above does not apply, “a lawyer is precluded from allowing his or her name to remain in the name of a law firm or to be used by the firm if the lawyer is not actively and regularly engaged in the practice of law as a member of the firm.” The same passage goes on: “Other members of the firm are precluded from using the absent lawyer’s name in its letterhead or professional notices.” From either perspective, the reason is that leaving the name of a lawyer who has no continuing connection to the firm may be misleading under RPC 7.1.

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# Around the Bar



Allen Eraut

**Rizzo Bosworth Eraut PC**  
Rizzo Mattingly Bosworth PC, a Portland, Oregon-based civil litigation firm, is proud to announce that it is changing its name to Rizzo Bosworth Eraut PC. The firm’s updated name reflects the significant contributions of **Allen Eraut**, who joined the firm in 2008 as a senior associate and was promoted in 2010 to shareholder. Eraut has spent his legal career defending individuals and businesses in civil lawsuits involving personal injury and property claims. He has defended local and national companies in asbestos litigation, handled multi-million-dollar casualty cases, and managed construction defect cases for both general contractors and subcontractors. Possessing a

wide variety of trial, arbitration, and mediation experience, Eraut has successfully argued in front of the Oregon Court of Appeals and Land Use Board of Appeals. He also tried over ten cases to verdict, including a defense verdict on the longest construction defect trial in Oregon’s history. In addition to taking on leadership roles at Rizzo Bosworth Eraut and championing the firm’s sustainability initiatives, Eraut has actively supported the greater legal community through the years. He has presented numerous continuing legal education seminars, authored legal articles, and volunteered with The Lawyers’ Campaign for Equal Justice, Lawyers for Literacy, the Classroom Law Project, the MBA YLS Imprint Program, and Legal Aid Services of Oregon. For the Oregon Association of Defense Counsel, Eraut served on the board of directors, and chaired the Construction Practice Group. Collectively, Rizzo Bosworth Eraut’s nine trial lawyers represent businesses, individuals, and insurers in complex litigation involving construction, environmental and toxic tort, casualty, premises liability, product liability, professional malpractice, trucking, insurance

coverage, civil rights, and commercial disputes. Michael Mattingly has transitioned to private practice in new areas of law. Rizzo Bosworth Eraut was founded in 1995.



Stephanie Grant

**Tonkon Torp LLP**  
The firm has elected attorneys **Stephanie Grant, Danny Newman, and Megan Reuther** to its partnership, effective January 1. Grant joined Tonkon Torp’s Litigation Department in 2016. Her practice focuses on complex business litigation, including product liability defense, intellectual property disputes, and contract disputes. She has extensive experience guiding clients through disputes in state and federal courts, arbitration and mediation, and administrative forums. In addition to her practice, she helps steer the firm’s diversity and inclusion work. Grant

graduated first in her class from Lewis & Clark Law School. While a law student, she worked as a summer associate at Tonkon Torp.



Danny Newman


Newman joined Tonkon Torp’s Litigation Department in 2019 and focuses his work in the firm’s Bankruptcy & Reorganization and Government Solutions groups. He represents debtors and large creditors in complex bankruptcy cases, government investigations and enforcement actions, and various election-related and regulatory proceedings. Newman obtained his JD from Northwestern University School of Law, and clerked for federal judges in federal district court and the Ninth Circuit Court of Appeals. Reuther joined Tonkon Torp’s Labor & Employment Practice group in 2017. She works with local, regional, and national employers to solve complicated employment matters. Reuther



Megan Reuther

has substantial experience representing employers in state and federal court, and before California’s Department of Fair Employment and Housing, Oregon’s Bureau of Labor & Industries and the Equal Employment Opportunity Commission. She is a summa cum laude graduate of Lewis & Clark Law School.

