



Endings and Beginnings

by Theresa L. (Terry) Wright
MBA President

At the time of this writing, I have been the MBA President for just a few weeks. I thank teamwork for making the transition between Tim Resch, Past President, and me seamless. More about teamwork later.

First, a little about me. I graduated from Willamette Law many years ago, and have enjoyed a legal career primarily in legal education in the practical skills area. I was a clinician for approximately 30 years, first at Willamette, then at Lewis & Clark. Since 2015, I have been directing the Externship Program at Willamette Law. Working with our future lawyers while they are still in law school has been an incredibly rewarding experience, and I am proud of my past students who are now practicing attorneys and judges. I have learned and learn as much from them as I hope they have and do learn from me.

Through my work with law students, I have also become an advocate for changes to legal education. The fact that law schools are now required to offer skills training is a welcome change to the education I, and many of us, had. The ABA's recent addition to law school curriculum of diversity and development of professional identity is another way we are creating practice-ready lawyers and colleagues.

My passion has always been access to justice, and I have spent my career working with marginalized communities, which has led me to my second passion of diversity, equity, and inclusion, or in law school parlance, JEDI (Justice, Equity, Diversity, and Inclusion). I am certain you will hear more about these topics in future columns.

I have always been a bar "groupie," beginning early in my career when I was asked to join the OSB's Affirmative Action Committee. I immediately took to bar work, and have been an active volunteer since then. I found the MBA when I started practicing in Multnomah County, and have also been volunteering with the MBA since then. Through my work with both the OSB and MBA, I have developed many meaningful lifelong relationships, and hope to continue to do so. I have also worked on numerous projects that have improved the profession.

Now, a little about teamwork, as promised above. The MBA is as successful as it is in large part because of teamwork. Our small but dedicated and hard-working staff keep the organization running, and make it easy for people like me to look good doing our jobs. They always work as a team, and there doesn't seem to be anything that escapes their notice.

That being said, the MBA is primarily a volunteer organization, and we need each of you as part of our team. We have many committees that are always looking for volunteers. We are always looking for CLE speakers to enhance our excellent CLE program. Once a year we ask for nominations for some of our various awards and always welcome more nominations. The MBA supports our local court and legal aid programs which are always looking for volunteers for their pro bono projects. We have numerous events during the year where we welcome all members to attend and meet each other.

Speaking of teamwork and volunteers, our Young Lawyers Section (YLS) is also looking for volunteers. Any MBA member in practice less than six years or under the age of 36 is considered a part of the YLS. The YLS has its own committees, its own board of directors, its own CLE programming, and its own set of yearly awards.

The work of the MBA and YLS is only done with the teamwork of volunteers. Come be a part of the team!

My goals for this year are to continue the fine work done by my predecessors, to seek out volunteers for our teams, to support the work of all of our committees, to support the diverse needs of our bar, to support our local courts and judges, and to look for new projects the MBA can take on without overburdening our staff and volunteers.

I am looking forward to a productive year with all members of our team, which includes all of you. I want to hear from you, the members, about what the MBA is doing or can do for you. Thank you for being a member of the MBA!

mba | EVENT

23rd Annual MBA Golf Championship

Thursday, September 21
Ghost Creek at Pumpkin Ridge
8:30 a.m.

Enjoy the last days of summer at the MBA Golf Championship!

Your participation or sponsorship will help us reach our goal of raising \$10,000 for the Campaign for Equal Justice to benefit the Volunteer Lawyers Project. This is the MBA's largest annual fundraiser for legal aid.

MBA members and non-lawyers register by September 15 for discounted entry of \$240. Non-MBA lawyers, \$270. After September 15, all players \$270. Registration includes golf, cart, range, a light breakfast and awards lunch.

Sponsor levels range from \$350 to \$2,500. Sponsor by August 22 to be recognized in the September *Multnomah Lawyer*.

Please join us and support the CEJ and Volunteer Lawyers Project!



For more information, see the insert in this issue, visit www.mbabar.org, or contact Pamela Hubbs (pamela@mbabar.org, 503.854.5237).

mba | CLE

To register for a CLE seminar, please see p. 3 or visit www.mbabar.org/cle and input your OSB number to register at the member rate.

JULY

7.25 Tuesday
Paid Leave Oregon: 2023 Updates and Implementation Strategies
Anne Milligan

SEPTEMBER

9.12 Tuesday
How Practicing Mindfulness Can Make You a Better Lawyer and a Healthier Person
John Devlin

9.13 Wednesday
Winning Through Mediation - A Guide for Lawyers
Jeff Edelson



In This Issue

Calendar	2
MBF Campaign	2
CLE	3
Announcements	5
Ethics Focus	5
Around the Bar	6
Tips From the Bench	8
MBF CourtConnect	9
Profile: Referee Mark Peterson	9
YLS	10
Classifieds	16

Multnomah Bar Association
620 SW 5th Ave
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2023 Campaign Raises Over \$60,000 for the Multnomah Bar Foundation

by Pamela Hubbs
MBA Office and Foundation Administrator

With generous support from the legal community, the MBF Annual Campaign raised \$61,363 and helped bring us closer to our goal of \$120,000 to sustain our three successful programs, Multnomah CourtCare, CourtSupport, and CourtConnect. Meeting our goal will also provide seed money to develop future projects that improve the quality and administration of the legal system, increase access to justice, and support the courts.

Our donors are acknowledged here and also at www.mbabar.org/mbf.



Thank you, 2023 Campaign Donors!

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Calendar

AUGUST

3 Thursday
Battle of the Lawyer Bands
Details on p. 11

15 Tuesday
YLS Kickoff Social
Details on p. 10

SEPTEMBER

4 Monday
Labor Day
MBA office closed

21 Thursday
23rd Annual MBA Golf Tournament to Benefit the CEJ
See insert

Hon. Judith Matarazzo
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Supporting the MBF helps local people with local issues. Learn more at www.mbabar.org/mbf, or contact Pamela Hubbs at pamela@mbabar.org.

Thank you for your support.

Please remember the MBF as you budget for next year!

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Portland Urban Debate League (PUDL) and the Multnomah Bar Association held an event at Birdie Time Pub in Southeast Portland on June 7. Attendees enjoyed delicious food, played mini golf and learned about PUDL from Mallory Copeland, PUDL Executive Director and Amanda Haines, PUDL Board member. PUDL dismantles existing barriers for students, especially BIPOC students, at under-resourced high schools to access policy debate. Their work depends on the support of volunteers. Learn more at portlanddebate.org and volunteer at portlanddebate.org/volunteer.



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.

