



**Empathetic Lawyering**  
*Making Space for Clients and Colleagues  
with Unseen Disabilities*

by Theresa L. (Terry) Wright  
MBA President

“Hello, my name is Terry and I’m an alcoholic.” Many of those reading this have either had first-hand experience with this

introduction, or may recognize it as a traditional introduction in a twelve-step program. Add to that, “Hello, my name is Terry and I have generalized anxiety disorder.” So, okay, there aren’t really twelve-step programs for anxiety, but maybe there should be.

Despite this introduction, this column isn’t to talk about twelve-step programs or addictions. My intent is to focus on disabilities, both seen and not. As can be seen above, I have two disabilities, but thankfully, neither is debilitating for me. I doubt if people who encounter me in a classroom, at a CLE, at an MBA event, or other places recognize that I have disabilities. People only know when I choose to disclose this information, like in this column.

Even though few of us practice disability law *per se*, it is important for all of us to be acquainted with disability law and to consider that those with whom we come in contact in our daily legal lives may in fact have disabilities. Being aware of this possibility makes us all better lawyers. Lawyers, clients, and yes, judges, have disabilities that add dimensions to law practice we should all embrace.

First, a word about noticeable disabilities. Years ago, I was working with a student who was in a motorized wheelchair. Under my supervision, this student was representing a client in a deposition at opposing counsel’s office. Lo and behold, when we arrived, we discovered the attorney’s conference room table was too short for the student to get close to the table. After some quick scrambling, we were able to raise the table with some law books under the legs. Did any of us do anything wrong? No, but still, one of our colleagues was placed in an embarrassing situation.

Just like in the example above when I didn’t inform opposing counsel that I was going to be with a student with disabilities, our clients often won’t tell us that either. When they arrive using a cane, hearing aids, or a seeing eye dog, or have a speech impediment, we sometimes have to hustle to make adjustments to accommodate those disabilities.

Lesson learned: we all need to examine our offices to see if they are accessible to all.

Unseen disabilities are another story. I’ll bet most of us work with someone with some sort of disability, or have clients with unseen disabilities. For example, many of us have clients with PTSD, often caused by the event that brings the clients to us in the first place. Do all the staff and lawyers in your firm know what to look for in a client with PTSD? They should. The PLF is a wonderful resource for training and information as to how to become a trauma-informed

**...those with whom  
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have disabilities.**

lawyer. Our clients will appreciate us, and the legal profession in general, if they see their attorney working to meet their needs.

Likewise, opposing attorneys may have unseen disabilities they don’t tell you about. It may frustrate you when they don’t respond to long emails promptly, or only answer some of your list of questions posed. Someone in my family has ADHD and tells me he has a difficult time reading and absorbing the contents of long emails. I’ve known about his ADHD for years, but until he told me about the email difficulty, it didn’t make sense why he only responded to some of the contents of what I’ve asked. It never occurred to me that long emails or texts might not be the best way to communicate with him.

Of course, ADHD is not the only unseen disability our clients and colleagues have. Anxiety and depression seem to have found their way into the people who choose to practice law. Both can impact parts of law practice, while not impacting the overall service lawyers provide.

In this column, I am in no way trying to equate inadequate lawyering with disabilities, or to say that all inadequate lawyering is a result of a disability. I am just hoping that we all stop for a moment when in a frustrating relationship with another lawyer to stand in their shoes. Maybe they have a disability; maybe they have a sick pet at home; maybe they are expecting a death in their family soon. We don’t know, and we should give them the benefit of the doubt. With a little kindness, I’ll bet some relationships can be salvaged.

Now, back to me for a minute. My identified disabilities are under control. If you want me to join you for happy hour, I’m pleased to do so. There are lots of non-alcoholic beverages I can enjoy while you enjoy your drink of choice. If I stumble over words while presiding over the MBA’s Annual Dinner due to anxiety, have patience and know I’ll get through it. These traits have only made me a stronger person and lawyer.

**...most of us work  
with someone  
with some sort of  
disability, or have  
clients with unseen  
disabilities.**

**mba|EVENT**

**23rd Annual MBA Golf  
Championship**

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

Play beautiful Ghost Creek and support the Volunteer  
Lawyers Project at Legal Aid Services of Oregon.  
Register by September 15 for discounted entry.  
Sponsorships still available!



See page 13 and the golf insert for details.

**mba|CLE**

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.

**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

9.20 Wednesday  
**An Insider’s Guide for the  
Reluctant Federal Practitioner**  
Stephen Leggatt

**Minimum Competency  
YLS CLE Series**

*Begins September 21*

A nine-part series of seminars on how to spot multidisciplinary issues and identify when additional guidance may be needed.

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Details on p. 13.

Register online at  
[www.mbabar.org/cle](http://www.mbabar.org/cle)

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**DEADLINE for copy: The 10th of the month\***  
**DEADLINE for display ads: The 12th of the month\***  
 \*or the preceding Friday, if on a weekend.

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by Joseph L. Franco, MBF President and  
Tyler J. Volm, MBF Vice President



The Multnomah Bar Foundation would like to thank all of its donors for their incredible generosity thus far during 2023, including our local law firms who have consistently contributed so much. With your help, the MBF has raised a total of \$74,000 to date in 2023. During our annual fundraising campaign earlier this year, we were reminded by law firm managing partners and marketing directors that many of them typically budget their charitable contributions in the fall for the following year. With that in mind, the MBF would like to ask our law firm partners to please remember the MBF and its programs when you budget for 2024.



The MBF has three primary programs, all of which are back in full-swing following the pandemic.

**Multnomah CourtCare**

The MBF's longest running program is CourtCare. CourtCare offers free, drop-in childcare to people using the courthouse. Since its inception, CourtCare has served over 18,000 children. It offers a safe and welcoming place for those children whose caregivers need to attend court proceedings. With the new Central Courthouse came a brand new CourtCare facility, which is up and running, providing a great service to children and their families.

## SEPTEMBER

21 Thursday  
**23rd Annual MBA Golf  
Tournament to Benefit the  
CEJ and Volunteer Lawyers  
Project**  
See insert plus details on  
p. 13

21 Thursday  
**YLS Minimum Competency**  
**CLE Series begins with**  
**Client Management**  
Details on p. 13

## OCTOBER

3 Friday  
OGALLA Annual Gala

24 Tuesday  
**Absolutely Social**  
Details on p. 6

26 Thursday  
OWLS Fall CLE



County judges to give presentations to community organizations on procedural justice and to answer questions community members have about the justice system.

Please remember these vital programs as you budget for 2024, and help the MBF continue to serve the community well into the future!

For more information, please  
contact Pamela Hubbs  
([pamela@mbabar.org](mailto:pamela@mbabar.org),  
503.854.5237) or visit  
[www.mbabar.org/mbf](http://www.mbabar.org/mbf).

**Wills for Heroes Clinic**  
Saturday, October 21, 9 a.m.-2:30 p.m.

The clinic will serve approximately 30 Oregon-resident first responders and front-line healthcare workers. Spouses are also invited to participate.

Volunteer roles include:

**Form Fillers** to meet with the clients and assist in the completion of the estate planning document template. No estate planning experience required.

**Greeters** to welcome the clients and assist in the navigation of the clinic. No estate planning experience required.

**Estate Planning Attorneys Actively Licensed in Oregon** to review the final documents with the clients.

**Notaries** to assist in the execution of the Wills and Powers of Attorney.

Those interested in volunteering are invited to contact Missy Oakley at [moakley@barran.com](mailto:moakley@barran.com) and indicate a morning or afternoon preference.