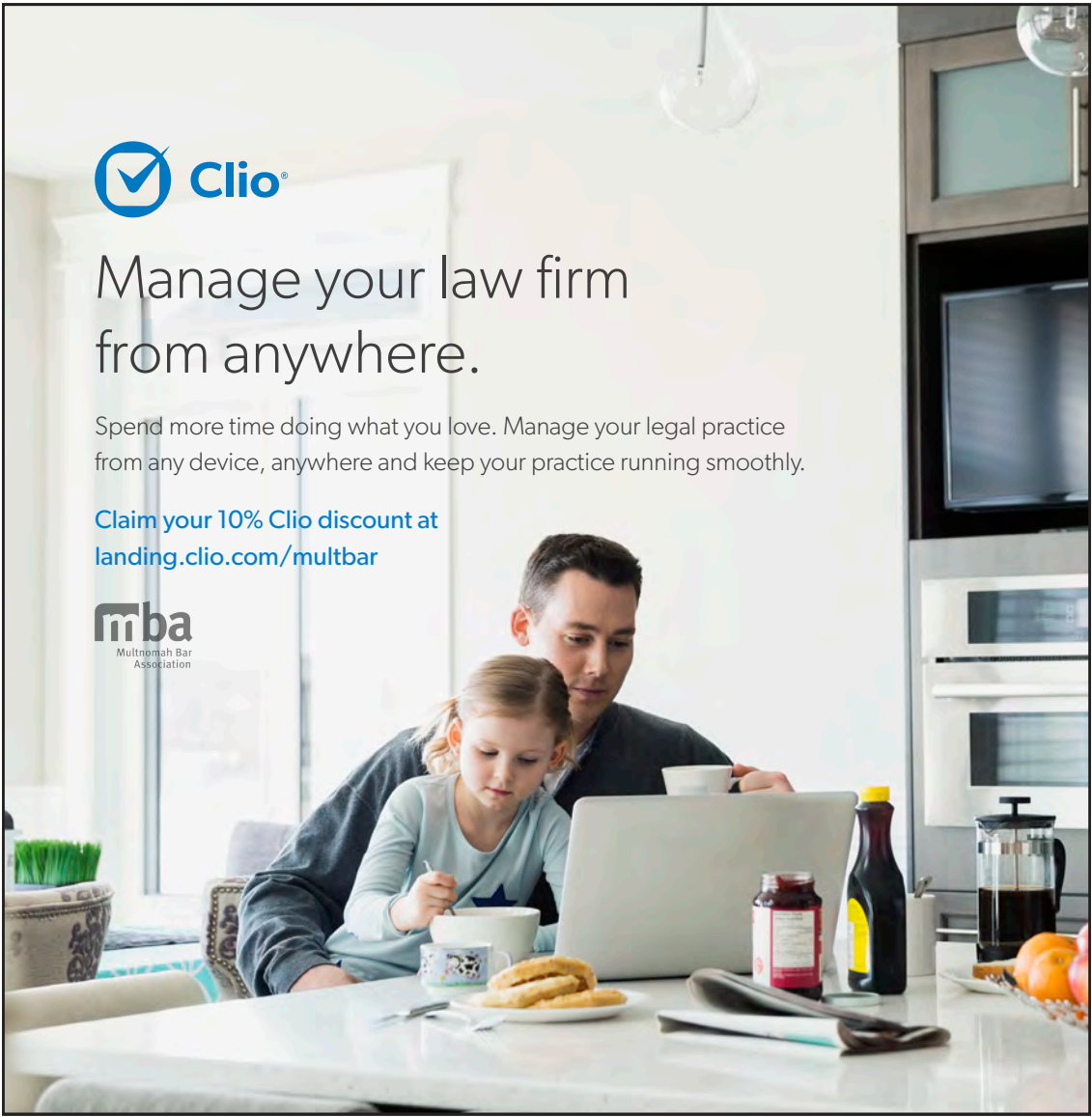

*The Around the Bar column reports on MBA members’ moves, transitions, promotions and other honors within the profession. The submission deadline is the 10th of the month preceding publication or the prior Friday if that date falls on a weekend. All submissions are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to [mba@mbabar.org](mailto:mba@mbabar.org).*



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## mba | EVENT

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Thanks to our generous sponsors - Foster Garvey PC, Gevurtz Menashe PC, Hedman Family Law LLC, Posey Legal PC and Wyse Kadish LLP - the cost to attend is only \$20 per person for MBA members and \$35 for non-members. Space is limited.



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## The Corner Office PROFESSIONALISM

### Professionalism in Motion Practice

We all know the feeling. We're reading a motion or response to a motion from opposing counsel and realize that the plaintiff has gone out of their way to make colorful characterizations of us, our co-counsel, our clients, and/or our arguments. It's frustrating and it's insulting. If you are anything like me, your mind immediately starts racing with comebacks, defenses, and most dangerously, your own snide remarks which in that moment you believe perfectly walk the line between acceptably aggressive wordplay and schoolyard yelling. It's easy to read it personally and assume that the opposing attorney is purposefully out there trying to make you look bad to the judge, the court, the other attorneys and anyone else who might have occasion to read the motion.

In that moment we want to react. We want first, more than anything, to correct the image of ourselves that we have perceived in opposing counsel's words. "No your honor, my argument was NOT woefully inadequate;" "Yes, I DO have some basis in reality for that assertion;" "No I am NOT advocating for a position which is 'ridiculous.'" The next instinct is to want to let the judge know that opposing counsel isn't so high and mighty.

It would be so easy to absolutely eviscerate them in a reply and the temptation to stoop down and engage in a war of words becomes ever greater.

It's at this moment that I would encourage you to pause, step back, and take a breath. The first question you should ask is "Could this be read differently?" So often it is easy to become attached to our client, case, or even a particularly well-drafted submission to the court, that we read malice into what really is just a strong or even slightly aggressive argument. While there are certainly those attorneys out there trying to make you look bad, the majority, especially here in Multnomah County, are just trying to do the best they can for their clients and often any perceived ill will can be chalked up to taking things too personally.

The above point is especially important now, as Portland winter is in full swing. This time of year can bring about depression and stress simply from the dreariness outside. When the added burdens of holiday events, travel, gift buying, and seeing friends and family while trying to balance work are added in, it sometimes becomes difficult to put our best foot forward. It is entirely possible that in navigating all of

that stress, opposing counsel did not realize that what they wrote could be taken as an insult.