Paid Leave Oregon: 2023 Updates and Implementation Strategies

Tuesday, July 25 Noon-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

Paid Leave Oregon (PLO) benefits go live on September 3, meaning that all Oregon employees who make at least \$1,000/year will be eligible for up to 14 weeks of paid, job-protected leave during qualifying life events. Moreover, BOLI has recently opined that “topping” off PLO benefits with accrued, paid time off may be considered mandatory under some circumstances, rather than permissive as originally thought. Are you and your clients ready for launch? Join Senior Deputy City Attorney **Anne Milligan**, Portland Office of the City Attorney, for the latest legislative updates, interpretative rules, and more at this timely CLE.

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

How Practicing Mindfulness Can Make You a Better Lawyer and a Healthier Person

Tuesday, September 12 Noon-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

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

“To be a good lawyer, one has to be a healthy lawyer.” -Report from the ABA National Task Force on Lawyer Well-Being

Many lawyers struggle with the stress and anxiety of practicing law. In 2017, the ABA National Task Force on Lawyer Well-Being issued a report titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. The report suggested mindfulness as a way to “enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making.”

John Devlin has been litigating and trying cases for more than two decades. John initially became interested in mindfulness because he was looking for ways to deal with stress and anxiety. He discovered that becoming more mindful also made him a more effective lawyer. He was more present when talking to clients and witnesses. He was able to respond rather than react to difficult situations, and remain calm during particularly stressful moments.

Join us for this CLE, where John will share what he has learned about mindfulness. He will discuss the scientific research on the benefits of mindfulness, and offer practical tips on how to get started. You do not need any prior experience with mindfulness, only curiosity about the topic.

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

Winning Through Mediation - A Guide for Lawyers

Wednesday, September 13 3-5 p.m.
Markowitz Herbold PC, 1455 SW Broadway, Ste 1900 and Online
Participation via Zoom
Members \$60/Non-Members \$95

Jeff Edelson, Markowitz Herbold attorney and mediator, brings a fresh perspective on the art of mediation from the lawyer’s perspective. In his insightful and nuanced presentation, Jeff will teach valuable techniques attorneys can bring to bear for their clients before and during mediation.

Jeff will cover topics such as why and when to mediate, choosing a mediator, mediation statements, and ethical considerations. He will also discuss some concepts to help lawyers develop credible mediation offers and demands.

For more information: Contact Kathryn Roberts, Markowitz Herbold PC, at 503.984.3071. For registration questions, contact the MBA at mba@mbabar.org.

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- ☐ MBA Member
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Online CLE registration strongly encouraged. Visit www.mbabar.org to register online. Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar. Registration forms may be mailed to the address below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail payment to:
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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. Online attendees will be emailed a link prior to the class.

7/25 Paid Leave Oregon: 2023 Updates and Implementation Strategies

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

9/12 How Practicing Mindfulness Can Make You a Better Lawyer and a Healthier Person

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

9/13 Winning Through Mediation - A Guide for Lawyers

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Unable to attend? Archived webcast options are available at www.mbabar.org/archivedcle



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mba | ANNOUNCEMENTS

Not Receiving MBA Emails?

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

Pledge to Increase Access to Justice

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

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).

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.

Change to Dress Code Policy at Multnomah County Jails

A new dress code policy for jail visitors went into effect in June at Multnomah County jails. While the new policy is less restrictive, the Multnomah County Sheriff’s Office will enforce all sections of the policy for all jail visitors. Details are available in the MCSO Inmate Visitors Guide, found at www.bit.ly/msco-guide.

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 pacerline around SW Fairmount; Thursdays go up through Forest Park. E-bikes okay. Great repeating interval workouts. Contact Ray Thomas, 503.228.5222, if you are a new rider or for additional details.

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.

Ethics Focus



In June, we discussed an Oregon State Bar ethics opinion issued this past year on depositing funds - with client consent - into trust accounts to correct discrepancies that arose beyond a law firm’s control, such as bank errors or thefts. Earlier this year, the OSB issued an ethics opinion that deals with what is usually an even more searing experience for a law firm: the discovery that a trusted bookkeeper or other staff member has stolen client funds. In many respects, the new opinion, OSB Formal Opinion 2023-202, is a companion to last year’s OSB Formal Opinion 2022-199. Both are available on the OSB website and both merit careful review by lawyers involved in managing their firms.

In this column, we’ll survey Opinion 2023-202. The opinion addresses three principal questions:

- 1. Must the law firm inform the clients affected of the theft?
- 2. Must the law firm obtain a conflict waiver from the clients affected to continue representing them in the matters involved?
- 3. May the law firm restore the funds stolen to the trust account?

With each, Opinion 2023-202 offers direct practical answers to this fraught situation.

New OSB Opinion on Staff Thefts of Client Funds

by Mark J. Fucile
Fucile & Reising LLP

Like Opinion 2023-202, we’ll begin with four qualifiers.

First, the opinion assumes that firm lawyers are not complicit in the theft. When they are, the lawyers involved are more likely to need good criminal defense counsel.

Second, the opinion uses the term “staff” broadly and does not distinguish between firm employees and independent contractors who are assisting the firm with the sensitive functions involved in managing the firm’s trust account.

Third, the opinion does not attempt to parse the degree to which even an honest lawyer failed to adequately supervise the staff member involved. When supervisory failings occur, Oregon case law suggests discipline may follow under RPC 5.3, which addresses lawyer responsibility for supervising nonlawyers.

Fourth, the opinion notes - but does not explore - other substantive legal ramifications beyond the professional rules that may come into play. These include, but are not necessarily limited to, litigation with the clients impacted over the funds stolen, insurance coverage issues and involvement in resulting criminal investigations.

Informing the Clients

Although a law firm may be understandably embarrassed that a staff member stole client funds, Opinion 2023-202 provides pointed counsel (at 3):

Having a client’s money stolen from a law firm trust account by law firm staff is an event that must be communicated to the client under RPC 1.4 (“the communication rule”) within a reasonable period of time following Lawyer’s discovery of the theft.

In reaching this conclusion, the opinion relies on ABA Formal Opinion 481 (2018) that reaches a similar conclusion on the duty to disclose potential material errors to clients.

Conflict Waivers

Opinion 2023-202 offers an equally direct answer (at 3) on whether a conflict exists:

The theft of a client’s money held in trust by law firm staff creates a conflict under RPC 1.7(a)(2) stemming from the possibility of claims or other material adverse roles (such as being a witness in a criminal investigation or a complainant in a bar proceeding) between the client and the lawyer.

In light of this conflict, Opinion 2023-202 counsels (at 3-4) that a law firm must

evaluate whether it can continue to represent the clients involved:

The lawyer must, therefore, evaluate whether, as required by RPC 1.7(b)(1) (which regulates conflict waivers), “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client” going forward and, if so, must obtain a conflict waiver under RPC 1.7(b) based on the client’s informed consent to continue representing the client in the matter concerned.

The opinion notes that the Professional Liability Fund has a template waiver on its website for conflicts arising from potential errors.

If the law firm concludes that it cannot continue to meet the requisite standards in light of the theft, Opinion 2023-202 suggests that the firm must then withdraw (or seek leave to withdraw if the rules of the forum require court permission).