***About Wills for Heroes***  
Wills for Heroes Foundation is a 501(c)(3) charitable nonprofit organization which provides basic estate planning documents, free of charge, to first responders across the United States. The goal is to help first responders plan ahead for the unexpected, to help ensure their legal affairs are in order for their family in case of a tragedy. Learn more about the Wills for Heroes Foundation at [www.willsforheroes.org](http://www.willsforheroes.org).





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.

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.

An Insider’s Guide for The Reluctant Federal Practitioner

Wednesday, September 20 Noon-1 p.m.

Remote attendance only via Zoom

Members \$30/Non-Members \$50

Many Oregon lawyers who routinely represent their clients in state court become anxious at the prospect of federal litigation. The rules may seem unfamiliar, unforgiving, and perhaps unfavorable. Stephen Leggatt, now a partner at Bonaparte & Bonaparte, served for more than 15 years as a judicial clerk to federal judges in the District of Oregon and elsewhere. At this presentation, Steve will demystify the arcana of federal procedure and help state court litigators get comfortable with federal practice. Topics will include: removal; pleading standards, discovery and expert witness rules; dispositive motion practice; attorney fee petitions; the dynamics of federal judicial chambers; and more.

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

CLE Registration Form

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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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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.

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

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We are beyond thrilled to welcome these dynamic attorneys to our firm.

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Commitment to Professionalism

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

Volunteers Needed for the Children’s Representation Project

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

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](http://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](http://www.bit.ly/msco-guide).

Second National Interdisciplinary Cannabis Symposium, December 1-3

The symposium seeks to bring together law enforcement, judges, the legal profession, in-house counsel, drug court professionals, the drug and alcohol testing industry, academia, and human resource associations and organizations in order to educate each other on the continued changes in cannabis law nationwide that impact our courts and society. For a complete schedule and registration details, visit [www.nationalinterdisciplinarycannabissymposium.com](http://www.nationalinterdisciplinarycannabissymposium.com).

Noontime Rides

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

PDX Starting Grounds

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

Ethics Focus



by Mark J. Fucile  
Fucile & Reising LLP

Stuck in the Middle: Disputed Funds Held in Trust

Finally, Formal Opinion 2005-52 focuses primarily on claims by third parties against funds held in trust. A lawyer may have a claim for fees against the funds as well.

Duties

Formal Opinion 2005-52 outlines two intertwined obligations.

First, Oregon RPC 1.15-1(d) requires a firm to disburse funds held in trust “that the client or third person is entitled to receive[.]” Formal Opinion 2005-52 notes that the phrase “entitled to receive” is not defined in the rule. Although the opinion cautions that the firm should not anoint itself the arbiter of disputed claims, the opinion finds that ordinarily secured creditors and statutory lienholders are “entitled to receive” funds over which they hold perfected secured or lien interests. By contrast, the opinion concludes that unsecured creditors do not automatically fall within the circle of claimants “entitled to receive” funds.

Second, Oregon RPC 1.15-1(e) counsels that if there is a dispute over entitlement to funds, the law firm must keep the funds “separate” “until the dispute is resolved.” This speaks to the fundamental duty reflected in the title to RPC 1.15-1: “safekeeping property.” In other words, lawyers have a duty to preserve funds entrusted to them while competing claims to those funds are being resolved. Formal Opinion 2005-52 underscores that the duty of safekeeping is owed to all of those whose property the law firm is holding - whether clients or not.

Failing to follow RPC 1.15-1 can result in regulatory discipline, with, for example, *In re Goff*, 352 Or. 104, 105, 280 P3d 984 (2012), finding that a lawyer violated RPC 1.15-1(e) for “mishandling disputed funds.” Courts have also cast the duty of safekeeping in fiduciary terms, with, for example, *Hetzel v. Parks*, 971 P.2d 115, 120 (Wash. App. 1999), finding that a lawyer failed to protect a nonclient’s funds held in the lawyer’s trust account. *In re Hockett*, 303 Or. 150, 155-160, 734 P.2d 877 (1987), discusses lawyer liability for assisting clients with

fraudulent transfers and Formal Opinion 2005-52 cites *Hockett* for the proposition that lawyers owe the duty of safekeeping to all claimants of disputed funds pending resolution.

Remedies

In the event there is a non-frivolous dispute over “entitlement,” Formal Opinion 2005-52 counsels that any non-disputed portion must be disbursed consistent with RPC 1.15-1(d) and that disputed funds must be held pending resolution of the dispute.

Again, Formal Opinion 2005-52 cautions that the law firm holding the disputed funds should not play the role of arbitrator over the dispute because its duty of safekeeping flows to all of the claimants pending resolution. Instead, Formal Opinion 2005-52 counsels that the firm should either hold the funds in trust while the claimants resolve their dispute or implead the funds for court resolution. Especially if the claim arises outside the context of the current case, impleading the funds may be the “safest” route for the law firm in many circumstances because the firm may not want to hold the funds in its own trust account for a long period and may lack the substantive expertise to assess “entitlement.”

If the claimant is already a party, then depositing the funds into the court handling the case involved is the simplest solution. UTCR 1.120 addresses disbursement of funds in Oregon state court and implicitly recognizes that funds may be deposited. 28 USC §§ 2041 and 2042 govern, respectively, deposit and withdrawal of funds in federal court. FRCP 67 and Oregon District LR 67-1 include supplemental information for federal court.

If the claimant is not a party, impleader is available in both state and federal court. ORCP 31 governs interpleader in Oregon state court. FRCP 22 and 28 USC § 1335 do the same in federal court. *Davis & Galm, LLC v. Neve*, 325 Or. App. 123, 528 P.3d 1165 (2023), recently discussed interpleader in the law firm context and merits close review for firms that find themselves in this unusual situation.

One of the most uncomfortable situations a law firm can face is a disputed third-party claim against funds held in the firm’s trust account. Third-party claims can range from statutory liens connected to the case generating the funds to separate claims against the funds being held in trust that are not connected to the matter the firm handled for the client concerned. If the firm’s client disputes the claims, the firm can quickly find itself “stuck in the middle” between its own client and the person asserting the claim.

The OSB addressed both the duties involved and the potential remedies available to a law firm in Formal Opinion 2005-52 (rev 2016). Although necessarily general, Formal Opinion 2005-52 offers practical guidance for law firms. In this column, we’ll survey both the duties and the remedies from the perspective of Formal Opinion 2005-52.

Before we do, three qualifiers are in order.

First, Formal Opinion 2005-52 does not address conflicts that may develop between a lawyer and a client if, for example, the lawyer determines that funds must be released to a statutory lienholder and the client insists otherwise. As a practical matter, this may lead to the lawyer’s withdrawal.

Second, Formal Opinion 2005-52 also does not address the relatively common situation where a plaintiff’s lawyer may attempt to negotiate a medical lien down as a part of settling a case for a client.

Get started on the right foot.

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Around the Bar

**Aruna Masih, Bennett Hartman LLP, Appointed to the Oregon Supreme Court**

On August 16, Governor Tina Kotek appointed MBA Director Aruna Masih to fill the vacancy created on the Oregon Supreme Court when Judge Adrienne Nelson was confirmed to the federal bench earlier this year. Aruna, a long-time employment, worker, and civil rights attorney will be Oregon’s first Punjabi, Indian American and South Asian Supreme Court Justice. She will be sworn in on September 5. The MBA Board and leadership congratulate Aruna on her appointment and wish her all the best in her new role!