The next question I would ask is, "even if this was on purpose, is a fiery retort worth it?" It may be that in this instance opposing counsel let some of those outside stressors impact their work in a way they aren't proud of or in a way they normally would not have. We have no way knowing. In that instance, instead of perpetuating the aggression and the less than civil discourse, I would encourage you to give opposing counsel some grace. You may just find that they appreciate your civility, and it certainly increases the likelihood of civil and productive interactions moving forward.

Even if your choice to take the high road does not result in any noticeable impact to your relationship with opposing counsel or the conduct in your litigation, you can be certain that the judge will take notice. In a recent panel with Multnomah County judges, the judges discussed at length the fact that they recognize unnecessary remarks and lack of civility in motion practice, and they greatly appreciate the parties who hold back and refuse to engage in those kinds of games.

The MBA Commitment to Professionalism states "We will treat all persons with courtesy, fairness and respect, without regard to any distinguishing characteristic such as gender, race, ethnicity, disability, sexual orientation, gender identity or expression, social or economic status, military status, age, national origin, or religion."<sup>1</sup> You will notice that there is no follow-up clause that says, "unless they don't treat me that way." There is no carve-out for angry responses. The commitment to professionalism is a personal choice made and adhered to both when you are treated with respect and when you are not. In fact, the goal of professionalism in the legal field is only achievable if we maintain

<sup>1</sup> Available on the Multnomah Bar Association website at [www.bit.ly/prof-cert](http://www.bit.ly/prof-cert)

our commitment to respect and professionalism when faced with conduct that is decidedly disrespectful. So as we navigate the trials of winter, please remember, treat each other with respect.

*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](mailto: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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## Tips From the Bench

# The Often-Overlooked Importance of Jury Instructions

by Judge Jenna Plank  
Multnomah County Circuit Court

The law is an ever-changing animal. All lawyers know this. It is one of the features of our profession that is simultaneously interesting and aggravating all at once. What many attorneys forget is that a change in the law often precipitates a need for changes to jury instructions. A failure to request jury instructions that reflect current law can result in plain error reversal. A failure to clearly articulate a special instruction can, in some cases, prove equally disastrous for a litigant; leading jurors to either misunderstand or misapply the law. Jury instructions must reflect the current state of the law, and they must reflect it in a manner that can be understood by an average juror.

The Uniform Instructions published by the Oregon State Bar are not pre-approved by the Oregon Supreme Court. Often a uniform instruction reflects an interpretation of the law that later opinions reveal is not shared by Oregon Appellate Courts. The OSB's Uniform Jury Instruction Committees meet monthly and work hard to author new instructions based on need. However, the Committees can only tackle a few instructions at a time, and the print version of Uniform Instruction updates are only published once a year. The Uniform Jury Instruction Committees are not structured to immediately author, vet and publish updated instructions contemporaneous with changes in the law. This means that attorneys themselves must fashion their own new or modified special instructions when case law or legislation presents a change or clarification of the law.

*State v. Owen*, 369 Ore. 288, 505 P.3d 953, (2022), published in March 2022, provides a perfect example of the issue described above. In *Owen*, the Oregon Supreme Court made clear that “a defendant must act with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state,” and that in the case of criminal assault “[the] resultant injury is a material element of the offense that requires a culpable mental state.” *Id.* at 290. Henceforth, all jury instructions that fail to set out resultant injury as a separate element with a separate mental state are in error.

The *Owen* decision, and several that followed, rendered obsolete many of the Oregon Uniform Criminal Jury Instructions on assault, sexual assault, and theft. At the time of the writing of this article, the Uniform Criminal Jury Instructions Committee was



diligently working on new instructions in these areas, but had not yet published revised uniform instructions for all affected charges. Until they do, special instructions are needed to accurately instruct on the law. And yet, practitioners still regularly request uniform instructions that reflect now incorrect statements of the law. Alternatively, practitioners who recognize these changes often submit Frankenstein-like amalgamations of uniform instructions and appellate opinion language as proposed special instructions. Instructions of that kind are often incomprehensible to an average juror, and a failure to clarify can result in an unfair and unlawful outcome.

The takeaway from all of this should be that compiling requested jury instructions cannot be an afterthought in preparing a case. Attorneys, particularly in criminal cases, must consult the current case law germane to the offense(s) at issue, and conform instructions accordingly before the start of trial. The most up-to-date iterations of uniform instructions can be found on the OSB's website in the *BarBooks* section. Where no current uniform instruction is available, attorneys must fashion their own special instructions in a manner that both accurately reflects the state of the law and can be understood by a juror.

