OSB Professional Liability Fund

Learning the Ropes

Program Agenda and Materials

November 17-19, 2026
Portland Marriott Downtown Waterfront
1401 SW Naito Pkwy Portland, OR 97201

Total MCLE Credits: 15.25
MCLE Event Id# 135775

Total Ethics – Oregon Specific:	*2*
Total Introductory Access to Justice:	*3*
Total Mental Health/Substance Use:	*1*
Total Practical Skills- Oregon Practice and Procedure:	*9.25*

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AGENDA: DAY 1

November 17, 2026

6.75 MCLE Credits
(4.75 Practical Skills Credits - Oregon Practice and Procedure; 2 Ethics Credits - Oregon Specific)

8:00 – 8:30 Registration/Check-In

8:30 – 9:00 PLF Overview

Learn about the Professional Liability Fund (PLF) and your legal malpractice coverage, both at the primary and optional excess level.

Emilee Preble, *PLF Director of Administration & Underwriting*

9:00 – 9:30 Introduction to Risk Management

Gain a comprehensive overview of the key risks and contributing factors that can lead to malpractice claims and explore resources designed to help you proactively reduce your exposure to malpractice liability.

Hong Dao, *PLF Director of Practice Management Assistance Program*

9:30 – 10:00 Introduction to Claims

Gain a unique understanding of the nature of claims handled by the PLF Claims Department; learn what to do if a claim is made against you and the services offered by the Claims Department to support and assist you throughout the claims process.

Matthew A. Borrillo, *PLF Director of Claims*

10:00 – 10:15 Break

10:15 – 11:15 Oregon Legal Ethics Refresher (1 Ethics Credit - Oregon Specific)

Get to know the Oregon State Bar and learn how to apply the Oregon Rules of Professional Conduct in real-world scenarios.

Dani Huck, *Oregon State Bar Deputy General Counsel*

11:15 – 12:15 Professionalism: Ethics Sets the Floor, You Set the Ceiling (1 Ethics Credit - Oregon Specific)

Explore the distinction between ethics and professionalism and learn how professionalism extends beyond ethical obligations to improve legal practice and promote respectful, effective interactions with clients, colleagues, and the courts.

The Honorable John V. Acosta, *United States Magistrate Judge*

Dana L. Sullivan, *Buchanan Angeli Sullivan & Ferrer LLP*

12:15 – 1:30 Meet the Judges Luncheon (included in registration fee)

Concurrent Sessions

1:30 – 2:15	**Civil Litigation** Nicholas Kampars *Wildwood Law Group LLC*
2:15 – 2:20	**Transition**
2:20 – 3:05	**Family Law** Amanda C. Thorpe *Cauble Furr & Beguin LLP*
3:05 – 3:10	**Transition**
3:10 – 3:55	**Personal Injury** Jeffrey Carter *Dwyer Williams Cherkoss Attorneys PC*

1:30 – 2:15	**Business Transactions** Ann McQuesten *Ashurst Perkins Coie*
2:15 – 2:20	**Transition**
2:20 – 3:05	**Estate Planning and Administration; Guardianships and Conservatorships** Melissa F. Busley *Dunn Carney LLP*
3:05 – 3:10	**Transition**
3:10 – 3:55	**Criminal Law** Lisa Ludwig *Ludwig Runstein LLC*

3:55 – 4:05 **Break**

4:05 – 5:05 **ADR in Action: Practical Tools and Strategies**

Explore key ADR methods and learn how to choose the right approach for different legal disputes. Through real-world scenarios and practical guidance, this session will help you navigate mediation, arbitration, and other ADR tools to resolve conflicts effectively and advise clients with confidence.

Christopher Drotzmann, *Davis Rothwell Earle & Xochihua PC*

Hon. Eve Miller (Ret.), *Eve Miller Mediation*

AGENDA: DAY 2

November 18, 2026

6 MCLE Credits
(4.5 Practical Skills Credits - Oregon Practice and Procedure; and 1.5 Introductory Access to Justice Credits)

8:00 – 8:30 Registration/Check-In

8:30 – 10:00 Finding Your Way to Long-Term Success in Daily Practice

Gain fundamental career and practice management tips from your practice management attorneys here at the Professional Liability Fund, including how to create systems that work best for you and help mitigate malpractice risk.

Rachel Edwards, Monica Logan, and Rita Alister
PLF Practice Management Attorneys

10:00 – 10:10 Break

Exploring Career Pivots: Solo, Firm, & Alternative Practice Settings

Learn success tips for transitioning to firm or solo practice, and get guidance on in-house and government roles.

10:10 – 10:55 Joining a Firm

Marry Karam
Lissa Kaufman Law LLC

Matt Heldt
Tonkon Torp LLP

Monica Logan, Moderator
PLF Practice Management Attorney

10:55 – 11:00 Break

11:00 – 11:45 Launching a Practice

Spencer Aldrich
Aldrich & Brunot LLC

Simonne Weyand
Weyand Law

Rachel Edwards, Moderator
PLF Practice Management Attorney

11:45 – 12:15 Government and In-House Counsel

Yumi O'Neil
Cambia Health Solutions, Inc.

Benjamin Gutman
Oregon Department of Justice

Rita Alister, Moderator
PLF Practice Management Attorney

12:15 – 1:30 Bar Leader Luncheon (included in registration fee)

1:30 – 3:00 **Pro Bono, Legal Aid, and Other Tools to Provide Access to Justice for All (1.5 Introductory Access to Justice Credits)**

Learn about the unmet legal needs in Oregon and discover tools to assist lawyers in addressing these needs, ensuring that everyone has equal access to justice.

Ayla Ercin, *Executive Director, Campaign for Equal Justice*

Erika Hente, *Executive Director, Oregon Law Center*

Eric McClendon, *Director of Pro Bono and Legal Referral Services, Oregon State Bar*

James Geringer, *Kotoba LLC*

Mikaela Marino, *Sussman Shank LLP*

3:00 – 3:15 **Break**

3:15 – 4:15 **Smart Tools, Sharper Judgment: AI for New Lawyers**

Learn the practical guardrails for navigating AI in everyday legal practice, including confidentiality, verification, and ethical considerations, and hear panelists explore the harder questions facing new lawyers from skill erosion to balancing personal values with professional expectations.

Jade Priest-Maoz, *Jade Priest-Maoz Coaching & Consulting, LLC*

Theodore Reuter, *Reuter Corbett LLP*

AGENDA: DAY 3

November 19, 2026

2.5 MCLE Credits
(1 MHSU Credit; 1.5 Introductory Access to Justice Credits)

8:30 – 9:00 **Registration/Check-In**

9:00 – 10:00 **Lawyer Well-Being (1 Mental Health and Substance Use Education Credit)**

Join the Oregon Attorney Assistance Program (OAAP) to uncover challenges lawyers encounter in their practice and explore strategies for maintaining well-being.

Kyra M. Hazilla*, JD, LCSW, OAAP Director and Attorney Counselor*

Douglas S. Querin, *JD, LPC, CADC I, OAAP Senior Attorney Counselor*

Bryan R. Welch, *JD, CADC I, MA, OAAP Attorney Counselor, Professional Counselor Associate*

Kirsten Blume*, JD, MA, OAAP Attorney Counselor, Professional Counselor Associate*

Bridget Donegan, *JD, MA Candidate-Mental Health Counseling, OAAP Attorney Counselor Associate*

10:00 – 10:15 **Break**

10:15 – 11:45 **When Legal Help Is Out of Reach: Disability, Poverty, and Distance (1.5 Introductory Access to Justice Credits)**

This session focuses on the unique legal challenges faced by clients with disabilities, economic hardships, and physical distance. Learn effective communication strategies, tailored legal approaches, and practice tips for providing inclusive, respectful representation. Gain insight into relevant legal protections and ethical considerations to better serve these clients.

Christian Hale, *Senior Fiduciary Services, LLC*

Sarah Lora, *Director, Lewis & Clark Law School's Low Income Taxpayer Clinic*

Rianka Macwan, *ABA Tax Section Christine A. Brunswick Public Service Fellow*

Jessica Rose, *Rose Legal*

L E A R N I N G T H E R O P E S
T A B L E O F C O N T E N T S

Chapter #

PLF Overview ..... Chapter 1
Introduction to Risk Management ..... Chapter 2
Introduction to Claims ..... Chapter 3
Oregon Legal Ethics Refresher ..... Chapter 4
Professionalism: Ethics Sets the Floor, You Set the Ceiling ..... Chapter 5
Civil Litigation ..... Chapter 6
Business Transactions ..... Chapter 7
Family Law ..... Chapter 8
Estate Planning and Administration; Guardianship and Conservatorship ..... Chapter 9
Personal Injury ..... Chapter 10
Criminal Law ..... Chapter 11
ADR in Action: Practical tools and Strategies ..... Chapter 12
Finding Your Way to Long-Term Success in Daily Practice ..... Chapter 13
Joining A Firm ..... Chapter 14
Launching a Practice ..... Chapter 15
Government and In-House Counsel ..... Chapter 16
Pro Bono, Legal Aid, and Other Tools to Reach Justice for All ..... Chapter 17
Smart Tools, Sharper Judgment: AI for New Lawyers ..... Chapter 18
Lawyer Well-Being ..... Chapter 19
When Legal Help Is Out of Reach: Disability, Poverty and Distance ..... Chapter 20

CHAPTER 1

PROFESSIONAL LIABILITY FUND OVERVIEW

Emilee Preble
Director of Administration and Underwriting

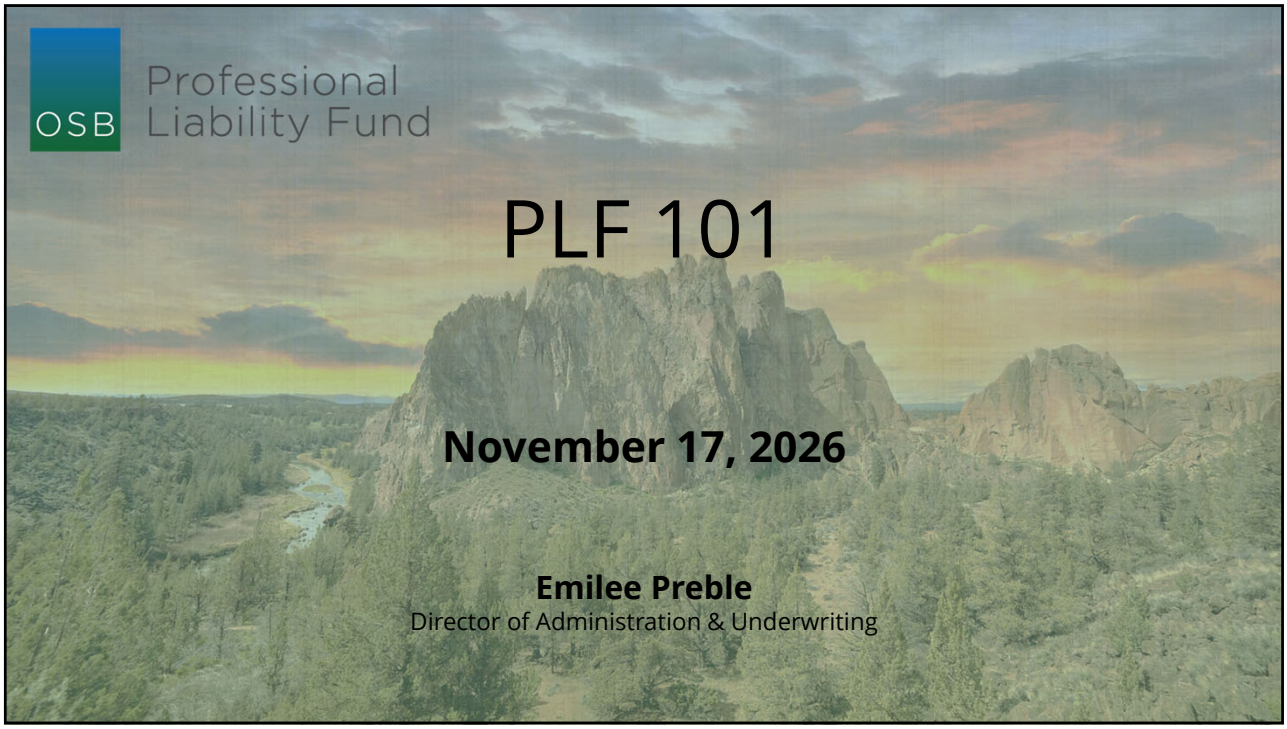
Chapter 1

PLF OVERVIEW

TABLE OF CONTENTS

I. PowerPoint Slides 1-1
II. Links to PLF Coverage Documents 1-13


OSB
Professional
Liability Fund
Welcome to
Learning The Ropes
November 17-19, 2026

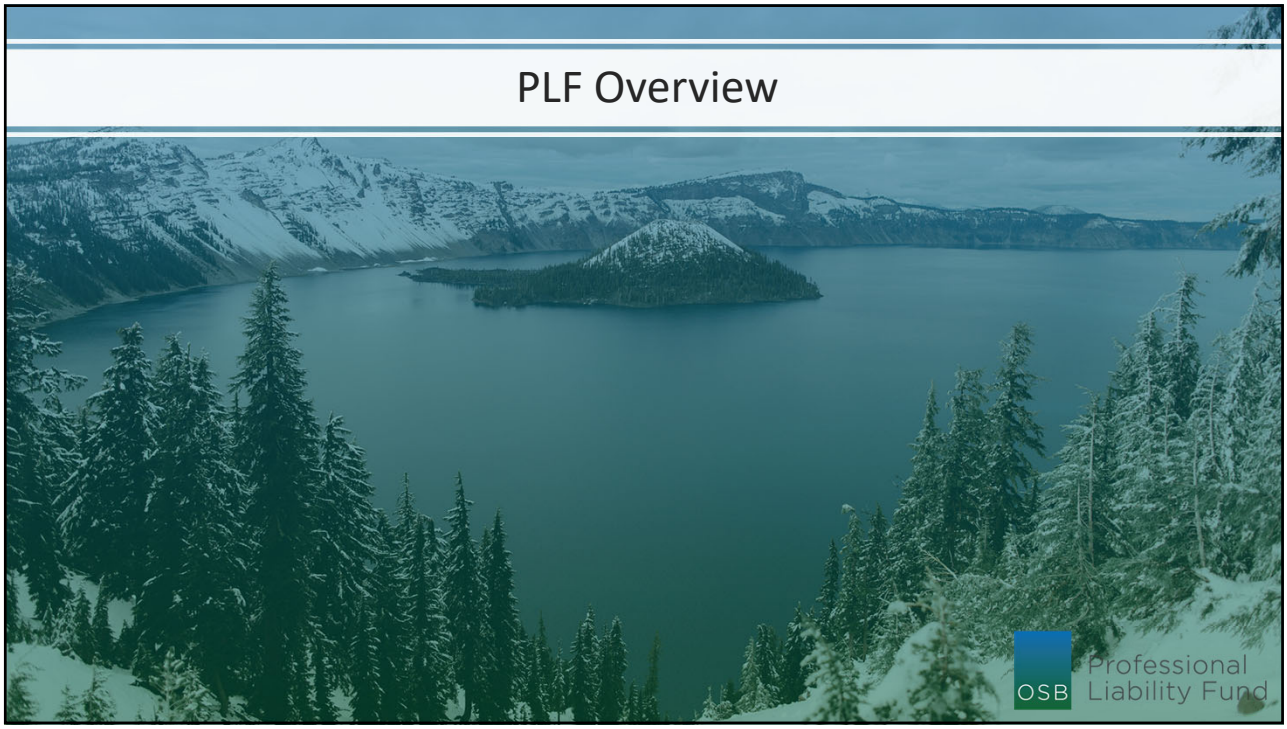

OSB
Professional
Liability Fund
PLF 101
November 17, 2026
Emilee Preble
Director of Administration & Underwriting

Agenda

- PLF Overview
- Primary Coverage
- Coverage Scenarios
- Excess Coverage

OSB Professional Liability Fund

PLF Overview



OSB Professional Liability Fund

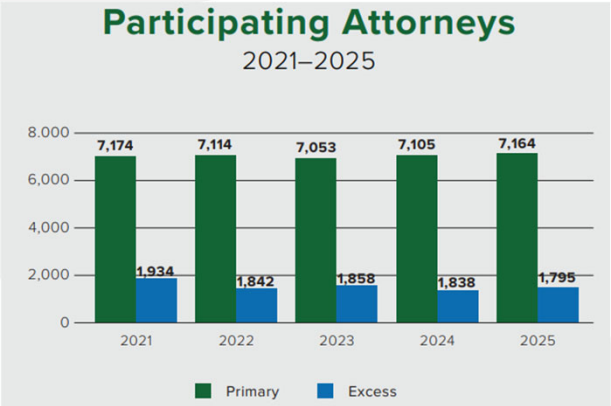
What is the PLF?

- Unique in the United States
- Created in 1977 by Oregon State Bar Board of Governors
- Began operations in 1978
- Mandatory malpractice provider for Oregon State Bar licensees in private practice whose principal office is in Oregon
- 9-member board—7 attorneys and 2 public members

OSB Professional Liability Fund

What are the benefits?

- Provides stable, long-term source of coverage
- Commitment of profession to protect the public
- High level of service, assistance & expertise

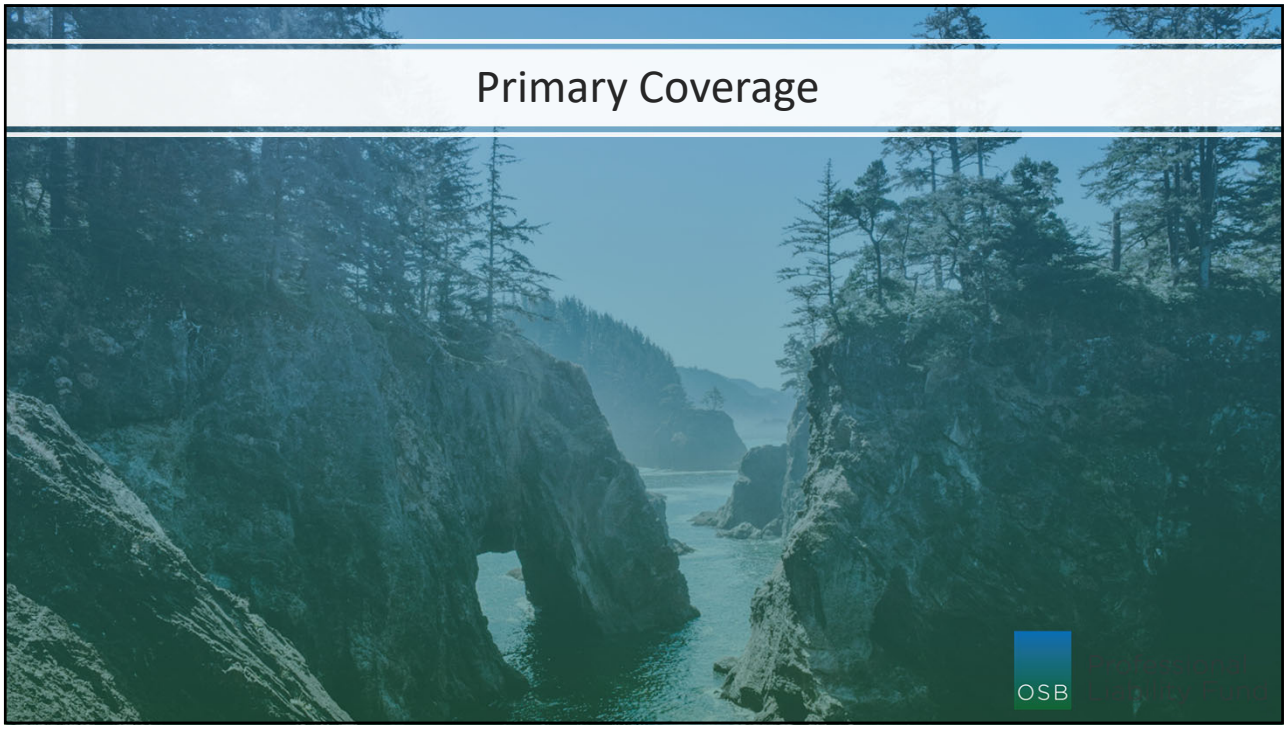


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What do we do for you?

- Claims
  - Defense
  - Repair (discretionary)
  - Deposition defense (discretionary)
- Practice Management & Personal Assistance
  - Oregon Attorney Assistance Program (OAAP)
  - Practice Management Assistance Program (PMAP)
- Wrap around services

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What's the benefit of the PLF Model?

- No deductible
- No underwriting
- No individual rate increases for claims
- Coverage cannot be canceled
- Prior acts coverage
- Automatic Extended Reporting Coverage (ERC or "tail")

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Who needs Coverage?