Aruna Masih

Committee on Audit and the Standing Committee on Scope and Correlation of Work as a member, resuming his involvement with the Law Practice Division, re-joining the Judicial Division Lawyers Conference Executive Committee, and continuing in the House of Delegates as an At-Large Delegate.



Shayda Le

Partner **Shayda Le** completed a three-year term on the ABA Board of Governors as a Young Lawyer Member-at-Large and a term as the Governance Committee Chair. She will be working on the ABA’s Sustainable Business Model Taskforce, the Standing Committee on Membership, and the Welcome Home Taskforce through the Young Lawyers Division. She is also serving on the board of directors of the American Bar Foundation.



Kamran Farkhondepay Aryah

from initial formation and funding to windup. He guides clients through intellectual property protection, corporate conversions and mergers, asset sales and acquisitions, and contract drafting and negotiation. He has extensive experience in corporate governance and regulatory compliance for companies in highly regulated industries in Oregon and Washington. In addition, he continues to expand his proficiency in federal and state trademark registrations.

and Oregon state, federal and appellate courts. She also negotiates and consummates commercial transactions and maintains an expanding general business counsel practice.



Sarah Osborn

**Keller Rohrback LLP**  
The firm has hired **Sarah Osborn** as a new associate attorney in its Portland office. She will be splitting time between KR’s commercial and complex litigation groups and working on a variety of matters. Prior to joining KR, Osborn focused on employment, consumer, and civil rights litigation, including matters of discrimination, sexual harassment, whistleblower retaliation, and disability rights. She serves on the executive committee for the Oregon New Lawyers Division, OSB Consumer Law Section, and OGALLA.



David Fauria



Joseph Pickels

litigation team. Pickels’ practice focuses on defending businesses and individuals in general liability claims and healthcare professionals in medical malpractice and wrongful death actions in Oregon and Washington courts. Prior to joining Hart Wagner, Pickels served as Chief Counsel and Senior Advisor to the Minority Caucus in the Oregon House of Representatives and as a litigation attorney at a Portland-based civil defense firm.



Allison (Ali) Rothgeb

**Markowitz Herbold PC**  
The firm welcomes **David Fauria** and **Allison (Ali) Rothgeb**.

Fauria joined the firm after three years of work as a judicial law clerk to the Honorable Mustafa T. Kasubhai in the US District Court for the District of Oregon. During his tenure at the District of Oregon, he was responsible for researching and drafting opinions on a wide range of complex procedural and substantive legal issues.

Rothgeb specializes in representing litigation clients in both state and federal courts. She previously worked at a large regional firm, where she advised clients on land use issues, water law, and environmental law. At Markowitz Herbold, Rothgeb is broadening her practice areas to include general commercial litigation, employment law, and intellectual property.

**Hart Wagner LLP**  
Hart Wagner LLP is pleased to announce that litigation attorney **Joseph Pickels** has joined the firm’s preeminent general liability and medical malpractice



Stacie Damazo

**Stacie Damazo** has been appointed as the ABA Young Lawyers Division Labor & Employment Law Committee Chair, as well as the Liaison to the ABA Labor & Employment Law Section.

All three members of the firm are strong proponents of ABA involvement, as a complement to state and local bar involvement, and believe that these service and volunteer opportunities help strengthen the profession as well as individual lawyer development. In particular, Schpak has served as a state Membership Committee Chair and encourages outreach or questions from any local colleagues who are interested in starting or furthering their ABA involvement.



Andrew Schpak

**Barran Liebman LLP**  
Barran Liebman is thrilled to share that members of the firm will continue to support the American Bar Association through several new roles. Co-Managing Partner **Andrew Schpak** concluded a three-year term on the ABA Board of Governors representing District 19 (Oregon, South Carolina, and Iowa) and a term as the Finance Committee Chair. His next steps include joining the Council of the ABA Fund for Justice and Education, joining the Standing

**Chenoweth Law Group**  
Chenoweth Law Group is pleased to welcome two new attorneys, **Kamran Farkhondepay Aryah** and **Blake Van Zile**.  
Farkhondepay Aryah obtained his JD from the University of Oregon in 2017 and represents small to mid-size business clients



Blake Van Zile

After receiving her JD from the University of Utah in 2016, Van Zile has grown a versatile business, real estate, and general civil litigation practice representing businesses, financial institutions, commercial landlords, and individuals, handling partnership disputes, enforcement proceedings, and breach of contract and business tort claims in Washington

*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).*

**mba**|EVENT

Multnomah Bar Association

Absolutely Social

Tuesday, October 24

Ecotrust Building

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5-7 p.m.

Drop in after work and catch up with friends and colleagues.

Register at [www.mbabar.org](http://www.mbabar.org).




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Left to Right: Wes Mueller, Emily Johnson, Tim DeJong, Cody Berne

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Samuels Yoelin Kantor LLP is pleased to announce that Chris Costantino, Victoria Blachly, Elizabeth Munns, Valerie Sasaki and Leslie Johnson have been named Oregon Super Lawyers® for 2023. In addition, Walker Clark has been recognized as a 2023 Rising Star by the organization

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Tips From the Bench

Treating Others with Respect Speaks Volumes about You

by Judge Morgan Wren Long  
Multnomah County Circuit Court



It is important to treat everyone in a courtroom with respect. This may sound like a simple concept unworthy of an article, but from where I sit, I frequently see attorneys behave toward others in the courtroom with anything but respect. Judges see it, hear about it, take note of it, and remember it. Respect is more than polite words; it is treating each person in the courtroom in a manner that acknowledges their basic right to dignity no matter what the circumstances are. Below is a brief list of some of the most common scenarios that I see:

**Stand up with your client. Always.** Train yourself to stand up the second that your client stands to speak just as quickly as you stand to speak directly to the judge. Attorneys are there to zealously advocate for their clients, but they are also the only person who physically accompanies the client past the bar to stand in front of the court. The attorney’s job includes the duty to guide and assist the client through the courtroom experience - in other words, to literally *be there* for their client. Far too many times, as an attorney and as a judge, I have seen litigants standing before the judge looking scared and alone while their attorney sits beside them. Whether introducing themselves, addressing the court, or engaging in a plea colloquy, an attorney should always stand up for and with their client. It is the least an attorney can do to show respect for their client’s situation.

**Learn how to pronounce your client’s name.** Names are highly personal and a huge aspect of a person’s identity. They can reflect a person’s culture, heritage, and language, among other things. No one appreciates having their name mispronounced, but most are gracious about offering the correct pronunciation when someone gets it wrong the first time. Show respect for your client by asking how to pronounce their full name if it is a name or pronunciation with which you are unfamiliar, and then pay attention and practice that pronunciation. It is disrespectful to make no effort

to pronounce a person’s name correctly; it is rude to ignore a person’s demonstration of the correct pronunciation or to simply refuse to acknowledge how the person pronounces it. If an attorney consistently mispronounces their client’s name, or even worse, calls their client by the incorrect name, that is hugely disrespectful and can cast doubt as to whether that attorney is adequately representing the client. While you’re at it, ask your client what name they would like for you to use for them, in court and out of court, and ask them for their pronouns. Develop a system to accurately capture the correct name, pronunciation, and pronouns and then use them! This goes for other attorneys, witnesses, litigants, and court staff as well.