When authoring a special jury instruction, attorneys must get the law right and keep it simple. Where possible, attorneys should use short sentences, simple and understandable words, avoid repetition where possible, and keep the proposed special instruction as brief as possible. See also *Criminal Jury Instructions User's Guide* by the OSB, available online at [barbooks.osbar.org](http://barbooks.osbar.org). When the state of the law makes it such that a special instruction cannot be phrased in plain language, attorneys must spend time in their arguments carefully explaining to the jury

*Continued on page 15*

## News From the Courthouse



by Anne Milligan  
MBA Court Liaison Committee

### Trial Court Administrator's Report - Barbara Marcille

If Multnomah County Circuit Court needs to delay or close due to weather, please remember that the school districts, the City of Portland, and Multnomah County may decide to delay opening or close for the day but the court could still be operating under normal business hours. The court makes an independent decision about whether to delay operations or close based on early morning consultation with officials from the City and County, the Department of Transportation, the National Weather Service, the sheriff's office, and the district attorney's office, and reports on the current status of city sidewalks, public transit, highways and roads, etc. If there is to be a delay or closure, the information is usually posted on the court's website by 6:30 a.m. and all court staff and judges receive an emergency notification. Lawyers and their staff can subscribe to Flash Alert to receive notice about weather-related closures and delayed openings, as well as other time-sensitive notifications from the court. Sign up at [flashalert.net](http://flashalert.net), select Portland on the map, scroll down to the Courts/District Attorneys group, and select Multnomah County Circuit Court.

Staffing continues to be challenging for the court, as it does for many employers in the public and private sector. Although the court is hiring at a rapid clip, turnover continues to be a problem and the market is extremely competitive. This poses an ongoing operational issue for the court. Please be patient with staff during this extraordinary time.

Additionally, the combination of flu and RSV on top of COVID cases is posing operational struggles for the court, reducing already less-than-optimal staffing to even lower staffing levels. If you have any type of illness whatsoever - whether it is “just a cold” or “something you're

just getting over,” but have not completely recovered - please do not come into the court building and jeopardize the health of your colleagues, court staff or jurors. If you anticipate needing remote access due to an illness, please reach out to your designated judge as early as possible and the court will make a decision whether to reschedule the proceeding or allow remote access depending on the circumstances of the proceeding.

The court reminds the bar that the court's trial calendar is very busy with specially assigned trials for next year and cases that need to go out to trial. Attorneys are expected to appear in person at Presiding Court call. Do not wait for your call date to report that you are not ready for trial the following business day; instead, appear at ex parte to select a new trial date. For efficiency you may also contact the court in advance of your call date to report ready for trial, per SLR 7.055(8)(b). Please make sure to advise the court when a case has settled by emailing [mul.presiding@ojd.state.or.us](mailto:mul.presiding@ojd.state.or.us) in advance of your scheduled call date.

Our criminal justice system continues to address the historic public defense crisis. Throughout 2022, court leadership met with Chief Justice Martha Walters and leadership from Multnomah Defenders Inc., Metropolitan Public Defender, the Multnomah County District Attorney's Office, the Office of Public Defense Services, and state legislators trying to work on solutions to this issue. Changes made to aid in resolving the crisis include daily monitoring of the cases where defendants are unrepresented, emailing reminders to lawyers regarding call and trial dates, expanding the allowance of omnibus motions beyond dispositive motions to be heard in advance of trial, exploring the increased use of remote appearances, and extending the time to disposition standards to give parties more time to resolve their matters. The court also established resolution dockets that allowed parties a

structured time to negotiate pleas. Collectively, the many varied efforts have worked to some extent, but there is no single solution that will resolve the crisis.

At the time of this report, there were 420 out of custody defendants facing criminal charges in Multnomah County without a lawyer, and 20-25 defendants in custody in Multnomah County who were unrepresented. Those defendants in custody without counsel were represented previously and granted a motion for a new lawyer, yet a substitute lawyer had not yet been identified. Public defenders are hiring and training new staff although it takes time to bring the new lawyers up to speed.

On Monday, December 5, 2022, a time capsule was sealed in the walls of the Central Courthouse. The capsule - to be unsealed in 2120 - will tell the story of 2020, including the construction and opening of the Central Courthouse, the pandemic, and the context of historic protests in the community. Some of the items included in the capsule are a judge's robe and gavel, face masks, newspaper clippings, letters from judges and court administration, and pictures taken in the past few years. In the context of a \$324+ million building that was completed and opened during a global pandemic - a building that never had a grand opening, public recognition, or celebration - this was a first of its kind, special event for the new Central Courthouse.

Artwork recognizing indigenous people has been installed on the exterior of the courthouse by the Regional Arts and Culture Council (RACC). Entitled “We are the Land,” the project showcases portraits of local Native people on public buildings throughout the city. RACC has also solicited a new “portable” collection of art for public display on various county buildings and those works will be on display for five years. Look for additional new pieces of art coming soon to the Central Courthouse.



# MBF Announces 2023 Officers and New Directors

by Pamela Hubbs  
Office and Foundation Administrator

The Multnomah Bar Foundation is pleased to announce its new officers and directors. We asked our officers for their thoughts about the MBF, their service and the year ahead.



Joe Franco

**Joseph L. Franco**, Holland & Knight LLP, President: “I am excited to serve as MBF President this year! We are thankful for the generous support shown by the legal community last year, and look forward to the community’s support in 2023 as we continue promoting access to justice and civic education through the MBF’s CourtCare, CourtSupport and CourtConnect programs.”