Restoring the Funds

Opinion 2023-202 effectively cross-references Opinion 2022-199 on the question of restoring the funds involved. The earlier opinion found that a lawyer cannot unilaterally deposit the lawyer’s own funds into trust because RPC 1.15-1(b) and OSB Formal Opinion 2005-145 (rev. 2016) interpreting RPC 1.15-1(b) generally prohibit lawyers from depositing their own funds into trust (above account fees) because doing so would defeat overdraft protection incorporated into the trust account rules. Opinion 2022-199 reasoned, however, that a lawyer could either reimburse clients directly for a bank error or - with the clients’ permission following adequate disclosure - write checks to the clients for deposit into the trust account to cover the error.

While acknowledging that the two opinions are predicated on fundamentally different facts, Opinion 2023-202 concludes that the remedies discussed in Opinion 2022-199 make equal sense in the staff theft scenario. Therefore, the new opinion approves the same approach: offering to either reimburse clients directly for the losses or - again with the clients’ permission following adequate disclosure - writing checks to the clients for deposit into the trust account to cover the theft. The opinion closes by cautioning that a firm cannot condition reimbursement on a client agreeing to waive the conflict involved.



The PSU **Explore the Law Program (ETL)** held an End of Year Celebration on June 9. Judge Angel Lopez and Judge Melvin Oden-Orr were the keynote speakers. The event was attended by Judge Maurisa Gates, attorneys and legal professionals, and of course, the students. Here are some of this year’s ETL achievements:

- Two of the ETL students were recently admitted to law school.
- Nearly one-third of the ETL students have taken the LSAT or are taking the LSAT this year.
- Three of the ETL students received the MBA’s LSAT Prep Scholarship.
- At least 70% of ETL students are from non-traditional or underserved backgrounds and

- had never met an attorney until this program.
- All ETL students now understand what the practice of law looks like, what it takes to apply to law school, including financing law school and prepping for the LSAT, and about the different paths in law.

Around the Bar



Perry Salzhauer

McGlinchey Stafford
McGlinchey Stafford is pleased to announce that two nationally recognized attorneys who specialize in complex litigation, transactional, and regulatory matters across the spectrum of cannabis businesses have joined McGlinchey in Albany.

Perry Salzhauer, who co-founded Green Light Law Group in 2015, joins McGlinchey as a Member (Partner) and co-chair of the Cannabis Industry Group. He is a corporate and environmental attorney with two decades of experience providing strategic and compliance guidance as well as legal advice to public and private entities. Salzhauer has served as both outside and in-house counsel to a variety of companies, investors, and government agencies throughout the United States, and has helped successfully launch several marijuana companies, brands, and projects. Salzhauer's years working on business processes and SEC and environmental compliance make him uniquely qualified to advise participants in the emerging cannabis space, where navigating compliance within complex regulatory regimes can be a major barrier to entry and long-term success.

Salzhauer has also written extensively on land-use and conservation issues related to project design, siting, and development. He received his JD from Vanderbilt University Law School and an LL.M. in Environmental and Natural Resources Law from Lewis & Clark Law School. He is licensed to practice in Oregon and New York.



Brittany Adikes

Brittany Adikes, who joins the firm as an Associate in its Albany office, is a litigation attorney with experience in New York and Oregon. She represents clients in a variety of

legal matters, including contract and commercial disputes, construction defects, products liability, malpractice, and catastrophic injuries. She also has experience providing legal and environmental consulting services to a startup cannabis company. Adikes received her JD at St. John's University School of Law in New York. She is licensed to practice in Oregon and New York.



Eva Novick

Miller Nash LLP
Miller Nash welcomes **Eva Novick** to the firm's Portland office where she will lead its privacy and data security team. Novick is a Certified Information Privacy Professional and brings extensive experience advising clients on complying with US and international data privacy laws and responding to data security incidents. She has deep knowledge and practical experience in matters of privacy and data security, including helping businesses comply with consumer protection laws and regulations.

Prior to private practice, Novick dedicated nearly two decades of her career to the Oregon Department of Justice (DOJ), including serving as senior assistant attorney general. During her tenure with the Oregon DOJ, Novick gained a substantial amount of experience regarding matters of privacy and data security and consumer protection. She led settlement negotiations in Oregon-specific and multistate actions and resolved over 400 investigations, which resulted in distributing over \$1 billion in restitution. Novick received her law degree at the University of North Carolina School of Law.

Glazer Maurer & Peterson PC
Lake Oswego couple **Cyndie and Peter Glazer** have been honored by Legacy Health with its 2023 Community Spirit Award for the Founders Society for their volunteer work on behalf of Legacy Meridian Park Medical Center.

Cyndie Glazer has been a member of Women of Meridian Park since 2008, helping to raise over \$500,000 to benefit women, children and families. She has served as chair of Women of Meridian Park since 2020. She is well known in Lake Oswego for her leadership in the Lake Oswego Public Library's award-winning Lake Oswego Reads program.



Cyndie and Peter Glazer

Peter Glazer served two terms on Meridian Park's foundation board. He is an attorney in Lake Oswego with a long history of representing victims of drunk drivers, and other negligent motorists, and in family law cases in need of strong representation. He is a past president of the Lake Oswego Rotary Club and the Clackamas County Bar Association, and is a past Prime Minister of the Royal Rosarians.

In April, the couple was recognized as Rotary Foundation Arch Klumph Society members in a ceremony at Rotary World Headquarters in Evanston, Illinois.

Both remain active in the community.

Tonkon Torp LLP
Partner **Megan Reuther** is serving on the board of directors for Trauma Intervention Program (TIP) NW. TIP is a national nonprofit that screens and trains citizen volunteers to provide emotional and practical support to survivors of traumatic events and their families in the first hours following a tragedy. The TIPNW chapter was founded in 1992 and has 200 local volunteers available through the emergency response system on a 24-hour, 365 days-a-year basis.

Reuther is a partner in Tonkon Torp's Labor & Employment Practice Group.



Megan Reuther

She works with local, regional, and national employers to solve complicated employment matters.

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

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Sponsoring the September 21 golf championship offers excellent opportunities for visibility and marketing, with complimentary golf included at some levels.



Sponsor by August 22 to be recognized in the September Multnomah Lawyer. Sponsors will also be recognized at the event, in promotional material, on the MBA website and in the November Multnomah Lawyer.

See the insert in this issue or contact Pamela Hubbs at pamela@mbabar.org.



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Tips From the Bench

Special Jury Panels in Civil Cases

by Judge Steffan Alexander
Multnomah County Circuit Court



In civil cases, special jury panels are best suited for trials expected to last more than two or three weeks. Trials of this length will have a higher number of potential jurors who cannot serve without an undue hardship; and therefore, they require a greater number of potential jurors to participate in the jury selection process. Cases that have received significant media attention may also need a larger group of potential jurors from which to select a jury.

