



Taking Care of Yourself

by Theresa L. (Terry) Wright
MBA President

As a law professor, I have the luxury of creating assignments for my students to help them reflect on their learning and future practice habits. One assignment I have given to my students the past several semesters is to “spend at least two hours doing a self-care

activity” during the semester. (Some of my colleagues refer to this as “community care;” for the sake of simplicity, I will refer to this as self-care in this article.) I am always surprised at the number of questions I get from students about what that means!

Hopefully those of you reading this article know what that means. I suspect that not everyone who knows what self-care is actually practices it. I was talking with a younger lawyer at an MBA event recently who said they’d not taken a vacation while they were with their current firm. Either the lawyer doesn’t understand the need for this, or the firm doesn’t support that. In either case, I would hope that the lawyer and/or firm do some thinking about how unhealthy this can be.

Another activity I give my students is to do a creative presentation for the class at the conclusion of the semester. It is surprising how many students tell me they are at a loss as to what to do. I explain how important creativity is in being a successful lawyer. But, the primary reason I ask students to do this is so they will think about how to bring creativity into their lives outside of work. This remains true for all of us who have graduated from law school and practice law, in whatever form.

I was with some friends recently sitting in front of a warm wood fire at their home (yes, I know the controversy about burning wood, but bear with me here). After the four of us just sat for a while staring at the fire, one of us commented about how meditative staring at the fire was. That’s when it hit me that meditation can take so many forms. There is the formal meditation practice, but also staring at fires, looking out one’s window at a beautiful sunrise, staring at trees on a hike. All of these help us calm our minds and help us become better able to deal with the stresses of life and law.

Don’t like meditating, regardless of the form? There are many things you can do to calm your mind and body, and I’ll bet you already do one or more but don’t call it self-care. You should. It is vitally important to us to take time for ourselves so we don’t burn out long before our careers should be done.

So, think about what besides work makes you happy. And I don’t mean drinking or drugging or driving your car far over the speed limit (except of course if you are on a closed track and in a car designed for such things). Do you like playing music or singing, listening to music, coloring in adult coloring books, knitting, reading something other than law-related materials? Do you enjoy walking, running, lifting weights, doing crossword puzzles? Hanging out with a friend in a coffee shop sharing a snack and a cup of tea? I’m sure

It is vitally important for us to take time for ourselves so we don’t burn out long before our careers should be done.

you can come up with a long list of things that you enjoy doing that take your mind off your work.

And, by all means, you should be taking time away. Mini-vacations, medium vacations, long vacations, sabbaticals - all are important. The next time you figure out how much vacation time you’ve accrued, ask yourself why. If you are saving it for a trip to Antarctica, great! If you aren’t using it because you don’t know what to do with it or think your work can’t wait through your vacation, re-think that. There’s a reason people take vacations, even if they are staycations.

And, when you are on vacation, TURN OFF THAT PHONE. If you have put the proper backstops in place (i.e. have someone watching your cases), you shouldn’t have to deal with work crises except in limited situations. Yes, I know that unanticipated things come up and you may need to work some during your vacation. But at least do it on your terms and your timelines so you won’t have to miss that pre-planned trip to the Eiffel Tower or the Sistine Chapel. Your law practice will be there when you return. And you will be better able to cope with the inevitable stressors that come up. It is the nature of the beast, but you do yourself and others around you no good if you haven’t taken periodic time away to recharge your batteries.

This is a new year, and while I’m not big on resolutions, I am committing to practice at least one self-care event every day. Will you join me?

...you do yourself and others around you no good if you haven’t taken periodic time away to recharge your batteries.

MBA 20th Annual WinterSmash

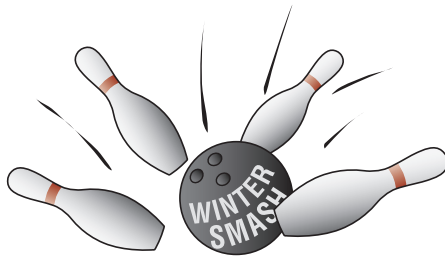
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See details on p. 3. To register, visit www.mbabar.org/cle and input your OSB number to register at the member rate.

FEBRUARY

2.13 Tuesday
Effective Mediations
Hon. Kathleen Dailey

2.21 Wednesday
Representing Veterans: Everything You Didn’t Know You Need to Know!
Jaimie Fender
Leslie Nelson

2.27 Tuesday
Wait. What?! Oregon Now Has a Comprehensive Consumer Privacy Law?
Kristen Hilton
Eva Novick

2.28 Wednesday
Mindful Lawyering: Trauma-informed Practices in an Age of Overwhelm
Kyra Hazilla
Doug Querin

MARCH

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Judge Katharine von Ter Stegge
Cody Hoesly

APRIL

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The Oregon Secretary of State’s Advisory Report on a Statewide Strategy re: Domestic Violence
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Krystine McCants
Kip Memmott

4.11 Thursday
Drafting Effective Trial Briefs
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Moody v. Oregon Community Credit Union: The Oregon Supreme Court Heralds a Significant New Development in First-Party Insurance Litigation

by Stephen Leggatt
Bonaparte & Bonaparte



On December 29, 2023, the Oregon Supreme Court released a new opinion that will have far-reaching implications for Oregon insurance consumers: *Moody v. Oregon Community Credit Union*, 371 Or 772 (2023). To fully convey the significance of the new decision, it is necessary first to set the stage and explain the backstory.

In January 2022, Judge Jack Landau of the Oregon Court of Appeals issued a groundbreaking opinion that significantly expanded Oregon policyholders’ ability to hold insurance companies accountable for improper conduct. In *Moody v. Oregon Community Credit Union*, 317 Or App 233, 505 P3d 1047 (2022), Judge Landau opined that where an insurer violates the standard of care codified at ORS 746.230(1) - which requires insurers to adhere to fair claim settlement practices, including conducting reasonable investigation of claims, paying claims promptly once the insurer’s obligation becomes reasonably clear, and refraining from offering policyholders substantially less than what is actually owed under the policy - the policyholder may bring a claim against the insurer for “negligence *per se*” (that is to say, negligence in which the requisite duty of care is created by statute). Judge Landau further opined that, because the purpose of Section 746.230(1) was, at least in part, to ensure that purchasers of insurance get what they are paying for - including “the peace of mind that is a principal benefit of an insurance policy” - policyholders deprived of that peace of mind may seek emotional distress damages from their insurers in connection with such a negligence *per se* claim.

It is not an exaggeration to say that Judge Landau’s decision had revolutionary implications for the insurance industry and for the insurance-buying public. For decades, the received wisdom among first-party insurance litigators was that aggrieved policyholders seeking to impose liability on a defaulting insurance company were virtually always limited strictly to contract damages, which is to say the amount of the

insurer’s underpayment of the policy benefits owed. Only where policyholders could prove the insurance company’s intentional bad faith were any form of extra-contractual damages available - and intentional bad faith is notoriously difficult to prove, particularly in the insurance-dispute context. To establish insurer bad faith, a policyholder faces not merely the usual challenges of proving a corporate entity’s state of mind, but also must disprove the always-colorable hypothesis that delayed payments or low proffers were motivated, not by the intent to force the policyholder into accepting pennies on the dollar out of sheer financial desperation, but rather by its need to conduct a diligent investigation of the policyholder’s claim. And with the only existing mechanism for recovering extra-contractual damages well out of reach for virtually all policyholders, insurance companies had little incentive *not* to try to get away with underpaying their obligations; as a practical matter, the worst possible outcome of an action on the policy was that the insurer would simply have to pay in full what it had owed all along.

Judge Landau’s decision thus raised the prospect that insurance companies might face real economic consequences if they treated their policyholders unreasonably in seeking to underpay policy benefits. Insurance companies, perhaps like most for-profit enterprises, tend to view adverse economic consequences with a jaundiced eye. When the *Moody* defendant appealed Judge Landau’s opinion, the Oregon insurance industry spilled considerable ink on *amicus* briefs roundly condemning Judge Landau’s legal reasoning and suggesting that if *Moody* were affirmed, the cost of insurance would skyrocket.