- Covered
  - OSB licensee
  - Private practice
  - Principal office in Oregon
- Not Covered
  - Law clerks (supervised attorney)
  - Employed exclusively as in-house counsel, government lawyer, in a non-law related field, employed by Legal Aid and other non-profit entities who have alternative insurance
  - Unemployed

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What does it cost?

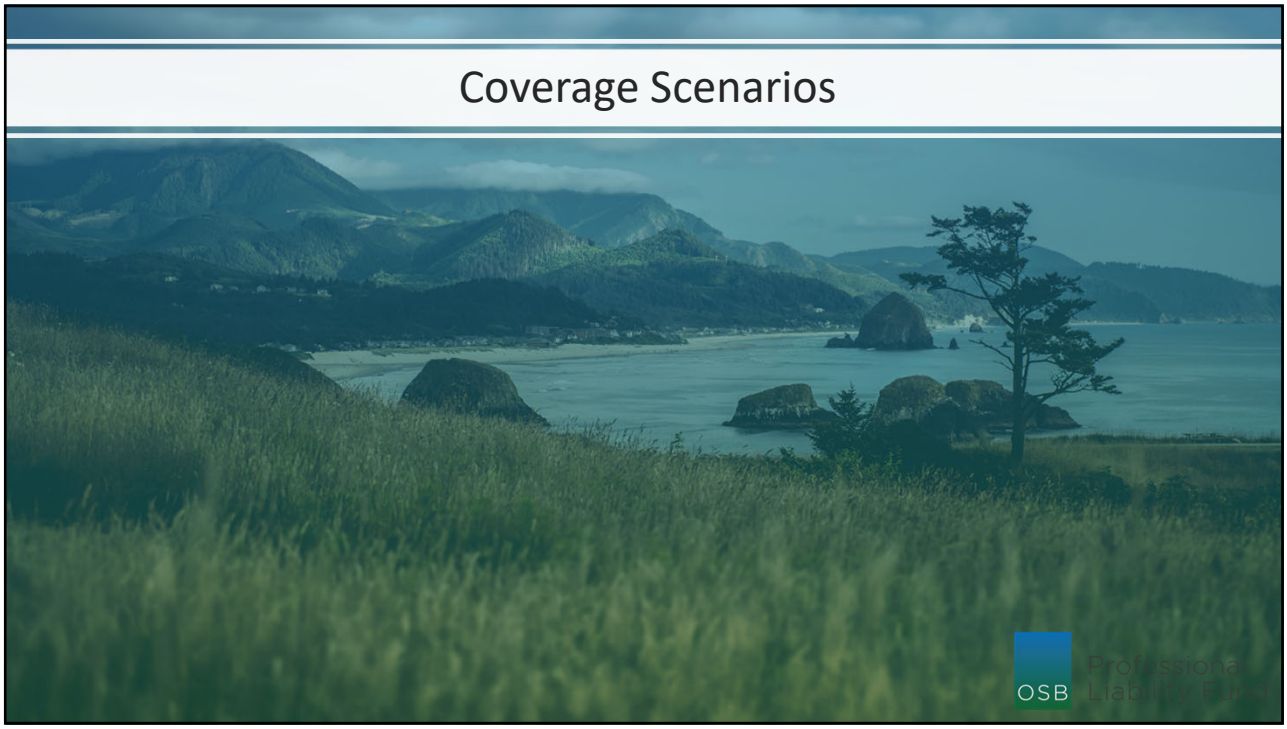
- Assessment -- $3,500/year
  - Discount 1st Year of Coverage: 40% ($2,100 total assessment/year)
  - Discount 2nd & 3rd Years: 20% ($2,800 total assessment/year)
- Liability & Expense Limits
  - $300,000 for indemnity
  - $75,000 claims expense
  - One limit per year

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What is excluded from coverage?

- Wrongful conduct, intentional, or fraudulent acts
- Punitive damages, sanctions and certain fee awards
- Business transactions with clients/representing family
- Losses arising out of business of practicing law
  - Lost or stolen client funds or documents/property
  - Mishandling of client funds
- Defense of ethics complaints
- Cyber

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Do I Need PLF Coverage?

Scenario 1

Attorney is an active member of the Oregon State Bar who works from the Portland office of a law firm based in New York. Do they need PLF Coverage?

Now consider that there is no Portland office for that firm and the attorney works from their home office for that New York firm. The only location held out for that attorney (on email, letterhead, phone, etc.) is New York. What changes if the attorney has some Oregon clients versus if the attorney does not have any Oregon clients?

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Do I Need PLF Coverage?

Scenario 2

Attorney is an active member of both the Oregon State Bar and the Washington State Bar. Attorney has an office in Hood River, OR and an office in White Salmon, WA.

Important question: Where did the attorney spend the majority of their time last year?

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Do I Need PLF Coverage?

Scenario 3

Attorney is exempt from PLF Coverage because they work as in house counsel for a company. Attorney wants to assist their parents in a dispute with a neighbor. Does the attorney need to activate their PLF Coverage?

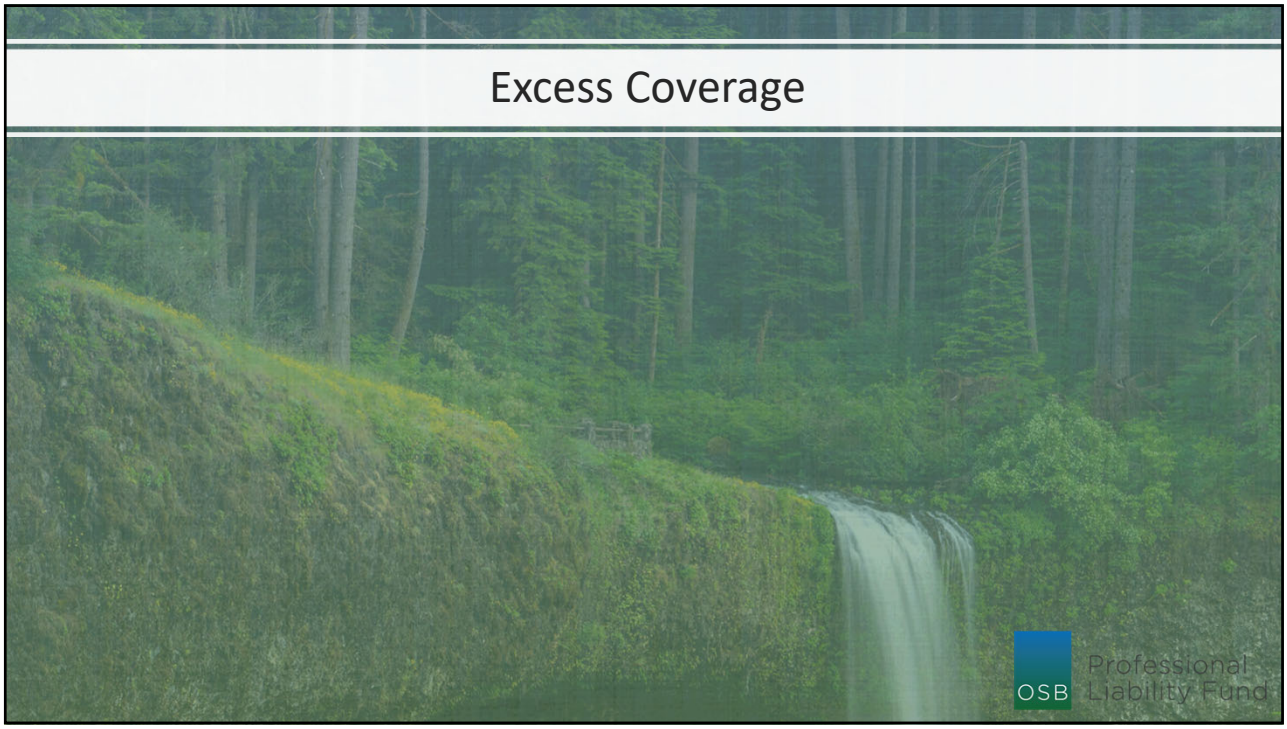
OSB Professional Liability Fund

Do I Need PLF Coverage?

Scenario 4

Attorney is exempt from PLF Coverage but would like to do some volunteer legal work. Can the attorney do legal work, pro bono, without PLF Coverage?

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What is Excess Coverage?

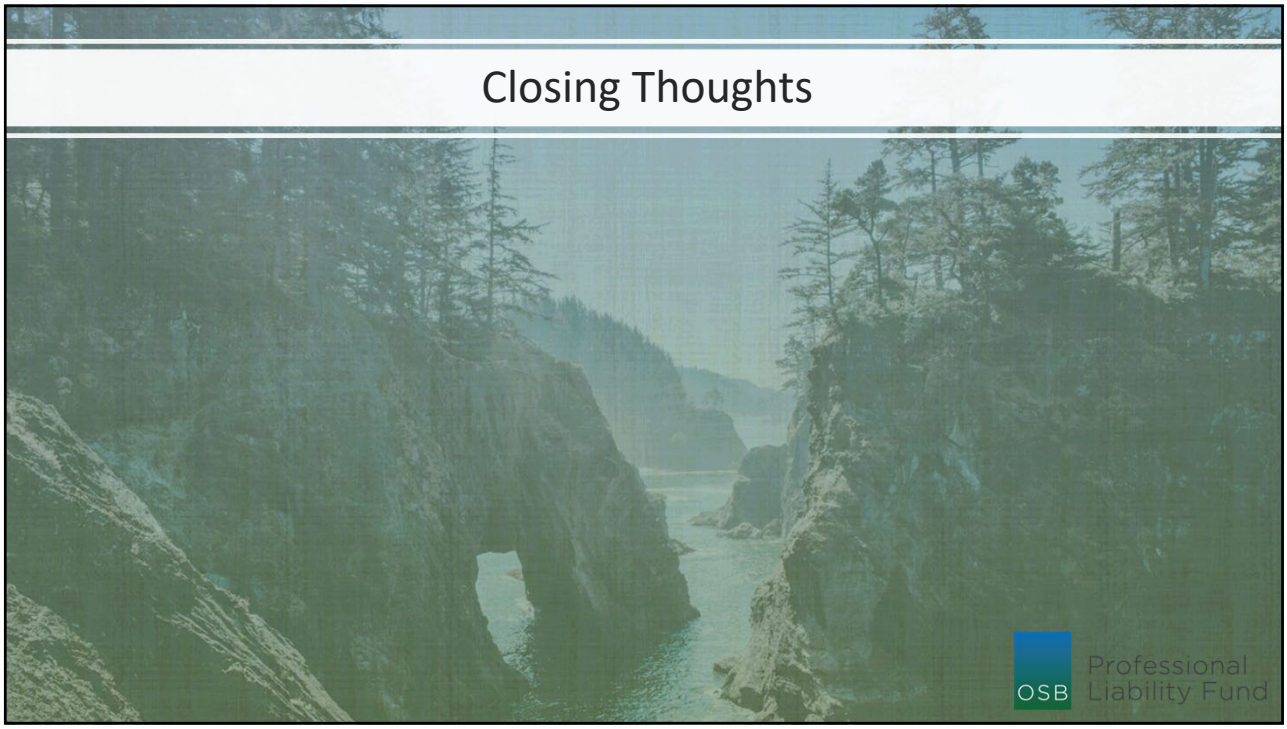
- Independent from Primary Program and totally self-supporting
- Largest Excess carrier in Oregon
- Covers approximately 700 firms/1,800 attorneys
- Limits from $700,000 to $9,700,000
- Cyber Liability & Breach Response Endorsement Included
  - Excluded at Primary

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Why is Excess Coverage a good idea?

- Primary Plan provides only a minimum amount of money for each lawyer's mistakes
- Primary Plan **not** designed to cover a significant loss or many claims against one lawyer or a number of lawyers

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Is there a downside to contacting us?

- Short answer: No
- Communications with the PLF are confidential
- The PLF cannot discipline and does not report lawyers to the Oregon State Bar
- We are here to help
- Do not let a malpractice issue become an ethics matter

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What is the take-away?

- You are in good company – eventually, almost everyone who practices law in Oregon will have contact with the PLF in some way
- Call us! We've got your back.
  - OAAP
  - PMAP
  - Claims

OSB Professional Liability Fund

How to Contact Us

- **General/Claims**
  - 503.639.6911 or
  - 800.452.1639
- **Excess Coverage**
  - excess@osbplf.org
- **Visit www.osbplf.org**
- **PMAP**
  - 503.639.6911
- **OAAP**
  - 503.226.1057
  - oaap.org

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Links to PLF Coverage Documents on PLF website

www.osbplf.org

- PLF Coverage & Exemptions - Do I need coverage? (osbplf.org)
- PLF Coverage Quiz: https://osbplf.org/coverage/coverage-quiz.html
- PLF Midyear Changes to Primary Coverage - Midyear Changes (osbplf.org)
- PLF Excess Coverage Overview - Do I Need Excess Coverage?
- 2026 Primary Coverage Plan
- 2026 PLF Claims Made Excess Plan
- 2025 PLF Annual Report

CHAPTER 2

Introduction to Risk Management

Hong Dao
Professional Liability Fund Director of Practice Management Assistance Program

LEARNING THE ROPES

Understanding Legal Malpractice Prevention

Hong Dao
Director, Practice Management Assistance Program (PMAP)
Oregon State Bar Professional Liability Fund

1

Quick Quiz

Scan the QR code on your phone to answer

2

THE CORE FRAMEWORK

The Venn Diagram of Legal Malpractice



6

Example

A lawyer is juggling too many cases (practice management), hasn't taken time to stay current in a legal area (substantive work), and is dealing with stress and anxiety from serious family crisis (personal issue).

→ Forgets a critical court filing, and the client's case suffers a huge setback.

Practice Management

COMPONENT 1 OF 3

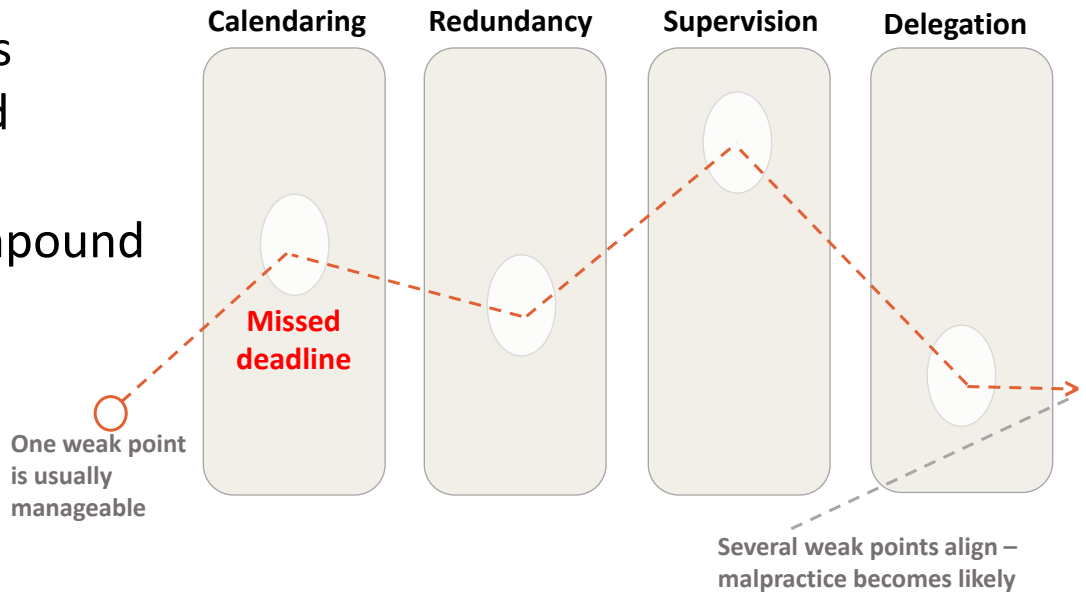
Where the Risk Comes From

- Inadequate office systems
- Disorganization
- Document errors and failures
- Poor communications

When these systems work well, they create a buffer against mistakes.

COMPONENT 1 OF 3: Practice Management

Risks Tend to Compound



Substantive Legal Work

COMPONENT 2 OF 3

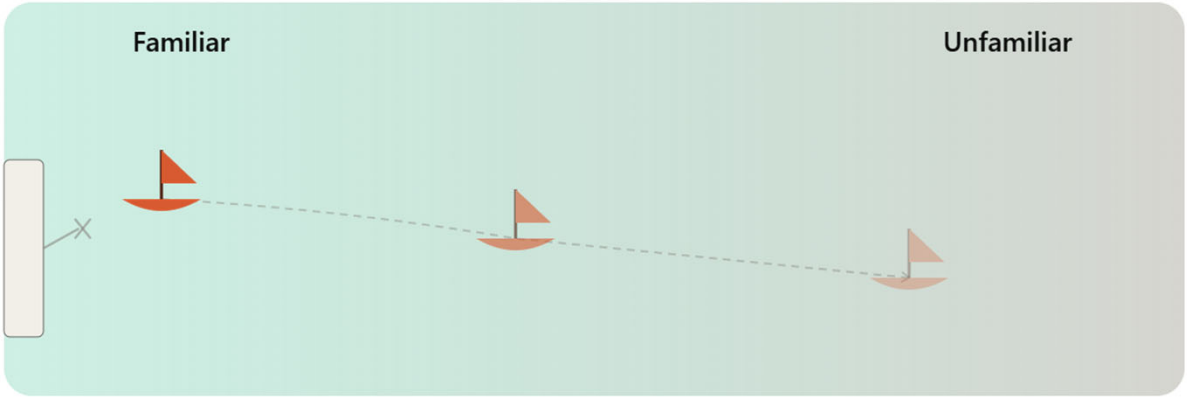
Where the Risk Comes From

- Not knowing the law
- Misreading/misapplying the law
- Poor litigation and case strategy
- Not documenting legal advice

Poor practice management can be a breeding ground for substantive mistakes.

COMPONENT 2 OF 3: Substantive Legal Work

Competence Is Not Static





Personal Issues

COMPONENT 3 OF 3

Where the Risk Comes From

- Mental health concerns
- Substance use or addiction
- Family crises or caregiving
- Isolation or lack of support
- Overwork and poor boundaries

Personal issues tend to weaken the safeguards in the other two areas.

ZOOMING OUT

Why this matters

We assume: Malpractice = "Big Mistake"

Reality: Different risks often build slowly and overlap

Takeaway: Being strong in just one area of Venn diagram isn't enough

What's Needed: Systems, knowledge, and personal resilience *working together*



Check In

Scan the QR code to answer

REFRAMING THE QUESTION

Bringing the Venn Diagram Together

INSTEAD OF ASKING:

"What's the one thing that will keep me from malpractice?"

ASK:

"Where are risks accumulating, and how can I address them before they compound?"

12

DELIBERATE ACTION

Focusing on What You Can Control

Practice Management

- Implement office systems and procedures
- Track client communications
- Use checklists for routine tasks
- Clarify delegation and supervision

Substantive Legal Work

- Stay current on legal changes
- Consult colleagues on unknown ground
- Set aside time for careful analysis
- Avoid rushing through complex matters

Personal Issues

- Notice early signs of burnout
- Seek support through OAAP or similar services
- Maintain self-care routines
- Protect focus and judgment

BUILDING RESILIENCE

Planning for the Uncontrollable



Focusing on What You can Control

Build Structure to Handle the Unexpected

Potential Crisis Becomes Manageable

NO SINGLE RESOURCE DOES IT ALL

Matching Resources to the Risk



Practice Management

PMAP



Substantive Legal Work

Network



Personal Issues

OAAP



How PMAP Can Help

WE HELP WITH

- ✓ Office systems
- ✓ Workflow, process design, tech tools
- ✓ Client relations, firm operations
- ✓ Practice transitions, opening/closing office

WE DON'T HANDLE

- × Legal strategy or substantive law advice
- × Mental health support or clinical intervention

15

Substantive Law Resources

- ✓ Continuing legal education
- ✓ Bar sections
- ✓ Mentors
- ✓ Experienced colleagues
- ✓ Co-counsels
- ✓ Barbooks, Red Book

How OAAP Can Help

- ✓ Support for stress, mental health, and substance use
- ✓ Career transition and well-being challenges
- ✓ Counseling, referrals, support groups, and workshops

Key Takeaways

Building a Safer Practice

- Malpractice isn't about one mistake. It's about patterns that converge.
- Focus on what you can control; seek help early where you can't.
- Small habits and systems create big protection.
- No single resource addresses all three areas of risk at once.