**Make sure that your client has adequate access to the proceedings.** It is a sign of basic respect to take simple steps to ensure that your client can understand and engage in the court proceeding. Ask your client if they would find an interpreter helpful even if they appear to be fluent in English. Double check that the interpreter is properly arranged in advance so the client is always able to participate. Ask your client if they need any help to fully attend court, such as a hearing assistance device, closed captioning for video appearances, a support animal, permission to stand or lie down as needed, or fidget toys. Offer your client the information for the ADA Coordinator at the courthouse so they can request appropriate accommodations as needed, or better yet, assist them in contacting the ADA Coordinator. Follow up with court staff to ensure that any requested accommodations are prepared and approved in advance. This goes for your witnesses as well.

**Communicate with court staff and the judge about any client behaviors that may be unusual.** Many people develop various tactics or habits to cope with stressful and difficult situations that are easily misinterpreted. I have seen litigants appear to be sleeping during witness testimony when they were actually closing their eyes so they could better process what was being said. I have seen parties laugh or giggle at highly inappropriate times as an involuntary reaction to being nervous or scared. I personally focus significantly better during long stretches if I am able to doodle but during school was often confronted by teachers about not paying attention during class. Many of

Referee Joseph Hagedorn  
Judicial Profile

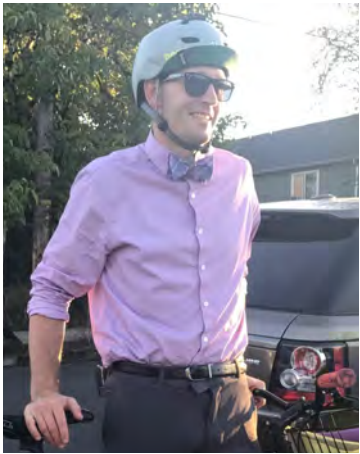
by Robert Parker  
MBA Court Liaison Committee

Referee Joseph Hagedorn came to his current position largely by happenstance, as one might expect. Referees, utilized by Multnomah County to handle high volume, limited-purpose courts, do not get as much public attention as judges. Their work, however, often deals with some of the most vulnerable members of the population, and the calmness and understanding required of the job can bring its own challenges. Despite this, Referee Hagedorn was surprised by how much he enjoyed the job once he had it.

Referee Hagedorn began his legal career as an attorney for AmeriCorps - a “compensated volunteer” position which barely paid enough to cover Referee Hagedorn’s travel costs from Portland to Linn and Benton counties, where he was assigned to work. In 2003, Referee Hagedorn joined the Metropolitan Public Defender’s office. Throughout his career as a public defender, he handled a broad range of criminal defense cases, including three murder cases, two of which went to trial, and numerous juvenile delinquency cases. After four years as a trial attorney, he became a supervising attorney and was at various points the chief supervising attorney for minor felonies, juvenile, and specialty courts.

After 13 years, Referee Hagedorn started feeling that it was time for a change. In 2016, MPD knew it was going to downsize. Referee Hagedorn took this as an opportunity, joining several attorneys in volunteering to move on. He started his own practice, focusing primarily on juvenile cases, and started thinking about being a judicial officer. He was ultimately appointed as a referee in 2020.

Referee Hagedorn had plenty of experience arguing before referees, as they handle most juvenile cases, though he admits it was not what he was expecting to do. He took the job, and realized that, like many attorneys, he didn’t have a true sense of what



Referee Joseph Hagedorn

referees did until he experienced the full position firsthand. Whereas judges have more of an analytical job, often having to make cold interpretations of what the law says and how it must apply to the facts before them, Referee Hagedorn thinks of referees as having more of a problem-solving job.

As Referee Hagedorn works out of the Juvenile Justice Center, his position is different even from the referees at the Multnomah County Central Courthouse in downtown Portland. Downtown courthouse referees tend to be a “jack of all trades,” spanning traffic court, preliminary criminal hearings, landlord/tenant disputes, and commitment proceedings. All referees, including Referee Hagedorn, are also pro tem judges, and may cover certain dockets in that capacity. Referees in the Juvenile Justice Center, however, have a more specialized position, mostly within the context of family law and juvenile delinquency and dependency.

This is not to say that Referee Hagedorn does not also need to be a jack of all trades in his own right. Referee Hagedorn spends most of his time hearing dependency cases - disputes brought to the court by Child Protective Services (CPS) to address children who may need to be removed from their homes, or put differently, whether the court can help develop a plan to help find a way to solve the problems in the child’s home so that the child can safely *stay* with their

family. This kind of case comes with its own challenges. Referee Hagedorn often only has a “snapshot” of the child’s situation - a moment in time which may or may not be indicative of the broader situation.

In many cases, the child suffers from neglect arising from a parent struggling with substance abuse disorder. Once CPS can identify this type of neglect, flexibility in the juvenile court system allows the agency and courts to work together to help keep the family together by providing resources and incentive for the parent to recover from their addiction and return to their normal life. This flexible approach requires much more than simply interpreting the law and rendering decisions. Resolving these cases can require a real understanding of the specific challenges that come with addiction, parenting, and accessing support services, often requiring creative solutions to difficult problems.

Referee Hagedorn has similar challenges - and opportunities for creative solutions - in his other cases. For instance, Referee Hagedorn presides over juvenile delinquency cases, often including allegations of theft, robbery, assault, and other violent crimes. Referee Hagedorn sees many parallels between his dependency and delinquency cases. Indeed, many of the youth that appear before him for delinquency cases also have open or previous dependency cases or were raised in a neglectful environment or have suffered significant childhood trauma. Referee Hagedorn understands that it can be difficult to see a 15-year-old as a vulnerable child, when that child may have committed what would be classified as a violent crime if it was committed by an adult. Referee Hagedorn sees an opportunity to make a positive, long-term difference by using his position to reach these youth.

Given these opportunities to make a difference that his position holds, Referee Hagedorn doesn’t see himself stepping down from his referee position any time soon. He may not have expected to have become a referee, but now that he’s here, Referee Hagedorn feels that as long as he loves what he does, he’s going to keep on doing it.

these behaviors may be seen as disrespectful, a sign of a disorder, or even open the possibility of a client being found in contempt if the behavior is extreme enough, but it may be involuntary or difficult to avoid in certain situations. Inform court staff, the judge, and other parties if you are aware that your client has a habit like this so that your client can participate in the way that best meets their needs while assuring all participants that the client is showing proper respect for the proceedings. Mutual respect goes a long way.

**Avoid showing frustration or negative thoughts about accommodations.** If a person needs an interpreter, repetition of what is said,

has an unusual behavior, or requires an accommodation that is malfunctioning and thus slowing down the proceeding, it is not uncommon for all involved to feel a certain amount

of frustration by the delays or distractions. Allowing that frustration to become a part of your outward demeanor

Continued on page 14

Questions for the Court?

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



# Ninth Annual Battle of the Lawyer Bands Brings Down the House

The McMenamins Mission Theater was rockin’ on August 3 when six bands competed for the title of “Best Oregon Lawyer Band 2023.”