While the appeal was pending, Oregon insurance companies fought hard to discredit and limit *Moody* in the trial courts. Insurer defendants argued that the courts should not recognize *Moody* because it contravened decades of Oregon law and was sure to be overturned. Specifically, they argued (correctly) that nearly 50 years ago, in *Farris v. U.S. Fid. and Guar. Co.*, 284 Or 453, 587 P2d 1015 (1978), the Oregon Supreme Court unambiguously found that there was no private cause of action for violation of ORS 746.230(1) (while ignoring that the *Farris* court had expressly left unanswered the question whether conduct in violation of the standard of care the statute

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Calendar

FEBRUARY

10 Saturday
WinterSmash
Details on p. 1

19 Monday
Presidents’ Day
MBA Office Closed

20 Wednesday
Solo & Small Firm Workshop: Discovery Strategies for Small Firms
Details on p. 11

29 Thursday
Axe Throwing Event
Details on p. 7

MARCH

6 Wednesday
Solo & Small Firm Workshop: Cloud Storage and e-Discovery
Details on p. 11

21 Thursday
YLS Speed Networking Event
Details on p. 10

21 Thursday
Minoru Yasui Day Event
Details on p. 11

Thank You for Your Support, 2023 Year-End Donors

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

Contributions of a certain level are acknowledged here; all contributions are acknowledged on the MBA website.

A special note of thanks to the OCF Joseph E. Weston Public Foundation for awarding the MBF a \$20,500 grant to benefit Multnomah CourtCare, and to the Multnomah County Prosecuting Attorneys Association for a donation of \$8,680 to benefit CourtCare. Looking ahead, the US District Court for the District of Oregon Attorney Admission Fund announced it is making a \$50,000 donation to the MBF in 2024.

Thank you, donors, for your generous support!

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Learn more about the work of the MBF in Past President Joe Franco’s article in the December 2023 issue of the Multnomah Lawyer (www.bit.ly/dec23-ml).



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



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

Unless otherwise noted, all classes are held online.

Effective Mediations
Tuesday, February 13 12-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

The **Hon. Kathleen Dailey**, who served on the Multnomah County Circuit Court from 2004-22, explains ways to make mediation more effective, including managing your client’s expectations, choosing the right mediator and making the most of the mediation process, whether it is conducted in person or remotely. Judge Dailey addresses questions of how, when and why to mediate, drawing on her experience as a former judge and current mediator.

For more information: Contact Kevin McHargue, McHargue Family Law LLC, at 503.462.5469. For registration questions, contact the MBA at mba@mbabar.org.

Representing Veterans: Everything You Didn’t Know You Need to Know!
Wednesday, February 21 12-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

Leslie Nelson is the current Chair of the OSB Military & Veterans Law Section (MVLS) Executive Committee. **Jaimie Fender** was the MVLS Chair in 2018 and currently serves as an At Large Member of the Executive Committee. Leslie and Jaimie will help you learn all the things you didn’t know you need to know about serving Oregon’s veterans and servicemembers. They will provide an overview of the most common legal issues our veterans and servicemembers face. They will discuss client intake considerations and best practices, highlight the critical sections of the Servicemembers Civil Relief Act (SCRA) that you MUST know, and help identify issue spotting. Jaimie and Leslie will also discuss resources available to you and your clients, and most importantly provide a roadmap of who to contact when in a pinch.

For more information: Contact Holly Hayman, Farleigh Wada Witt, at 503.228.6044. For registration questions, contact the MBA at mba@mbabar.org.

Wait. What?! Oregon Now Has a Comprehensive Consumer Privacy Law?
Tuesday, February 27 12-1 p.m.
Standard Insurance Building Atrium, 900 SW Fifth Ave., Portland, and Online Participation
Members \$30/Non-Members \$50

Kristen Hilton, Senior Assistant Attorney General in the Consumer Protection Section of the Oregon Department of Justice, and **Eva Novick**, who leads Miller Nash’s privacy & data security team, will provide an overview of the Oregon Consumer Privacy Act, including:

- What types of entities need to comply?
- What rights are consumers granted?
- What responsibilities do businesses and nonprofit organizations have under the law?
- What exceptions are there?
- How does the Oregon Consumer Privacy Act compare to other state privacy laws, like those in California, Colorado, Connecticut, and Virginia?
- How will the Oregon Consumer Privacy Act be enforced?

For more information: Contact Edward Decker, Miller Nash LLP, at 503.205.2446. For registration questions, contact the MBA at mba@mbabar.org.

Mindful Lawyering: Trauma-informed Practices in an Age of Overwhelm
Wednesday, February 28 12-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

Lawyers have significant exposure to the trauma stories of their clients, magnified during controversy and during this long season of worsening mental health and spiraling addiction. In this important CLE, **Kyra Hazilla**, director and attorney counselor with the Oregon Attorney Assistance Program (OAAP), and **Douglas Querin**, OAAP senior attorney counselor, will skillfully cover the following topics:

- What are the current trends of mental health and substance abuse in the population?
- What types of conditions are commonly present and what symptoms are commonly identified?
- What is happening with people’s brains who might have susceptibility to these conditions during additional times of stress, like litigation?
- How can we best serve clients or colleagues amidst these struggles?
- Are there self-care practices should we employ to weather the storm?

For more information: Contact Jon Strauhull, Multnomah County Attorney’s Office, at 503.988.3138. For registration questions, contact the MBA at mba@mbabar.org.

Appellate Law Update
Friday, March 1 12-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

Please join the MBA for an update on Oregon appellate decisions for civil law practitioners. Multnomah County Circuit Court **Judge Katharine von Ter Stegge** and **Cody Hoesly**, Barg Singer Hoesly, will present an overview of some key civil law decisions from the Oregon Court of Appeals and Oregon Supreme Court from 2022-23. These esteemed speakers will touch on issues relevant to nearly all practitioners.

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

The Oregon Secretary of State’s Advisory Report on a Statewide Strategy re: Domestic Violence
Thursday, April 4 12-1 p.m.
Remote attendance only via Zoom
FREE for Members and Non-Members

In late 2023, the Oregon Secretary of State released the advisory report “Breaking the Cycle: A Comprehensive Statewide Strategy Would Benefit Domestic Violence Victims, Survivors, and Advocate.” Join **Kip Memmott**, Audits Director, **Andrew Love**, Audit Manager, and **Krystine McCants**, Lead Performance Auditor from the Oregon Secretary of State’s Office for a presentation on the report’s findings. Learn how a statewide coordinated strategy would better address the needs of victims and survivors, centralize resources and statewide information sharing, including improved data collection, and add financial stability to nonprofit operations. Legal Aid Services of Oregon will also share information regarding pro bono opportunities. This presentation is offered by the United States District Court, District of Oregon, pursuant to the Pro Bono Work to Empower and Represent Act (“POWER Act”).

For more information: Contact Judge Youlee Yim You at youlee_yim_you@ord.uscourts.gov. For registration questions, contact the MBA at mba@mbabar.org.

Drafting Effective Trial Briefs
Thursday, April 11 12-1 p.m.
Remote attendance only via Zoom
Members \$30/Non-Members \$50

Whether you are writing to a judge, opposing counsel, or your colleagues, you are writing to persuade - to convince others to adopt your position. In this seminar, Oregon Supreme Court **Justice Stephen K. Bushong** will draw on his many years’ experience as a trial lawyer and trial judge to explain how to write and organize effective trial motions and briefs. Come learn concrete techniques to apply during the writing process to make your work product more persuasive.

For more information: Contact Jon Strauhull, Multnomah County Attorney’s Office, at 503.988.3138. For registration questions, the MBA at mba@mbabar.org.

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

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mba | ANNOUNCEMENTS

MBA LSAT Preparation Course Scholarship - Apply by March 18
To help achieve the goal of increasing diversity in the Multnomah County legal community and the state of Oregon, the MBA Equity Diversity & Inclusion Committee awards scholarships for LSAT preparation courses to law school applicants whose future involvement in the law will enhance the diversity of our bench and bar. Applications are due March 18. Details available at www.bit.ly/mba-lsat-prep.

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.

Multnomah CourtCare
Free drop-in childcare for children six weeks to 12 years of age is available at the Central Courthouse, Monday-Friday, from 8:30 a.m.-4 p.m. This MBF-funded program is for parents and legal guardians who are actively conducting business at the Central Courthouse, Federal Courthouse, or Justice Center in downtown Portland. Reservations are encouraged, but not required. (503.988.4334, courtcaresdropin@voaor.org).

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 2024. 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).

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

MBA and YLS Board Elections

The MBA bylaws provide for nominations for MBA and YLS board positions from the membership at large. MBA members may self-nominate for the MBA Board, and YLS members for the YLS Board. MBA and YLS board nominating petitions must be endorsed by the nominee and at least 10 other MBA or YLS members, respectively. **Petitions must be received by 5 p.m. on Friday, February 16.** New MBA and YLS board members will be announced at the MBA Annual Meeting on Wednesday, May 8.