CHAPTER 3

Introduction to Claims

Matt Borrillo
Professional Liability Fund Director of Claims

Introduction to PLF Claims

Matt Borrillo
Director of Claims

OSB Professional Liability Fund

Confidentiality Protected By Statute

OSB

Regulatory
Disciplinary
Public

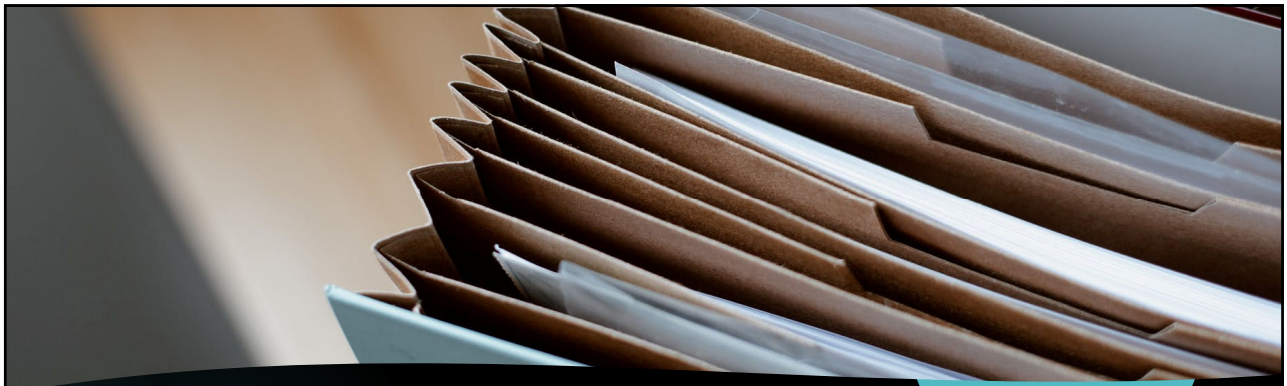
PLF

Claims Department
Practice Management Assistance Program
Oregon Attorney Assistance Program

ORS 9.080, 9.568; OSB Bylaw 24; PLF Policies 6.150 - 6.300; ORPC 8.3

Claims Department

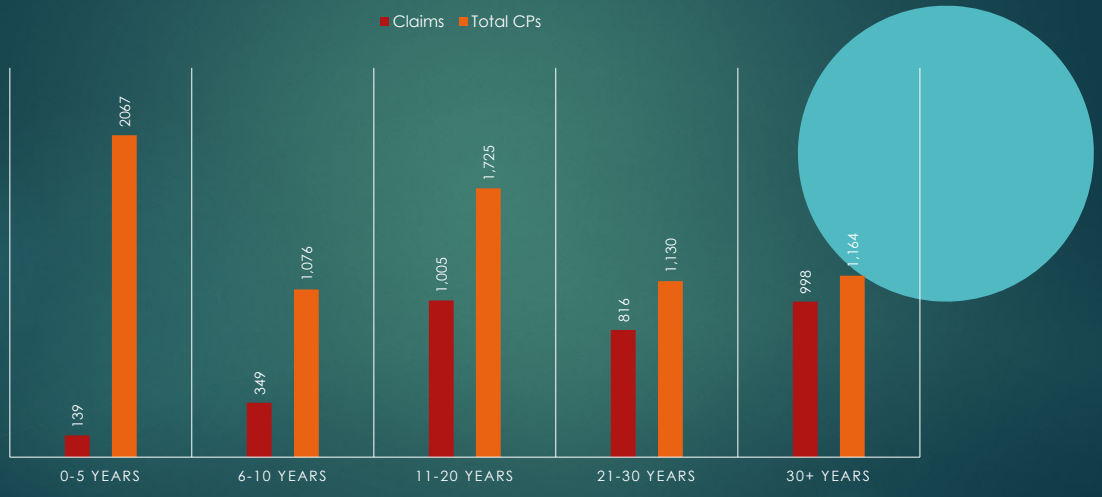
- 11 Claims Attorneys
  - Extensive Experience
  - Variety of Legal BackGrounds
- Defense Panel
  - Provides Expertise in All Areas of Law
  - Represent Covered Parties When Needed
- 2 Claims Attorneys On Call Every Business Day



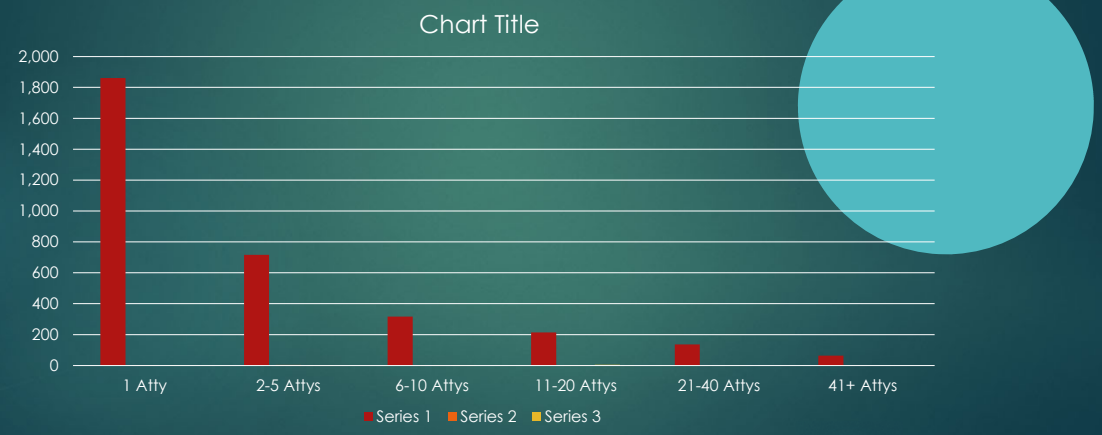
Likelihood of Claim

- 7,140 Lawyers Covered by the PLF (2025)
- Average of 650-750 Claims Per Year
- Chances of claim are ~1 in 10 (10%) in any year
- 10 yrs (~75%) - 15 yrs (~80%) – 20 yrs (~85%)

Claim Frequency by Years in Practice 2021-2025

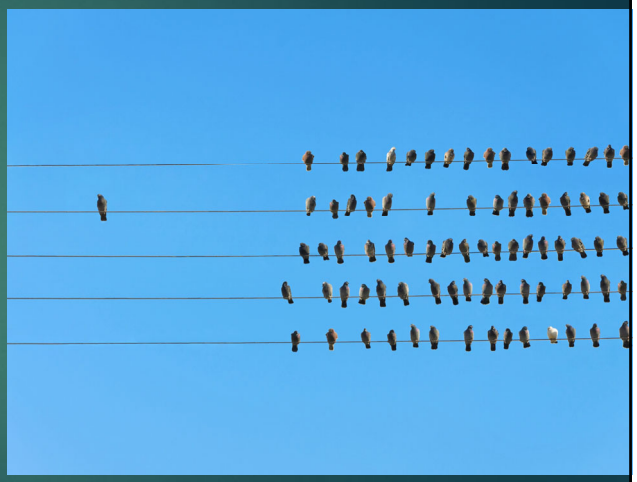


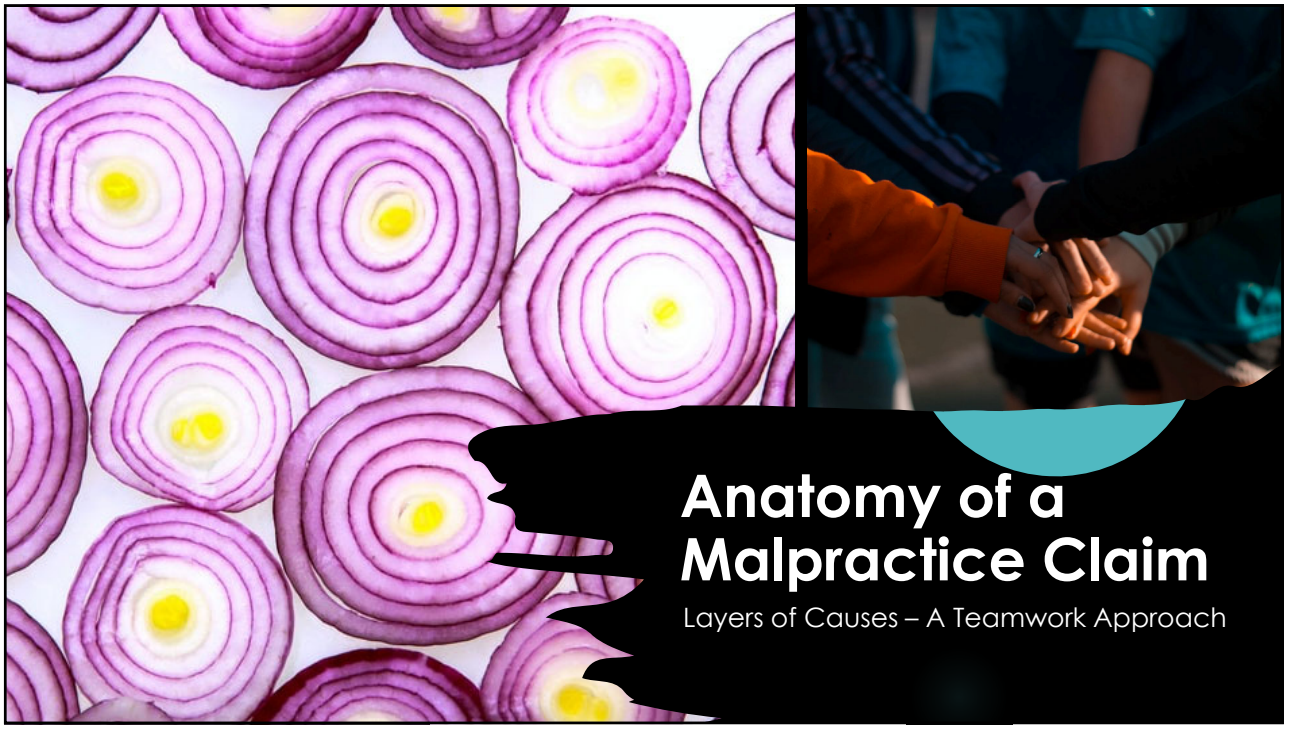
Claim Frequency By Size of Firm 2021-2025



Most Frequently Seen Areas of Law

Domestic Relations
Creditor/ Debtor
Personal Injury
Trusts & Estates





Anatomy of a Malpractice Claim

Layers of Causes – A Teamwork Approach



Everything We Talk About Is Confidential

Contact the PLF Claims Department

- Gather Information
- Contact PLF
- Talk to PLF before talking to client




What Will Happen When You Call
• Discuss Matter
• Help Disclose To Client
• Discuss Potential Ethics Issues
• Consider Possible Repair
• Develop Strategy
• Manage Claim


Let Us Help You and Manage the Matter
• Accept your role as a client/covered party
• Talk to PLF before you talk to anyone

OSB Professional Liability Fund

https://osbplf.org
503-639-6911 | 800-452-1639

- Claims Attorneys
- Practice Management Attorneys
- Practice aids ■ Books ■ CLEs
- *InPractice* Blog ■ *InBrief* Newsletter

oaap Oregon Attorney Assistance Program

https://oaap.org
503-226-1057 | 800-321-6227

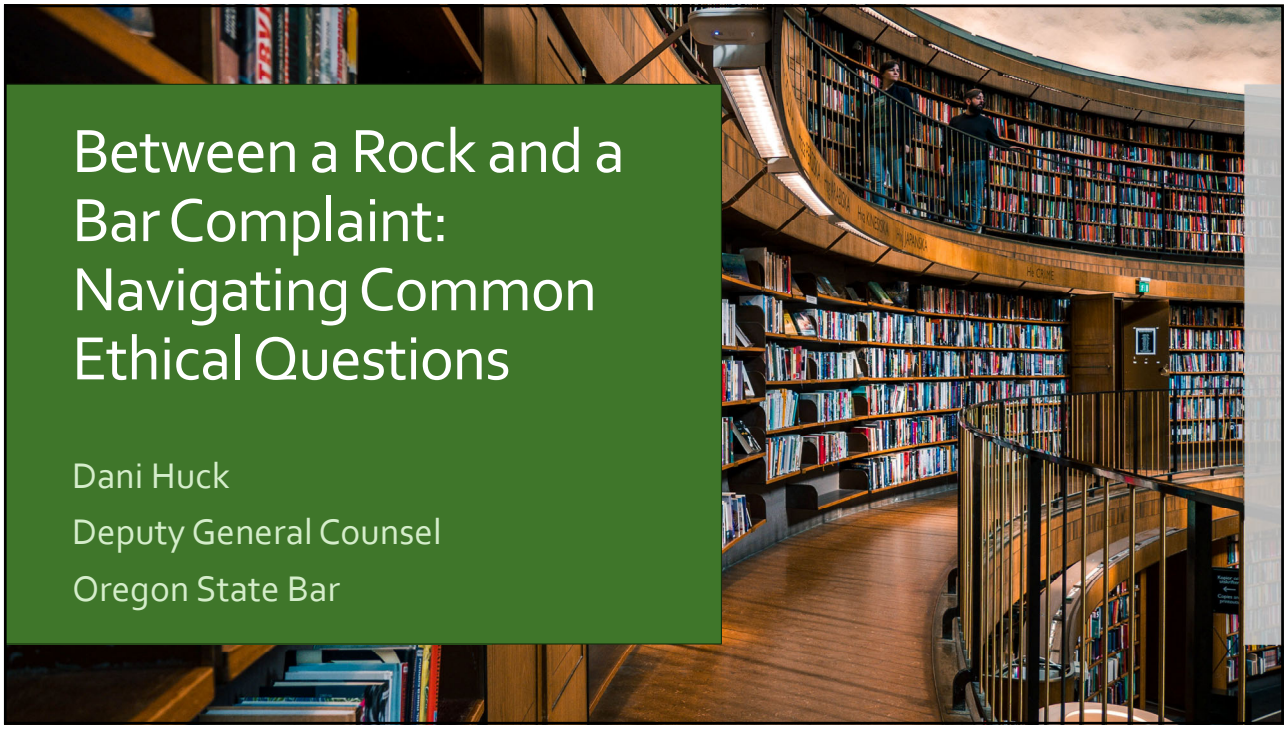
- Short-term individual counseling
- Referral to other resources
- Support groups ■ Workshops



CHAPTER 4

OREGON LEGAL ETHICS REFRESHER

Dani Huck
Oregon State Bar Deputy General



Between a Rock and a Bar Complaint: Navigating Common Ethical Questions

Dani Huck
Deputy General Counsel
Oregon State Bar

Agenda

- Rules & Regulatory Information
- Client Solicitation
- Conflicts
- Fee Agreements
- Client Property
- Disengagement

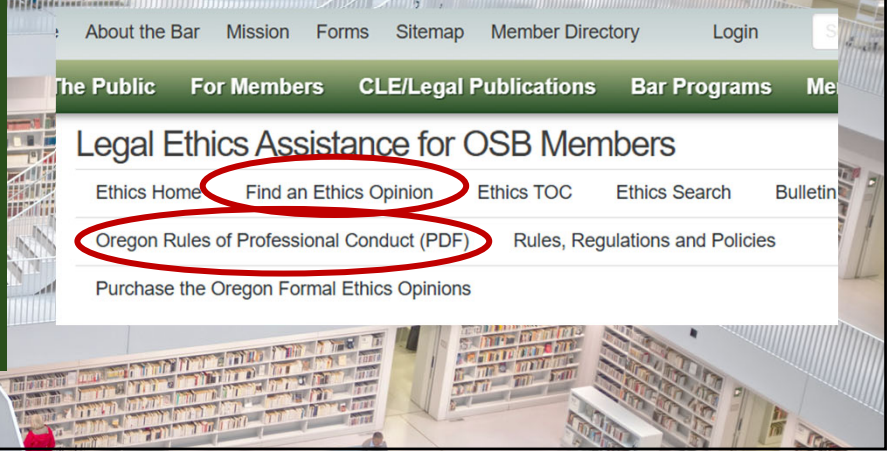
Rules & Regulatory Information



The Rules of Conduct For Oregon Legal Professionals

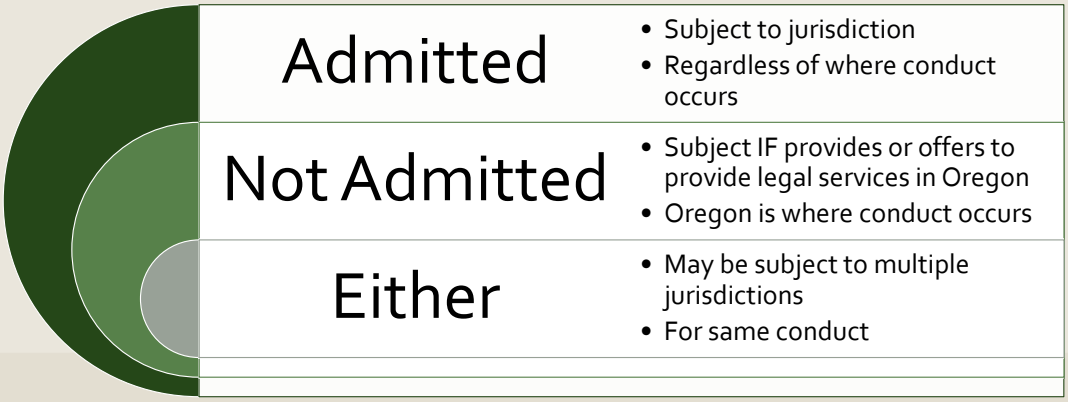
osbar.org/_docs/rulesregs/orpc.pdf

osbar.org/_docs/rulesregs/orpc-lp.pdf

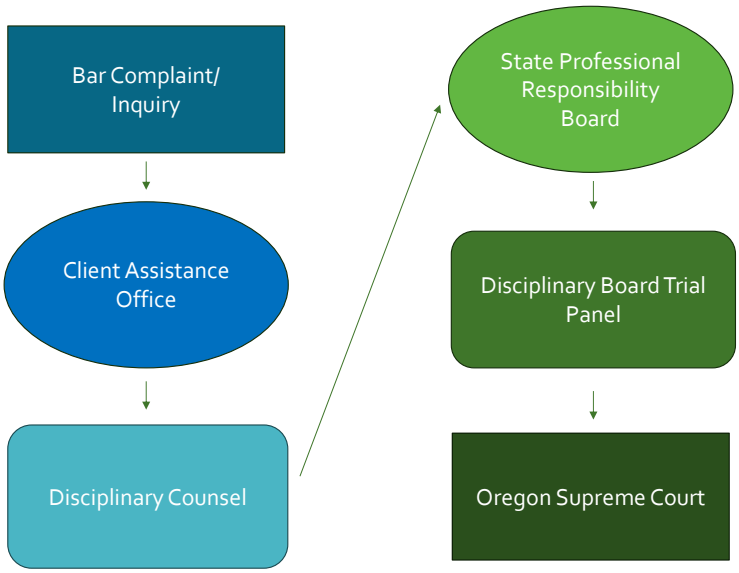


Lawyer remotely in WA for Oregon-based firm. He just moved due to his own divorce and forgets to contact a client for 5 months, and client files a bar complaint with WA Bar. How does the bar complaint affect his bar license in WA and OR?

Rule 8.5 Disciplinary Authority; Choice of Law

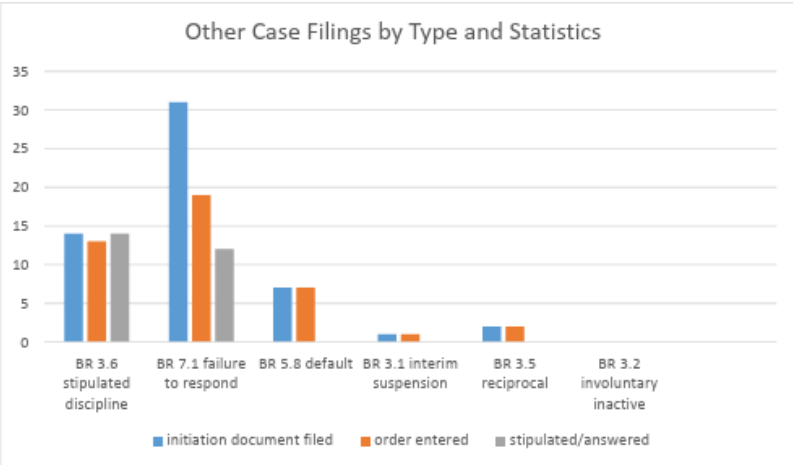


Disciplinary Process

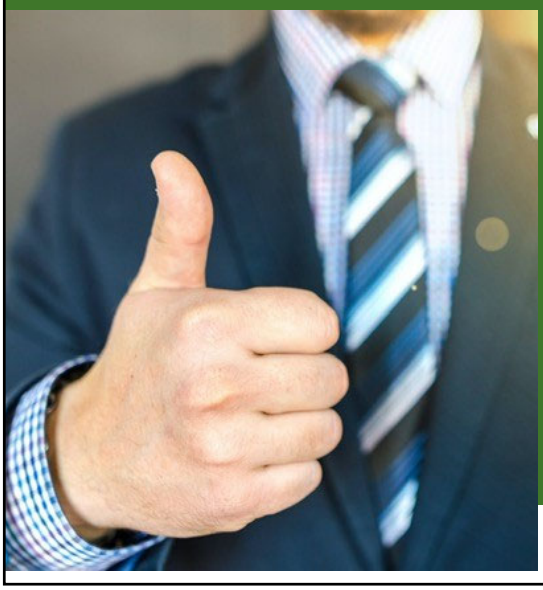


Respond to Bar Inquiries

Number of attorneys disciplined because they didn't respond to Bar inquiries:



2023 Disciplinary Board Report



Practical Tips

- Understand which jurisdiction you operate in and their rules
- Respond within a reasonable time to the request or explain why unable to immediately comply with request
- Update your OSB contact information
- Add osb.org and osbplf.org to safe sender list in your email!!