- **Bunny Lebowski & the Nihilists** - Bradley Dixon, P.K. Runkles-Pearson, Steve Galloway and Dennis Westlind
- **The Catbird Seats** - Zack Mazer, Max Wall, Howie Cockrill, Erik Eklund and Josh Mathis
- **Lisa Fitzgerald and Russ Barnett** - Lisa Fitzgerald and Russ Barnett
- **McCoy Russell Band** - John Russell, Anna McCoy, Tony Pullig and Nate Holtey
- **The Soul Searchers** - Sheldon Aronson, Adam Greenman, Glenn Gregorio, Michael Maggard and Matt Miali
- **TCB Band** - Tony Kullen, Brian Sniffen and Houston Bolles

It was evident the crowd has missed this beloved event, which was on hiatus during Covid. The energy was vibrant and the pizza was tasty, as drinks flowed and the audience danced to the diverse range of music presented in a glorious new venue for Battle of the Lawyer Bands. Both the judges’ positive feedback and the thunderous applause from the crowd made it clear that everyone enjoyed all the bands, but in the end TCB Band was named Best Oregon Lawyer Band 2023. After a rather dramatic mix-up with some tallies (remember when La La Land didn’t really win that Oscar, as announced?), The Soul Searchers received the Audience Choice Award. Lisa Fitzgerald of Lisa Fitzgerald and Russ Barnett received the James Britt Award for Best Individual Performer, an award that honors frequent Battle of the Lawyers Band judge James Britt’s vivacious, generous spirit and enthusiastic love of music. The judges commented on the honesty, bravery and authenticity she shares in her original songs. In another dramatic moment, Russ Barnett congratulated his bandmate and shared loving memories of James, his late colleague and best friend.

Thank you to Farleigh Wada Witt, McCoy Russell LLP, Harrang Long P.C., PLF Excess Program, Bullard Law and Laura Rumford, Certified Divorce Real Estate Expert for sponsoring the event.

We would also like to thank our event judges: Judge Cheryl Albrecht, Tim DeJong, Trish Walsh and Jennifer Yruegas; and Victoria Blachly, who served as emcee. The event was



TCB Band took home the Best Oregon Lawyer 2023 trophy



The Soul Searchers received the Audience Choice Award



Best Individual Performer, Lisa Fitzgerald

planned by the 2022-23 MBA Events Committee, chaired by Natalie Hedman, with members, Justice Brooks, Shannon Hall, Elizabeth Hohn, Kurt Peterson, Joanna Posey, John Robb and Christopher Thomas.

Thank you to everyone who attended and helped raise \$4,200 for the Multnomah Bar Foundation.

It is never too early to start planning and practicing for next year’s Battle of the Lawyer Bands. The judging is based on (1) Music (things like musical clarity, lyrical content, musicianship, instrumentation, and originality); (2) Performance (stage presence, theatricality and showmanship); (3) Crowd Reaction/Participation

(were people dancing or engaged?); and (4) Lawyer Band Composition (percentage of the band’s members who are lawyers or legal professionals). If you have ever needed an excuse to dust off a musical instrument, sing a song and put on a show, there may be no better reason than to raise money for the Multnomah Bar Foundation - and to make all of your friends and family come and cheer you on. We hope to see you next year for the 10th Annual Battle of the Lawyer Bands!

Visit [www.mbabar.org/mbf](http://www.mbabar.org/mbf) to learn more about the Multnomah Bar Foundation.

# A Call for a Professionalism Statement that Includes the Proper Use of Technology

by Amber Bevacqua-Lynott  
MBA Professionalism Committee



As lawyers, we are required to operate under a set of ethics rules based upon long-standing principles of acceptable behavior. These rules are highly regimented and not easily or routinely modified. However, we live in a world of rapidly developing technologies - technologies that we are expected to both understand and fully utilize to the extent possible for the benefit of our clients. Yet neither the OSB Statement of Professionalism,<sup>1</sup> nor the MBA Commitment to Professionalism<sup>2</sup> speak to the use of technology, let alone the civility that should be employed in its use. That should be remedied.

**The Present Uncertainty**

“All the rules that the legal profession relies on to instruct lawyer behavior were forged before the emergence of twenty-first century technology.”<sup>3</sup> For this reason, it can feel as if the ethics rules fail to keep pace with the real-world requirements of being a lawyer. This is particularly true where these swiftly evolving technologies impact or influence civility in the profession. For example, whereas a dispute between opposing counsel may have previously been hashed out in a telephone call or an exchange of letters, the digital era has facilitated the needless publication and escalation of such disagreements via online platforms. It is as if the cyber medium emboldens people in a way that direct contact, or even direct written correspondence, did not. Add to that the fact that social media and the inundation of extremist viewpoints has desensitized people to consideration of others and their positions, as well as made them comfortable with the disclosure of formerly private information, which is now a routine and voluntary practice. These issues are not addressed under the ethics rules.

RPC 1.1 mandates that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. ABA Model Rule 1.1, cmt. [8] explains that “[t]o maintain the requisite knowledge and skill, a lawyer

should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” Even so, the term “technology” is not found in the Oregon Rules of Professional Conduct. In addition, only a few OSB ethics opinions even deal with the proper use of technology in any meaningful way<sup>4</sup> and, although the ABA has recently provided a bit more guidance,<sup>5</sup> notably, none of the opinions from either source talk about professionalism or professional courtesies. OSB Formal Ethics Op. 2022-201 (Responding to Negative Online Comments and Reviews) followed in the wake of Oregon Supreme Court guidance on the issue,<sup>6</sup> and, although useful as far as it goes, the opinion centers on protections to clients and duties with respect to client information, and does not extend to professionalism or obligations attorneys should have toward one another (e.g., posting a review on another lawyer’s website, tweeting regarding another lawyer, or referencing their own or another lawyer’s positive or negative reviews in advertising).

Similarly, even though published professionalism standards (although aspirational) can fill the gaps in the ethics rules or provide other useful guidance, as noted, neither of the predominant professionalism creeds in Oregon have taken on the appropriate use of technology. The Bar and MBA should fix this.

**Concerns to be Addressed**

It is critical that there be a resource for attorneys to reference and cite with respect to online decorum and technological invectives, as well as technological competence. Although not an exhaustive list, the following issues should be considered for inclusion:

- Online comments and interactions can easily be misread, misunderstood, or taken out of context. Real-time exchanges and the seemingly back-and-forth conversational nature of many emails and other digital exchanges allows for their authors to be brusque and improvident. How rude is too rude? What subjects should be avoided or are off limits?
- Likewise, improvements in AI and research platforms have both facilitated access to more and more information and called into question its reliability. Lawyers must be encouraged to utilize these tools, but with appropriate factual vetting and research to verify their sources. But what does that entail?

Continued on page 12



**mba** | Young Lawyers  
Section

What is the YLS?

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

YLS CLE Speaker  
Acknowledgements

by Ramon Henderson and Elli Tillotson  
2022-23 YLS CLE Committee Co-Chairs

The YLS CLE Committee would like to thank all of the dedicated attorneys who volunteered their time, experience, and professional knowledge to present during our recent Advanced Litigation Series. The Advanced Litigation Series followed the committee’s flagship series, the Young Litigator’s Forum, and consisted of nine, hour-long, lunchtime CLEs covering a variety of topics geared towards providing new attorneys with a deeper dive into litigation in Oregon. Topics included “How to Prepare for Trial,” “Ethics and Discovery,” “Protective Orders,” “Working with Experts,” and “How to Be a Great Second Chair,” to name a few. Thank you to all of our speakers for volunteering their time and putting on a successful and engaging series. We could not do this without you.

**Ron Cheng**, Cheng Law LLC  
**David Elkanich**, Buchalter  
**Justice Brooks** and **Maggie Sholian**, Foster Garvey PC  
**Erica Clausen**, Miller Nash LLP  
**Rachael Federico**, Legal Aid Services of Oregon

**Jovita Wang**, Richardson Wang LLP  
**Breanna Thompson**, Garrett Hermann Robertson PC  
**Eleanor DuBay**, Tomasi Braga DuBay PC  
**Chad Colton**, Markowitz Herbold PC

The YLS CLE Committee organizes and puts on three CLE series a year. Our upcoming fall series is titled Minimum Competency and will focus on the unexpected ways practice areas can overlap, when a specialist may be required, and some general considerations for when you find yourself in an unfamiliar situation. The series will include topics such as client management when there are multiple issues or attorneys involved, litigation considerations for the non-litigation attorney, Insurance 101, and the unexpected ways family law, business law, and tax may find their way into your seemingly unrelated case. To view the full lineup or to register, please visit [www.mbabar.org/cle](http://www.mbabar.org/cle).