Ethics Focus



Over the years, I have read a lot of responses to bar complaints written by lawyers representing themselves. Some were stellar. Others not so much. The ones that were stellar usually brought the same degree of professional analysis and writing that would be expected from an excellent brief filed with a court. The ones that were lacking often had a variety of issues that led them to be less than effective. In this column, we’ll look at five particular areas to avoid when responding to a bar complaint. Before we do, three qualifiers are in order. First, many lawyers conclude from the outset that having another lawyer respond for them is the best way to go. Understandably, that is both a personal and financial decision for the lawyer involved. At the same time, just as a personal injury lawyer wouldn’t take on a securities offering, having a seasoned disciplinary defense counsel handle the response brings a level of technical expertise that is difficult for a lawyer unfamiliar with bar proceedings to replicate. Second, although I have included five areas, these should not be considered an exhaustive list. Rather, they are simply a collection of recurring themes. Finally, I will use the term “bar complaint” because most Oregon lawyers still use that phrase colloquially even though the technical word under the Oregon State Bar Rules of Procedure for initial proceedings is now “inquiry.”

Don’t Respond Immediately
A natural human tendency for some is to respond immediately - often with less than lawyerly rhetoric. Although this impulse may feel good initially, it is often counterproductive longer term in at least two respects. First, particularly when a lawyer “vents

Five Things Not to Do When Responding to a Bar Complaint

by Mark J. Fucile
Fucile & Reising LLP

their spleen,” it may undercut the lawyer’s credibility by making the lawyer look unprofessional. That first impression may linger for the duration of the proceedings. Second, under RPC 8.1(a), a lawyer must respond truthfully. A quick, “off-the-cuff” response risks including mistaken facts that will color the proceedings moving forward. These problems can be avoided by taking the time necessary to prepare a careful response addressing the issues raised by the complaint and, ideally, having a colleague with sound judgment review the resulting draft for tone.

Don’t Wait Too Long
Responding to a bar complaint understandably is not an enjoyable exercise. Like many unenjoyable tasks, lawyers sometimes put off preparing their response until the eve of being due. If a lawyer needs additional time stemming from, for example, an upcoming trial or a long-planned vacation, the lawyer should approach the Bar in advance for a reasonable extension. Simply putting the response off, however, will not make it go away. Waiting until the last minute to start risks a less-than-thorough response that does not put the lawyer in the best light and may lead to mistakes that create problems for the lawyer under RPC 8.1(a). Lawyers should approach a bar response as they would a summary judgment motion for a client: thorough, tethered to the record, analytical, and prepared with sufficient time for appropriate edits and review.

Don’t Say Too Much
Lawyers sometimes think the Bar needs to know the entire history of a representation in exhaustive detail. While that may be true in some instances, often it is not if a particular event within the overall context of a representation triggered the complaint. In the latter instances, this can be the legal version of the old saw: “don’t explain how to build a clock when the question is ‘what time is it?’” Including minute detail not relevant to the Bar’s review

risks obscuring the key points on which the Bar’s determination will ultimately turn. As a matter of routine, the Bar will tell respondent lawyers the particular RPCs that it believes may be implicated. It usually makes sense to take that cue and build the response around those.

Don’t Reveal Unrelated Confidential Information
Responses often require that at least some client confidential information be disclosed. This is generally permitted by the “self-defense” exception to the confidentiality rule, RPC 1.6(b)(4). The self-defense exception, however, is tempered with an important qualifier: the lawyer may only reveal confidential information “to the extent the lawyer reasonably believes necessary[.]” Albeit in the context of responding to a negative online review, the Oregon Supreme Court discussed both the self-defense exception and the accompanying limitation at length in *In re Conry*, 368 Or. 349, 491 P.3d 42 (2021). As an illustration, if the gist of the complaint is that the lawyer missed a key deadline due to a calendaring error, that doesn’t automatically trigger the ability of the lawyer to include the client’s unrelated “deep dark secret” in the response. Carefully tailoring the response to the complaint is usually the safest way to avoid this potential pitfall.

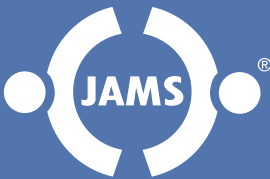
Don’t Charge the Client
Oregon lawyers have been disciplined for charging their clients for the time involved in preparing responses to bar complaints. Although there may be exceptions when, for example, the complaint was filed by a party-opponent as a thinly disguised strategic attempt to create a conflict forcing a lawyer’s withdrawal, those situations are rare. Rather, lawyers have typically been disciplined under RPC 1.5(a) (and the prior equivalents) for charging the client a “clearly excessive” fee because this cost was not reasonably contemplated by the fee agreements involved.

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Around the Bar



Brad Krupicka

Brad Krupicka Appointed MBA President-Elect

Brad Krupicka, Managing Partner of Portland at O'Hagan Meyer, has been appointed president-elect of the MBA. He will serve as president-elect for the balance of the 2023-24 program year and will serve as president for the 2024-25 term. Brad has been actively involved with the MBA for over 13 years and has served on committees and in leadership positions for both the YLS and MBA.



John Stellwagen

Miller Nash LLP

The firm welcomes **John Stellwagen** as partner in their growing employment law and labor relations team, adding further depth to the team's capabilities. Stellwagen's practice focuses on labor contract administration, employee relations, collective bargaining, discipline and discharge, representation before state and federal agencies, labor arbitrations, preventive law/risk management, education and municipal law. Stellwagen has spent most of the past 20 years representing and providing legal guidance to public sector clients throughout Oregon and Washington, including higher education institutions, K-12 school districts, municipalities, public utilities, special districts, healthcare providers and tribal entities.

Stellwagen's experience includes serving in both in-house and outside legal counsel roles which have provided him with insight into the complexities of governmental entities and the unique pressures and regulatory frameworks they must navigate. Prior to joining Miller Nash, Stellwagen worked at an employment, labor and employee benefits firm in the Pacific Northwest. Before that, Stellwagen worked at Portland Public Schools as senior legal counsel, focusing on employment and labor matters. Earlier in his career, Stellwagen

served as a Washington State assistant attorney general with the University of Washington Division where he supported the University and UW Medical Center on employment and labor matters. He also worked with the Oregon School Boards Association. Stellwagen received his J.D. at University of Washington School of Law.



Paige Alli



Cristela Delgado-Daniel

Miller Nash welcomes two talented associates to the firm's deep bench of employment law and labor relations attorneys. **Paige Alli** and **Cristela Delgado-Daniel** add substantial depth and further support for employers throughout the Pacific Northwest.

Alli assists public and private sector clients with labor relations matters, including complex arbitrations, administrative proceedings and litigation. She has experience negotiating collective bargaining agreements, contract administration and providing advice and counsel during union organizing campaigns and actions.

During law school, Alli was actively involved in student-led organizations, including the Moot Court Board, Asian Pacific American Law Student Association, Phi Alpha Delta International Law Fraternity and the Labor and Employment Law Association, of which Alli was a founding officer at Willamette University. Alli received her law degree at Willamette University College of Law.

Delgado-Daniel works with public, private and nonprofit clients in employment advice and litigation matters, with a focus on the intersection of employment and education law. In addition to active litigation, she advises clients on matters related to wage and hour, discrimination, harassment and retaliation. Delgado-Daniel regularly defends employers in connection with charges filed with the Equal Employment Opportunity Commission and the Oregon

Bureau of Labor and Industries. She also assists in conducting independent investigations related to harassment, race and gender discrimination and Title IX.

Prior to private practice, Delgado-Daniel clerked for the Honorable Steven R. Powers with the Oregon Court of Appeals. In law school, she worked as a law clerk for the Oregon Department of Justice General Counsel Division in the labor and employment section. She also worked as a law clerk for the University of Oregon Office of General Counsel and as a judicial extern to the Honorable John Acosta of the United States District Court for the District of Oregon. Delgado-Daniel received her law degree at the University of Oregon School of Law.



Paul Balmer

Tonkon Torp LLP

Paul Balmer has been appointed to the board of directors of Raphael House of Portland, a multi-faceted agency dedicated to ending domestic violence through advocacy, education, community outreach, and by providing a safe haven. They offer emergency shelter, a 24-hour in-house crisis line, transitional housing, and advocacy programs.