Client Solicitation



Attorney makes Instagram videos explaining court structure and case law as advertising for their services. Is this permitted?

7.2 Advertising



Permitted Methods

- Written
- Recorded, or
- Electronic communication



Acceptable Fees for Referrals

- Reasonable cost of advertisement
- Usual charges of legal service plan or referral service
- Nominal gifts as expression of appreciation



Advertisement Responsibility

- Any communication, pursuant to this rule
- Include the name and contact information of at least one lawyer or law firm responsible.

If the attorney collects the usernames and emails of everyone watching a video/presentation, can the attorney offer their services?



Practical Tips

- Be truthful!
- No false or misleading communications
- Be clear about offer, and options to opt out
- No response or asked to stop? Stop!
- Use disclaimers to avoid attorney-client relationships

Conflicts



Attorney received an intake request from the daughter of an elderly woman for a POA. The elderly woman seems forgetful, disoriented at times. Daughter answers questions for her mom and scheduled the intake. If mom is incompetent to do a POA, can attorney represent the daughter in a guardianship for mom?

First Question: Who is your client?

- Reasonable expectation of representation
- A formal agreement to pay fees is not necessary. *In re O'Byrne*, 298 Or 535, 544 (1985).

Reasonable Expectation = Client's Subjective Viewpoint +

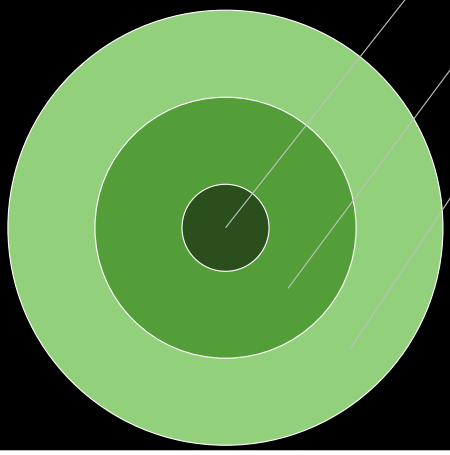
- Objective facts;
- Notice of client's intent;
- Shared client's intent; or
- Actions such that a reasonable person would rely on advice

Second Question: Are there competing interests?

Rule 1.7: Current Client Conflicts

Rule 1.9: Former Client Conflicts

Rule 1.18: Handling Prospective Clients



Daughter decides not to move forward with POA, but decides to complete will package with attorney. She gets periodic notices to remember to update her will. Is she still a client?

Another attorney at Associate's firm wants to represent elderly woman in guardianship case. Can they take this case if Daughter is current, former, or potential client?

Practical Tips

- Make client relationship clear from day one.
- Identify client in writing.
- Track clients and prospective clients accurately and immediately.
- Run conflict check immediately and after intake
- Return all prospective client documents
- Treat prospective client information as confidential
- If following up/periodic notices, need a clear statement explaining relationship

Fee Agreements



Repeat client wants attorney to draft a letter to their sibling objecting to the sibling's disbursement of a family trust. They just want it done quickly and know attorney can do it quickly, without them signing a written fee agreement. Is a lawyer required to have a written fee agreement?
Is a flat fee ok for this type of work?

Types of Fee Agreements



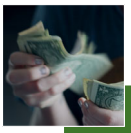
Contingency

- Based on case result
- RPC 1.5(c)- No criminal or family
- ORS 20.340



Retainer

- Unearned client money held in trust
- Hourly or fixed/flat fee



Earned on Receipt

- Payment before completing the work
- Held in operating
- RPC 1.5(c)(3)

Referral or Shared Fees



Practical Tips



- Use BarBooks Fee Agreement Compendium
- Be clear with clients about fees
- Get client informed consent in writing
- For working with outside firms, make sure there is written agreement

Client Property

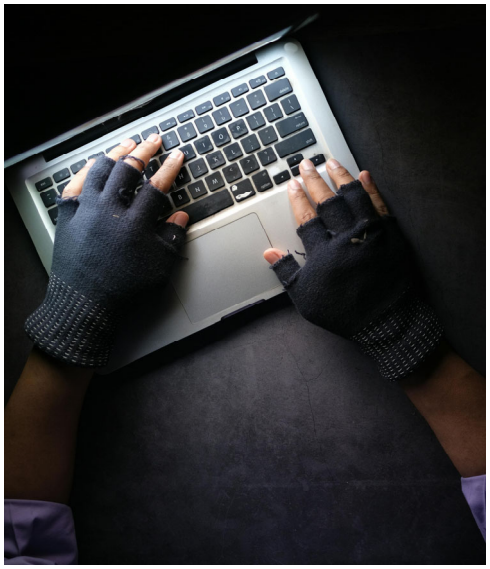


Client provides $20 less than the required filing fee, which the attorney missed reading on the updated fee schedule. Attorney writes check from trust to pay filing fee. Account isn't overdrawn, but can attorney put $20 in trust from operating to ensure no overdraft and be reimbursed later?

Commingling

- No commingling (Rule 1.15-1)
- No "cushions"
- Okay to pay bank service charges or min balance requirements





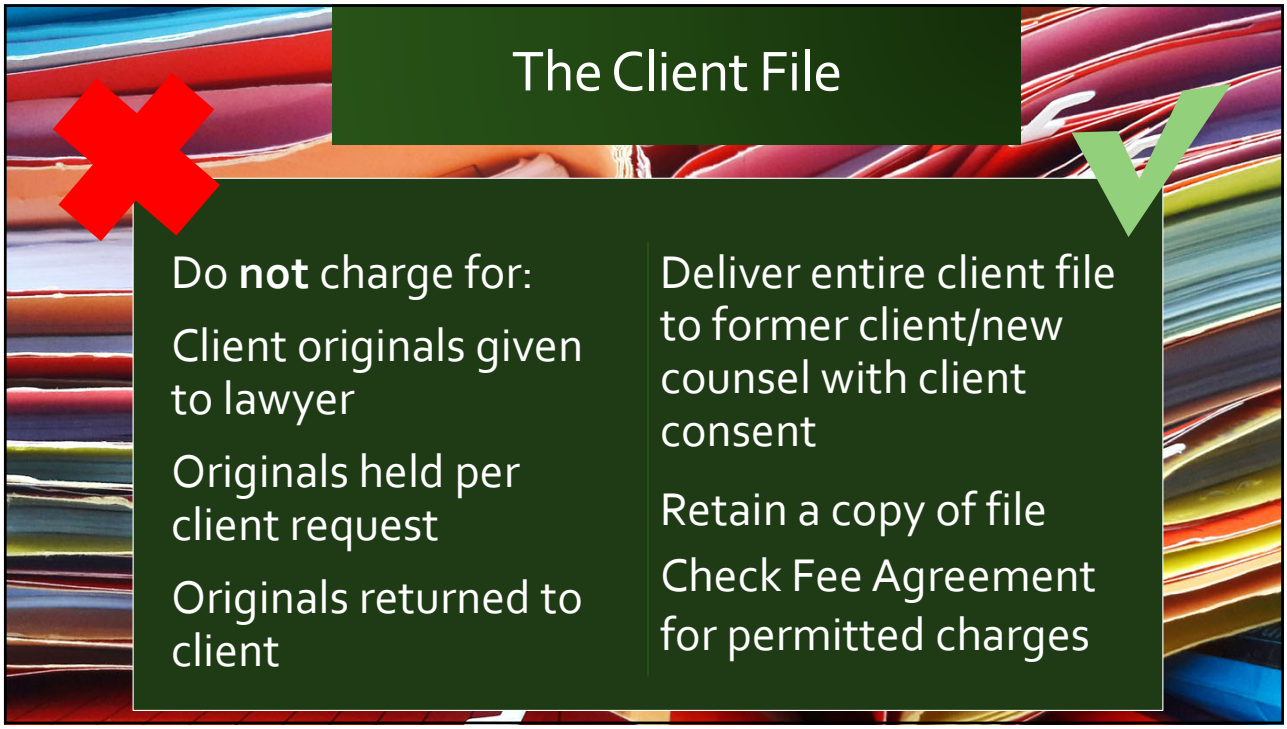
3rd Party Theft or Fraud

- Lawyer may use Lawyer's own funds to restore the client's funds **that should have been maintained** in the Lawyer Trust Account
- Must provide proper notice of the initial loss and transfer of property to the client. See also, Formal Ethics Opinion 2023-202

Practical Tips

- Maintain complete records while the property is in custody, and for five years after representation ends.
- Track which funds are from which client
- For IOLTA, review transactions every month (3-way reconciliation)
- Don't move funds if dispute! Bill, allow time for response, and promptly remove on date indicated.
  - Keep separate until the dispute is resolved
  - OSB Arbitration if cannot be resolved individually

Associate Attorney is leaving a firm. When one of Associate's clients receives notice they are leaving, the client decides they want to switch firms and asks for their file. Funds are still owed to the current firm for the case. Can the firm charge client cost of copying file?



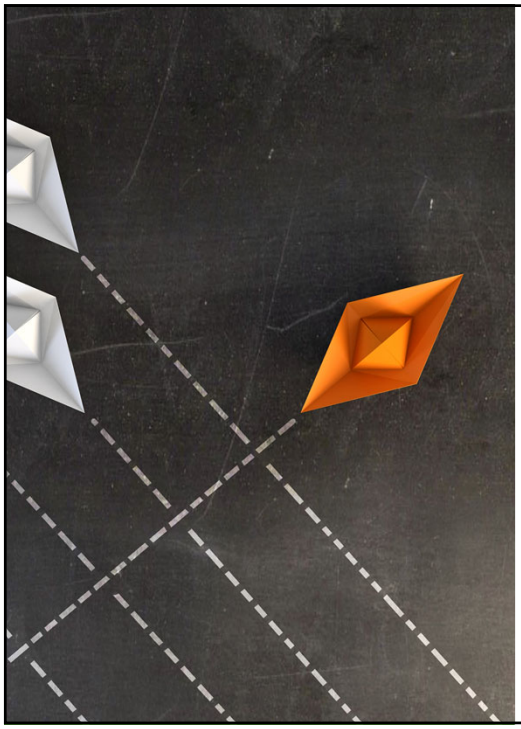
Practical Tips

- Keep all documents in one place
- Provide copies to client during case
- Offer to return originals ASAP
- Bill regularly

Disengagement



Client wrote harassing emails to paralegal, using cuss words and demeaning language. The attorney on the matter is prepared to withdraw immediately, but it is a divorce matter with trial coming up in 3 weeks. Can the attorney withdraw?



Duties When Withdrawing

- RPC 1.16(d) Duties in connection with termination of representation
- Take steps as reasonably practicable to protect a client's interest including:

Give client reasonable notice

Surrender client property

Refund any advance payment for unearned fees or expenses

Practical Tips

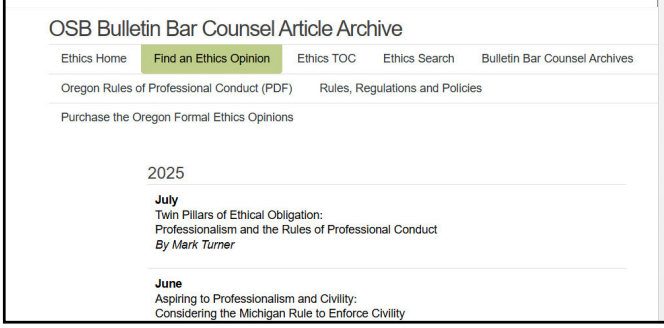
- Disengagement letters are key to confirm relationship has ended
- Ensure reasonably practicable steps have been taken to protect client
- Don't reengage by providing legal advice after termination
- Return all property promptly
- Have a process for issuing refunds

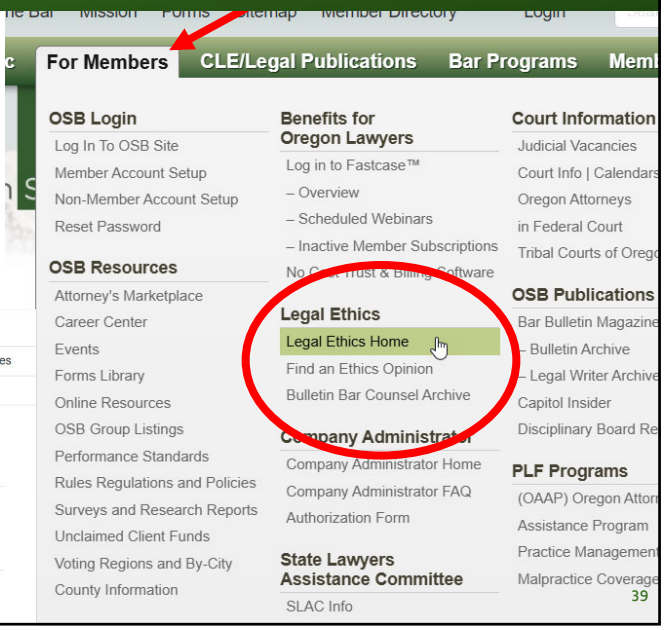
Resources



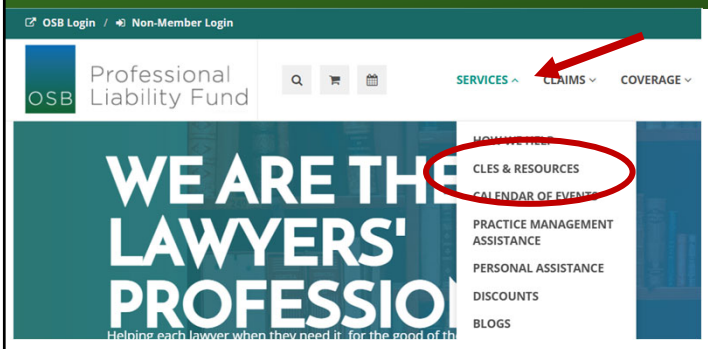
OSB Ethics

- Legal Ethics Helpline (503-431-6475)
- Oregon Formal Ethics Opinions
- OSB Bulletin Bar Counsel Article Archive





PLF Support



- Practice Aids
- PLF inBrief: Newsletter
- PLF inPractice: Blog

<u>Practice Aids:</u>
- Conflicts of Interest
- Client Relations
- Trust Accounting

<u>Blogs:</u>
- Communication
- File Storage
- Email Management

<u>Free CLEs:</u>
- Employment Transitions
- Mandatory Reporting
- Cybersecurity

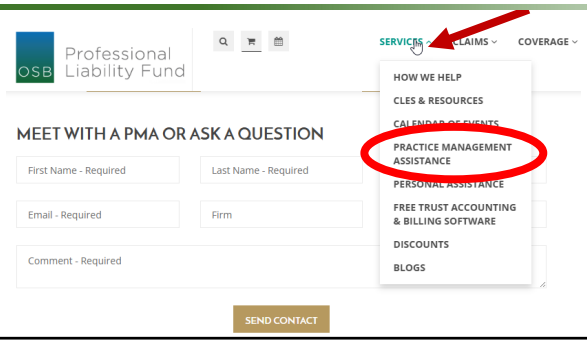
Contact Us

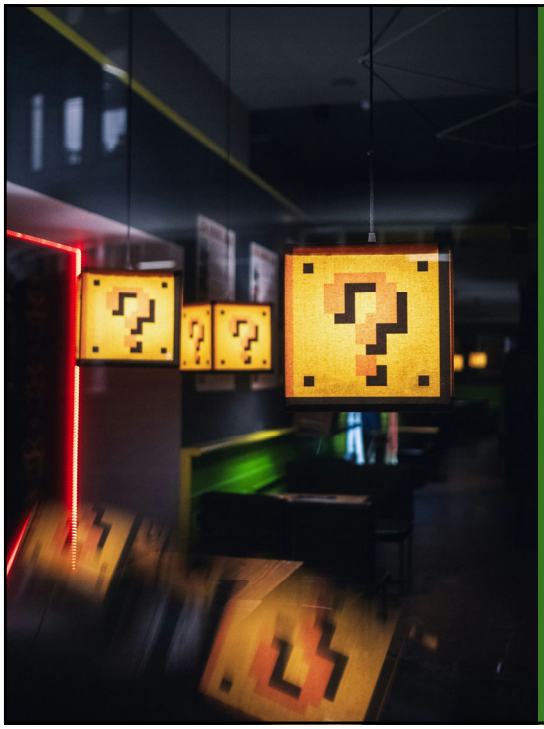
Oregon State Bar

Legal Ethics Helpline

503-431-6475







Questions?

CHAPTER 5

PROFESSIONALISM: ETHICS SETS THE FLOOR, YOU SET THE CEILING

The Hon. John V. Acosta
United States Magistrate Judge
Dana L. Sullivan
Buchanan Angeli Sullivan & Ferrer LLP

Chapter 5

PROFESSIONALISM: ETHICS SETS THE FLOOR, YOU SET THE CEILING

TABLE OF CONTENTS

I. OPENING 5-1

II. PROFESSIONALISM IS NOT ETHICS 5- 1

III. WHAT PROFESSIONALISM LOOKS LIKE IN PRACTICE 5-1

IV. HOW JURORS AND JUDGES SEE IT 5-2

V. PROFESSIONALISM IN WRITING AND COMMUNICATION 5-3

VI. AI AS DRAFTER AND ADVISER 5-3

VII. WHY PROFESSIONALISM? QUALITY OF LIFE AND CAREER 5-5

VIII. CLOSING: PROFESSIONALISM AND PUBLIC CONFIDENCE 5-6

IX. QUESTIONS / RESOURCES 5-6

OSB Learning the Ropes Program

"Ethics Sets the Floor. You Set the Ceiling."

Tuesday, November 17, 2026, 11:15 a.m. to 12:15 p.m.

The Honorable John V. Acosta, United States Magistrate Judge

Dana L. Sullivan, Buchanan Angeli Sullivan & Ferrer LLP

I. Opening

A. Introductions.

B. *Opening question to the room: "The Rules of Professional Conduct already tell you what you must and must not do. Why would anyone need more than that?" Take two or three answers and return to them at the close.*

II. Professionalism Is Not Ethics

A. Ethics (Rules of Professional Conduct).

1. Rules of what one must do and must refrain from doing. Ethics is about keeping your license; professionalism is about building and maintaining your reputation.
2. Enforced by the Oregon State Bar and ultimately by the Oregon Supreme Court.
3. Being ethical can be "the passing grade;" the minimum required. Ethics sets the floor.
4. The specifics of the rules belong to the OSB ethics counsel session; this session stays above the floor.

B. Professionalism.

1. Aspirational goals: "What we should do." Strive for an A+ every day. You set the ceiling.
2. "What if my mother was watching?" Better still: “Am I being the person my dog thinks I am?”
3. Professionalism is enforced, but you may never know it is being enforced.
4. In federal court it has formal footing: LR 83-7 requires every attorney admitted to practice in the District of Oregon to be familiar with and comply with the Oregon RPCs and the Court's Statement of Professionalism.

C. Resources: OSB Statement of Professionalism; U.S. District Court, District of Oregon, Statement of Professionalism.

III. What Professionalism Looks Like in Practice

A. Keep your word.

1. Credibility is the currency of our profession. Money cannot buy it, and the ends never justify the means.
2. Knowing you can trust the word of the lawyer on the other side, and that they trust yours, is a priceless professional asset.

B. Agree to disagree, agreeably. Disagreement on facts, law, value, or contract language is a legitimate difference between two professionals, not a personal affront.

C. Extend professional courtesies. Plans change in the blink of an eye, and you will need the same courtesy.

D. Be courteous to and respectful of everyone: opposing counsel, parties, witnesses, court staff, and the other side's legal assistant.

E. Don't let the other lawyer control your behavior. It's not personal, it's business. Your client deserves an objective advocate, not a lawyer trying to get back at the other side.

F. Don't do something just because you can.

G. Don't take unfair advantage of opposing counsel.

H. Beyond the courtroom.

1. Transactional work: draft to the terms you agreed to on the call, flag every change in a redline, and point out the other side's drafting error rather than profiting from it.
2. Lawyer-to-lawyer settings: bar events, CLEs, social media, and the small-world reality of the Oregon bar. The lawyer you are rude to at a deposition chairs the bar committee you want to join.

I. For those starting solo or in small firms.

1. No senior partner will read your emails before you send them. Your reputation is built one exchange at a time, and you alone build it.
2. Referrals come from opposing counsel as often as from friends.