YLS Committees

YLS members serve on committees designed to address the needs of newer lawyers and offer discrete networking and volunteer opportunities. A synopsis of each committee charge follows, with contact information for the 2023-24 chairs. If you have ideas to share or would like to join a committee, please contact the committee chair, YLS President Maxine Tuan at [mtuan@salcgroup.org](mailto:mtuan@salcgroup.org) or MBA staff at [mba@mbabar.org](mailto:mba@mbabar.org).



Alysha Phelps



Sophia von Bergen

YLS Continuing Legal Education

Co-chairs: **Alysha Phelps**, Barran Liebman LLP ([aphelps@barran.com](mailto:aphelps@barran.com)) and **Sophia von Bergen**, Miller Nash LLP

([sophia.vonbergen@millernash.com](mailto:sophia.vonbergen@millernash.com)) Organizes 27+ MCLE-accredited seminars, with content intended specifically for newer lawyers. Provides additional professional and career development seminars for the YLS membership.



Marry Karam

YLS Membership

Chair: **Marry Karam**, Lissa Kaufman Law LLC ([marry@lissakaufmanlaw.com](mailto:marry@lissakaufmanlaw.com)) Assists in recruitment and involvement of YLS members, to encourage member participation in the YLS, and to organize a variety of networking activities for YLS members.



Kelsey Benedick

YLS Pro Bono

Co-chairs: **Kelsey Benedick**, Larkins Vacura Kayser LLP



Rachelle Collins

([kbenedick@lvklaw.com](mailto:kbenedick@lvklaw.com)) and **Rachelle Collins**, Stoel Rives LLP ([rachelle.collins@stoel.com](mailto:rachelle.collins@stoel.com)) Provides leadership and professional development opportunities for YLS members in pro bono work. Administers the local Wills for Heroes Foundation clinic, providing estate planning services to first responders.



Alex Hutchinson

YLS Service to the Public

Chair: **Alex Hutchinson**, Miller Nash LLP ([alex.hutchinson@millernash.com](mailto:alex.hutchinson@millernash.com)) Provides programs to engage YLS members in community outreach activities that educate the public about the legal system, the positive role of lawyers in society, and the legal resources available to the community.



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Meet **Ashley Shearer**, a **MacMillan, Scholz & Marks** associate and *Rising Star*.

**Annapurna Raman**  
Construction Litigation

**Megan Ferris**  
Construction Litigation

**Christine Reinert**  
Construction Litigation

**Leslie Kocher-Moar**  
Personal Injury Defense



Ashley’s practice focuses on construction litigation and general tort liability. Now selected to the *Oregon Rising Stars* list, she joins our principals Megan Ferris, Leslie Kocher-Moar, Annapurna Raman, and Christine Reinert — all recognized in 2023 by Super Lawyers. Well done, Ashley!



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# 2024 MBA Awards Nominations Due November 3

### Professionalism Award

Do you know a lawyer who is a pleasure to work with as both an ally and an adversary, regularly goes well beyond minimum ethical and professionalism standards, and often mentors others and works to improve the quality of our practice as a whole? We strongly encourage you to nominate them for the 2024 MBA Professionalism Award. Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award.

Esteemed award recipients include Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweet, Daniel E. O’Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver, Walter H. Grebe, Susan M. Hammer, Carl R. Neil, Jeffrey M. Batchelor, Judy D. Snyder, Garry L. Kahn, Michael D. Schrunk, Edwin A. Harnden, Thomas W. Brown, Mark Johnson Roberts, Robin J. Selig, Bonnie Richardson, Jane Paulson, Carolyn Walker, Robert Joondeph, Judge Rima I. Ghandour, Alice Cuprill-Comas and David B. Markowitz.

### Diversity Award

The MBA Diversity Award honors individual attorneys, legal employers, or other legal organizations that have made a longstanding commitment to furthering diversity and

inclusion in the MBA and Multnomah County legal community. The award spotlights the various efforts of individuals, legal employers, or legal organizations in fostering a culture of diversity and inclusion, and encourages others in their own efforts.

Do you know of an individual attorney, legal employer, or other legal organization that has shown a long-term commitment to fostering diversity and inclusion in the MBA and Multnomah County legal community? If so, please complete a nomination form for the MBA Diversity Award. The nomination should include the efforts made, the impact of those efforts, and how the individual, legal employer, or legal organization exemplifies the principles set forth in the MBA Statement of Diversity.

Esteemed award recipients include Aruna Masih, Ernest Warren, Hala Gores, Kamron Graham, Diane Sykes, Parna Mehrbani, Derily Bechthold and Judge Rima I. Ghandour.

The concept of “diversity” is made up of many dimensions that make it difficult to define. To the MBA, diversity is “an inclusive concept” that “encompasses, without limitation, race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status.” The MBA also recognizes that “achieving diversity is an evolutionary process that requires a continued renewal of our commitment to strategies of inclusion.” (*MBA Statement of Diversity Principles*.)

### Merit Award

The MBA Merit Award recognizes and honors those who have made significant recent contributions to the MBA’s mission of promoting justice through service, education or leadership to the MBA, legal profession or community.

### Pro Bono Awards

The pro bono awards recognize lawyers who provide pro bono assistance to low-income and underserved members of our community to reduce barriers to justice and provide 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.

The **Legal Aid Pro Bono Volunteer of the Year** award is 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.

The **Michael E. Haglund Young Lawyer Award** is 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.

The **Pro Bono Award of Merit** is 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.

Former nominees may be re-nominated. To propose a nominee for any of this year’s award selection processes, please complete and return the nomination form(s) available starting on September 15 at [www.mbabar.org](http://www.mbabar.org) or contact the

MBA at [mba@mbabar.org](mailto:mba@mbabar.org) for more information. Nomination forms are due November 3 to the MBA. The MBA will present the recipients of the Professionalism, Diversity, Merit and Pro Bono awards at the MBA Annual Meeting on May 8, 2024.

## Alysha Phelps YLS Member Spotlight

by Wilson Jarrell  
YLS Board

The MBA is pleased to highlight the contributions of Alysha Phelps, a long-time member of the MBA Young Lawyer Section CLE Committee, and its current co-chair. Alysha has served on the committee for more than four years, having joined shortly after her graduation from Lewis & Clark Law School in 2018, where she graduated cum laude and was an editor for the *Lewis & Clark Law Review*.

Prior to law school, Alysha attended the University of Idaho, where she initially was pre-med before discovering an interest in public policy that resulted in her receiving a BA in International Studies and Spanish, and a BS in Economics. Subsequently, Alysha found her way to law school at Lewis & Clark, where she sought out ways to apply her interest in policy (and rare-for-a-lawyer math skills) to help make a difference in peoples’ lives. While at Lewis & Clark, she became involved in many organizations and groups, including the Public Interest Law Project and the Labor and Employment Law Society, as well as met her now-husband within her cohort. Alysha also was the recipient of the Lewis & Clark Law School Community Service Honors Award, recognizing her service and contribution to the local community.