Raphael House has been working for more than 45 years to help domestic violence survivors and their families find safety, hope, and independence. The agency serves over 5,250 people each year and is responsible for 24% of the emergency domestic violence shelter space in Multnomah County.

Balmer is a passionate proponent of community engagement and enjoys an active pro bono practice. He has helped clients vacate unconstitutional convictions and expunge past criminal records and is a volunteer coach with Civics Learning Project.

Balmer is an associate in Tonkon Torp's Litigation Department where he represents businesses and individuals in a wide variety of complex civil matters, from residential real estate disputes to multi-million-dollar trade secret claims and civil rights litigation.

The firm has elected attorneys **Lauren Bernton**, **Will Gent**, and



Lauren Bernton



Will Gent

Ferdinand (Ferdie) Ruplin to its partnership.

Bernton joined Tonkon Torp's Litigation Department in 2020. Her practice is focused on all types of commercial disputes, with an emphasis on complex real estate litigation. She advocates for multinational companies, regional companies, and local businesses to help them achieve their goals in state and federal courts. She attended the University of Oregon School of Law where she graduated Order of the Coif.

Gent joined Tonkon Torp's Litigation Department in 2016, after working for the firm as a summer associate. He represents businesses and individuals in a variety of complex civil matters, with a particular emphasis on real estate and construction litigation. In addition to his active real estate litigation practice, Gent routinely appears in state and federal courts in matters concerning commercial contracts, corporate governance, fiduciary duty, and shareholder disputes, as well as on a variety of pro bono matters. An Oregon native, he is a graduate of the University of Oregon School of Law (Order of the Coif) and the University of Puget Sound.



Ferdinand (Ferdie) Ruplin

Ruplin joined Tonkon Torp's Business Department in 2019. He regularly advises private and nonprofit entities with respect to mergers and acquisitions, corporate governance, securities and financings, and other general corporate matters. Ruplin has significant experience working in highly regulated sectors, with a focus on the cannabis and financial services industries. He serves as Chair of Tonkon Torp's Cannabis Group and frequently advises OLCC and ODA regulated cannabis producers, processors, and retailers. Ruplin graduated cum laude from Fordham University School of Law.

Markowitz Herbold PC

Adele Ridenour has become a shareholder at the Portland litigation firm.

Ridenour is a trial lawyer who focuses her practice on complex commercial litigation



Adele Ridenour

and construction, insurance, and design-related disputes. She also advises education institutions regarding Title IX, including Title IX analysis regarding school facilities and new construction.

Ridenour is the current President of Oregon Women Lawyers (OWLS) and a pro tem judge for Washington County where she presides over the FED (landlord/tenant), small claims, and civil motions dockets.



Josephine (Josi) Kovacs



Joseph Levy

Josephine (Josi) Kovacs and **Joseph Levy** recently joined the firm.

Kovacs focuses her practice on contract disputes, shareholder disputes, construction defects, and business tort litigation. Before joining Markowitz Herbold, she litigated hundreds of cases including construction service and defect, product liability, personal injury, premises liability, employment, and other commercial claims at her previous firm.

Levy specializes in complex litigation and appeals. He is the author of *Part of the Appeal*, an appellate newsletter on Substack. Before joining Markowitz Herbold, Levy was an associate at Wilmer Hale, an Amlaw 10 law firm in Palo Alto, California. He is a former law clerk for the Honorable David M. Ebel at the Tenth Circuit Court of Appeals in Denver, Colorado.

Cosgrave Vergeer Kester LLP

The firm is excited to announce the promotion of **Chester Hill** to the position of Partner.

Chester is a trial lawyer who focuses his practice on all areas of commercial, financial, and real

Continued on page 7

Around the Bar

Continued from page 6



Chester Hill
estate litigation. He represents commercial landlords in disputes against tenants, including both breach of contract and eviction actions. He also advises insurance companies on coverage matters and litigates those matters as well. Additionally, he represents professionals, including accountants and lawyers, in malpractice and related actions. He also defends businesses, including financial institutions and insurance companies in federal and state proceedings brought by regulators and private parties.
Chester graduated magna cum laude from Lewis & Clark Law School.

Stoel Rives LLP
The firm is pleased to welcome **Seth Row** to the Portland Litigation Group. Row brings over two decades of legal expertise, specializing in policyholder-side insurance recovery and business litigation.



Seth Row
Throughout his career, Row has successfully recovered millions of dollars for clients under various insurance policies, including property, builder’s risk, Directors & Officers, marine, and cyber-risk, among others. His extensive experience also covers business litigation, spanning commercial disputes, theft of trade secrets, products liability, and more, with a diverse client base ranging from banks, manufacturers, publicly traded entities, and technology startups to agriculturalists, nonprofits, and universities.
Notably, Row is a Fellow in the American College of Coverage Counsel, an honor bestowed on only 350 lawyers globally and marking him as the first policyholder-side attorney from Oregon to receive this recognition. Row received his JD from Georgetown University Law Center.

Cable Huston LLP
Román Hernández has joined the firm as a partner.



Román Hernández
Hernández has a national litigation practice and focuses on the areas of employment law and commercial litigation. He represents clients in a variety of industries including energy, retail, telecommunications, agribusiness, health and hygiene, software development, manufacturing, logistics, transportation, in addition to educational institutions.

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

mba|EVENT

Axe Throwing
Thursday, February 29
Blade & Timber
1150 NW 17th Avenue, Portland
6-8 p.m.

Ready to channel your busy day frustrations into something FUN?
Join the MBA at Blade & Timber’s Axe Throwing, located in the heart of Slabtown. We have reserved axe throwing lanes for up to 36 people so register to reserve your spot NOW! Whether you’re a seasoned pro or just looking for a unique night out, Blade & Timber has everything you need for an unforgettable experience.
Never been axe throwing before? This is what you can expect...your axe throwing experience starts with personal training from an Axe Safety-certified coach. You’ll learn how to keep everyone safe and help you stick that first bullseye. Participants must be at least 10 years of age in order to throw axes.
The cost is \$50 per person, which includes two hours of axe throwing, shared appetizers for your lane and “all you can drink” soda or water. A full bar is available and additional appetizers are available for purchase.



\$50 for MBA members and non-members.
Register at www.mbabar.org

sussman shank LLP

We are pleased to welcome the Vanden Bos & Chapman team to our firm



Christopher Coyle Ann Chapman Douglas Ricks Colleen Lowry

Our new lawyers bring a wealth of experience and respect that will complement Sussman Shank’s long-established Bankruptcy and Creditors’ Rights practice.

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Trial Attorney, 1988–2004

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Tips From the Bench

Read the Rules
It Will Do You Good

by Referee Mark A. Peterson
Multnomah County Circuit Court



The first year of pretty much every law student in an American law school includes a course in civil procedure. We are talking the Federal Rules of Civil Procedure here. This is a somewhat daunting challenge as most law students, unless they had a parent or two who were lawyers, have no familiarity with the concepts or with the subject matter of the diverse cases that are utilized to illuminate the many principles to be learned. The facts of the cases run from the familiar, such as torts and family law matters, to the more obscure, such as shareholders’ derivative actions, franchise disputes, and cases involving mixed law and equity claims. Does anyone else recall being lost in discussing the Beacon Theaters v. Westover and Dairy Queen, Inc. v. Wood cases? Then there is the realization that many graduates will not take a litigation path and can fairly safely forget what they failed to understand in the first place. Of those who go on to litigation, most will find themselves practicing exclusively, or almost exclusively, in the state courts.

A long since departed professor at one of Oregon’s three law schools once told his classes that they did not need to worry about Oregon’s civil procedure laws because in short order Oregon would switch to the federal rules, as have many other jurisdictions. When pigs fly! Oregon has a proud tradition of independent thinking, e.g., public beaches, the first bottle bill, and (until recently) a prohibition on pumping your own gasoline. Oregon has its own civil procedure rules, thank you. Each state has a means to the end of creating rules of civil procedure. In some states, the judiciary writes the rules. In others, the legislature handles it. In yet other states, a commission or other hybrid body writes the rules. In Oregon, it is the Council on Court Procedures.