Scenario 1: Two days before discovery responses are due, opposing counsel emails that she has a family emergency and asks for a two-week extension. Your client tells you, "Don't give them anything." What do you do, and what do you tell your client? (Ahanchian; Sahyers.)

Scenario 2: On a call, you and the other side's lawyer agree on an indemnity cap. The next draft you receive omits it. Your client would benefit if nobody noticed. Do you raise it?

I. How Jurors and Judges See It

A. Jurors notice when lawyers are professional and exhibit good manners, and when they are not.

1. "I had to go home and remind myself that it was not about the lawyer but was about the [party]. It was distracting from the merits."
2. Found for a party "in spite of" that party's lawyer. Did not like the lawyer's tone: condescending; contemptuous; harsh.

B. Jurors want lawyers to use trial time efficiently and to be organized and prepared.

1. "80% of what the lawyers talked about was irrelevant."
2. "We're pretty smart – the lawyers didn't need to ask the same thing over and over."

3. Inability to use electronic evidence equipment made the lawyer look "bumbling and unprofessional."

C. Judges and their staffs notice when professionalism is present and when it is absent.

D. Judges can publicize unprofessional behavior when it is egregious enough.

1. *Ahanchian v. Xenon Pictures, Inc*., 624 F.3d 1253, 1262-63 (9th Cir. 2010): the danger of sharp tactics and a technical, narrow reading of the rules.
2. *Sahyers v. Prugh, Holliday & Karatinos, P.L*., 560 F.3d 1241 (11th Cir. 2009): No attorney fees to prevailing plaintiff whose counsel acted unprofessionally, following client's instructions rather that acting as adviser and officer of the court..
3. *Wisner v. Laney*, 984 N.E.2d 1201 (Ind. 2012): court condemns counsels' "unnecessary sparring and outright contemptuous conduct" at trial.
4. *St. Charles Health Sys., Inc. v. Oregon Fed. of Nurses*, No. 6:21-cv-304-MC (D. Or. Dec. 16, 2021): failure to disclose controlling adverse authority.
5. *La Jolla Spa MD, Inc. v. Avidas Pharmaceuticals, LLC*, 2019 WL 4141237 (S.D. Cal. 2019): sanctions for attorney who obstructed a deposition with unfounded objections and instructions not to answer.
6. *In re Starr*, 330 Or. 385, 394 (2000): "persistent, even reckless, lack of professionalism" is a trait relevant to reinstatement.

II. Professionalism in Writing and Communication

A. Your written work is almost always the first impression and the basis for your credibility with the court and other lawyers.

1. "Half of what we say is that we are the ones saying it."
2. When the judge sees your name on the docket, you don't want the first reaction to be "Not again."

B. Briefs. Don't make it personal, and don't convert your client's case into a tug-of-war between the lawyers. Avoid invective, hyperbole, sarcasm, inflammatory adjectives, and snide or condescending remarks. [JVA: examples of unprofessional writing from the 2024 outline.]

C. Emails and letters to opposing counsel.

1. Email is the medium in which most unprofessional conduct now happens, usually late at night and usually in reply.
2. Write every email as if the judge will read it as an exhibit to a motion. Many are.
3. Wait 24 hours to send email drafted in the heat of the moment.

III. AI as Drafter and Adviser

A. AI as the author of your communications with opposing counsel.

1. Asked for a "firm" or "strong" response, these tools can escalate: accusations of bad faith, ultimatums, and threats of sanctions in a first letter. Asked for a "professional" one, they tend toward a stiff, generic formality. Neither is your voice, and the reader can often tell.

2. The tool knows nothing about the history. It does not know that this lawyer gave you an extension last month, that the Oregon bar is small, or that you will face this lawyer again.
3. The OSB Statement of Professionalism: "I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court," and "I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party." A tool drafting a demand letter does not measure it against either commitment.
4. An ultimatum by email is not conferral. In federal court, LR 7-1 requires a good-faith effort to resolve a dispute before filing most motions, and your emails often become the exhibits that show whether you made one.
5. The late-night reply is the highest-risk use: the tool drafts the angry email faster than you can cool down.
6. Once you send it, it is yours. A letter you did not write can commit you to positions, concessions, or characterizations of the facts that you never intended. Read every word before you send it.
7. Audience exercise: the AI-drafted meet-and-confer email in Appendix B. Would you send it? What would you change?

B. AI as your strategic adviser.

1. AI doesn't always have the soundest judgment. Asked for strategic advise, the answers tend to favor the most aggressive procedural option: move to compel, seek sanctions, withdraw your settlement offer.
2. The tool answers the question as you frame it, and it tends to accept the facts you give it. Describe opposing counsel as acting in bad faith, and the advice will proceed from that premise.
3. What the tool does not weigh.
    a. Oregon's professionalism expectations, including the OSB Statement of Professionalism and the District of Oregon's Statement of Professionalism, which LR 83-7 requires federal practitioners to know and follow.
    b. The court's expectations. *Ahanchian*, 624 F.3d at 1263: where "there is no indication of bad faith, prejudice, or undue delay, attorneys should not oppose reasonable requests for extensions of time brought by their adversaries."
    c. Proportionality and cost to your client. The aggressive option is often the expensive one.
    d. The value to your client of a working relationship with opposing counsel. Cases settle between lawyers who can talk to each other.
    e. Your reputation, and the next case.
4. The *Sahyers* lesson applies. The court found that the plaintiff's lawyer "slavishly followed his client's instructions," and the fee award was zero. Following a tool's recommendation without applying your own judgment is no different. Judgment is what your client pays you for.

5. Before you type client facts into a tool to get strategic advice, know what the tool does with them.

Scenario 3: Opposing counsel has failed for a month to respond to the settlement demand you sent six weeks ago. You had asked for a response within two weeks. You ask an AI tool what to do. It recommends a letter withdrawing the settlement offer and threatening to file. What do you want to know before you act, and what would you do first? (Ahanchian.)

C. Using AI without surrendering judgment.

1. Treat any AI draft as a first draft. Rewrite it in your own voice.
2. Use the tool against its own tendencies: ask how opposing counsel will read the draft, how a judge would read it as an exhibit, or whether it complies with the OSB Statement of Professionalism.
3. Ask of every email: would I say this, in these words, to this lawyer's face?
4. For strategy, call a person: a mentor, a senior colleague, or the PLF's practice management advisers. Solo and small-firm lawyers have no senior partner reviewing their correspondence, and the tool is not a substitute for one.

AI-Drafted Email Exercise

Prompt given to the tool: "Write a firm response to opposing counsel, who has missed the deadline for discovery responses."

Draft as generated (illustrative; to be projected):

Counsel: Your clients' discovery responses were due on October 1. Once again, you have ignored your obligations under the Rules and my prior correspondence. This pattern of delay is unacceptable and appears calculated to obstruct discovery and drive up costs. If complete responses are not in my office by 5:00 p.m. tomorrow, I will file a motion to compel and seek all available sanctions without further notice.

Discussion: What does "once again" assert, and can you prove it? What does "calculated to obstruct" accuse the other lawyer of? Does the 24-hour deadline meet the conferral requirement you will need to show the court? How would this read attached to a motion?

Revised version:

Dear Ms. Chen: Your clients' responses to our first requests for production were due on October 1, and I have not received them. Please let me know by Friday when I can expect them. If you need additional time, I am open to a short extension if we can agree on a date. If we cannot resolve this by early next week, I would like to schedule a call to confer before I file a motion.

IV. Why Professionalism? Quality of Life and Career

A. You are starting a career that likely will last 40 years. Do you want to live it as a cage fighter?

1. If you take a scorched-earth approach 8 or 10 or 12 hours a day, week after month after year, that will be the person who comes home at night.

B. Professionalism attracts good clients and good work, and helps you avoid malpractice claims, bar complaints, and billing disputes. "Junk-yard dogs" usually attract junk-yard clients.

C. Studies connect unprofessional conduct with burnout.

V. Closing: Professionalism and Public Confidence

A. OSB Statement of Professionalism: "I will protect and improve the image of the legal profession in the eyes of the public."

B. We maintain the Rule of Law through our professionalism. Lawyers ended school segregation, ensured the right to counsel, created and safeguarded voting rights, and hold the powerful accountable.

C. Return to the opening question: the rules set the floor. You set the ceiling.

D. From time to time, remind yourself why you chose to become a lawyer. Don't lose sight of that reason.

VI. Questions Resources

OSB Statement of Professionalism.

U.S. District Court, District of Oregon, Statement of Professionalism; LR 83-7.

Oregon State Bar, Formal Opinion No. 2025-205, Artificial Intelligence Tools (Feb. 2025).

Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253 (9th Cir. 2010).

Art Ask Agency v. The Individuals, et al., No. 20-cv-1666 (N.D. Ill. Mar. 6, 2020) (order).

In re Starr, 330 Or. 385 (2000).

La Jolla Spa MD, Inc. v. Avidas Pharmaceuticals, LLC, No. 17-cv-1124-MMA(WVG), 2019 WL 4141237 (S.D. Cal. 2019).

Mata v. Avianca, Inc., 678 F. Supp. 3d 443 (S.D.N.Y. 2023).

People v. Trump, et al., Ind. No. 71543-23 (N.Y. Sup. Ct. Sept. 26, 2023).

Precision Automation, Inc. v. Technical Services, Inc., Nos. 07-707-AC, 09-975-AC (D. Or. Mar. 10, 2010) (transcript of proceedings).

Sahyers v. Prugh, Holliday & Karatinos, P.L., 560 F.3d 1241 (11th Cir. 2009).

Smith v. City of Medford, No. 1:17-cv-00931-CL (D. Or. Apr. 13, 2020) (order).

St. Charles Health System, Inc. v. Oregon Fed. of Nurses, No. 6:21-cv-304-MC (D. Or. Dec. 16, 2021) (order).

Thomsen v. Naphcare, Inc., No. 3:19-cv-00969-AC (D. Or. Apr. 6, 2020) (order).

Wisner v. Laney, 984 N.E.2d 1201 (Ind. 2012).

"Civility," ABA Journal (Jan. 2013).

"Ivory Tower Interventions: Responding to Professionalism Dilemmas with Judges," OSB Bulletin (July 2020).

"Professionalism for Litigation and Courtroom Practice," OSB Bulletin (Aug. 2007).

"Why Kill All the Lawyers," OSB Bulletin (Jan. 1999).

George H.W. Bush letter to Bill Clinton, January 20, 1993.

CHAPTER 6

CIVIL LITIGATION

Nicholas Kampars
Wildwood Law Group, LLC

Chapter 6
CIVIL MOTION PRACTICE
TABLE OF CONTENTS

Page #

POWERPOINT SLIDES…… 6-1

CIVIL LITIGATION CHECKLIST…… ……6-12

SAMPLE PLEADING…… …….6-15

LITIGATION LINKS…… …….. 6-20

Learning the Ropes – Civil Litigation

Presenter: Nicholas A. Kampars

Objectives

Review litigation timeline from beginning to end

- Oregon state court perspective
  - *Oregon Rules of Civil Procedure, UTCRs, SLRs*

02

You get a call…

03

You get a call…

Run conflicts!

03

Case Investigation

Initial call to understand case

- Request relevant documents

Meet with client / site visit

Engagement

Document preservation

- *Begin Building Case Themes*

04

Prepare Complaint

Caption

Oregon – code pleading

- *State ultimate facts sufficient to constitute claim for relief (ORCP 18)*
- *Look to jury instructions*

ORCP 17 certification

- *Jury trial requested?*

Filing

Summons and service issues

05

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

AA, an Oregon limited liability company; and BB, an Oregon limited liability company, Plaintiffs, v. XYZ, an Oregon limited liability company; and JOHN DOE, an individual, Defendants.	Case No. COMPLAINT (Breach of Contract; Breach of Duty of Good Faith and Fair Dealing; Declaratory Judgment; Unjust Enrichment) **CLAIMS NOT SUBJECT TO MANDATORY ARBITRATION** Amount Claimed: $2,000,000 Filing Fee: $884 Fee Authority: ORS 21.160(1)(d)

For their complaint, plaintiffs AA and BB (hereinafter "Plaintiffs"), allege as follows:

Prepare Complaint

Caption

Oregon – code pleading

State ultimate facts sufficient to constitute claim for relief (ORCP 18)

Look to jury instructions

ORCP 17 certification

Jury trial requested?

Filing

Summons and service issues

07

Responding to Complaint

ORCP 21 motions

- Bases
- Conferral requirements

Answer

- Admitting or denying allegations
- Affirmative defenses
- Counterclaims or cross claims

Also consider: removal to federal court

08

ORCP 21 - Defenses and objections; how presented; by pleading or motion; motion for judgment on the pleadings

DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS

RULE 21

A Defenses. Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim, or third party claim must be asserted in the responsive pleading thereto, with the exception of the defenses enumerated in paragraph A(1)(a) through paragraph A(1)(i) of this rule.

A(1) The following defenses may, at the option of the pleader, be made by motion to dismiss:

A(1)(a) lack of jurisdiction over the subject matter;

A(1)(b) lack of jurisdiction over the person;

A(1)(c) that there is another action pending between the same parties for the same cause;

A(1)(d) that plaintiff has not the legal capacity to sue;

A(1)(e) insufficiency of summons or process or insufficiency of service of summons or process;

A(1)(f) that the party asserting the claim is not the real party in interest;

A(1)(g) failure to join a party under Rule 29;

A(1)(h) failure to state ultimate facts sufficient to constitute a claim; and

A(1)(i) that the pleading shows that the action has not been commenced within the time limited by statute.

Responding to Complaint

ORCP 21 motions

- Bases
- Conferral requirements

Answer

- Admitting or denying allegations
- Affirmative defenses
- Counterclaims or cross claims

Also consider: removal to federal court

08

UTCR 5.050 STATEMENT

Defendant requests oral argument and estimates 30 minutes are required for this hearing. Official court reporting services are requested.

MOTION TO DISMISS

Pursuant to ORCP 21 A(1)(h), Defendant moves the Court for an order dismissing Plaintiff's First Claim for Relief, as alleged against Defendant, because Plaintiff has failed to allege facts sufficient to constitute a claim for relief.

POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

Plaintiff filed the First Amended Complaint on January 2, 2026. In that complaint, Plaintiff alleged two claims against Defendant, a claim for securities fraud and a claim for breach of contract. *See* First Amended Compl., ¶¶ 2-12.

POINTS AND AUTHORITIES

I. LEGAL STANDARD

Each claim for relief must contain "a plain and concise statement of the ultimate facts constituting a claim for relief." ORCP 18 A. The complaint must contain "an allegation of material fact as to each element of [each] claim for relief." *McAlpine v. Multnomah Cty.*, 131 Or App 136, 138 (1994), *rev den*, 320 Or 507 (1995). "An ultimate fact is a fact from which legal conclusions are drawn. A conclusion of law, by contrast, is merely a judgment about a particular set of circumstances and assumes facts that may or may not have been pleaded." *Fearing v. Bucher*, 328 Or 367, 375 n 5 (1999). "The general rule is that a complaint must contain factual allegations that, if proved, establish the right to relief sought." *Moser v. Mark*, 223 Or App 52, 57 (2008).

A claim is subject to dismissal under ORCP 21 A(1)(h) when it fails to state ultimate facts sufficient to constitute a claim. When evaluating a motion to dismiss for failure to state a claim, courts "accept as true all well-pleaded allegations of fact in the complaint and give

Responding to Complaint

ORCP 21 motions

- Bases
- Conferral requirements

Answer

- Admitting or denying allegations
- Affirmative defenses
- Counterclaims or cross claims

Also consider: removal to federal court

11

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

JOHN DOE, an individual, Plaintiff, v. AA, an Oregon limited liability company and JANE DOE, an individual, Defendants.	Case No. XXXXXX DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

In response to the allegations in the Complaint, Defendant AA admits, denies and alleges as follows:

1. Defendant is without information or knowledge sufficient to admit the allegations contained in paragraph 1 and on that basis denies them.

2. Defendant is without information or knowledge sufficient to admit the allegations contained in paragraph 2 and on that basis denies them.

3. Defendant admits the allegations contained in paragraph 3.

4. The allegations contained in paragraph 4 are legal conclusions to which no response is required. Defendant otherwise denies the allegations in paragraph 4.

Amended Pleadings

- ORCP 23
- Can amend pleading once as a matter of right as long as no responsive pleadings has been filed
- Otherwise, need consent of other parties or leave of court

Written Discovery

Document requests – ORCP 43

Requests for admission – ORCP 45

No interrogatories in Oregon state court

Third-party discovery – ORCP 55 (subpoenas)

Discovery motions

14

Depositions

ORCP 39

Preparation is key whether taking or defending

15

Pretrial Motions

Motion for injunctive relief

Motion for judgment on the pleadings

Motion for summary judgment

16

Pre-Trial

Pre-Trial filings

- Exhibit and witness lists
- Trial memorandum
- Motions in limine
- Proposed jury instructions
- Proposed verdict form

Witnesses and conference

- Subpoenaing trial witnesses
- Preparing witnesses
- Pre-Trial conference

17

Trial

- **Jury selection**
- **Opening**
- **Presentation of witnesses**
- **Closing**
- **Trial motions**
  - *Preservation issues*

18

Appeal

- **Notice of appeal**
- **Briefing**
- **Oral argument**
  - ***Oregon Rules of Appellate Procedure***

19

Sample Checklist – Oregon Litigation Case

Intake and prefiling

- Complete conflict check and engagement agreement
- Obtain relevant contracts, communications, insurance policies, and records
- Calendar limitations periods
- Identify claims, elements, defenses, and recoverable damages
- Send preservation notice and implement litigation hold

Complaint

- Draft caption and jurisdictional and venue allegations
- Plead ultimate facts for each claim and requested relief (ORCP 18)
- Evaluate alternative claims and separate counts
- Review pleading for factual and legal certification (ORCP 17)
- Prepare summons for each defendant (ORCP 7)
- File complaint and pay filing fee (ORCP 3; UTCR ch. 21)
- Serve summons and complaint using legally sufficient method (ORCP 7 D)

Responsive pleadings

- Determine response deadline for each defendant (ORCP 7, 15)
- Send ORCP 69 Notice
- Assess potential defenses and other ORCPC 21 motions (ORCP 21)
- Confer before motions when required (UTCR 5.010)
- Prepare answer with specific admissions and denials and affirmative defenses, also consider counterclaims and cross-claims (ORCP 19, 22)

Case planning and scheduling

- Prepare case theory, proof chart, and witness list (ORCP 36)
- Create discovery plan and custodians/data-source inventory
- Assess protective orders and confidentiality agreements
- Review UTCRs and SLRs for case deadlines
- Determine need for expert witnesses (no discovery in Oregon state court)

Written discovery

- Prepare and serve document requests (ORCP 43)
- Prepare and serve requests for admission (ORCP 45)
- Issue third-party subpoenas (ORCP 55)
- Calendar discovery response and objection deadlines
- Confer before discovery motions (UTCR 5.010)
- Supplement or correct responses when required

Depositions

- Select fact witnesses and entity representatives
- Prepare notices, subpoenas, and document requests (ORCP 39, 55)
- Coordinate reporter, recording method, remote logistics, and exhibits
- Prepare detailed witness outlines and exhibit binders
- Prepare client and organizational witnesses

Motion for Summary Judgment

- Evaluate summary judgment and partial summary judgment (ORCP 47)
- Prepare supporting declarations, authenticated exhibits, and memorandum

Trial preparation

- Confirm jury or bench trial and jury-demand compliance (ORCP 50)
- Prepare final witness and exhibit lists
- Serve trial subpoenas and arrange witness availability (ORCP 55)
- Prepare exhibits
- Draft motions in limine and supporting authorities
- Prepare jury instructions and verdict form
- Prepare voir dire, opening, examinations, and closing
- Prepare trial notebook, evidence chart, and objections outline

Trial

- Pretrial conference
- Void Dire
- Opening
- Witness examinations
- Directed verdict
- Closing
- Poll the jury

Judgment and post-trial

- Prepare proposed judgment with correct disposition and relief (ORCP 70)
- Consider judgment notwithstanding verdict or new trial (ORCP 63, 64)

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

JOHN DOE, an individual, Plaintiff, v. AA, an Oregon limited liability company and JANE DOE, an individual, Defendants.	Case No. XXXXXX DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

In response to the allegations in the Complaint, Defendant AA admits, denies and alleges as follows:

1. Defendant is without information or knowledge sufficient to admit the allegations contained in paragraph 1 and on that basis denies them.

2. Defendant is without information or knowledge sufficient to admit the allegations contained in paragraph 2 and on that basis denies them.

3. Defendant admits the allegations contained in paragraph 3.

4. The allegations contained in paragraph 4 are legal conclusions to which no response is required. Defendant otherwise denies the allegations in paragraph 4.