Timing for a Request

Ideally, attorneys should request a special jury panel as early as the first case management conference in a case that has been designated as complex. See also UTCR 7.030 (Complex Cases). If a case of such length has not been designated as complex, the attorneys must send a letter to the Calendaring Secretary, c/o the Presiding Judge, for pre-assignment to a trial judge and include their request for a special jury panel in that letter, among the other information required under SLR 7.055(14). The SLR provides that the pre-assignment letter must be delivered six weeks in advance of trial. If a special jury panel is being requested, attorneys should submit that pre-assignment letter even earlier because of the timelines associated with sending summonses and setting a date for the special jury panel. The court will need to order the juror summonses at least four to six weeks before the date of the special jury panel.

Date Selection

Special jury panels are usually held on Fridays, either in the morning or afternoon, ideally 10 days before trial, but they can be held the immediate Friday before a Monday trial.

Panel Preparation

Particularized language can be placed on the summons. Here is an example of specific language that was used in one of my recent complex civil trials:

You are required to report in person for jury orientation on April 6, 2023, at 8:30 a.m. If selected, you will return the week of April 24, 2023, for jury selection. Trial is expected to last 8 weeks, from April 24, 2023, through June 16, 2023, Monday through

Friday, from 9 a.m. to 5 p.m., except on May 29, 2023, in observance of Memorial Day. Any potential juror that cannot commit to the entire date range should seek deferment before the April 6th juror orientation date. This is a civil case involving claims of negligence and other tort related claims.

It is important for the attorneys to have good ongoing communication with the court regarding whether their trial is likely to proceed as scheduled. In 2022, the court had a total of 30 special jury panels for which summonses were issued, but only one-third of those cases proceeded to trial. A decision needs to be made regarding how many summonses need to be issued. The general rule is to expect a 10% turn out, but this could vary depending on the length of trial, time of year, and the nature of the case. Because of the additional financial and other resources associated with issuing the special summonses and the disruption to the lives of numerous potential jurors, it is prudent to set a status conference before the court is scheduled to issue special summonses to discuss the foregoing.

Questionnaires

Attorneys may have jurors complete a juror questionnaire on the date of the special jury panel. It is the attorneys’ responsibility to prepare the questionnaire and make hard copies for the potential jurors. The court has clipboards and pens. The questionnaires should include a front page where each juror can write their juror number, name, and contact information. This sheet will be collected by the trial judge’s staff at the conclusion of the special panel and kept separately from the questionnaires. After the questionnaires are completed by the jurors it is the attorneys’ responsibility to scan the questionnaires and distribute them to the court and opposing counsel. The original questionnaires must be returned to the trial judge’s staff. Once jury selection concludes, the staff will return the original questionnaires to the court’s jury room.

The Special Jury Panel Day

All jurors check in with court staff in the jury room and then watch the jury orientation videos. After, the judge usually comes to the jury room, swears in the prospective panel, welcomes the potential jurors, and provides introductory remarks. Some judges may read some or all of the uniform instructions provided in UCJI 5.00 and UCJI 5.01, including a neutral statement of the case. Accordingly, attorneys should submit their

Continued on page 12

Congratulations, Award Recipients

The May 24 MBA Annual Meeting, Dinner and Judges Reception recognized exemplary members of our profession. The MBA Professionalism Award recipient was **Dave Markowitz** and the MBA Diversity Award recipient was **Judge Rima Ghandour**. MBA Awards of Merit were presented to **Judge Jacqueline L. Alarcón**, **Emily Teplin Fox**, **Jollee Faber Patterson**, and **Adele J. Ridenour**. The YLS Award of Merit was given to **Caulin M. Price**. **Joseph C. Baxter**, **Marry A. Karam**, and **Emily C. Templeton** received the YLS Rookie of the Year Award. Pro Bono Awards recognized **Bethany A. Bacci**, **Tiffany Davidson**, **Elizabeth R. Lemoine**, **Julie A. Stevens**, and **April Stone**. Congratulations to all the very deserving award recipients!

Watch the recording of the dinner program and see photos from the evening at www.bit.ly/mba-annual-dinner.

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David Markowitz giving his acceptance speech



Tim Resch presents Judge Rima Ghandour with her plaque



Leigh Quenton with 2023 MBA Fellows Brian Aguilar and Anna Hong



Adele J. Ridenour, Jollee Faber Patterson, Emily Teplin Fox and Judge Jacqueline L. Alarcón with their MBA Merit Awards



YLS Rookie of the Year recipients Emily C. Templeton, Joseph C. Baxter and Marry A. Karam, and YLS Award of Merit recipient Caulin M. Price pictured with Nikki Abercrombie



Pro Bono Award recipients Elizabeth R. Lemoine, Tiffany Davidson, Julie A. Stevens, Bethany A. Bacci and April Stone pictured with Shelby Smith

MBF CourtConnect New Year in the Park - Celebrating the Cambodian, Thai, Lao, and Burmese New Year

by Pamela Hubbs
MBA Office and Foundation Administrator

It was the last Saturday in April and the weather at Glenhaven Park was ideal for “New Year in the Park,” a festival that highlights the vibrant Southeast Asian communities in the greater Portland area, giving these communities an opportunity to celebrate and share their rich cultural heritage with the general public.

Judge Chanpone Sinlapasai, who was born in Laos and serves on the MBF Public Outreach Committee, staffed Multnomah County Circuit Court’s outreach booth at the event. She shared information with visitors about the courts and CourtConnect, the MBF’s civic education outreach program. Judge Melvin Oden-Orr and Judge Patricia McGuire, both CourtConnect volunteers, stopped by the booth and spent time visiting with community members.

CourtConnect serves as a bridge between the bench, bar and community by pairing

lawyers and judges to visit youth and community groups - either online or in person - to make a brief presentation about the courts and the rule of law, and give audiences an opportunity to ask questions and share their own experiences in the justice system.

The goal of CourtConnect is to forge a better connection between the community and the legal profession by putting a personal face on the justice system, make the courts more approachable, and remove some of the mystery that surrounds them. CourtConnect helps further the court’s goal of increasing procedural justice by opening the doors of discussion between the public, the bench and the bar.

If you know of organizations that would welcome a CourtConnect presentation, or would like to volunteer to be a CourtConnect presenter, contact Pamela Hubbs at pamela@mbabar.org.



Judge Chanpone Sinlapasai with Governor Tina Kotek

New Year in the Park is a nonprofit, volunteer organization whose mission is to foster greater understanding and appreciation among various Southeast Asian and greater Portland communities. The New Year festival includes cultural dance and music performances, traditional games, cultural crafts and activities, and vendor booths with food and merchandise.
www.newyearinthepark.com



Blessings were offered and elders, monks, family, friends and community honored



Judge Sinlapasai with MBA Director Aruna Masih



Judge Melvin Oden-Orr joined Judge Chanpone Sinlapasai at the court’s outreach booth



Fair-goers of all ages stopped by the court’s booth.