I have served as the executive director of the Council since 2005. This is the smallest agency in state government and was charged with writing the Oregon Rules of Civil Procedure and with continuously amending and

updating the ORCP. The Council was created by the legislature in 1977 to codify the rules of procedure that govern civil litigation in our state’s courts. The existing rules were at that time statutory, and one law review article compared the statutory framework to jabberwocky. The Council is comprised of six plaintiffs’-oriented attorneys and six defense-oriented attorneys who are appointed for recognized expertise in civil practice, eight trial court judges, one Court of Appeals judge, one justice from the Oregon Supreme Court, and one public member. Those attorney members of the Council who also practice in federal court or in Washington’s state courts uniformly contend that they prefer practice in Oregon’s state courts as far more economical and more satisfying. Rules matter!

Each biennium the Council conducts a survey of Oregon attorneys who are members of Oregon State Bar sections that would be associated with civil litigation. Each survey yields some troubling responses to the effect that there are lawyers who are lost and confused as to how to prosecute and defend their cases. So, a good start to improving your litigation practice would be to carefully read the Oregon Rules of Civil Procedure, found in volume 1 of the Oregon Revised Statutes as well as in stand-alone books.

Where do the ORCP fit in with laws and other rules and procedures? There is a familiar hierarchy: constitution, statutes, the ORCP, the Uniform Trial Court Rules (UTCRR), and the supplemental local rules (SLR) written for each judicial district. (For those practicing in Multnomah County, there is also the court’s Attorney Reference Manual, a helpful resource available on the court’s website at www.bit.ly/mult-arm.) Perhaps analogous to the administrative law approach, the ORCP set out the broad-brush strokes of policy and the UTCRR apply that policy with a narrower focus - like comparing statutes to administrative rules. The SLR cannot conflict but guide navigating one’s case in different courthouses. Consider that in a large metropolitan venue certain procedures may be handled differently from what is expected or available in very rural venues.

When the meaning of a rule may make or break your case, there is a resource that allows you to dig deeper. The Council maintains a website, www.counciloncourtprocedures.org, where one can see each iteration of each rule from the original promulgation through the

News From the Courthouse



by Sierra Fotos
MBA Court Liaison Committee

Presiding Judge’s Report
- Presiding Judge Judith Matarazzo

Presiding Judge Matarazzo encourages attorneys to use the “Appearance through Counsel” form. The court spends a great deal of time at the end of each docket explaining to people that their attorney changed the date and didn’t let them know, so they have wasted the last few hours. There is no need for people to spend over an hour on the phone, it would be more helpful for them to stay in good contact with their attorneys. If attorneys want their clients to call in then please let them know when the dates have been postponed.

Warrant Issues

The Presiding Court is only recalling warrants at Ex Parte for failures to appear or when someone is required to report to PRS/Close Street and fails to do so.

Civil Court

The court isn’t granting motions to postpone a trial because the parties were hoping to set up a mediation or Judicial Screening Conference (JSC). Most trial dates are set close to a year in advance, which allows plenty of time to schedule a mediation or JSC.

Courthouse Hours

The court has requested city and county approval for the sheriff’s office to increase staffing at the Central Courthouse and open the building prior to 7:30 a.m. to allow people who are waiting outside in the cold and

rain to get inside earlier and more quickly, and to prevent the risk of people getting too close to the traffic surrounding the courthouse. The Central Courthouse was not designed with the expectation that lines would be forming outside the courthouse doors. The court will continue to work with Multnomah County and the Multnomah County Sheriff’s Office to address this need.

Civil Court Update - Chief Civil Court Judge David Rees

Judge Rees became Chief Civil Court Judge in January, taking over from Judge Christopher Marshall, who served as chief judge for six years. Judge Rees credits Judge Marshall for leading the civil court through the challenges and complexities of the pandemic. Judge Rees isn’t planning to make major changes to current operations and expects the transition to be seamless.

A priority for both Judge Rees and Judge Matarazzo is a return to having civil cases concluded within a year of filing.

Judge Rees reports that Judge Eric Dahlin will take over from him as the Multnomah County arbitration judge, handling court-annexed arbitration for cases under \$50,000.

Judge Rees, originally from California, moved to Oregon in 1994. He practiced law for 15 years at Stoll Berne, doing primarily commercial civil litigation, and took the bench in 2009. A sports enthusiast, he rides his bike to work regardless of most weather conditions, drawing the line at snow.

Judge Rees is honored to be the new chief civil court judge and welcomes questions from the bar.

Free Lunch & Learn CLE

The court and the MBA Court Liaison Committee are organizing noontime opportunities for lawyers to visit some of the judges in their courtrooms at the Central Courthouse to give people more ease about being in court. This is an ideal opportunity for newer lawyers, lawyers who haven’t been to the new downtown courthouse, lawyers who have been conducting much of their court business remotely for the past few years, and others who would like to get familiar with courtroom layouts, see the technology, ask questions, etc., in a relaxed, conversational atmosphere. Dates and details to be announced.

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

most recent amendment. Such amendments not infrequently are a guide to which of two conflicting meanings of a phrase in a rule is more supportable. Frequently one can find staff comments that

provide background and the reason for the amendment in question. Finally, there are the detailed minutes of the Council’s deliberations on each proposed amendment and those minutes serve as the legislative history for

all rule changes. One law librarian called them a wonkish deep dive into a rule’s history. Enjoy these resources!

The Honorable Aruna Masih

Judicial Profile

by Anne Milligan
MBA Court Liaison Committee

On September 1, 2023, Justice Aruna Masih was sworn into the Oregon Supreme Court to fill the vacancy created in February 2023 after the US Senate confirmed Judge Adrienne Nelson as an Article III judge for the US District Court for the District of Oregon. Justice Masih, born in New York to a Punjabi father and a British mother, moved to India with her medical missionary parents when she was just six months old, returning to the States when she was 15. She is the first Indian American, South Asian American and Punjabi to serve on the court.

In 1994, she graduated from Wellesley College (Massachusetts) with a Bachelor of Arts, cum laude in International Relations and French. She later pursued her legal studies at both Tulane (Louisiana) and Creighton University School of Law (Nebraska), ultimately receiving her Juris Doctor from Creighton in 1997. Justice Masih moved to Portland immediately after law school. She and her spouse - who is a Multnomah County Public Defender - packed up a U-Haul and drove across the country to sit for the Oregon Bar Exam. For all but two years of her private practice career, Justice Masih worked at Bennett Hartman, specializing in civil rights and workers' rights.

Her varied geographic experiences and cross-cultural heritage contributed to Justice Masih's outlook on community and inclusion in the legal profession: "When you're a transplant, you need community more. I was so lucky to have found a group of attorneys [at Bennett Hartman] who were willing to give me large impactful litigation work when I was a new attorney and throughout my career, people who supported the professional and volunteer work I wanted to do, who helped to create a connection between me and the clients. That kind of support in the firm is what you need to be successful."

"Outside your firm, you need people in the legal community who will invite you to participate and appreciate your presence and input. That was what started my involvement in the Oregon Minority Lawyers Association (OMLA), ultimately serving as a co-chair of OMLA, founding board member of the OMLA scholarship program, in many different positions in the Oregon Women Lawyers (OWLS) Foundation, moving on to the OWLS Board, working on the OWLS Intersectionality Committee, the OSB Advisory Committee on Diversity and Inclusion (ACDI), and as Chair of

the OSB Labor and Employment section, having speakers come to talk about all these issues of authentic community and inclusion, and working together toward that goal. *That* is what allows you to feel that this is someplace you can call home."

Unsurprisingly, against this backdrop of dedicated volunteerism and leadership in diversity, equity, and inclusion, in 2017, Justice Masih became the inaugural recipient of the MBA Diversity Award, which is now awarded annually to an individual or individuals who have demonstrated extraordinary commitment to fostering and promoting diversity and inclusion in the legal profession. Justice Masih sees access to justice work continuing in her position on the Oregon Supreme Court, offering that the regulation of the profession aspect of the Supreme Court's jurisdiction was something which particularly drew her to the position. "Anything the Board of Governors or others may advocate as changes in our profession ultimately come before the Supreme Court for consideration, review, and adoption."

In addition to her legal work, Justice Masih has also been a dynamic influence in her community, including as an advisory board member for the nonprofit Roseway Recovery Café, housed in Calvary Presbyterian Church in Portland of which Masih is an active congregant. The café, founded on the principle that the "opposite

of addiction is connection" and "long-term recovery requires long-term support and authentic connection," serves anyone who identifies as being in recovery, whether from drugs and alcohol or "homelessness, incarceration, trauma, mental health challenges, or loneliness."