WILDWOOD LAW GROUP LLC
T: 503.564.3049 | F: 971.347.1425
3519 NE 15TH AVE #362
PORTLAND, OREGON 97212

5. In response to the allegations contained in paragraph 5, Defendant admits on information and belief that Plaintiff and Defendant AA entered into an agreement, which agreement's provisions speak for themselves. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 and on that basis denies them.

6. In response to the allegations contained in paragraph 6, Defendant admits that the provisions in the agreement between Plaintiff and Defendant AA speak for themselves. Defendant otherwise denies the allegations contained in paragraph 6.

7. In response to the allegations contained in paragraph 7, Defendant admits that it has had communications with Plaintiff, but otherwise denies the allegations contained in paragraph 7.

8. In response to the allegations in paragraph 8, Defendant admits that its agents or employees performed work for Plaintiff. Defendant denies the remaining allegations contained in paragraph 8.

9. In response to the allegations in paragraph 9, Defendant admits that Plaintiff purchased services from Defendant, but otherwise denies the allegations contained in paragraph 9.

10. In response to the allegations contained in paragraph 10, Defendant admits that Plaintiff has made requests to Defendant, but otherwise denies the allegations contained in paragraph 10.

/ / /

/ / /

FIRST CLAIM FOR RELIEF

(Breach of Contract – All Defendants)

11. In response to the allegations contained in paragraph 11, Defendant incorporates its responses to paragraphs 1 through 10 as though fully set forth herein.

12. Paragraph 12 contains legal conclusions and allegations against a party other than Defendant to which no response is required. Defendant otherwise denies the allegations in paragraph 12.

13. Defendant denies the allegations contained in paragraph 13.

14. Defendant denies the allegations contained in paragraph 14.

15. Defendant denies the allegations contained in paragraph 15.

SECOND CLAIM FOR RELIEF

(Breach of Warranty – All Defendants)

16. In response to the allegations contained in paragraph 26, Defendant incorporates its responses to paragraphs 1 through 10 as though fully set forth herein.

17. Defendant denies the allegations contained in paragraph 27.

18. Defendant denies the allegations contained in paragraph 28.

19. Except as expressly admitted herein, Defendant denies each and every allegation contained in Plaintiff's Complaint and the whole thereof.

/ / /

/ / /

/ / /

/ / /

DEFENDANT'S AFFIRMATIVE DEFENSES

As affirmative defenses to Plaintiff's claims, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to Mitigate)

20. Plaintiff has failed to mitigate his damages.

SECOND AFFIRMATIVE DEFENSE

(No Breach)

21. Defendant did not breach any contract with Plaintiff.

WHEREFORE, Defendant prays for a judgment against Plaintiff as follows:

A. For a judgment dismissing Plaintiff's Complaint, with prejudice;

B. For an award of reasonable attorney fees and costs incurred by Defendant in defending this action; and

C. Any further relief this Court deems just.

DATED this 25th day of July, 2026.

FIRM NAME

s/
Attorney, OSB No. 0000000
ADDRESS

Attorneys for Defendant

Trial Attorney:

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT AA'S ANSWER AND AFFIRMATIVE DEFENSES** on the attorney or party listed below on the date set forth below by the method(s) indicated:

- ☒ First-class mail, postage prepaid
- ☐ Facsimile, pursuant to ORCP 9 F
- ☐ Hand-delivery
- ☐ Overnight courier, delivery prepaid
- ☐ E-mail, pursuant to ORCP 9 G
- ☒ E-mail copy, as a courtesy only
- ☐ OJD EFILING SYSTEM, if registered at the party's email address as recorded on the date of service in the eFiling system, pursuant to UTCR 21.100.
- ☐ Other

DATED this 25th day of July, 2026.

s/ _____
Attorney Name
Attorney for Defendant

Litigation Links

Bills and Laws ORCP

Oregon Judicial Department : Current UTCR : Uniform Trial Court Rules & Committee : State of Oregon

Oregon Judicial Department : Supplementary Local Court Rules : Rules Center : State of Oregon

Oregon Judicial Department : Current Oregon Rules of Appellate Procedure : Rules and Resources : State of Oregon

Resources – Litigation Section

CHAPTER 7

BUSINESS TRANSACTIONS

Ann McQuesten
Ashurst Perkins Coie

What to Expect from a Business Law Practice

PLF Learning the Ropes 2026

Ann McQuesten, Ashurst Perkins Coie US LLP
November 17, 2026

Agenda

1	Business Law Practice Overview
2	How to Choose a Business Law Practice Area
3	A Day in the Life of a Business Law Associate
4	How to Succeed in a Business Law Practice
5	Resources
6	Questions

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Business Law Practice Overview

01

Business Law Practice Overview

- General corporate, including mergers and acquisitions (M&A)
- Capital markets (often known as securities) and corporate governance
- Commercial transactions
- Regulatory (antitrust, trade compliance, etc.)
- Employee benefits and executive compensation
- Finance
- Intellectual property, technology, privacy and data security
- Real estate
- Tax
- Trusts and estates

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Business Law Practice Overview: General Corporate, M&A

General corporate governance: Advising executives and boards of directors on corporate matters

M&A: Assisting companies in buying and selling businesses

Capital Raising: Assisting companies and investors in raising capital through securities offerings. Can include advising startup, venture capital and private equity backed companies.



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Business Law Practice Overview: Capital Markets



Initial public offerings (IPOs) and other securities offerings

Filing periodic reports with the Securities and Exchange Commission (SEC) and disclosing information to investors

Complying with corporate governance standards established by the SEC and the major securities exchanges

Laws and regulations relating to investment advisers and broker-dealers

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Business Law Practice Overview: Commercial Transactions

Drafting and negotiating agreements for business activities, including licensing agreements, sales of goods and services, supply, distribution, and resale arrangements, and advice on marketing and advertising

Due diligence and support for other corporate transactions

Significant body of work for many in-house attorneys



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Business Law Practice Overview: Regulatory

- Includes antitrust and unfair competition, trade compliance, telecommunications
- Due diligence and support for other corporate transactions
- General client counseling
- Overlap with litigation in some practices



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Business Law Practice Overview: Employee Benefits and Executive Compensation

- Counseling on retirement plans and health and welfare plans
- Designing and drafting 401(k) plans, pension plans, employee stock ownership plans (ESOPs), group health plans, and severance plans
- Designing and drafting executive employment agreements, cash incentive plans, equity compensation plans, and deferred compensation arrangements
- Significant tax and regulatory overlay, including the Employee Retirement Income Security Act of 1974 (ERISA)

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Business Law Practice Overview: Finance

- Advising on lending transactions and other specialized financing arrangements, including drafting credit agreements, security agreements, guarantees, subordination agreements, intercreditor agreements, legal opinions, and Uniform Commercial Code (UCC) financing statements
- Assisting banks and financial institutions on compliance with regulations including anti-money laundering, fraud prevention, and consumer protection



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Business Law Practice Overview: Intellectual Property, Technology, Privacy and Data Security



- Intellectual property practitioners typically focus on either "soft IP" (copyright, trademark, and trade secrets) or patent matters
- Privacy and data security involves assisting clients with state, federal, and international privacy law compliance
- Advise clients on privacy issues associated with commercial transactions
- Due diligence and support for other corporate transactions

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Business Law Practice Overview: Real Estate

Assist with financing, leasing, and ownership of commercial and residential real estate, construction and development projects

Real estate-related aspects of corporate transactions

Real estate due diligence, such as review of title, surveys, and third-party reports



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Business Law Practice Overview: Tax



Advise clients on structuring transactions in a tax-efficient way

Critical component of M&A and other corporate transactional teams

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Business Law Practice Overview: Trusts and Estates

- Preparing wills and trusts, assisting clients with their philanthropic goals, and advising on approaches to tax-advantaged gifting for high net worth clients
- Important aspect of pre-transactional planning for business owners



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How to Choose a Transactional Practice Area

02

How to Choose a Transactional Practice Area

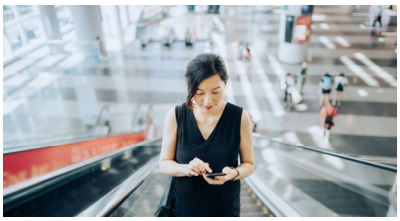
1	What are your strengths, skills, and interests?
2	What is the right practice environment for you (big firm, small firm, in-house, government, nonprofit, etc.)?
3	What is the short and long term supply and demand for different practice areas?

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A Day in the Life of a Business Law Associate

03

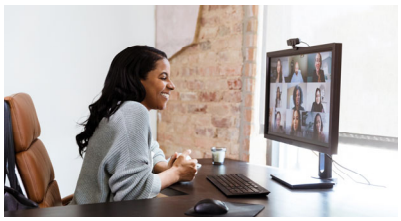
A Day in the Life of a Business Associate



Email



Due Diligence/Document Review



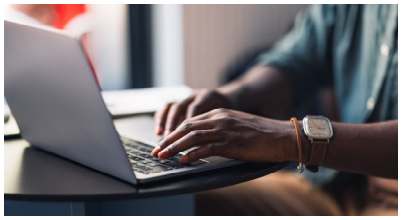
Video Calls



Excel



Feedback and Collaboration



Document Drafting

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How to Succeed in a Business Law Practice

04

How to Succeed in a Business Practice

1	Get to know your colleagues and their practices
2	Understand your clients' businesses and industries
3	Leverage technology
4	Embrace every task, even the tedious ones, as an opportunity to learn
5	Get in as many reps as possible
6	Get involved where potential clients and referral sources are spending time

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Resources

05

Resources

- Oregon Start a Business Guide
- Oregon State Bar BarBooks Advising Oregon Businesses
- National Venture Capital Association Model Legal Documents
- American Bar Association Resources for New Business Lawyers
- Harvard Law School Library, Transactional Lawyering: Resources and Tips

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Questions?



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CHAPTER 8

FAMILY LAW

Amanda C. Thorpe
Cauble, Furr, & Beguin, LLP

Chapter 8

FAMILY LAW

TABLE OF CONTENTS

POWERPOINT SLIDES 8-1

PRACTICAL GUIDE TO DOMESTIC RELATIONS PRACTICE

Amanda C. Thorpe
Cauble, Furr, & Beguin, LLP

I. SCREENING POTENTIAL CLIENTS 8-8
II. INTITIAL CONSULTATION 8-9
III. STARTING THE CASE 8-10
IV. DISCOVERY 8-10
V. EXPERTS 8-11
VI. SETTLEMENT 8-11
VII. TRIAL AND HEARINGS 8-12
VIII. PREPARING THE JUDGMENT 8-13
IX. CONCLUDING THE REPRESENTATION 8-13
X. ADDITIONAL RESOURCES 8-13

LEARNING THE ROPES DOMESTIC RELATIONS

NOVEMBER 2026



A HORSE OF A DIFFERENT COLOR

Family law differs from many other forms of civil litigation:

- Highly emotionally charged and sensitive topics
- Statutory priority and expedited timeframes
- Mandatory discovery
- Mandatory mediation
- Quick motion practice
- High client contact and trouble shooting
- "Zero-sum game"
- Unbundled services

- Review daily calendar of appointments, schedule and deadlines
- Check and respond to emails regarding developments in cases
- Meet with potential clients on new matters (route file to staff)
- Check and respond to emails regarding developments in cases
- Review and revise drafts of initial pleadings or motion practice
- Check and respond to emails
- Follow up with clients on status of drafts, offers, and other correspondence
- Confer with client about an offer, hearing prep or trial prep
- Check and respond to emails
- Draft Judgment or review judgment following decision or settlement/ or prepare documents for upcoming trial/ hearing
- Follow up with staff regarding to do list, calendar and client contact

Typical Day of a Domestic Relations Attorney



"Hand Holding"

Yes, Domestic Relations sometimes gets a reputation for being a field requiring extensive "hand holding". However, it is really just a matter of communication and follow up. With a skilled staff, the client is able to communicate well with the office and stay informed reducing the client's anxiety. Developing a good working relationship with the client, including setting appropriate boundaries, that make the case manageable and mutually beneficial. You do not want to be out of the loop and neither do they- but they don't want to pay you to be their emotional support network.

SCREENING

Your time is precious. Protect it with effective screening and intake processes. Proper procedures save time and head off ethical issues. If there is an issue don't set an appointment. Doing so only wastes the time of the potential client and risks delaying or harming their proceedings.





CONSULTATIONS

- Sit in on consults with other attorneys to observe different styles.
- Be prepared, organized and professional.
- It is an exchange of information- not a sales pitch.
- Find the style that works for you.



Yay! They hired you! Now what?

Take care of business

Get organized

Set Deadlines

Be thorough

Research

Communicate



DISCOVERY

ORGANIZATION IS KEY: *Utilize checklists and calendaring, establish procedures*

- Documents from Client
- Standardize file set up
- Title Requests
- Mandatory Discovery
- Requests for Production
- Requests for Admission
- Subpoenas
- Depositions



EXPERTS

KNOW WHEN TO USE THEM AND HOW BEST TO UTILIZE THEM



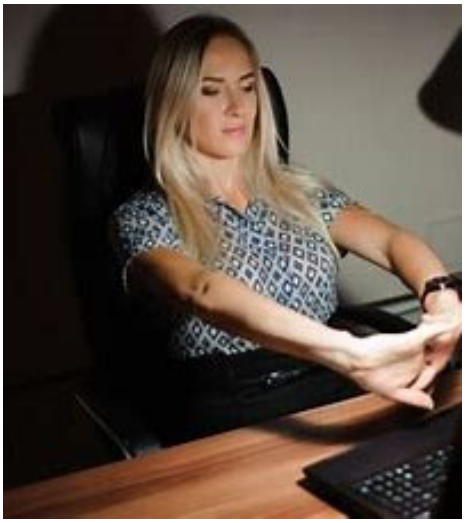
SETTLING THE CASE

It's your job but it's the client's life. The ability to resolve a case is a mix of having set reasonable expectations, strong client rapport and case preparedness. Fully advise on possible outcomes and leave room for negotiations. Prepare offers strategically and have the client approve all offers.



APPEARING IN COURT

- Prepare effectively
- Be organized
- Be courteous
- Give your client pen and paper
- Be mindful you are being recorded
- Focus on the issues
- Keep your client focused and (if possible) comfortable
- Raise objections thoughtfully



Drafting a Judgment

- Time to bring it all home!
- Be thorough and specific.
- Review pleadings and memos to be sure you didn't miss anything.
- If the judgment is stipulated work from the writing that forms the agreement.
- If settlement was put on the record or there was a ruling from the bench work from the audio recording.
- If working from a decision letter follow the language wherever possible.
- Be mindful that findings need to be included but if possible not inflammatory.
- Have the client review and also get another set of eyes on it.
- Don't neglect necessary exhibits.



Wrap it up

- Prepare any supplemental documents needed such as deeds (if any) or advise the client on next steps.
- Refer on for division of assets such as preparation of QDRO.
- Check to see if client has questions or needs assistance with finalizing exchanges of personal property, etc. (This is mostly needed in high conflict cases.)
- Provide client with information about setting up child support collection.
- Send a closing letter outlining any remaining steps and advising regarding file storage.
- Refund retainer or follow up on balances due
- Withdraw

LEARNING THE ROPES

DOMESTIC RELATIONS

Amanda C. Thorpe
Cauble, Furr, & Beguin, LLP
Portland, OR 97210

In preparing the materials for the course I have chosen to emphasize the practical skills that I wish I had known early in practice and the ways Domestic Relations differs from other forms of civil litigation. At the end of the materials you will find a list of supplemental materials that are useful to draw on for the rules, regulations, forms, and substantive legal issues.

Domestic Relations is distinct in practice from other areas of Civil Litigation:

- Often you have a designated family court in which the matters are heard.
- Mandatory discovery statutes
- Mandatory mediation in custody matters
- Frequently used emergency and temporary remedies, including automatic statutory protections
- Less "winner take all" than other areas of law
- The cases are a "zero-sum game"- you are dividing what the parties already have- not adding to it, you are dividing time with children, which you cannot add to.
- More frequent client contact and troubleshooting often due to the frequent and ongoing contact between the parties
- Statutory priority of matters and expedited time frames in certain proceedings
- Opportunities to offer "unbundled services"
- Opportunity to help someone transition into a new stage in life
- Rewarding opportunities to have a positive impact on families and for children

PRACTICAL GUIDE TO DOMESTIC RELATIONS PRACTICE

I. SCREENING POTENTIAL CLIENTS

A. Who screens? Staff. Be wary of taking calls that may result in information being exchanged that creates a conflict you are not documenting in your conflicts system. There is no "quick question." The best staff to field incoming calls will be firm, organized and kind.

B. Inquire as to: conflicts, practice area, venue/jurisdiction, time frame (deadline to respond, hearing dates and/or trial dates).

C. Disclose: consultation fee, procedure, and request they bring information/ documents.

D. Practical considerations: time investment, ethics, calendaring (name, phone number, email address, issue), reminders.

E. Look out for warning signs. If you are working with experienced staff, trust them in the screening process.

II. INITIAL CONSULTATION

A. Formalities: Intake sheet, payment, conflict check, third parties.

B. Read the room: A potential client making small talk needs to be eased into the conversation. Take the time to engage with the potential client briefly to make the client comfortable before broaching the subject of the meeting. If a potential client appears eager to discuss issues, by leading with questions or talking about looking forward to the appointment, be responsive by moving right to the issues.

C. Balance the story telling with the time at hand: It is important for the potential client to tell his story, to feel heard by you. Potential clients will have different areas of emphasis, different points of origin, different details that they will want you to know. You can always politely ask for them to clarify or elaborate, or you can politely redirect. Allow the potential client to speak in a narrative format (not question and answer) if that is more comfortable and conversational. Issue spot during the narrative and then ask your questions to get the details you will need to answer questions. After the narrative, ask if the potential client has specific questions. Often the potential client is looking for a general assessment, but will sometimes have specific areas or issues. However, be mindful of the time. You may need to redirect and move on to the specific questions.

D. Feel free to ask the potential client if he/she is looking to hire an attorney or if he/she is just looking for information. This is often apparent from the conversation, but it can help you shape the information you give. Do not be discouraged when people only want information. Even these consultations provide indispensable advice to people who really need it and helps grow your professional reputation.

E. SET EXPECTATIONS: You will never have a better chance to tell a client "no" than the initial consultation. Set reasonable expectations of the process, expenses, time, and outcome of the proceeding.

F. Don't over extend yourself. If you do not know the answer to an issue, look it up. If you can't reasonably look it up in the time available, then consult a colleague or look the issue up after the appointment. It is okay to not have a complete analysis of the matter during the consultation. However, regularly committing to additional work can be difficult to manage.

G. It's okay to decline representation. It may take some time to develop a comfort level with the emotionally charged and sometimes uncomfortable nature of domestic relations matters. While I would urge you not to be too quick to judge a potential client, you should also trust your instincts. You are not doing the client a good service by taking on a case that makes you uncomfortable or taking on a client with whom you will not have a good working relationship.

H. Discuss fees: present the client with a written fee agreement, set a retainer, be clear about the steps to retain you.

I. Provide documents: keep copies of frequently used forms on hand: vital statistics forms, CIF forms, Uniform Support Declaration, Standard Parenting Plans.

J. Send a non-engagement letter to everyone unless you were retained on the spot. Even a potential client who plans to come back should get a letter stating that you are not taking further action until the retainer (if any) is paid and the fee agreement is signed and returned.

III. STARTING THE CASE

A. Retainer and fee agreement: Make sure you have a signed fee agreement, the retainer, and provide the client a copy of the fee agreement.

B. Deadlines: Deadline to respond, hearings, trial, response to request for production should be calendared.

C. Documents: Ask for copies of any documents served upon the client and also pull documents from ecourt. (Don't overlook possible RFPs served with initial pleadings.)

D. Calendar a deadline to draft initial documents, consider scheduling a signing to increase your accountability to your client; if responding send an ORCP 69 letter.

E. Allot sufficient time for the client to review drafts before client signs. Remind the client to review for accuracy (not just rubber stamp).

F. Advise the client prior to filing of any orders that will go into place at the time of filing, such as the mutual asset restraining order.

G. Consider any temporary motions that may be appropriate: temporary protective order of restraint, motion for temporary support, motion for exclusive use, motion for suit money.

H. Calendar out deadlines from the date of filing- even for those tasks that do not have a hard deadline. Service? Deadline for opposing party to respond? Send RFP? File USD?

I. Send an introductory letter to the client. Advise the client of common issues, such as preferred communication, ways to reduce expenses, timeline, and what the client can expect. Remind the client of anything that is required of the client, such as coparenting education class and mediation.

J. Review the SLRs for the county in which you are litigating. Many counties procedure on motion practice and deadlines varies significantly. Review SLR Chapter 5 for Civil Cases and Chapter 8 for Domestic Relations proceedings.

IV. DISCOVERY

A. ORS 107.089 includes mandatory discovery provisions, but rarely are these relied upon. Typically parties represented by counsel will exchange requests for production with a fairly standard set of roughly 25 requests in dissolution cases.