Tyler Volm

**Tyler J. Volm**, Sussman Shank LLP, Vice President: “Working within well-established MBF programs, shoulder to shoulder with colleagues from the bench and bar, has been an extremely rewarding experience, particularly my time on the Public Outreach Committee. From reviving the CourtConnect public education program post-pandemic, to a jovial tour of the new courthouse with representatives from the Immigrant and Refugee Community Organization and Judge Chanpone Sinlapasai, to meeting with the Mexican Consulate and learning about their important work in our community, my service to the MBF has granted me new experiences, insights, and friendships that I know have made me a better lawyer, but more importantly a better person.

Like many people, during the pandemic I took stock; routinely asking myself why I do what I do, what I was adding to the stream of life, and where I could find peace and purpose. A short time later, I was presented with the opportunity to join the

MBF, and since then that daily dialogue and internal conflict has been largely muted and serenity restored through service.”



Yoona Park

**Yoona Park**, Keller Rohrback Law Offices, Secretary Treasurer: “As we move into the new year, I’m excited to continue the work of the MBF to connect the judicial system and legal community with the broader population. Like others, I look forward to connecting with fellow lawyers - including the other MBF Board members - face-to-face, and to think creatively about new ways we can serve the families who are physically entering our courtrooms. Here’s to bustling courthouses and the programs that support them!”



Victoria Blachly

**Victoria Blachly**, Samuels Yoelin Kantor LLP, Immediate Past President: “It has been my honor to serve as the MBF President this last year. Although reopening CourtCare remains an ongoing challenge for staffing (anybody know of a good lead out there???), the board showed its dedication to the program and willingness to put in extra work as we continue to seek solutions. The board also made excellent new connections in the community this year through the dedicated work of the Public Outreach Committee and helped the Multnomah County courthouse by voting to increase and fund the CourtSupport Navigator’s position at full time. With the addition of four terrific new board members and Joe Franco as the incoming MBF President, 2023 is set up for further success!”

New directors are **Danielle L. Fischer**, Attorney at Law; **Pilar C. French**, Lane Powell PC;



Danielle Fischer



Pilar French



Bob Steringer



June Wyrick Flores

**Bob Steringer**, Harrang Long Gary Rudnick P.C.; and **June M. Wyrick Flores**, Schwabe Williamson & Wyatt PC.

Continuing directors are **David I. Bean**, Wyse Kadish LLP; the **Hon. Amy Holmes Hehn**, Multnomah County Circuit Court; **Anit K. Jindal**, Markowitz Herbold PC; and **Leah C. Lively**, Buchalter.

**Shalini Vivek**, Oregon Judicial Department, is the MBA Board Liaison.

# Chief Justice Meagan Flynn Judicial Profile

by Leslie Johnson  
MBA Court Liason Committee

With the start of the New Year, Justice Meagan A. Flynn (pronounced MEE-gan) became Chief Justice Flynn. She has had ample opportunity to prepare for this service. She’s known since she was 10 years old that she wanted to grow up to be a lawyer.

## Background

Chief Justice Flynn grew up in Seattle. The roots of her family extended east to Spokane and Montana. She is not the first lawyer in her family. Her father’s cousin was a lawyer and the first woman that Chief Justice Flynn remembers knowing who had a career in a profession.

She left for college already thinking about law school. She attended Willamette University in Salem, where she met her husband, Dan Keppler. She went back to Spokane, with Dan, to attend Gonzaga University School of Law, graduating in 1992. Believing that working in the courts was a way to get to know people and make connections, she went from law school to a two-year clerkship with the Oregon Court of Appeals, working with Judge Robert Durham and Judge Rick Haselton from 1992 to 1994.

## Being a Lawyer in Practice

In 1994, Chief Justice Flynn took a position in private practice with Pozzi Wilson Atchison. She was interested in their plaintiff-oriented practice which included civil rights. She tried cases - small value jury trials on her own, workers compensation administrative proceedings, longshore cases, and second chair on bigger cases. But her preference has always been for research, writing, and legal analysis. She enjoyed dispositive motion practice and writing jury instructions, and handled a lot of appeals.

When the Pozzi Wilson firm came to an end, she and a few former Pozzi partners eventually founded Preston Bunell & Flynn, where she handled appellate work in state and federal courts.

## Coming to the Appellate Court Bench

Governor John Kitzhaber announced the appointment of then-lawyer Meagan Flynn as a judge on the Oregon Court of Appeals, on September 25, 2014. She succeeded Judge Robert Wollheim, who retired from the court on October 31, 2014. She was re-elected in her own right in May 2016. For a time, she was a member of the first regular all-female panel of the Oregon Court of Appeals. (I cannot help thinking of Justice Ruth Bader Ginsburg’s famous answer to the question: When will there be enough women on the US Supreme Court? When there are nine...)

Governor Kate Brown appointed then-Judge Flynn to the Oregon Supreme Court in



Chief Justice Meagan Flynn

2017, to replace Justice Richard C. Baldwin, who retired on March 31, 2017. Then-Justice Flynn again won election in her own right to a new six-year term in May 2018.