Referee Mark Peterson Judicial Profile

by Craig Russillo
MBA Court Liaison Committee

“Honey, we need to fire the exterminator.” These are the words that Multnomah County Referee Mark Peterson’s wife, Randie, said to him in 1981 after finding holes in the walls of their home in Cairo, Illinois. At the time, Referee Peterson was working as the Directing Attorney for the Land of Lincoln Legal Assistance Foundation, Inc., where he was heavily involved in complex class action litigation in an area with a history of racial strife. But the holes were not caused by bug infestation; they were caused by bullets, one of which narrowly missed the crib where one of his children slept. Thus, Referee Peterson literally put his life and his family’s lives on the line for public interest work.

Referee Peterson was born in Oregon and attended Portland State University in the late 1970’s where, in his words, he spent six years “attempting to avoid any kind of career commitment,” eventually obtaining a BA in political science and economics. During his time at Portland State, he was asked to assist on a political campaign in the Midwest, where he met Randie, his wife of 50 years. Referee Peterson recalls that it was Randie, bucking the rigid cultural norms at the time, who asked him to marry her (the author of this article was unable to confirm this allegation). The Petersons have two grown children - one a physician and the other a teacher - and four grandchildren, all of whom live in Oregon.

In 1977, Referee Peterson graduated from the University of Toledo College of Law, in Toledo, Ohio. From graduation until 1982, Referee Peterson worked for the Land of Lincoln Legal Assistance Foundation, managing regional offices in Cairo and Champaign, Illinois, practicing in the area of poverty law, with an emphasis in housing, education, and individual rights. In 1982, Referee Peterson relocated to Oregon, where for the next four years he was the co-director for the Klamath Falls regional office of Oregon Legal Services, Inc.

In 1987, Referee Peterson made the envious leap to academia, where he joined the legal clinic and taught ethics and Oregon pleading and practice at Lewis & Clark Law School.

In 2016, Referee Peterson left Lewis & Clark, took some time off to rehab a house with his son-in-law, and ultimately in 2018 was appointed as one of 10 Multnomah County non-



Referee Mark Peterson

juvenile referees. In this role, Referee Peterson is able to handle all manner of civil and criminal proceedings, but tends to focus his efforts on the high-volume dockets (e.g., evictions, small claims, traffic) to give the elected judges more time to handle other litigation.

As a referee, Referee Peterson has had the pleasure of hearing matters from former students, as well as having former students join him on the bench. When asked what he finds most rewarding, Referee Peterson said it is his ability to listen to people and make a decision on their matters - often in the same day - as opposed to normal criminal or civil litigation that could take months or even years. Referee Peterson, ever the consummate public servant, was hesitant to state his frustrations with his position, but when pressed said he would appreciate having a dedicated judicial assistant to assist with, among other things, dealing with calls to his office, which he personally answers. Who knew you could simply call a judge?

In addition to his years working for legal aid and his time on the bench, and what can only be construed as further paving his way to sainthood (in the secular sense), in his “spare time” Referee Peterson is the Executive Director of the Council on Court Procedures, which is charged with maintaining Oregon’s Rules of Civil Procedure.

From all accounts, Referee Peterson has no intentions of slowing down in his work for Multnomah County and the State of Oregon. His past dedication to representing the poor and marginalized members of our society, clearly prioritizing his work over financial gain and enduring physical intimidation, is a shining example of the best of the Oregon bar. We, as Oregon lawyers who practice in Multnomah County, are lucky to have Referee Peterson on the bench.

Pro Bono Volunteers

Thank you to the following lawyers who recently donated their pro bono services to the Children’s Representation Project. Visit www.mbabar.org/probono to discover pro bono opportunities in Multnomah County.

David Bean
Jay Bodzin

Emily Cohen
Brett Engel
Benjamin Evans
David Gearing
Anne Haugaard
Rose Hubbard
Caryn Jones
Ivan Karmel
Lissa Kaufman
Andrew Kelly
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Logan Krochalis
Bradley Lechman-Su
Henry LeSueur
Andrew McLain
Kimberly Quach
Trina Strom
Mary Tollefson
Anthony Wilson

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!

Maya Rinta
YLS Member Spotlight

by Amelia Andersen
YLS Board

Maya Rinta’s pathway to lawyering has been shaped by her experiences working with and learning from community members impacted by systems of oppression. Maya grew up in Oregon and attended undergrad at the University of Oregon. After graduation, she did not go directly to law school. Instead, she worked for six years, including serving in AmeriCorps at an alternative high school. During this time, she felt that she was intersecting with people in need who were already downstream from the source of the problem. Without knowing any attorneys, Maya became interested in how being a lawyer could help support people earlier on in their adversity.

Maya went on to attend Lewis & Clark Law School. Her first year corresponded with the 2016 presidential election. Upon reflection, this became a defining event that further shaped her career. On Inauguration Day, Maya attended a protest in downtown Portland as a legal observer for the National Lawyers Guild where she witnessed the use of tear gas and violent repression at the hands of law enforcement. The next morning, Maya attended the women’s march and was struck by the juxtaposition of law enforcement officers wearing pink and hugging marchers.

With the backdrop of these moments, Maya was inspired to use her time as a law student to be active in community work and volunteering. She was drawn to being on the ground with community members and having her work driven by what people identify as their own needs. She also quickly learned what spaces she could access as a law student to do this work. Maya helped facilitate a student group in MacLaren Youth Correctional Facility focusing on Measure 11 and other criminal justice reform issues that the youth were interested in. She also worked in the Oregon State Penitentiary spending time with those who were incarcerated without the possibility of parole. Additionally, Maya spent time at the US/Mexico border preparing women for credible fear interviews for their asylum cases. Through these experiences, she quickly realized that she had a lot to learn as a law student from those directly impacted by the legal systems.

During her first summer of law school, Maya clerked with Legal Aid Services of Oregon in their Low Income Taxpayer



Maya Rinta

Clinic. She also participated in the Criminal Justice Reform Clinic at Lewis & Clark where she had the opportunity to work with the Community Law Division at Metropolitan Public Defender.

Eventually Maya met Ashlee Albies at a Northwest Workers’ Justice Project event and she was introduced to the areas of employment and civil rights law. Maya clerked with Albies, Stark & Guerriero and then joined the team after graduation, where she practices employment discrimination, labor law, and civil rights litigation. She enjoys working with a team of smart and passionate women who believe in the work they are doing. While Maya has found work that aligns with her values, she also finds ways to continue her community work. Maya just finished her first year on the YLS Service to the Public Committee and she continues to volunteer with people in prison.