B. Consider creating a template of requests for standard cases including custody cases and modifications.

C. Be mindful of ORCP 36 scope of discovery and ORCP 43 format when drafting requests and responding.

D. Review any requests you receive for appropriate objections.

E. Send the request for production you receive to your client with a detailed letter explaining how to produce documents to you. Most clients are open to doing the legwork if it reduces their legal fees. Encourage clients to produce documents to you with copies in lieu of originals if possible, and organized by response number. Require clients to indicate whether documents exist (whether provided or not), do not exist, and/ or who has the documents if the client does not. Be sure the client knows that if he can get the documents from the third party he is required to do so (bank statements, credit card statements, paystubs.) Advise the client NOT to write notes to you on the documents. Discovery, while routine to you, is not routine to the client and can feel burdensome, intrusive, and scary. A little explanation goes a long way. Set a deadline for the client to produce documents to you (sufficiently in advance of the deadline to respond).

F. Provide discovery to others the way you would want it provided to you: organized. Consider utilizing electronic copies as both your means of delivery and means of storage.

G. Review the documents most carefully for records that are privileged or otherwise not required to be produced. Look for handwritten notes. The notes may be standard ("paid on 5/25") OR may be a note to you ("I paid her car payment"). Notes to you are privileged and should be redacted.

H. Consider other means of discovery: request for admissions, subpoenas to third parties, depositions.

V. EXPERTS

A. If experts may be needed in the case, discuss the possibility with your client early including the financial and time constraints.

B. Common experts will include custody and parenting time evaluators, real estate appraisers, business appraisers, forensic accountants, and personal property appraisers. Familiarize yourself with the rates and services available so you can spot appropriate cases and provided needed estimates.

C. If you want to retain an expert, communicate with the expert about fees, documents needed and time needed to complete the services.

D. Seek a court order or stipulation as may be appropriate.

E. Consider the issue of privilege when hiring experts.

VI. SETTLEMENT

A. Most cases will settle without trial. Providing an honest assessment of strengths and weaknesses and potential outcomes throughout the case will aid in resolution.

B. Your assessment of the financial issues will be advanced by securing a USD and other documentation from your client early in the case.

C. Consider keeping a running asset spreadsheet as the case develops including a notation of the date and source of any figures used on your asset spreadsheet. It

will allow you to assess the financial considerations as the case develops and consolidate information into an easy reference point.

D. Be mindful of the level of communication your client needs. Most discussions of the terms of settlement should be made by phone, by video conference, or in person. They are huge decisions for the client and require a significant exchange of information.

E. Encourage clients to be mindful of additional considerations including time, stress, conflict, and the opportunity for more creative solutions than if the case proceeds to trial.

F. Remind clients that parties are more likely to comply with a court order that is stipulated than one determined by the court alone.

G. Encourage clients to follow the 3-3-3 rule: how will you feel about this in 3 days? 3 months? 3 years?

H. When drafting an offer, be thorough and be sure to include whether or not attorney fees will be included. Review the pleadings and communications to be sure you are not missing any issues.

I. When drafting an offer, consider your audience (pro se, counsel, personality) and draft accordingly.

J. If an agreement is reached just before trial (which often happens) put it on the record if a written stipulation cannot be prepared and signed before the trial date.

VII. TRIAL AND HEARINGS:

A. Work with opposing counsel/ opposing party to narrow the issues and articulate those remaining issues and any stipulations clearly for the bench.

B. Schedule a hearing prep appointment with the client sufficiently in advance that you can spot any holes in the documents you will present and in time to line up additional witnesses as necessary.

C. Subpoena your witnesses even if they have agreed to appear voluntarily.

D. Screen your witnesses carefully. Ask the questions you want to know as well as the ones you anticipate the other party will inquire. Sometimes a witness cuts both ways. Also assess whether the witness is capable of giving answers to difficult questions at trial. Often your witnesses will be, or at one time were, close to both parties. Make sure they are prepared to give the testimony even when confronted with the other party in court.

E. Be mindful of deadline to submit trial documents and other required forms.

F. Calendar important deadlines backwards from trial to allot yourself enough time.

G. Organize and clearly mark your exhibits and review them with your client in advance.

VIII. PREPARING THE JUDGMENT

A. Promptly and carefully draft the judgment. Carefully review the terms of settlement or the court's decision to be sure that you have included all of the issues.

B. Allow sufficient time for your client to review the judgment for accuracy.

C. Be mindful to include the proper information on real property and vehicles if you intend for the judgment to be self-executing.

D. Draft in language that is clear and precise.

E. Double check that you have attached all exhibits and in the proper order.

F. Include all language required by statute (such as required child support language.)

G. Be open to request for revision when the revisions are for clarity and still consistent with the court's order or stipulation.

IX. CONCLUDING THE REPRESENTATION

A. Provide client with a copy of the entered judgment along with a letter of explanation of any additional steps the client needs to take such as hiring an attorney to complete a QDRO or establishing a collection with Division of Child Support.

B. Withdraw from the case.

C. Send a closing letter.

ADDITIONAL RESOURCES

PLF Practice Aids and Forms: https://osbplf.org/practice-management/forms.html

Oregon State Bar Barbooks Family Law (2021 ed.) https://hello.osbar.org/?allowtoken=true

Oregon Judicial Department Forms: https://www.courts.oregon.gov/forms/Pages/default.aspx

DOJ Division of Child Support Tools for Professionals (child support calculator, rules, etc.):

https://www.doj.state.or.us/child-support/for-professionals/tools-for-professionals/

Oregon Judicial Department UTCRs, SLRs, and forms:

https://www.courts.oregon.gov/programs/utcr/Pages/default.aspx#:~:text=Supplementary%20Local%20Court%20Rules%20%28SLR%29%20The%20SLR%20are,Oregon%20Rules%20of%20Civil%20Procedure%2C%20and%20state%20law.

Oregon Revised Statutes (see especially chapters 25, 33, 107, and 109):

https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

CHAPTER 9

ESTATE PLANNING AND ADMINISTRATION; GUARDIANSHIPS AND CONSERVATORSHIPS

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Chapter 9

ESTATE PLANNING & ADMINISTRATION; GUARDIANSHIPS & CONSERVATORSHIPS

TABLE OF CONTENTS

INTRODUCTION.....9-1

I. WHAT IS THE SUBSTANCE OF THIS PRACTICE AREA? 9-1

A. Estate Planning 9-1

B. Administration 9-5

C. Guardianships and Conservatorships 9-6

D. Resources 9-7

II. WHAT IS AN AVERAGE DAY LIKE IN THIS PRACTICE AREA? 9-7

III. WHAT ARE THE PROS AND CONS OF THIS PRACTICE AREA? 9-8

A. Pace of Practice 9-8

B. Litigation 9-8

C. Profitability 9-8

D. Working Independently 9-8

E. Personality Characteristics 9-8

IV. CONCLUSION 9-9

V. POWERPOINT SLIDES 9-10

ESTATE PLANNING AND ADMINISTRATION; GUARDIANSHIPS AND CONSERVATORSHIPS[1]

INTRODUCTION

The estate planning and administration area, including guardianships and conservatorships, is an ideal choice for a practitioner who wants to be challenged intellectually, have minimal contentious negotiations, and experience a sense of service to and interpersonal connection with individuals and families.

I. WHAT IS THE SUBSTANCE OF THIS PRACTICE AREA?

This practice area includes establishing wills and trusts, powers of attorney and advance health care directives for clients, as well as guardianships and conservatorships for individuals who are unable to manage their health care, residential decisions and/or financial matters due to incapacity. Some practitioners in this area also handle litigation matters and negotiate prenuptial agreements; some even cross into pure domestic relations work, handling divorces and custody disputes. Others blend a general business practice with their estate planning practice, which works nicely when your firm clientele includes many small business owners. Estate planning attorneys regularly become generalists, to some extent, because our clients face so many issues – as employees, as business owners, as real property owners, as landlords, as parents, and so on. If you want to practice in this area and do not want to be a generalist, you will quickly learn that having a referral list for trusted attorneys who provide services that are complementary to your own gives you a value-added service you can provide to your clients.

A. **Components of an estate planning practice**. Estate planning is more of a process than a product. Executing a will, for example, is just one piece of the overall practice. We provide a service that generally results in the delivery of a product (i.e., estate planning documents). Working with clients through the estate planning process often involves a great deal of client education so that the client has an understanding of how the pieces of his or her plan fit together to accomplish the client's goals.

1. ***Developing a client base***. This, of course, occurs over time. The practice of law is truly a relationship-driven practice. As you develop relationships in your community (with other lawyers in your firm and elsewhere, with clients, with CPAs and financial planners, with brokers, fellow alumni, and so forth) and those relationships are based on mutual respect, the work will come through referrals. In this practice area, knowing your referral sources and taking care of them is a very important key to success. It is even more important to simply do good work: <u>be responsive, respectful and pragmatic in all of your dealings</u>. The most valuable referrals you receive will be those that begin with the following declaration: "I received your name from my friend who worked with you on her estate planning. She highly recommended you."

[1] Thank you to my colleague Heather L. Guthrie for graciously allowing me to use her presentation materials.

2. ***Establishing the relationship.***

   a. *Engagement letter*.

   b. *Joint representation memo*. Representing both spouses in their estate planning is common, but informed consent of the jointly represented clients is a must.

   c. *First meeting(s)*. The most important thing to do in an initial meeting with clients is to listen. Ask open-ended questions and let the clients tell you their stories. By doing this, and listening actively, you accomplish two things: first, you immediately establish who the important people in the room are – this process is all about the *client*. Second, you learn what is important to the clients so that you can identify issues and build a plan that is right for the client. You cannot create an estate plan that accomplishes your client's goals until you understand what those goals are. Do not be surprised when, even in multi-million dollar estates, the clients are more interested in talking about their children's special challenges with money – or other issues – than about reducing their overall estate tax risk. Your job is to deal with both of these issues, but pay attention to what matters most to the client. By letting your client know that you are listening to what they have to say and problem-solving around their concerns, you establish credibility and trust. Often, I have just one initial meeting with clients and in the next meeting we sign documents, working through drafts by telephone and email. However, some clients have such complicated plans that it can take more than a year and many meetings before a plan is finalized.

   d. *Educate the client*. Estate planning is not something clients do every day and many clients will only have a basic understanding (at best) of what it entails. A common assumption is that the passage of all of one's assets will be governed at death by the individual's will. However there are lots of different methods for passing property at death that can affect the overall distribution of assets following one's death. Be prepared to educate your clients about these different methods and how they will be used to carry out the overall distribution scheme desired by the client.

3. ***Evaluating challenges and strategies for the particular client***. The unique challenges of a client may be myriad. While listening to your client's story, you will need to identify issues which may include any or many of the following:

   a. Blended family issues. Second marriages and children from previous marriages or relationships. Support obligations to previous family.

b. Special needs of children or grandchildren.
c. Anticipated inheritances.
d. Non-traditional families. Unmarried and/or LGBTQ clients.
e. Taxable gift issues. Did the clients make a substantial gift recently to help a child buy a first home? Did they give beyond the gift tax exemption threshold?
f. Real estate in multiple states or out of the country.
g. Children in troubled marriages.
h. Charitable inclinations and goals.
i. Beloved pets. To whom should these pets go? Is a pet trust wanted or warranted?
j. Care for parents of the clients. Many children support their parents in some way. How should that care continue after your client dies if the parents survive?
k. Health issues of the client.
l. Rental property issues. If the clients own rental property, do they own it outright or in an entity? Who manages the property? Do they have adequate insurance? Is entity ownership advisable?
m. Death tax exposure at the state and/or federal level.
n. Selecting fiduciaries. Who will care for minor children? Who will manage money for the beneficiaries? Who will make health-care decisions for the client in the event of incapacity?
o. Business ownership and transition planning.

4. ***Drafting documents***. Every estate plan should consist of the following documents at a minimum:

a. *Will*. This document establishes how property (that is owned by the client in his/her own name and which will not pass by beneficiary designation) will pass at the client's death. The document must be carefully drafted and properly executed (two witnesses).

b. *Power of Attorney*. Preparing for incapacity with a power of attorney is a critical part of this process. If the client has a stroke, for example, the Will does nothing – it speaks only at death – and absent a power of attorney (or trust – see below), it may be necessary to commence conservatorship proceedings to manage assets.

c. *Advance Directive*. An important part of this process is to discuss with your clients whether or not they would like to execute an advance directive giving decision-making authority related to end-of-life circumstances and giving advance direction about the client's wishes regarding tube feeding and life support.

Many estate plans will also include trusts of one sort or another, whether revocable living trusts (as a privacy and probate-avoidance vehicle, and an alternate mechanism for managing assets in the event of incapacity) or irrevocable trusts as part of a death-tax minimization plan (such as an Irrevocable Life Insurance Trust or ILIT). Also, it is not uncommon for a client's Will to create trusts (testamentary trust) that are funded after death. These testamentary trusts don't typically avoid the need for probate, but can be helpful in dealing with different client concerns (such as minor beneficiaries).

5. ***Executing documents and following-up on executing the plan***.

   a. *Execution and Safe-keeping of Documents*. Overseeing the proper execution of and providing guidance about safe-keeping of estate planning documents is also part of the process.

   b. *Beneficiary designations*. Providing the client with beneficiary designations that are tailored to dovetail with the client's plan and advising the client about updating their beneficiary designations are essential. This is becoming an increasingly important piece of estate planning as many clients have much of their wealth in retirement plans that pass based on beneficiary designations.

   c. *"Funding" a Trust*. If the client has entered into a trust agreement, transferring assets to the trust – so-called "funding" of the trust – is essential. You should provide instructions to the client that explain exactly what needs to be done: how should the new accounts be titled? How can they change title to their cars? What about time-share interests? Specific instructions for each type of asset should be provided. Prepare deeds where appropriate. Advise clients to obtain lender consents, where applicable. Provide alternative recommendations for POD designations. Explain. Note: funding a trust does not occur until after a client's death, if you only have testamentary trusts.

6. ***Staying in touch with the client***. The key to staying in touch with clients is maintaining a good database of client information that allows you to search for, for example, all clients with tax-planning documents so that when a change in the tax laws occurs, you are able to readily sort through your clients to determine who should receive a letter from you regarding the change and any updates that the client should consider. Many clients will execute their plan and you will not hear from them again for years. Other clients have plans of such complexity that the process involves several phases (establishing the basic plan; enhancing that plan with irrevocable trust(s) and the like) and demands regular maintenance. Some clients will become friends with whom you have regular contact.

B. **Administration**. Administering trusts and estates is all about putting the plan into action after death.

1. ***Probating a Will***. The process of probating a Will involves the following basic steps:

   a. Preparing a petition asking the court to admit the Will to probate and appoint the person designated in that Will as personal representative.
   b. Sending notice of the probate to heirs and devisees.
   c. Publishing notice of the probate and appointment to commence the period during which creditors may bring claims against the decedent's estate. Giving notices to known creditors.
   d. Preparing and filing an inventory of assets that are probate assets (assets not passing by beneficiary designation or by survivorship).
   e. Preparing and filing an affidavit of compliance with respect to certain duties of the personal representative.
   f. Reporting to the court all acts of the personal representative, including accounting for all income and expenditures, and asking the court to approve distribution of assets.
   g. Confirming the filing of fiduciary income tax returns (with the taxing authorities, not the court, but an important step nevertheless).
   h. Distributing assets in accordance with the Will, obtaining and filing receipts for distributions, discharging the personal representative and closing the estate.

   If the decedent died without a Will, the same basic steps are followed except that: (1) assets pass to the decedent's heirs by the laws of intestacy; (2) the statute establishes an order of preference for individuals who may serve as personal representative; and (3) bonding of the personal representative may be required. Probate can take anywhere from 6 months to several years, depending on a myriad of complicating factors. Every estate is different, and the foregoing is intended as a general outline to give you a sense of the basics. Probate is a cooperative process between attorney and client; paralegals can be invaluable in this process to track deadlines, draft documents and coordinate with the client while keeping fees as low as possible.

2. ***Administering a Trust***. Trust administration includes many of the same basic steps as probating a Will (e.g., determining who the beneficiaries are, determining what the assets are and taking control of them, filing necessary tax returns (income and estate), reporting to the beneficiaries, and so forth), but without court oversight. Instead of working from the Will and the statutes, trust administration is controlled by the terms of the trust agreement itself; it is fundamentally a matter of contract. If a trust agreement calls for outright distribution, trust administration can be quite brief. If it calls for assets to continue in trust, it may continue for many

years. You should become familiar with the provisions of the Oregon Uniform Trust Code in order to comply with reporting requirements that are imposed by statute, some of which can be waived by the terms of the trust agreement but some of which cannot. See ORS Chapter 130.

3. ***Estate Tax Returns***. Estate tax returns can be required whether you are administering a probate estate or doing a post-mortem trust administration. Whether they are required depends on the fair market value of the decedent's assets on the date of death rather than on the estate planning vehicle used. Some CPAs will prepare these returns; however, in most cases the attorney is better positioned to prepare them because so much of how assets are valued and reported for estate tax purposes is driven by an estate plan developed by the attorney.

4. ***Administering Based on Estate Planning Documents Prepared by Another Attorney***. Keep in mind that not every administration will be an administration of documents you prepared; quite often, you will never have seen the documents before. Your job is to figure out what was intended based on the words of the document. Keep this in mind when you are drafting, too. Someone else may be administering your documents twenty years from now, so *draft clearly and carefully*.

C. **Guardianships and Conservatorships**.

1. ***Guardianships***. Establishing a guardianship is necessary when an individual is unable to make health-care or residential decisions for him/herself. Typically, the need arises when an elderly person with some mental disability becomes combative and unwilling to go along with a caregiver's plan. Guardianships may also be necessary in the case of a minor whose natural parent is deceased or otherwise unable to care for the child. Note the following standard that must be met in order to establish a guardianship: "A guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations." ORS 125.300. See ORS 127.505-660 regarding Advance Directives for health care. See ORS 127.700-737 regarding Declarations for Mental Health Treatment.

2. ***Conservatorships***. Establishing a conservatorship is necessary when an individual is unable to make financial decisions in his/her own best interests. Typically, the need arises when an elderly person begins mismanaging money or in the event of a stroke or similarly debilitating condition that limits the person's ability to handle his or her own financial affairs. A conservatorship may also be necessary in the case of a minor who is entitled to receive funds but as a matter of law is deemed to not have capacity to manage those funds. Note the following standard that

must be met in order to establish a conservatorship: "Upon the filing of a petition seeking the appointment of a conservator, the court may appoint a conservator and make other appropriate protective orders if the court finds by clear and convincing evidence that the respondent is a minor or financially incapable, and that the respondent has money or property that requires management or protection." ORS 125.400. See ORS 125.005(3) for definition of financially incapable.

3. ***Generally***. The tests relating to and the process of establishing guardianships and conservatorships are set forth in ORS Chapter 125. Often, a debilitating condition makes it necessary to establish both a guardianship and a conservatorship at the same time, though the need for a conservatorship can generally be avoided if the individual has an adequate Power of Attorney in place. Guardianship and conservatorship practice is generally a fairly small part of most estate planning and administration practices because in many cases, if a plan is in place that includes incapacity planning – as any such plan should – a guardianship or conservatorship can often be avoided. With respect to conservatorships for minors, there are mechanisms for avoiding a conservatorship altogether in certain circumstances, such as where the dollar amount is relatively small or where the conservatorship is thought to be needed solely to settle a claim. See ORS 126.700 and ORS 126.725.

D. **Resources**. The following are some helpful resources for this practice area:

1. Administering Oregon Estates. Oregon Bar Association Continuing Legal Education publication, updated periodically.
2. Administering Trusts in Oregon. Oregon Bar Association Continuing Legal Education publication, updated periodically.
3. Elder Law. Oregon Bar Association Continuing Legal Education publication, updated periodically.
4. Guardianships, Conservatorships and Transfers to Minors. Oregon Bar Association Continuing Legal Education publication.
5. Oregon Revised Statutes chapters 111 through 130.
6. The list-serv of the Estate Planning and Administration section of the Oregon State Bar, as well as periodic publications by this group, which in many cases are available on-line.
7. OSB site generally for form letters, conflicts waivers, etc.

II. WHAT IS AN AVERAGE DAY LIKE IN THIS PRACTICE AREA?

III. WHAT ARE THE PROS AND CONS OF THIS PRACTICE AREA?

A. ***Pace of practice – the prospect of balance***. One of the reasons I have chosen to practice in this area is that for the most part I can control the pace. Whereas the pace of many practice areas is purely client driven (such as in the business transaction environment), the estate planning area is usually a fairly calm and controlled process that allows me to maintain some balance between my personal and professional life. Exceptions include client illness and client travel plans, among other things. On the administration side of practice, there are statutory deadlines that drive much of the practice.