## Stepping Up to Center Chair

Chief Justice Flynn follows Martha Walters and Tom Balmer to the center chair. Both retired at the end of 2022. But she has been preparing for some time. She has been going to meetings since the summer with Chief Justice Walters, chairing the annual judicial conference, attending meetings of the presiding judges from all the state courts, and generally working on getting to know the system. She was elected unanimously by the members of the Supreme Court. With the retirements of Walters and Balmer, she is the most senior member of the Supreme Court bench.

She thinks of the role of Chief as CEO of the whole Oregon court system. The Chief is supported by a great state court administrator. There are lots of meetings. She has been struck by how hard everyone works - not just to maintain the status quo but to get better. OJD has placed a major emphasis on collecting data on the work of the court to facilitate sharing problems and potential solutions across the counties.

Chief Justice Flynn has been meeting the presiding judges of all of the Oregon courts. She is learning the state budgeting system and preparing to carry the Judicial Department budget and statutory proposals to the state legislature. She wants to improve salaries for judges and avoid reductions to current court services. In addition, other priorities that give rise to the need for testimony and persuasion from the Chief and her staff include replacing unsafe courthouses, having security screening in every courthouse, and replacing and updating technology. All the courts are experiencing difficulties recruiting staff, but despite that most have reduced their pandemic case backlogs. She will be lobbying for the legislature to improve judicial compensation and make the court more accessible, and she will be

Continued on page 14



**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!

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Pro Bono Spotlight: Juliana Minn

by Eric Werner  
YLS Pro Bono Committee

Juliana Minn was recently named the Executive Director of Lewis & Clark Law School's Small Business Legal Clinic (SBLC), but Minn is no stranger to the SBLC - or the legal nuances of working with small businesses. Born and raised in Honolulu, Hawaii, Minn moved to Portland for her undergraduate degree and stayed to attend Lewis & Clark Law School. Minn was first introduced to the SBLC during law school as an intern, and working for the clinic solidified her interest in business law. After graduation, she worked for Vestas (a wind turbine manufacturer and wind park developer) and as a contract attorney in private practice. She knew she wanted to return to the clinic, and that opportunity came in 2020, when Minn took a position as a staff attorney. In November of this year, she was named executive director.

Minn brings to the role significant experience working with both big corporations and small businesses in a variety of industries, as well as a personal connection to the SBLC. Minn is also uniquely aware of the challenges small businesses face and the importance of SBLC's services, having been raised by a single mother who is also a small business owner.

Recently, Minn talked about how her experiences prepared her for the position and what's in store for the SBLC under her leadership.

**What is it about the SBLC that first excited you as a law student and brought you back as an attorney?**  
The clients! We get to help so many awesome and interesting businesses throughout Oregon. It also doesn't hurt that our team here at the SBLC is the best.

**The SBLC runs the Pro Bono Project and the Staff Attorney Program, which both provide services to local businesses, as well as the Rural Program, which provides services to businesses in towns of less than 35,000 people. Are there**



Juliana Minn

**Any programs you hope to start or grow as Executive Director?**  
I'd like to start a program that is more focused on assisting BIPOC artists. I'd also like to grow our Rural Program in order to ensure its longevity and provide students with an opportunity to see more clients from outside the Portland metropolitan area.

**In October, the SBLC ran an LLC Formation Clinic (in cooperation with the YLS Pro Bono Committee) that connected local attorneys with clients to help businesses file formation papers. What are some other opportunities for attorneys to get involved with the SBLC?**

We are always looking for volunteers to represent clients in transactional matters. Aside from offering your traditional skills as a transactional attorney, I encourage people to reach out if they're interested in mentoring our students or speaking about a specific business law topic at our Friday seminar classes during the school year.

**What do you do with your free time when you're not helping small businesses navigate the legal system?**  
I'm a musician and I love to collaborate - albeit long distance - with my good friend who lives in San Francisco. I also enjoy cycling and binge-watching shows.

Gemma Nelson  
YLS Member Spotlight

by Kirsten Rush  
YLS Board

Gemma Nelson is the chair of the YLS Service to the Public (STP) Committee and the focus of this month's Member Spotlight. Gemma is a Portland native who left the Pacific Northwest to attend Boston College and the University of Denver for her undergraduate studies. But the lure of the mountains and trees in her home state proved too strong to stay away for long, so she returned to Portland to attend law school at Lewis & Clark. While in law school, Gemma focused her interests on litigation by interning for a local mid-sized law firm and working as a certified law student at the Multnomah County District Attorney's Office. After graduating from Lewis & Clark and passing the bar in 2019, Gemma began her career in civil litigation. Gemma had been practicing law for less than a year when the pandemic hit, and the shift to remote work gave Gemma the opportunity to evaluate her career path. During a time when networking opportunities were few and far between, Gemma connected with an attorney practicing affordable housing law. It was through this connection that she was inspired to practice in an area where she could assist clients in creating more affordable housing in the Pacific Northwest. She decided to change her career trajectory and now primarily