Following law school, Alysha entered private practice and focused on business and real estate litigation, before turning to workers’ compensation law as a way to incorporate her previous interest in medicine. Eventually, she joined the firm Barran Liebman LLP, where she currently practices labor and employment law, with a focus on litigation and advice work. Alysha sought out this practice when looking for a way to utilize her litigation prowess while



Alysha Phelps

doing work that was fulfilling and meaningful to her clients. She supplements her practice by providing trainings to Human Resources professionals throughout Oregon and is a regular contributor to local trade publications.

As a member of YLS CLE Committee, Alysha has worked to ensure that the MBA provides continuing legal education on substantive law topics with a focus on young and novice practitioners. Recently, Alysha organized CLE programs on the basics of wage and hour law, as well as the Courtroom Nuts & Bolts program in the YLS Young Litigators Forum. Additionally, Alysha has regularly engaged in public service and volunteer activities with the YLS, continuing to display her commitment to bettering her community.

In addition to serving on the YLS CLE Committee, Alysha also serves as the incoming Co-Chair of the Oregon Women Lawyers Roberts & Deiz Award Committee, volunteers with the Lewis & Clark Law School Mentor Program, and is an active member of the Oregon Public Employer Labor Relations Association and the Oregon Labor & Employment Relations Association.

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### Submissions for the Multnomah Lawyer

The MBA is looking for writers and article ideas for the newsletter. If you are interested in submitting ideas or articles, please review the *Multnomah Lawyer* contribution guidelines and contact the MBA Executive Director at [mba@mbabar.org](mailto:mba@mbabar.org). Our readers especially enjoy profiles of members, analyses of trends in law, tips on points of law and essays on issues in the profession.

Contribution guidelines and other details are available at:  
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**Call for Professionalism Statement**

Continued from page 9

- The technical competence required by RPC 1.1, as well as our duty to protect client information under RPC 1.6,<sup>7</sup> has long required recognizing the risks of online social media and electronic communications, in addition to electronic storage and cyber security, but what are the “reasonable efforts” required by RPC 1.6(c)? How is a lawyer to know?
- In this same vein, the COVID-19 pandemic ushered in a “new normal” reliance on Zoom and other videoconferencing platforms, both in the provision of legal services and participation in judicial appearances. Indeed, many lawyers have transitioned to a fully virtual practice, yet neither the OSB nor the ABA offer an ethics opinion on either videoconferencing or virtual practice. How much are lawyers required to do to ensure the security of equipment and platforms? How should they behave when participating on them?
- Lawyers deserve to have personal opinions and have a First Amendment right to engage in the discourse options available on social media, blogs, podcasts, and other digital media outlets. That said, does it create a conflict of interest for a lawyer to post or otherwise assert a personal position through these mediums contrary to the position they are advocating for on behalf of a client? Does it matter whether we are speaking as a lawyer (or even identify as a lawyer)? How far are we allowed to go in criticizing opposing counsel, a judge, or the legal process?

**Conclusion**

There are a number of questions about the competent and professional use of technology by lawyers that the ethics opinions and Rules of Professional Conduct have yet to address. While waiting for these authorities to catch up, the OSB and MBA have the ability and opportunity to provide needed guidance on these topics through their published professionalism statements to help lawyers navigate the challenges of evolving technologies in appropriate, ethical, and professional ways.

The MBA Board appreciates Ms. Bevacqua-Lynott’s raising the issue of technology and its intersection with professionalism. This year, the MBA Professionalism Committee will be reviewing the MBA Professionalism Statement to evaluate how to incorporate technology as part of the Statement.

**Endnotes**

- 1 [www.osbar.org/\\_docs/rulesregs/professionalism.pdf](http://www.osbar.org/_docs/rulesregs/professionalism.pdf)
- 2 [assets.mbabar.org/Pro%20Bono/profcertorder.pdf](http://assets.mbabar.org/Pro%20Bono/profcertorder.pdf)
- 3 Ken Strutin, *Social Media and the Vanishing Points of Ethical and Constitutional Boundaries*, 31 PACE L. REV. 228, 264 (2011).
- 4 See OSB Formal Ethics Op. 2022-201 (Responding to Negative Online Comments and Reviews); OSB Formal Ethics Op. 2011-187 (rev. 2015) (Competency: Disclosure of Metadata); OSB Formal Ethics Op. 2011-188 (rev. 2015) (Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials); OSB Formal Ethics Op. 2013-189 (Accessing Information about Third Parties through a Social Networking Website).
- 5 See ABA Formal Op. 06-442 (Metadata); ABA Formal Op. 466 (Permissible Information gathering about Jurors Using Social Media); ABA Formal Op. 477R (Securing Communication of Protected Client Information); ABA Formal Op. 496 (Lawyer responding to online criticism).
- 6 *In re Conry*, 368 Or 349, 491 P3d 42 (2021).
- 7 RPC 1.6(a) prohibits a lawyer from revealing “information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).” RPC 1.6(c) requires that a lawyer “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”



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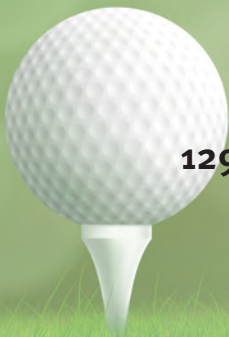
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## 23rd Annual MBA Golf Championship

### Thursday, September 21



**Ghost Creek Course**  
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This is the MBA's largest annual fundraiser for the Campaign for Equal Justice. Proceeds benefit the Volunteer Lawyers Project. Invite clients, colleagues, family and friends and play a beautiful course for a great cause. Discounted entry of \$240 for MBA members and non-lawyers if registered by September 15. Non-MBA member lawyers \$270.

Tee and Raffle Benefit sponsorship opportunities are available, and we're seeking prize donations. To be acknowledged on event signage, contact Pamela Hubbs by September 11. To register or sponsor, see the insert in this issue or contact Pamela Hubbs (pamela@mbabar.org, 503.854.5237).

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Eight hours of practice skills and one hour of ethics OSB MCLE credit will be applied for in total. Series registration is \$150 for members (or \$30 per individual seminar); non-members \$250 (or \$45 per individual seminar).

Register online at [www.mbabar.org/cle](http://www.mbabar.org/cle)

**Client Management** - Thursday, September 21, 12-1pm  
Speaker: **Alexander Hill**, Bullivant Houser Bailey PC

**Family Law** - Thursday, September 28, 12-1pm  
Speaker: **C.J. Graves**, Graves & Swanson LLC

**Tax Law** - Thursday, October 5, 12-1pm  
Speaker: **TBA**

**Business Advising Considerations** - Thursday, October 12, 12-1pm  
Speakers: **Alicia Bell**, Wildwood Law Group LLC and **Erich Merrill**, Miller Nash LLP

**Collections** - Thursday, October 19, 12-1pm  
Speaker: **Michael Fuller**, OlsenDaines PC

**Insurance 101** - Thursday, October 26, 12-1pm  
Speaker: **Emily Miller**, Miller Insurance Law

**Privacy Law** - Thursday, November 2, 12-1pm  
(Note: One hour of ethics OSB MCLE credit will be applied for)  
Speaker: **Rishi Puri**, Lane Powell PC

**Litigation 101** - Thursday, November 9, 12-1pm  
Speaker: **Megan Ferris**, Macmillan, Scholz & Marks, LLC

**Courtroom Rituals and Etiquette** - Thursday, November 16, 12-1pm  
Speaker: **Bill Barton**, Barton Law Firm PC

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Tips From the Bench

Continued from page 8

is disrespectful to the person requiring the assistance and is likely to make that person feel that they are a nuisance or that they are not entitled to a fair proceeding. All attorneys who appear in court develop the ability to mask their thoughts, emotions, and reactions quickly; apply this same skill to the inevitable delays or issues that can arise in ensuring equal access to justice for everyone.