Since 2017, Justice Masih has also volunteered with the McDaniel High School cohort that participates annually in the Civics Learning Project's (formerly Classroom Law Project) *We the People* high school constitutional competition. *We the People* is an interactive learning curriculum that takes students on a deep dive into the US Constitution, Bill of Rights, and the US government. The culminating competition is a mock congressional hearing in which students testify before a panel, answering questions from adults posing as senators. "I specifically chose to work with McDaniel High because it's one of the most diverse high schools in Portland, and it's in the neighborhood where I live - I wanted to work with kids from my community. It's so good to be reminded of your own hopeful, youthful self and see the new generation with their hope and new ideas. It's a joy to be around them and teach them about the Constitution and government in action, reading the news and watching them realize that what they're studying is happening right before their eyes, seeing it all click for them."



Hon. Aruna Masih

Having found the experience immensely rewarding, Justice Masih encourages all lawyers to consider volunteering with *We the People*, whether as an instructor or coach, or in single-serving volunteerism: "You can start to volunteer by being a judge on the day of the spring competition, to see what it is like and what it entails - that's a discrete, one-day volunteer commitment. You can get exposed to the program without committing to an entire semester. We also love when folks volunteer to moot some of the kids - it's so helpful to them to have different groups of attorneys coming through and asking them questions so they're fully prepared to answer questions on the fly during the competition."

Find out more about volunteering with *We the People* at www.civicslearning.org.

MBF Announces 2024

Officers and New Directors

by Pamela Hubbs
Office and Foundation Administrator

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



Tyler Volm

Tyler J. Volm, Sussman Shank LLP, President: "I am grateful for the opportunity to serve as the President of the MBF Board of Directors and to continue the amazing work of the Foundation. It is an ongoing privilege to work with such a dedicated and passionate group of individuals who are committed to making a positive impact on the court and in our community."

Yoona Park, Keller Rohrbach Law Offices LLP, Vice President: "The work of the MBF is



Yoona Park

particularly gratifying because you can actually see and feel the Foundation's impact on the community we serve. Visiting the CourtCare facility at the courthouse, you can observe the direct impact that MBF donors are making on families who use the free, on-site childcare while attending to their business in the building. I have been energized on this board by the lawyers and judges who give time and energy not only to supporting our core initiatives, but in thinking of new and effective ways to connect with those who may be intimidated by the courthouse or unaware of the services it can provide I am looking forward to my year as MBF Vice President."



Bob Steringer

Bob Steringer, Harrang Long P.C., Secretary Treasurer: "It has always been a joy to work with MBA/MBF staff, judges, and fellow lawyers to launch and support programs that expand access to justice. The MBF Board's re-launch of CourtCare last year, bringing critical drop-in child care services back to the Central Courthouse, was a tremendous achievement in that vein. This year, I am excited to work with the Board and the broader legal community to put CourtCare on firm financial footing for years to come. If I call you this year to ask for your contribution to the MBF, remember this: I'm as uncomfortable asking for money as you are being asked for money, but the MBF's programs make a real difference in our community and deserve our support."

Joseph L. Franco, Holland & Knight LLP, Immediate Past President: "It was an honor to serve as MBF President during 2023, a year in which the MBF



Joe Franco

made great progress with its three major community service programs. First, we were able to re-open CourtCare in July of 2023 for the first time since it was closed at the beginning of the pandemic. Re-opening CourtCare in the midst of a childcare worker shortage took creativity and hard work from our board members and the MBF's community partners. Thank you. Second, 2023 was the first full year in which the CourtSupport Navigator position operated on a full-time basis - which increased the Navigator's ability to answer questions about the court, make visitors to the courthouse feel welcome, and connect individuals with needed services or accommodations at the courthouse. Third, the MBF's CourtConnect program engaged in extraordinary outreach to community groups in an effort to provide information about our legal system and engage in dialogue. This included

discussions with the Immigrant and Refugee Community Organization (IRCO), the Consular Office of Japan in Portland, the Consulate of Mexico in Portland, the Japanese American Society of Oregon, the Japanese Women's Association, Business Oregon, and Partners in Diversity. A big thank you to the members of our community whose generous donations made our work in 2023 possible. And here's to an even better 2024!"

New directors are **Christine R. Costantino**, Samuels Yoelin Kantor LLP; **Sasha A. Petrova**, Tonkon Torp LLP; and the **Hon. Chanpone P. Sinlapasai**, Multnomah County Circuit Court.

Continuing directors are **David I. Bean**, Wyse Kadish LLP; **Danielle L. Fischer**, Washington Trust Bank; **Pilar C. French**, Lane Powell PC; the **Hon. Amy Holmes Hehn**, Multnomah County Circuit Court; **Anit K. Jindal**, Markowitz Herbold PC; **Leah C. Lively**, Buchalter; and **June M. Wyrick Flores**, Schwabe Williamson & Wyatt PC.



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!

Michael Yates: Pro Bono Work in Private Practice Pro Bono Spotlight

by Jessy Morris
YLS Pro Bono Committee

In the Multnomah County family law community, one is hard-pressed to find an individual as well known and universally respected as Michael Yates. Currently of counsel at Gevurtz Menashe, Michael was previously at the helm of Yates Family Law. Yates Family Law alumni include the now Honorable Judge Jacqueline Alarcón of the Multnomah County Circuit Court, and Sarah Brown of Holtey Law, incumbent president of the Oregon Academy of Family Law Practitioners (OAFPL), both of whom reflect a dedication to pro bono legal work that Michael has exemplified throughout his career.

In his early post-graduate years, Michael accepted a position clerking for the Honorable Judge R. William Riggs of the Multnomah County Court, who at the time served as the Chief Family Court Judge. It was during his tenure as a clerk that he decided to focus his practice on family law matters and in 1984, Michael began his career in private practice when Albert Menashe hired him as an associate. Michael met other attorneys working with Legal Aid Services of Oregon who inspired him to begin offering pro bono legal services, first by volunteering for the Wednesday Night Clinic at St. Andrew Legal Clinic. At the time, attorneys in private practice would go to the clinic to provide initial consultations and assist in completing forms, and though the specifics of attorney volunteer work at the clinic have shifted through the years, the Night Clinic continues to be a mechanism for attorneys to provide limited scope pro bono assistance to individuals in need.

Michael continued to expand his pro bono work by volunteering with PROSAP, now known as LASO Family Law Forms Clinic, to help more individuals navigate the myriad of pleadings required in family law matters and even taking some cases on a pro bono basis. He continues to do so today. Michael has seen a plethora of potential clients through this work, and his experience has highlighted the great need for more attorneys, especially bilingual attorneys, to offer services to the immigrant communities in our state.

Two of Michael's more recent ventures in pro bono volunteering have been through the Multnomah County Judicial Settlement Conference Program as a pro tem judge and by serving as legal



Michael Yates

representation for minor children in Multnomah County family law proceedings. Judicial Settlement Conferences are essentially a form of mediation offered at significantly lower costs than private mediation, and allow clients the opportunity to mediate with counsel present. Many times, these conferences offer attorneys the opportunity to hear a fresh perspective on their position and receive feedback similar to what they may receive in court. Representing minor children in family law matters can be one of the most rewarding forms of pro bono legal work. It requires an ability to connect with the client and understand complex family dynamics that sometimes the client is not able to fully articulate or even comprehend. Michael recommends those already familiar with family law practice be the primary ones offering their services to minor clients, though the opportunity is available to those in any legal practice as long as they attend the informational session offered by Chief Family Court Judge Susan Svetkey.

When asked, Michael says that pro bono work is a great way to gain courtroom experience and connect with other attorneys. His advice for attorneys newer to pro bono work is to take it one case at a time. In 2015, then Oregon City High School senior Eileen Keen wrote about Michael's pro bono work for her family, helping her mother retain legal custody of Eileen after she was taken to another state by her father in the middle of the night. Ms. Keen wrote, "I am grateful beyond words to Michael Yates. To him, and to those of you who do pro bono work for people who have fallen into difficult circumstances, thank you, because it really does mean the world. It certainly did for me, and I couldn't be more grateful." "A Thanksgiving Message," *Oregon State Bar Bulletin*, Eileen Keen, November 2015.

Moody v. Oregon Community Credit Union

Continued from page 2

created might otherwise be actionable in tort; no Oregon court appears to have circled back to that unanswered question until the *Moody* case). And they argued, among other things, that even if Judge Landau was correct that a negligence *per se* claim could lie for violation of Section 746.230(1), the courts should not enforce his opinion to the extent he opined that a policyholder could seek emotional distress damages in connection with such a claim, because such damages are generally available under Oregon law only where the plaintiff has suffered physical as well as emotional injury.