practices in the areas of real estate, affordable housing, and low-income housing tax credits at Elliott, Ostrander & Preston, PC. Gemma represents for-profit developers, nonprofit organizations, and housing authorities across a spectrum of tax-driven real estate investment needs, including the planning, financing, and development of affordable multi-family and senior housing. Gemma's engagement with the community extends beyond her legal practice to her work with the YLS STP Committee. When she first started as an associate, Gemma was encouraged by a fellow member to join the YLS as a means to connect with other attorneys and engage with the legal community. Gemma joined the STP Committee without knowing exactly what she was getting into, but what she found was an amazing source of community and connection that was much needed during the pandemic. Now that in-person events are returning, she has found that the YLS has been and continues to be a great place to build community, meet attorneys in other fields, and build a professional referral network. Now in her third year on the STP Committee, Gemma is serving as the committee chair. Her favorite STP event is the



Gemma Nelson

Imprint Project, which pairs local high school students with attorney pen pals to read a book together and meet in person. The program is Gemma's favorite because it provides a direct line of communication to local teenagers where attorneys can share what their career entails and answer students' questions about the legal field, college studies, and life in general. Outside of the legal field, Gemma enjoys hiking with her husband and two dogs, cheering for the Portland Trail Blazers, and exploring the robust Portland food scene. Gemma is also the incoming chair of the Youth Village Oregon Ambassador Board, an organization that assists youth as they age out of the foster care system. Gemma encourages new attorneys to join upcoming YLS STP events, including the Imprint Project, as a way to meet other attorneys while engaging in meaningful community service in the Portland area.

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## Upcoming YLS Events

### YLS Imprint Project Virtual Orientation & Training Monday, January 9 5-5:30 p.m.

Read a great book and correspond with local high school students. This program connects Parkrose High School students with attorneys and judges in their community.  
Volunteers are invited to attend a 30-minute virtual orientation and training on Monday, January 9. Visit [www.bit.ly/yls-imprint](http://www.bit.ly/yls-imprint) for details and to volunteer.

### Donation Drive and Community Service Opportunity



The YLS Service to the Public Committee is assembling Winter Care Kits for local nonprofit Blanchet House. You are invited to donate essential relief items, as well as to join the committee for a kit-making event on Thursday, February 9.  
Winter Care Kits contain essential relief items for people living homeless. Things like clean socks, a rain poncho, a hand warmer or gloves, bath wipes, and snacks offer comfort to someone living outdoors in difficult conditions.

#### Donate

Purchase from the list of needed items ([www.bit.ly/blanchet-yls](http://www.bit.ly/blanchet-yls)) for the Winter Care Kit and deposit your donation at the drop-off site below:  
Stahancyk, Kent & Hook PC  
Attn: Thomas Ybarra  
2400 SW 4th Ave,  
Portland, OR 97201  
Or purchase online and have your donation mailed to:  
Miller Nash LLP  
c/o Alex Hutchinson  
111 SW Fifth Ave Ste 3400  
Portland OR 97204

### Participate in the Kit-Making Social Thursday, February 9 4-6 p.m. Miller Nash LLP, 111 SW 5th Ave Ste 3400

Using the donated goods, we will be assembling individual Winter Care Kits for delivery to Blanchet House. Snacks and beverages will be provided. Submit your RSVP for the event to [Alex.Hutchinson@MillerNash.com](mailto:Alex.Hutchinson@MillerNash.com).  
Thank you to Miller Nash LLP for hosting this event.

### YLS Trivia Night Thursday, February 23 5-6:30 p.m. Lucky Labrador Brew Pub, 915 SE Hawthorne Blvd, Portland

Please join the YLS Membership Committee and trivia host Graham Brown of Stumptown Trivia for a fun evening of trivia. Graham will be quizzing the whole group, but there will be only one Trivia Champion!  
Register for the event at [www.bit.ly/trivia-yls](http://www.bit.ly/trivia-yls). Attendance is free for MBA members, \$10 for non-members.

## How I Became Part of the Public Defense Crisis

*Continued from page 1*

Motion practice generally meant finding a boilerplate motion and hoping I'd at least included all the right legal issues for appellate preservation and changed all the names and captions before filing. I've missed obvious legal or factual issues and been granted continuances or filing deadline waivers only after I convinced the court it was necessary to avoid reversal in post-conviction proceedings. I've started a conversation with a client in jail that lasted far too long before realizing I wasn't talking with the right person.

Toward the end, I felt like a walking malpractice lawsuit waiting to happen. I knew my clients deserved better.

I attempted to manage my caseload through triage. I would identify particularly worthy cases and work overtime to be adequately prepared. As a result, I'm not sure it was as apparent to judges or prosecutors the full extent of the other shortcuts necessary to manage my caseload.

I could feel it.  
Again - this was my vocation, my passion. I cared deeply about my clients and fully identified my personal and professional worth with providing them a zealous defense. I was acutely aware of each and every shortcut and shortcoming.

What made me leave was fully realizing the mounting costs of staying. Throughout the day I

experienced intermittent panic that I was neglecting something critical for a client's case. I struggled to fall and stay asleep, and I felt my physical and mental health worsening every day.