Michael Cebert and Mark Cebert
Pro Bono Spotlight

by Marissa Roldan Vermillion
YLS Pro Bono Committee

Growing up in Hunstville, Alabama, brothers Michael and Mark Cebert were exposed to politics and activism early on and encouraged by their parents and mentors to use their own advocacy skills for the benefit of others. They also quickly discovered that law tended to negatively impact people of color and lower income folks. Michael and Mark decided that if they were going to pursue law, which neither initially had any interest in, they would advocate for these disadvantaged communities.

Mark’s activism led him to his current position as Staff Attorney at the Criminal Justice Reform Clinic, an organization he first began working for as a third-year law student. Mark’s work has ranged from research and advocacy to client-centered work. For instance, following the groundbreaking *Ramos v. Louisiana* decision, Mark testified in support of Senate Bill 1511 to make the decision retroactive in Oregon. The bill sought to aid defendants, a disproportionate number of whom were people of color, previously found guilty by a non-unanimous jury.

Mark has also researched former Governor Kate Brown’s use of clemency and its impacts on pardoned individuals, culminating in him interviewing Governor Brown about the issue. Mark’s interest in clemency led him to participate in the Black Oregonian Pardon Project, a project that resulted in nearly 50 individuals receiving pardons for non-expungable felony convictions that allowed them opportunities that were previously unavailable to them. Mark and other participants worked extensively with clients, interviewing and assisting them with the submission of their clemency applications.

Most of Mark’s day-to-day work is with clients, primarily incarcerated or previously incarcerated folks who simply



Michael Cebert

want to move forward with their lives. Mark appreciates that pro bono work allows him to advocate for members of communities that are usually overlooked and give a voice to those who cannot advocate for themselves.

Similarly, Michael’s desire to help people led him to his current position as a Staff Attorney at Youth, Rights & Justice (YRJ), a nonprofit law firm dedicated exclusively to the representation of children and families. One way Michael assists families is helping them navigate the dependency system, which is triggered when there is a petition alleging abuse brought against a parent. Michael’s goal with



Mark Cebert

parent clients is to reunify the parent and child, which commonly requires him to navigate a complex system of working with care providers and service providers, and coordinating service treatment. Michael also assists juveniles with navigating the complicated judicial system. Michael and other YRJ staff walk clients through the entire daunting process and ensure that they have zealous advocacy. As with Mark’s work, Michael hopes to allow these clients the ability to live a life without the weight of a delinquent act hindering their future.

Continued on page 13

mba yls | EVENT

YLS Kickoff Social

**Tuesday, August 15
5-7 p.m.**

**Migration Brewing - Williams Pub & Patio
3947 N. Williams Avenue, Portland**

The YLS Board of Directors invites the YLS membership to this informal social event as the 2023-24 program year begins. Appetizers will be provided. Attendance is free. RSVP required.



**Submit your RSVP at
www.bit.ly/yls-kickoff**

YLS Service to the Public Committee and
Parkrose High School 2023 Imprint Program

by Lindsey Daniel
YLS Service to the Public Committee

This year the YLS Service to the Public Committee continued its longstanding tradition of partnering with Parkrose High School to put on the 2023 Imprint Program. The Imprint Program is a wonderful program that connects MBA attorney pen pal volunteers with Parkrose High School students who correspond over a number of months via good old-fashioned snail mail. The attorney volunteer-student matches read the same coming-of-age story selected by the Parkrose student and write each other letters about the themes in the book and life in general. The students’ participation in the program is part of their

college preparation class and is a great way for the students to ask their pen pals questions about, and gain insight into, their pen pals’ educational and professional experiences - and just as in any

facet of life, there is also a lot of talk about each other’s cats, dogs, and other furry friends. This year’s program matched more than 50 students with volunteer pen pals.

The 2023 Imprint Program culminated in a donut party in the morning and pizza party in the afternoon at Parkrose High School, where volunteers and students were able to meet in person and celebrate the program’s end. The party was a wonderful celebration where volunteers and students could finally put a face to their pen pal after corresponding over the past several months. The carbs were a nice perk, too!

Continued on page 14



Battle of the Lawyer Bands

Thursday, August 3
7-9 p.m.
McMenamins Mission Theater
1624 NW Glisan Street, Portland

Join the MBA Events Committee for this Multnomah Bar Foundation (CourtCare, CourtConnect and CourtSupport) fundraiser. Bands comprised of at least one Oregon lawyer will compete for the title of “Best Oregon Lawyer Band 2023.” Judges from the MBA legal community will decide the winner at the end of all the performances. Bring your family and friends and cheer for your favorite band! Crowd applause and interaction will be one of the criteria on which judging is based, in addition to the Audience Choice Award. Tickets: \$10.

These bands will compete for the title of “Best Oregon Lawyer Band 2023:”

- Bunny Lebowski & the Nihilists
- The Catbird Seats
- Lisa Fitzgerald and Russ Barnett
- McCoy Russell Band
- The Soul Searchers
- TCB Band

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BATTLE of the LAWYER BANDS

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Tips From the Bench

Continued from page 8

neutral statement of the case sufficiently in advance of the special jury panel date, particularly if there are disputes about the contents of the statement for the court to resolve.

After the introductory remarks, there are different ways to conduct a special jury panel depending on the judge’s preference and the nature of the case. Some judges hear all hardships on the date of the special jury panel in the jury room on the record. Other judges do not address hardships until the first day of trial. Either way, the jurors complete their questionnaires on the day of the special jury panel. After hardships have been heard and questionnaires completed, the jurors are free to leave for the day. All jurors not excused for a hardship will be instructed to return directly to the trial judge’s courtroom on the first day of trial usually in groups of 40 potential jurors, with each subsequent group of 40 directed to report on consecutive days or at varying times.

Implementation of a Special Jury Panel Day

For my most recent civil class action trial referenced above, the court issued 2,600 summonses. Approximately 2,330 potential

jurors deferred their jury service, were excused before the date of the special jury panel, or failed to respond to the summons. On the day of the special jury panel, 268 potential jurors appeared. We conducted hardships on the day of the special jury panel, and 142 potential jurors were excused for hardship. 50 potential jurors were instructed to appear on the first day of trial, the next 50 potential jurors were instructed to report on the second day of trial, and the remaining 26 jurors were instructed to report on the third day of trial. In between the date of the special jury panel and the first day of trial, seven additional jurors were excused for hardships that were raised after the special jury panel. With the benefit of the juror’s completed questionnaires, the attorneys agreed to strike 13 potential jurors for cause before the first day of jury selection. As a result, some of the potential jurors who were supposed to report on day two of trial were directed to report on the first day of trial to take the place of those jurors who were released in the interim. That way, the first day of trial still had 50 potential jurors who had been both pre-qualified for hardship and threshold cause challenges. Without use of a special jury panel, it may have taken two or three days of trial to arrive at the same stage in the jury selection process under the standard selection process.

In sum, the attorneys were able to select a jury on the first day of trial from the initial panel of 50 prospective jurors. This enabled the trial to start as scheduled on the second day of trial, allowed the expert and

fact witnesses to maintain dates certain for their expected trial testimony, and helped the trial conclude on time.