The insurance industry's arguments found at least tentatively receptive ears in some of the judges of the federal bench. Sitting in diversity and applying Oregon law, at least one federal judge expressly declined to recognize Judge Landau's opinion as binding precedent in the absence of a statement from the Oregon Supreme Court; at least one acknowledged that the opinion was precedential as to the existence of a negligence claim premised on violation of the ORS 746.230(1) standard of care while declining to enforce the opinion as to the availability of emotional distress damages; several federal decisions expressly avoided reaching some or all of the thorny questions *Moody* raised, and either deferred the issues or resolved them on alternative grounds. Meanwhile, in the state courts *Moody* was acknowledged to be the law of the land.

This confused and confusing state of affairs persisted for nearly two years, with plaintiffs' *Moody* claims taken at face value in state court and either disregarded or enervated in federal court. Accordingly, the settlement value of plaintiffs' *Moody* claims was largely governed by the citizenship of the insurer defendant: if the plaintiff's insurer was based in Oregon, the plaintiff's claim

could proceed in state court and its settlement value was relatively straightforward, whereas if the insurer was headquartered in another state, the plaintiff's claim could be removed to federal court on diversity grounds, where the settlement value of the *Moody* claim was necessarily diminished in some degree. This naturally created serious tension under the universally recognized *Erie* principle that, sitting in diversity, the federal courts must apply state law in the same manner as would the state courts.

On December 29, 2023, the Oregon Supreme Court at last resolved the *Moody* appeal. By a 4-3 decision, the court elected to affirm, "conclud[ing] that the insurance claim practices that ORS 746.230 requires and the emotional harm that foreseeably may occur if that statute is violated are sufficiently weighty to merit imposition of liability for common-law negligence and recovery of emotional distress damages." However, while the Oregon Supreme Court agreed with Judge Landau both that an insurer's violation of the ORS 746.230(1) standard of care gives rise to a cause of action sounding in negligence and that emotional distress damages are available in connection with that cause of action, the high court's reasoning differed substantially from Judge Landau's.

Judge Landau characterized the newly recognized cause of action as one for negligence *per se* that was in some sense distinct from garden variety negligence, expressly rejecting the argument that such a cause may only lie in connection with a separate and independent common-law negligence claim. By contrast, the Oregon Supreme Court affirmed the principle that negligence *per se* is nothing more than a special case of ordinary negligence in which the at-issue duty is a creature of statute, and recognized that a negligence *per se* claim will lie only if a common-law negligence claim "otherwise exists." Specifically as to the particular negligence *per se* claim recognized for the first time by Judge Landau, namely one arising out of an insurer's violation of the Section

746.230(1) standard of care, the Oregon Supreme Court determined that, in light of the nature of the relationship between policyholder and insurer, it is reasonably foreseeable that an insurer's violation of the statutory standard of care will create a risk of harm to a legally protected interest of the policyholder; the court further opined that that legally protected interest is of sufficient importance to give rise to a common-law claim of negligence. The high court additionally found the policyholder's legally protected interest in freedom from the unfair practices proscribed by ORS 746.230 to be both of a kind and of sufficient importance to warrant subjecting insurance companies to liability for the policyholder's consequential emotional distress damages.

To be sure, the Oregon Supreme Court's decision does not answer every question litigants have raised regarding the newly recognized cause of action. Further jurisprudence will be required before the reach, scope, and elements of a Section 746.230(1) negligence claim become settled. In particular, the Oregon Supreme Court expressly left unresolved the question whether *economic* consequential damages are available in connection with such a claim (although there is very little ground for supposing that economic damages would *not* be available). But unanswered questions aside, the high court has expressly taken a step calculated to bring Oregon in line with the majority of American jurisdictions, which have long recognized the need for a cause of action to rectify the harms unfair settlement practices can cause policyholders to suffer beyond and apart from deprivation of the benefits of the insurance contract itself. The Oregon Supreme Court's *Moody* opinion can therefore correctly be viewed as a significant victory for Oregon's insurance consumers, and as marking the beginning of a sea change in Oregon first-party insurance litigation.

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Speed Networking Event

Thursday, March 21

5:30-7 p.m.

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Tuesday, February 20
12-1 p.m.
Remote attendance only via Zoom

This workshop will cover topics relevant to attorneys with a litigation practice and will be presented by professionals with firsthand experience with discovery. **Allison Bizzano** is an attorney licensed in Oregon and Washington with 18 years of experience; she focuses her practice on disputes and transactions involving closely held businesses and real estate. She will be discussing cost-effective ways to manage the production of electronic communications, including text and instant messages, emails, and social media posts. **Justin Rusk** is an attorney who handles complex white-collar criminal and quasi-criminal matters. He will be discussing strategies for handling extensive e-discovery and multi-defendant discovery, including the use of AI-supported software programs, strategies for different types of discovery, and effective pre-discovery planning. **Carol Kregear** from Cumulus Legal is an expert in e-discovery; she works with many solo and small firms and will share with you her experience in discovery assistance and the type of outsourcing help available for practitioners.

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

CLOUD STORAGE AND E-DISCOVERY

Wednesday, March 6
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Trevor Clark, founder of Cloudscape eDiscovery, and **Monica Logan**, a PLF practice management attorney, will offer solo and small firm practitioners information and practical advice about managing your documents within a cloud storage platform and how e-discovery software can make your review process easier. Additionally, they'll discuss how firms can securely share client information and produce discovery.

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Please join us in celebrating Minoru Yasui Day with a hybrid presentation from **Peggy Nagae** and **Lorraine Bannai**, the attorneys who represented Minoru Yasui and Fred Korematsu in the coram nobis cases to vacate the World War II convictions.

If you have questions, please contact the Office of Engagement, Equity, and Inclusion at SCA.ESD.OEEI@ojd.state.or.us



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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.