I left the public defenders office with a heavy heart but a deep sense of relief. These experiences are also far from unique in public defense. Very few of my colleagues are still handling a full public defense caseload, and I don't know anybody who hasn't seriously thought about leaving.

Managers at both public defender's offices today tell me these problems are even more acute now than when I was there. One describes continually seeing talented and passionate attorneys being slowly broken down by the caseloads, seeing bright eyes turn to vacant stares, and eventually leaving. The reality is there isn't a shortage of attorneys who want to be public defenders. Historically, entry level jobs at public defenders' offices have been competitive. More than enough of these attorneys are interested in public defense as a career to establish a large and robust community of career civil servants and eliminate the current shortfall.

The reality is that there is a shortage of attorneys who are willing to tolerate the current working conditions. Until these conditions are addressed directly and adequately, the crisis will not be.

## 2023 LASO/OLC/MBA Pro Bono Awards *Nominations must be received by January 20, 2023*

Pro Bono Awards recognize attorneys who provide pro bono assistance to low-income and underserved members of our community to reduce barriers to justice and access to the legal system. Recipients are screened and selected by Legal Aid Services of Oregon (LASO)/ Oregon Law Center (OLC)/ Multnomah Bar Association (MBA) Pro Bono Committee.

Awards will be presented at the MBA Annual Meeting on May 24.

### Award Categories

**Legal Aid Pro Bono Volunteer of the Year.** Presented to a lawyer (or lawyers) who has displayed an outstanding commitment to the delivery of critical pro bono services to low-income persons through LASO or OLC.

**Michael E. Haglund Young Lawyer Award.** Presented to a young lawyer (or lawyers) who, in the tradition of Michael Haglund, founder of the Volunteer Lawyers Project, has displayed a particular dedication to pro bono services. A "young lawyer" is a lawyer who is 36 years old or younger OR who has been an attorney licensed for six years or less.

**Pro Bono Award of Merit.** Presented to a lawyer (or lawyers or law firm) who has exhibited the highest standards of commitment to increasing access to justice within Oregon for those unable to afford legal assistance or those from communities underserved by the legal profession.

**Nomination form and further details available at:**  
[www.bit.ly/pro-bono-awards](http://www.bit.ly/pro-bono-awards)





**Chief Justice Flynn**

*Continued from page 11*

stepping into the ongoing work to solve the shortfall in available criminal defense counsel and the challenge of unrepresented defendants.

Her one regret: that this office is largely administrative. It will affect her availability for opinion writing, which she wants to continue though at a lesser level. In fact, the members of the court have an informal agreement that the Chief does not have to make recommendations on petitions for review.

And she is most excited about getting to meet more of the 200 OJD judges throughout the state and getting to know others better. She feels she has been given an extraordinary opportunity for service to the community of judges and courts as well as the larger community of citizens they serve.

**Family**

Chief Justice Flynn married the guy she met in undergrad. Dan Keppler is now a partner and in-house general counsel at the Portland office of Foster Garvey. They recently became empty-nesters, their two daughters having left for college and beyond.

She likes to cook. We shared our admiration for the New York Times Cooking app. She owns a tortilla press and a pasta maker, and likes cooking flavorful foods - a lot of Italian and Mediterranean.

They travel. Favorite destinations are in Canada, including Vancouver and the surrounding islands and coastal British Columbia. They’ve enjoyed road trips and tent camping in the region, plus a few trips to Europe and more to come.

**In Sum**

Chief Justice Meagan Flynn has had a career that looks, in many ways, like a direct march from grade school to the chief justice’s seat. She went to college planning to go to law school and completed the two in seven years. Her 20 years in private practice have been book-ended by service on the state’s appellate courts. Her practice experience has covered a range of subject matters and settings, including civil jury trials, administrative proceedings, and appeals. If you’ve met her in person, or when you do, you will experience a smart, thoughtful, observant lawyer, of even temperament, with an appetite to roll up her sleeves to learn, engage, and serve the state’s judicial process. Let’s wish her the very best!



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Tips From the Bench

Continued from page 10


the meaning of a particular instruction as it relates to the facts of the case.

Drafting legally accurate and functionally understandable jury instructions can be harder than it sounds, and generally takes longer than attorneys anticipate. The upshot of spending time carefully thinking about and preparing instructions pre-trial is that such preparation generally helps practitioners hone their overall theory and presentation of a case. Most judges are also appreciative of comprehensive and well-drafted instructions as it eliminates another opportunity for reversible error in any given case.

Jury instructions are a direct reflection of the law that

governs a case, and yet many practitioners treat instructions as an afterthought. In many cases it is not enough to simply select the uniform instructions that appear applicable to a given case. Attorneys need to spend time in advance of trial verifying the uniform instructions reflect the current state of the law, and carefully crafting special instructions where needed. Attorneys should keep in mind when preparing a case that jury instructions are just as important to the outcome of a trial as any argument they make, and like any good argument, accurate and clear instructions require adequate preparation.


*Special thanks to Dean Land and Judge Michael Greenlick for their assistance in drafting this article.*



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