In the right type of civil trials, implementation of a special jury panel could produce greater

certainty in the witness and trial schedules that are often fluid. That makes a more positive trial experience for the jurors, the witnesses, the clients, the attorneys, and the court.

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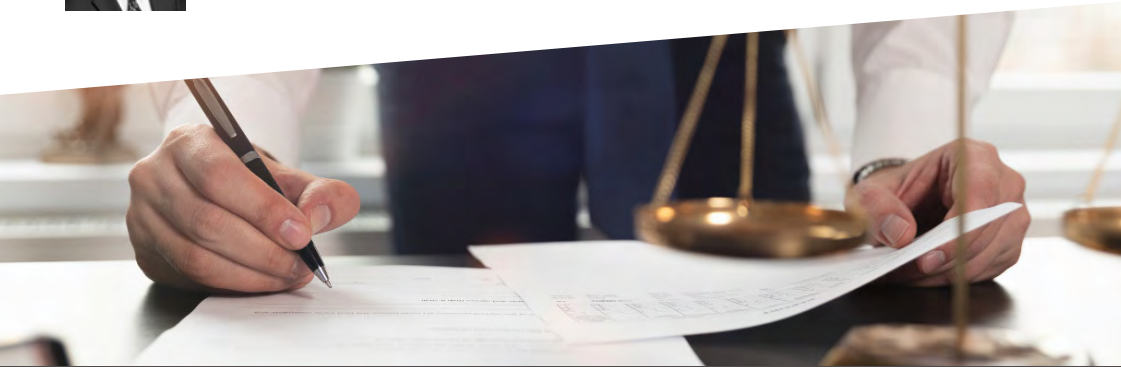
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503.485.2482



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Pro Bono Spotlight

Continued from page 10

Given the complex and sensitive nature of dependency work, each case can take months from start to end and have a high emotional toll for everyone involved. Michael understands the impact these cases can have on his clients. Given the

history of the dependency system commonly working against people of color, Michael recognizes that this may be the first time his clients see another person of color in his position, and that carries an additional level of significance to what he does. This work is worth it for him when he gets to reunite a child and their parent or help

a youth navigate their case and be able to go home. In this vein, Michael suggests that we redefine what it is to “win,” especially in the pro bono field. Michael is grateful that he is able to help everyday people who are simply interacting with systems that often work against them. He believes that as long as you have the legal knowledge,

pro bono work is something that anyone can do. His advice is to appreciate the unique opportunity to interact, connect, and learn from this specific subset of clients who have lessons and views to share that are different from our own. Without the work of Mark, Michael, the Criminal Justice Reform Clinic, and

YRJ, many disadvantaged and disenfranchised individuals and families would not be able to receive the assistance they deserve and the chance of a better future. Thank you, Michael and Mark, for your dedication to pro bono work, and the difference you make in your clients’ lives.



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The Oregon State Bar’s 2022 Economic Survey Has Been Released

by Stephen Leggatt
Bonaparte & Bonaparte



The Oregon State Bar recently released its latest economic survey. The 2022 Economic Survey, which relies on data collected from Oregon lawyers in 2021, reports a number of important findings; these include a relative decrease in the number of new lawyers of color joining the bar, an increase in mean lawyer compensation statewide, and a decrease in reported attorney career satisfaction over the previous five years. In this brief article, I address only the survey results regarding the hourly rates Oregon attorneys charged for their time in 2021. As many Oregon practitioners are aware, both state and federal judges routinely use the hourly rates reported in the Bar’s economic surveys as a critical benchmark for assessing the reasonableness of Oregon attorneys’ hourly rates. For example, a judge deciding a fee petition might need to determine the appropriate rate to use in calculating reasonable compensation for work performed in 2023 by a Lower Willamette Valley attorney with 25 years’ experience in private practice. The judge would likely start with Table 36 of the 2022 Economic Survey, which provides statistics on Oregon private practitioners’ 2021 hourly billing rates broken down by years admitted to practice and geographical region. Table 36 indicates that in 2021, private practitioners with 21-30 years’ experience in the Lower Willamette Valley on average charged \$315 per hour for their services, with a median rate of \$313 and a 95th percentile rate of \$422. The judge might use those data to determine a reasonable rate falling somewhere on that spectrum, and

then rely on inflation information provided by the US Bureau of Labor Statistics to adjust the 2021 buying power of that hourly rate to 2023 dollars. The first and most salient way that the 2022 Economic Survey differs from its predecessors is that the Bar no longer reports 25th or 75th percentile billing rates. The survey is silent as to the Bar’s reasons for the change, but the omission of 75th percentile rates,¹ in particular, can fairly be characterized as unfortunate from the practitioner’s perspective. Many judges have treated the 75th percentile rates as more important than any others in crafting reasonable fee awards, see, e.g., *Garcia v. Waterfall Cmty. Health Ctr., Inc.*, No. 6:20-cv-1800-MC, 2022 U.S. Dist. LEXIS 160119, at *3 (D. Or. Sep. 6, 2022), and the absence of those rates from the 2022 Economic Survey may result in inconsistencies in Oregon fee awards going forward. The 2022 Economic Survey also reflects significant and unexpected divergences from the “expected” rates that would be predicted through adjusting the rates reported in the most recent previous survey for inflation. Some of these divergences are greater in magnitude than any we have previously seen in the Bar’s economic surveys of the past two decades. As one example, the 95th percentile rate for Portland-based practitioners in private practice for three years or fewer increased from \$305 in 2016 to \$538 in 2021, a 76% increase over five years; adjusting the buying power of the \$305 2016 rate to 2021 dollars would yield an “expected” rate of only \$344, a significantly smaller increase of less than 13%. This constitutes the greatest divergence from inflation reflected in any of the Bar’s fee surveys of the 21st century. By contrast, the median rate for Portland-based practitioners in private practice for three years or fewer only modestly outperformed inflation, increasing from \$235 to \$300 (as compared to an “expected” rate of \$265). A similar phenomenon is observable at the other end of the attorney-experience spectrum.

Continued on page 15

Imprint Program

Continued from page 10

The Imprint Program would not be possible without the continued time and support of MBA members. A big thank you goes out to this year's volunteers who were generous with their time and ever-so-patient as the Parkrose students navigated addressing and mailing real letters, some for the first time. Thank you all for your commitment and grace as volunteers. An additional thank you to those who donated your books to Parkrose for use in future years. We hope to have as many of you back next year as possible!

If helping to coordinate the Imprint Program or similar service projects in future years sounds appealing to you, please consider signing up for a term with the YLS Service to the Public Committee. Contact Ryan Mosier (ryan@mbabar.org) for details. As a volunteer myself, I can attest that serving on the committee is a pretty painless and dare I say, enjoyable experience.