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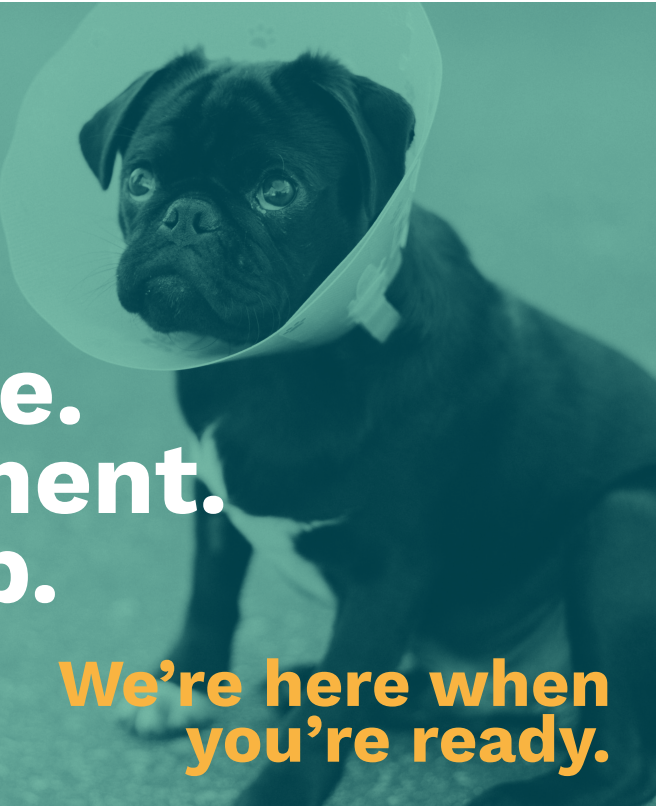
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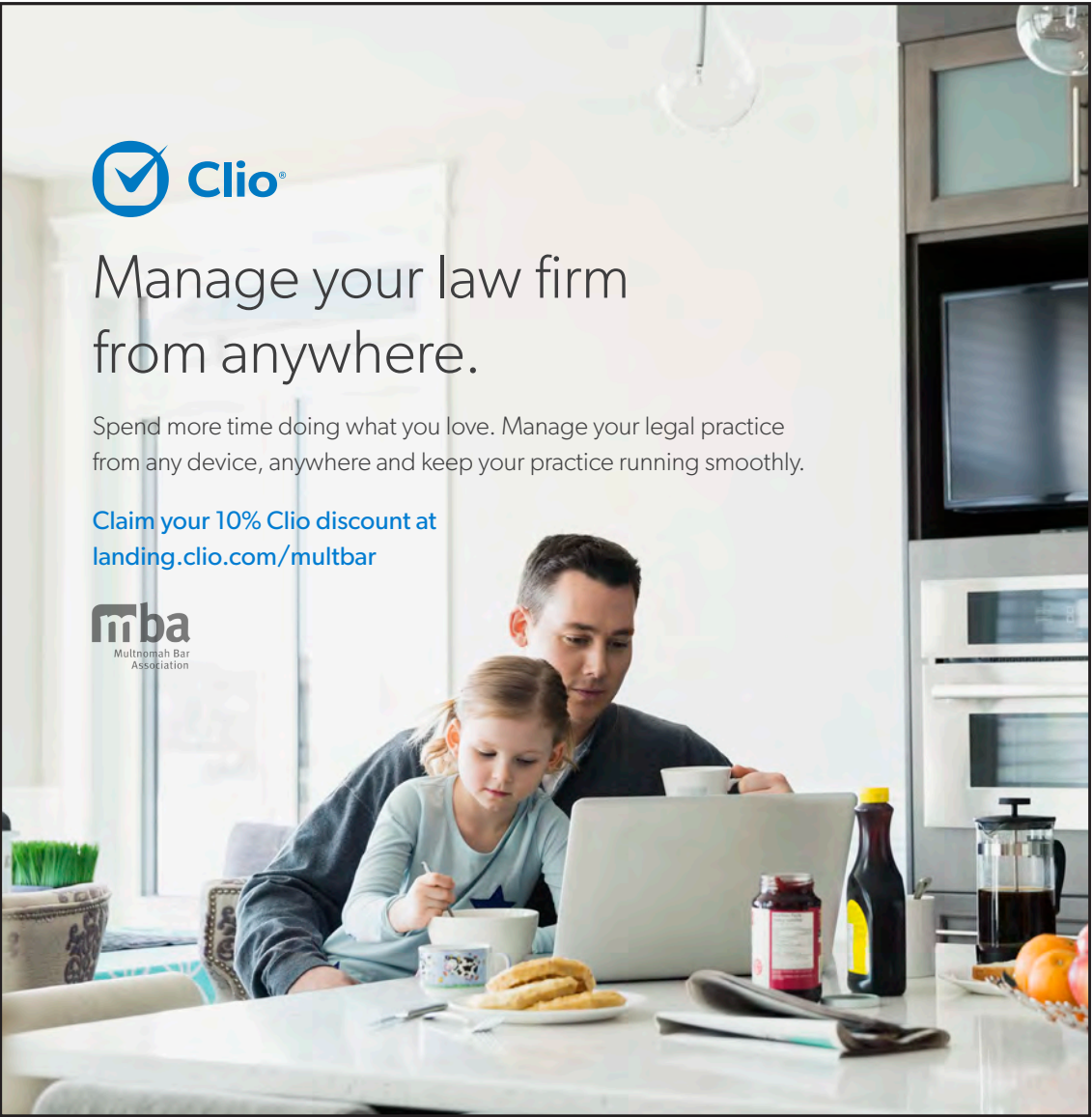


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Farleigh Wada Witt
Welcomes Tony Kullen
as a Shareholder

Farleigh Wada Witt is pleased to announce that Tony Kullen has become a shareholder of the firm. Tony focuses his practice on the life cycle of lending transactions, from loan origination through final collection, including addressing the bumps along the road through loan modifications, defaults, workouts, bankruptcy, and foreclosure. He also frequently handles complex real estate transactions for buyers and sellers, and for financial institutions with an interest in the transaction.

Tony is licensed to practice before the state and federal courts throughout Oregon, Washington, and Idaho.

Tony is the Chair of the Oregon State Bar Debtor-Creditor Section's Legislative Committee, and is an active member of regional associations representing the interests of credit unions, banks, and other financial institutions. He was formerly a Director and Supervisory Committee Chair of a leading Oregon-based community credit union.

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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. 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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Brian S. Jolly
Named President of
Farleigh Wada Witt

Farleigh Wada Witt is pleased to announce that Brian Jolly has been elected president of the firm effective January 1, 2024. He will serve on the 2024 executive committee with Margot Seitz, Hal Scoggins, and Trish Walsh.

Prior to his election as president, Brian held a number of leadership positions in the firm. He has been with the firm since 2017. Brian succeeds Kim McGair, who served as the firm's president for 6 years. Kim will continue her commercial litigation, employment litigation, creditor's rights and real property dispute practices.

Brian's practice includes advising businesses of all kinds and sizes. Brian also advises business owners and individuals in succession planning, estate planning, probate, and resolution of internal and external business disputes.

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Making the Most of Mentorship

The legal profession prides itself on transferring skills and insight from one generation of lawyers to another. In the same way that a precedential opinion builds on the wisdom of a prior jurist’s work, lawyers pass down their knowledge on everything from legal strategy to legal culture to those who come “after” them.

One of the commonly-used methods for this knowledge transfer is “mentorship.” In fact, the legal community takes mentorship so seriously that law firms and other organizations - including the MBA - often formalize the process of mentorship, by assigning new

lawyers to designated mentors to facilitate the new lawyers’ efforts to get their arms around the challenges they are about to face.

But does mentorship really work? And, more importantly, how can mentors and mentees best utilize the mentorship concept to make better lawyers?

The answer to the first question appears to be “yes” - and not just for mentees. In one study, mentors reported that serving as a mentor helped *them* learn, increased their feelings of self-worth, and gave them vicarious enjoyment in seeing mentees mature and grow. Pam Kennett & Tim Lomas, *Int’l J. of Evidence*

Based Coaching & Mentoring, 13(2) (2015), available at www.tinyurl.com/7mkksesd.

As to how best to approach the mentorship relationship, authors Adaira Landry and Resa E. Lewiss think that efficiency is the key. In their view, one of the biggest risks is that serving as a mentor is “draining.” They suggest to start by “clarifying baseline expectations” for the mentee, considering the mentor’s own preferences and developing standards and guidelines for the mentee. They also suggest developing a time budget, and sharing it with the mentee, to allow them to “see the mentor’s

time as a currency and develop thoughts and questions prior to reaching out.” Landry & Lewiss, *What Efficient Mentorship Looks Like*, Harv. Bus. Rev. (Aug. 25, 2020), available at www.tinyurl.com/naas5w84.

Landry & Lewiss’s advice to mentors is helpful perspective for mentees, as well. It’s important to come into a mentorship with a firm understanding that the mentor’s time is valuable and to focus on spending it wisely. On the other hand, it’s equally important for the mentee to clarify their *own* baseline expectations for the mentorship relationship. A new lawyer is no less busy - and sometimes more - than an experienced practitioner. Thus, both the mentor and the mentee should make it a priority to make their counterpart aware of what they can provide to, and what they hope to get out of, the relationship. Communication is key.

Another vitally important element for an effective mentorship is respect. Not just respect for the other’s time and energy - about that, see more above - but for the other’s experience, insight, and view of the world. This is probably easy to recognize when it comes to the mentee; after all, a mentor is supposed to be just that: a figure of respect. But respect, like everything else about the mentorship relationship, is a two-way street. It’s important that the mentor approach their mentee with a sense of respect, too - respect for the mentee’s own perspective, life experiences, and goals.

And finally, an underappreciated element of a mentorship relationship is its end. Author Carolyn O’Hara spoke to several experts about knowing when and how a mentee should move on from a mentorship. Like with many elements of mentorship, she found that the first step in the process is to think critically and carefully about what the mentee

is looking for - for example, whether the mentee is “taking full advantage of [the] mentor’s expertise.” O’Hara, *How to Break Up With Your Mentor*, Harv. Bus. Rev. (May 29, 2014), available at www.tinyurl.com/4srjujy6.

O’Hara goes on to say that it’s important for a mentee to be grateful, but direct and honest about the reasons for ending the mentorship relationship.

A mentor who - for whatever reason - needs to end the mentorship relationship should consider the same advice. Moreover, the mentor should take into account the relative professional status of their mentee; does the mentee have enough contacts to find a reasonable replacement mentor, or should the current mentor seek to find them additional placement, if possible? And a mentee in this position should feel free to ask for such a connection to be made on their behalf.

Most of all, remember that a mentorship relationship is just that - a relationship. All the rules, tips, and reminders in the world aren’t a substitute for simply making a personal connection and being responsive to the learning style, personality, and priorities of the person on the other end of the mentorship. In reality, *that’s* how you make the most of a mentorship.

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

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