**Be respectful to court staff.** Court staff deserve an enormous amount of respect. Court proceedings literally would not run without clerks and judicial assistants. Many clerks and judicial assistants know as much, if not more, about court procedures and policies than anyone else involved in the system. They sit through the same stressful, traumatizing, sad, and sometimes frightening hearings that the rest of us do. Court staff throughout the courthouse have a wealth of knowledge and are generally happy to go the extra mile to help attorneys and litigants when asked respectfully. I will never cease to be amazed at how frequently court staff are belittled and verbally abused, both in and out of my presence. I am fiercely protective of my staff and know that is true for most of my fellow judicial officers. We are well aware when our staff is mistreated. Showing respect to court staff will often help you to move through court processes smoothly; anything less than respect will likely make the

process harder for you and your client and is likely to hurt your reputation in the long run.

**Show respect for opposing counsel, parties, and witnesses.** Professionalism dictates that attorneys should be respectful toward each other, yet a lack of respect for opposing counsel is far too common in the courtroom. An attorney’s job is to zealously advocate for their client; that does not require disrespect toward the other side. As noted above, attorneys must develop a poker face quickly if they want to practice in the courtroom. All too often I see attorneys roll their eyes, scoff, chuckle, or audibly let out a sigh in response to opposing counsel’s arguments or questions. This is disrespectful and only hurts the reputation of the attorney demonstrating this behavior. Questioning a witness may very well include attacking that person’s credibility or attempting to get an emotional response out of them, but that does not negate that witness’s right to a basic level of respect while doing so. All attorneys are there to do their jobs, and witnesses are there to provide information. There is never a reason to show disrespect openly toward another attorney or a witness during a court proceeding, even if that attorney or witness makes the mistake of showing disrespect for you. To paraphrase Michelle Obama, when they go low, you go high. This will not only avoid delays due to hearings devolving into arguments or situations requiring intervention, but it will also solidify your reputation with the judge and within the greater legal community.

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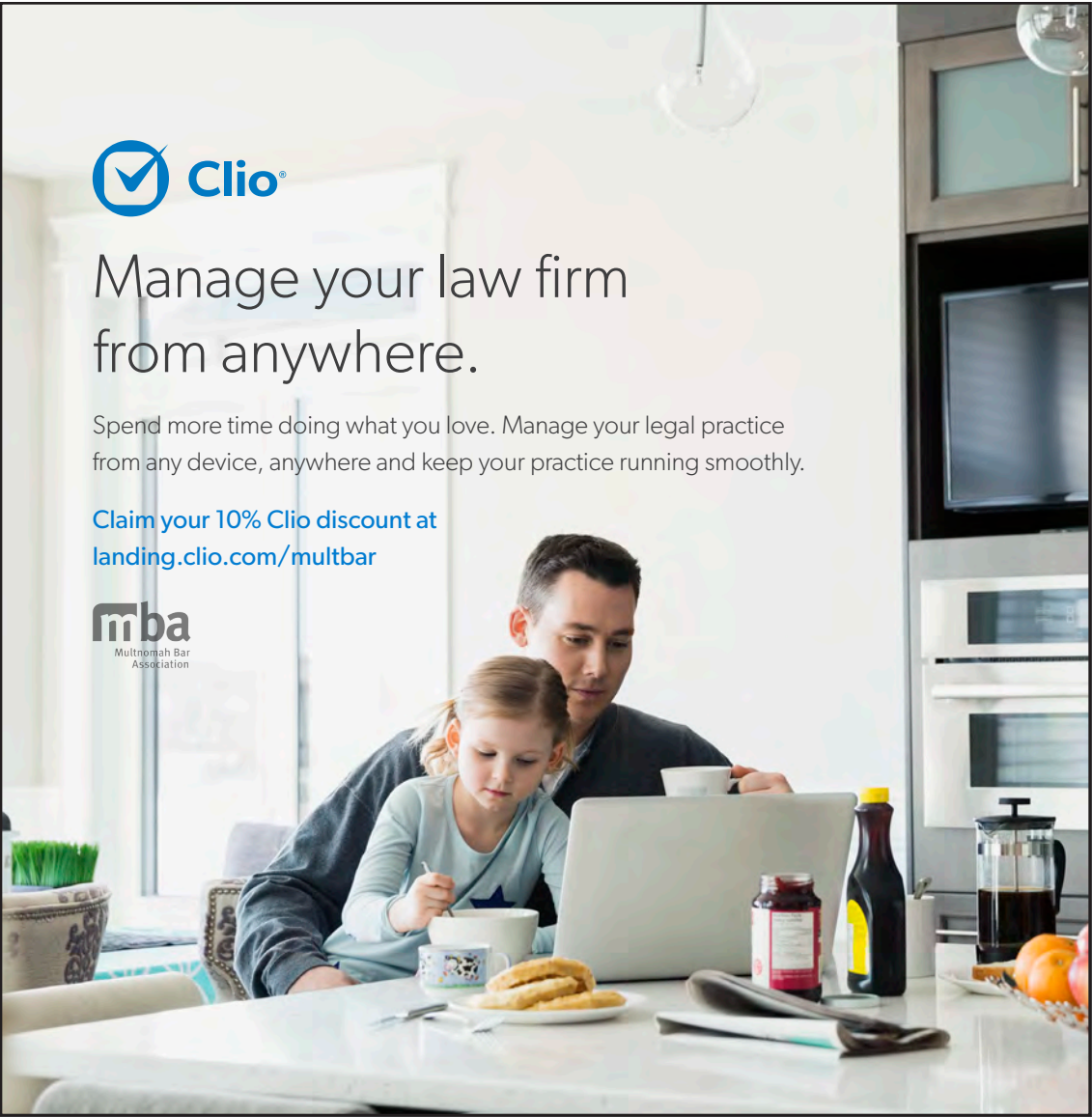
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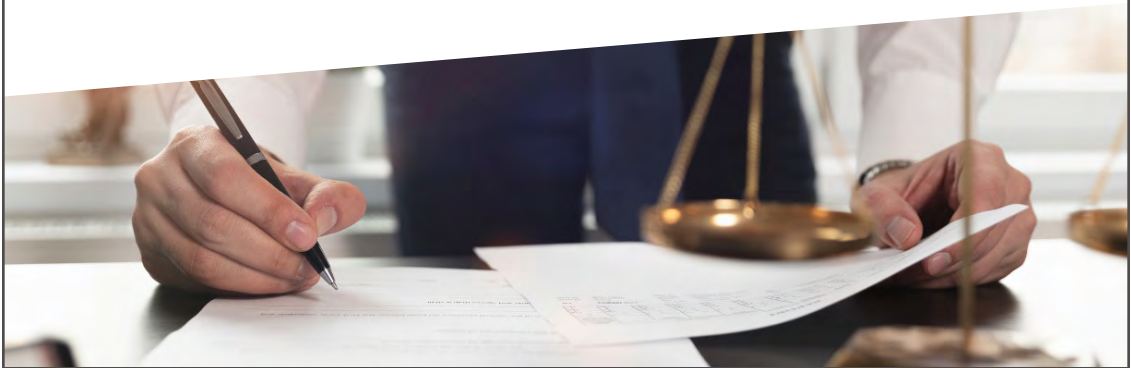
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