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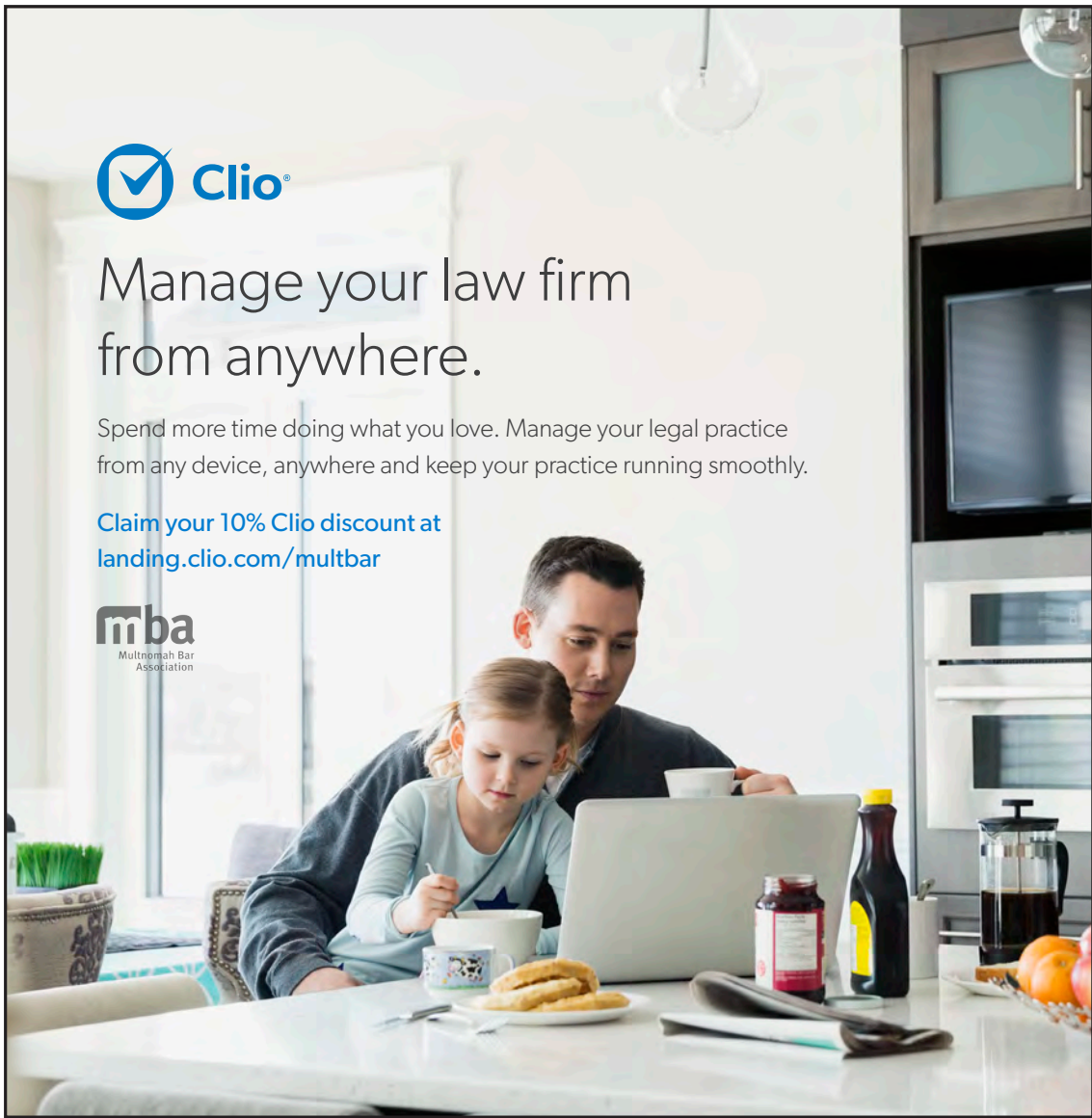
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OSB Economic Survey

Continued from page 13

The 95th percentile rate for Portland-based practitioners in private practice for more than 30 years increased from \$610 in 2016 to \$798 in 2021, outperforming inflation by a wide margin (the “expected” 2021 rate would have been \$688), while the median rate for such practitioners remained flat at \$425 over the same period, significantly underperforming relative to inflation (the “expected” 2021 rate would have been \$479). These divergences from inflation may reflect the fact that 2021 was a pandemic year. That is, it is possible that the COVID-19 pandemic impacted different sectors of the Oregon legal market differentially. It is perhaps a plausible inference that attorneys charging rates at or near the median of the legal market may have faced a slowdown in the demand for their services, while attorneys charging rates at the high end of the market faced significantly different conditions. In any event, it appears that experienced Oregon practitioners charging approximately median rates declined to adjust their rates to keep pace with inflation over the period from 2016 to 2021, while many attorneys already charging relatively high prices in 2016 were able to adjust their rates faster than was necessary to keep pace with inflation, in some cases to a previously unprecedented degree.

Oregon attorneys who litigate fee petitions - whether in support or in opposition - are likely to find fodder in the 2022 Economic Survey for creative arguments both for and against the courts’ strict reliance on the survey data. It is possible that the Bar’s election not to report 75th percentile rates and uncertainty about how to estimate appropriate prevailing rates may increase the potential relevance of the sometimes-controversial Morones Survey of Commercial Litigation Fees (a survey of Portland-area commercial litigation attorney billing rates compiled by CPA

Serena Morones). It is, at the very least, an interesting time to be an attorney fee litigator. Points to remember when litigating a fee petition:

- The 2022 Economic Survey reports prevailing rates from 2021. Those rates should be adjusted for inflation when litigating fee petitions in subsequent years. To adjust historical rates for inflation, the US Bureau of Labor Statistics maintains a user-friendly Consumer Price Index Inflation Calculator at www.bls.gov/data/inflation_calculator.htm.
- The 2022 Economic Survey data are relied on by judges of both state and federal courts in Oregon.
- Although the survey data are of critical importance in determining appropriate and reasonable hourly rates, there is also significant value in proffering expert opinion as to prevailing market rates, whether in support of or in opposition to a fee petition.
- Where a party’s entitlement to award of fees is a creature of state law, all of the factors set forth at Or. Rev. Stat. §20.075 remain applicable to determining an appropriate fee award. The economic survey data are used within the Section 20.075 framework, and do not replace it.

Endnotes

1 At time of writing (June 15, 2023), I am aware of one judicial opinion citing the 2022 Economic Survey, namely US Magistrate Judge Hallman’s decision granting a fees motion in *Owens v. State Farm Fire and Casualty Company*, No. 2:22-cv-119-HL (D. Or. June 14, 2023). At Footnote 4 of that opinion, Judge Hallman notes the omission of 75th percentile rates from the 2022 Economic Survey, stating that the court would approximate the 75th percentile rate by utilizing “a rate between the mean and 95th percentile.”

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