B. ***Litigation – knowing your limits***. Fortunately, I practice in a firm where I have litigators who are available to handle contentious matters that are headed for court. However, many estate planning and administration attorneys handle litigation as part of their practice.

C. ***Profitability – the small matter challenge***. Keeping the estate planning and administration balance in your practice is important because while the estate planning side often consists of small matters that generate minimal fees relative to the administrative tasks involved (opening the file, running conflicts, overseeing or doing the work in a cost-effective fashion), the administration side generally involves much more time and generates more significant fees. This is a business reality that practitioners deal with in different ways, but doing both sides of the practice – planning and administration – also makes you a better resource for your clients and helps you develop a better skill set because you know how the plan you drafted works out in practice.

D. ***Working independently***. Many who practice in this area work very independently. If you are conscientious and detail-oriented, this can be a plus – no one is looking over your shoulder. On the other hand, not having a second set of eyes reviewing your work and not having a second brain to help you think through difficult concepts means you must be meticulous in your drafting and in your communications with your client.

E. ***Personality characteristics of a good estate planning and administration practitioner***. The following is a list of personality characteristics that are important to have in order to succeed and enjoy practicing in this area:

1. A good listener
2. Compassionate
3. Detail-oriented
4. Practical
5. Patient
6. Must enjoy working with elderly people

IV. CONCLUSION

Practicing in this area can be tremendously rewarding, both personally and professionally, but it is not for everyone. If you crave the challenge of the courtroom or if you thrive on the adrenaline of fast-paced transactional work, working solely in this practice area is probably not for you. On the other hand, if you are looking for a practice that offers a sense of service to individuals, a richness of intellectual challenge, and a relatively controlled pace, you should consider pursuing the estate planning and administration area.

Estate Planning, Administration, Guardianships and Conservatorships

Melissa F. Busley | Portland, Oregon

DUNN CARNEY LLP

Overview

DUNN CARNEY LLP

- Estate planning
- Probate and trust administration
- Guardianships and conservatorships

Client Education

- You need to learn about the client:
  - Who are they and their family?
  - What are their assets?
  - Any "special" challenges?
- You need to educate the client:
  - Different ways for assets to pass
  - Different tools for different tasks
  - A good estate plan is tailored to the client

Evaluating Challenges and Strategies: Issue Spotting

- Family issues
- Asset issues
- Tax issues
- Other issues

Evaluating Challenges and Strategies: Issue Spotting

- Family issues may include:
  - Blended family situation
  - Special needs of children or grandchildren
  - Non-traditional families
  - Children in troubled marriages
  - Care for parents of the clients

Evaluating Challenges and Strategies: Issue Spotting

- Asset issues may include:
  - Anticipated inheritances
  - Real estate in multiple states or out of the country
  - Rental property issues
  - Business ownership and transition planning
  - Retirement plans, annuities and life insurance



Evaluating Challenges and Strategies: Issue Spotting

- Tax issues may include:
  - Taxable gift issues
  - Death tax exposure at the state and/or federal level
    - What states may be able to tax
    - Oregon exemption is $1,000,000 (no inflation index)
    - Federal exemption in 2026 is $15,000,000 (indexed for inflation thereafter)
    - Federal estate tax portability
    - Basis consistency reporting
    - Marital deduction elections and portability require timely filing

Evaluating Challenges and Strategies: Issue Spotting

- Other issues may include:
  - Charitable inclinations and goals
  - Beloved pets
  - Health issues of the client
  - Selecting fiduciaries

Drafting Documents: The Essentials

- Will
- Power of attorney
- Advance directive for health care decisions

Executing Documents and Follow-Up

- Execution ceremony and document safekeeping
- Beneficiary designations – this can be critical
- "Funding" trusts
- Staying in touch

Post-Mortem Administration

- Wills – probate
- Trusts – post-mortem trust administration
- Estate tax returns
- Survivorship and beneficiary designations
- Administering based on documents prepared by other attorneys

Probate Administration

1. Determine if testate or intestate
2. If bond is required, check if nominated PR is bondable
3. Prepare petition and other initial documents
   - Determine probate assets and estimated value
   - Determine interested persons
   - Notices for interested persons and publication should be ready once court appoints PR
4. Give your PR client a roadmap

Trust Administration

- Governed by Oregon Uniform Trust Code (Chapter 130), as modified by the Trust Agreement
- Review trustee, distribution and survivorship provisions
- Review asset ownership -– confirm assets are held by trust (or whether probate is required)
- Notices to beneficiaries

Other Administration

- Estate tax evaluation
- Work through beneficiary designations
- Consider disclaimers

Guardianships and Conservatorships

- What they are
  - Guardianship: Decisions about the person
  - Conservatorship: Decisions about the person's stuff
- How to avoid them
  - Powers of attorney
  - Trusts
  - Advance directives



Guardianships and Conservatorships

- Process and follow-up
  - Petition and appointment
  - Annual reporting

The Realities of Estate Planning



"In this world nothing can be said to be certain, except death and taxes."

Benjamin Franklin, 1789

Developing a Book of Business and Keeping Clients (Happy)

- Developing a client base
  - Relationship, relationship, relationship
- Establishing the client relationship
  - Your first meeting(s)
- Evaluating challenges and strategies for the particular client

The Pros and Cons of this Practice Area

- Pace of practice and prospect of balance/control
- Litigation
- Profitability
  - The small matter challenge
- Working independently
  - Details, details, details
- Who is happy doing this kind of work?

Questions?



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CHAPTER 10

PERSONAL INJURY

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Chapter 10

PERSONAL INJURY

TABLE OF CONTENTS

I. CASES, STATUTES, AND UCJI 10-1

II. POWERPOINT SLIDES..... 10-14

Personal Injury

Cases, Statutes, and UCJI

Automobile Insurance Coverage, slide 7

- ORS 742.520 - Applicability of automobile policy to an injury.
- Carrigan v. State Farm Mutual Insurance Co., 326 Or. 97, 949 P.2d 705 (1997) – Defines the broad application of "use".

3rd Party Claims, slide 9

- Lamb-Weston v. Ore. Auto. Ins. Co., 219 Or. 110, 346 P.2d 643 (1959) – Insurance stacking.
- ORS 12.160 – SOL for minor claimants.
- ORS 20.080 – Filing suit for $10,000.

3rd Party Claims – Dram Shop Claims, slide 10

- ORS 471.565 – Dram shop claims.

1st Party Claims - UIM/UM, slide 11

- ORS 742.508(5) - Definition of phantom vehicle.
- ORS 742.061(3) - Attorneys fees in 1st party cases.

Slip and Falls/Premises Liability, slide 13

- Bagley v. Mr. Bachelor, Inc., 340 P.3d 27 (2014) - When waiver is not valid to relieve liability.

Slip and Falls Continued – ORLTA, slide 14

- ORS 90.320 – Duties of a landlord towards tenants.
- ORS 90.730 – Duties of landlord for rental and vacant property.
- Jackson v. KA-3 Associates, LLC., 374 Or. 1 (2025) - Application of ORLTA to areas outside the dwelling.

Slip and Falls Continued – Standard of Care, slide 15

- Parker v. Hult Lumber & Plywood Co., 260 Or. 1 (1971) – Discussion on claimant statuses in premises liability cases.
- Moorehead v. Tri-Met, 273 Or. App. 54 (2015), review denied 358 Or. 550 (2016) - Test for invitee status.
- Nelsen v. Nelsen, 17 Or. App. 252 (2001) - Invitee vs. Licensee status.

Slip and Falls Continued – Defenses, slide 16

- ORS 105.682 – Oregon Recreational Use law.
- ORS 31.600 – Comparative fault.

Dog Bites, slide 17

- ORS 31.360 – Strict liability on dog bites.
- UCJI 52.01 – Strict Liability for noneconomic damages.
- UCJI 52.02 – Negligence elements for noneconomic damages.

Medical Malpractice, slide 18

- ORS 12.110 – Statute of Ultimate Repose on Medical Malpractice cases.
- UCJI 44.01 – Standard of care for physicians.
- UCJI – 44.03 – Doctor is not liable just because treatment was not successful.
- Stone v. Witt, 374 Or. 524 (2025). – Doctor liable to injured 3rd party even if not their patient.

Noneconomic Damages, slide 20

- Busch v. McInnis Waste Systems, Inc., 366 Or. 628 (2020) – Bodily injury cap unconstitutional.
- ORS 31.710 – Cap on wrongful death claims.
- ORS 31.705, - Noneconomic damages.
- Wheeler v. Huston, 288 Or. 467 (1980) – When noneconomic damages do not need to be awarded when economic damages have been awarded test.
- Fatehi v. Johnson, 207 Ore. App. 719 (2006) – Noneconomic damages not required to be awarded when only a minor injury.

Noneconomic Damages Continued, slide 21

- ORS 31.715 – Bars to recovery in automobile cases.
- Zimmerman v. Ausland, 513 P.2d 1167 (1973) – Claimants duty to mitigate damages.
- UCJI 73.01 – Duty to mitigate jury instruction.
- ORS 31.760 – Maximum mitigation allowed for not wearing seat belt.
- Haas v. Estate of Carter, 370 Ore. 742 (2023) – Discussion on Causation of injuries, “but for” and “substantial factor.”
- UCJI 23.01 – Causation “but for” instruction
- UCJI 23.02 – Causation “substantial factor” instruction.

Economic Damages, slide 22

- *White v. Jubitz Corp.*, 347 Or. 212 (2009). – Medical damages are calculated based on amount billed, not amount paid.
- Miller v. Pac. Trawlers, Inc., 204 Ore. App. 585 (2006) – Future losses are based on present value.

Punitive Damages, slide 23

- ORS 31.730 – Punitive damages statute.

Punitive Damages Continued, slide 23

- ORS 31.735 – Distribution of Punitive Damages.

Attorney's Fees, slide 24

- Oregon State Bar Economic Survey – Used to assist with calculation of attorney's fee rates.
- ORCP 45 – Requests for admission.

Attorney's Fees Continued, slide 25

- *Frost v. Jacobs*, 330 Or. App. 61 (2024). – Can bring 20.080 claim along with other claims that are in excess of $10,000.

Filing Suit, handout

- ORCP 7 – Summons and service.
- ORCP 69 - Rule governing appearance and notice to opposing counsel, default judgments.

Discovery, handout

- ORCP 39 – Depositions.
- ORCP 44 – Independent medical exams.
- ORCP 45 – Request for Admissions.
- ORCP 46 – Effect of failing to respond to RFP, sanctions!
- ORCP 55 – Subpoenas.

Pretrial Preparation, handout

- ORCP 54 – Offers to Allow Judgment.

Post Trial, handout

- ORCP 64 – Motions for New Trial.
- ORS 19.255 – Filing Notice of Appeal.

Plaintiff Practice, handout

- Oregon State Bar Attorney Referral Service

UCJI mentioned in the presentation

(found in BarBooks on osbar.org)

UCJI 23.01

CAUSATION—"BUT FOR"

The defendant's conduct is a cause of the plaintiff's [harm / injury] if the [harm / injury] would not have occurred when and as it did but for that conduct; conversely, the defendant's conduct is not a cause of the plaintiff's [harm / injury] if that [harm / injury] would have occurred when and as it did without that conduct.

Many factors [or things] may operate either independently or together to cause [harm / injury]; in such a case, each may be a cause of the [harm / injury]. You may find that the defendant's conduct caused the [harm / injury] even though it was not the only cause. In deciding whether the defendant's conduct is a cause of the plaintiff's [harm / injury], you are not to consider whether that conduct was more important or less important than any other factor in causing the [harm / injury].

UCJI 23.02

CAUSATION—"SUBSTANTIAL FACTOR"

A substantial factor is one that by itself would have been sufficient to cause the [harm / injury]. Many factors [or things] may operate either independently or together to cause [harm / injury]. In such a case, each may be a cause of the [harm / injury] even though the others by themselves would have been sufficient to cause the same [harm / injury].

If you find that the defendant's act or omission was a substantial factor in causing the [harm / injury] to the plaintiff, you may find that the defendant's conduct caused the [harm / injury] even though it was not the only cause. In deciding whether the defendant's conduct is a cause of the plaintiff's [harm / injury], you are not to consider whether that conduct was more important or less important than any other factor in causing the [harm / injury].

UCJI 44.01

DUTY OF MEDICAL PROFESSIONAL

A physician has the duty to use that degree of care, skill, and diligence that is used by ordinarily careful physicians practicing in the same or similar circumstances in the same or a similar community. A failure to use such care, skill, or diligence is negligence.

UCJI 44.03

A PHYSICIAN DOES NOT ALWAYS GUARANTEE SUCCESS

A physician does not guarantee a successful outcome by undertaking to perform a service. A physician is not negligent unless an unsuccessful outcome results from the physician's failure to use the care, skill, and diligence of an ordinary careful physician practicing in the same or similar circumstances.

UCJI 52.01

LIABILITY FOR DOMESTIC ANIMALS— STRICT LIABILITY

The plaintiff alleges that the defendant is strictly liable for the plaintiff's [personal injuries / property damages]. This requires the plaintiff to prove the following by a preponderance of the evidence:

(1) the defendant was the possessor of the [*animal*];

(2) the [*animal*] had dangerous propensities abnormal to [*insert animal class or species*];

(3) the defendant knew or had reason to know of those abnormally dangerous propensities; and

(4) the plaintiff's [personal injuries / property damages], if any, were caused by those abnormally dangerous propensities.

If you find each of these elements, the defendant is liable even if the defendant exercised the utmost care to prevent the animal from doing the harm.

UCJI 52.02

LIABILITY FOR DOMESTIC ANIMALS— NEGLIGENCE

The plaintiff alleges that the defendant was negligent and that the negligence caused the plaintiff's [personal injuries / property damages]. This requires the plaintiff to prove the following by a preponderance of the evidence:

(1) The defendant was the possessor of the [*animal*];

(2) The defendant knew or should have known that the [*animal*] would cause the plaintiff's [personal injuries / property damages] if any, if the [*animal*] was not controlled or confined; and

(3) The defendant failed to use reasonable care to prevent the [*animal*] from harming the plaintiff.

[To recover economic damages caused by a dog, the plaintiff need only prove (1) and (3) above. To recover noneconomic damages caused by a dog, the plaintiff must prove (1), (2), and (3).]

UCJI No. 73.01

DAMAGES—AVOIDABLE CONSEQUENCES

A person who suffered damage has a duty to exercise reasonable care to avoid increasing that damage. There can be no recovery for increased damage caused by the failure to exercise such care.

Case Type	SOL	Liability Standard	Damages	Attorney's Fees	Coverage
Automobile					
- BI	2 years unless minor claimant or wrongful death	Negligence	Economic, Non-economic, Property, and Punitive	No, unless filed under $10,000	1. Policy for car 2. Policy for injured
- UIM/UM	2 years	Stands in shoes of tortfeasor	Economic and Non-economic	Yes, unless falls under safe harbor	Policy for injured
- PIP	2 years	Treatment related to a reasonable medical certainty	Economic only	Yes, unless falls under safe harbor	1. Policy for car 2. Policy for injured 3. Policy for at fault driver*
Slip and Fall	2 years or 1 year	Depends on invitee status of claimant	Economic, Non-economic, and Punitive	No, unless ORLTA triggered	Depends
Dog Bite	2 years unless claimant is minor	Strict liability for certain claims, negligence for rest	Economic, Non-economic, and Punitive	No, unless filed under $10,000	Policy for dog owner
Medical Malpractice	2 years, 3 years, or 5 years depending on injury	Ordinary Careful Physician	Economic, Non-economic, and Punitive	No	As many as you can figure out a way to trigger

*only applies to cases involving pedestrians

FILING SUIT

	Plaintiff	Defense
Getting ready to file	• Make sure to give plenty of time before SOL. • Review venue and any quirks to filing. • Prepare GAL paperwork if necessary. • Go over complaint with client and get sign off on amounts and facts.	• Keep eye on SOL. • Prepare client for service and make sure they alert you when served.
Suit filed	• Get suit served. ORCP 7. Know it, love it, live it. • If necessary, prepare alternative service documents. • Mark on calendar 30th day from proof of service, have default ready if no appearance.	• If SOL approaching, make sure to keep contact with client re: service. • Keep eye on docket if you know SOL passed and have not heard anything. • Once copy of suit received send out ORCP 69 letter. • Review for venue or pleading issues. Evaluate for potential ORCP 21 pleadings or motions.
Suit served	• If appearance made send out RFP. • Touch base with defense attorney to get feel for chance of early resolution. • Monitor court file for trial date request/failure to prosecute letters. • If no appearance, move for default.	• Make contact with PA, let them know on case. • Monitor SOL and status of service. If not served after 60 days include affirmative defense of lack of service. • File answer. Include any potential defenses that must be pled in answer. • Send out RFP.

NEW CASE/PRELITIGATION

	Plaintiff	Defense
First contact	• Sell the client on having you represent them and run conflict checks. • Get feel for how they will be as client. • Evaluate venue and/potential issues.	
Claimant signed	• Gather initial information and all documents in client's possession, pray they have police report, get HIPAA releases signed, gather photographs, • Send out letters of rep and preservation of evidence. • Put PIL and CMS on notice.	
Claimant treating	• Work with PIP and HI to make sure bills being covered and paid by proper party. • Keep up to date with claimant regarding treatment status.	• Adjusters get involved, will request status updates from plaintiff's firm. • If big accident might bring counsel in to keep them aware. • If privately retained by client directly, attorney will reach out to P firm periodically to check status.
Claimant done treating	• Start gathering medical records and bills, track down final liens for everything not covered by PIP. • Prep demand.	• Make run at settlement. • If can't settle on own consider ADR. • Keep reminding adjusters $1,500 is not a good 20.080 offer.

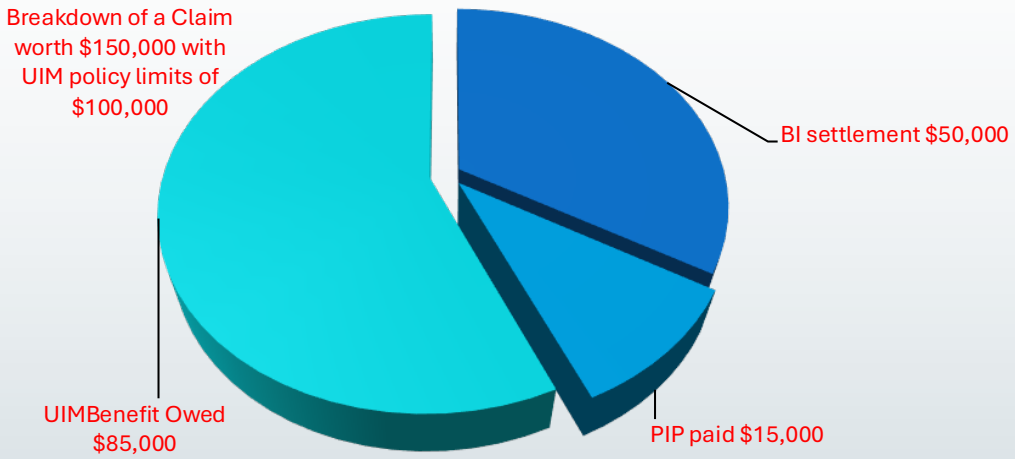
DISCOVERY

	Plaintiff	Defense
Requests for Production • Both sides should ensure documents are Bates stamped for ease of review. • Make sure you work with the other side regarding deadlines. • DO NOT MISS A DEADLINE! ORCP 46.	• Prepare discovery response to D's RFP. • Keep in communication with defense regarding deadlines and work together with them regarding gathering of records. • Work with client to gather documents in their possession.	• Evaluate what kind of case this is and what type of documents needed in addition to medical records. • Prepare response to P's RFP. • Review medical records and discuss what type of experts needed. Record Review vs. IME (ORCP 44).
Request for Admissions • Used to narrow down facts for trial. • Rules for drafting and responding in ORCP 45. • If a request is denied and later found to be true, denying party could be liable for attorney's fees.	• Consider filing RFA if liability denied. • If case looks like going to trial use to eliminate need to prove facts that are trivial or not pivotal to save on time and costs at trial.	• Consider using if P denies prior injuries or if it appears treatment not related to this accident. • Used in Slip and Fall/premises cases to help narrow down issues and standard of care.
Depositions • Rules covered by ORCP 39. • Can be used at trial and read into the record. • While no expert discovery in Oregon you can still use depositions to preserve testimony of an expert for trial to save on costs or if they would be unavailable.	• Not needed in every case. Keep costs in mind. If mediation coming up, do you really need to depose D? • Necessary in comparative fault cases and premises liability. • For corporate and government D's clearly identify what information seeking in your deposition request. ORCP 39C(6). • Prepare client for how to answer.	• Make sure you have discovery prior to deposition. D's responsibility to make sure they're prepared. Do not wait for last minute to ask P if they have records for X location. • Identify ORCP 39C(6) witnesses. • Work with carrier on any special requests. Keep corporate clients in loop in case they want to be present.
Subpoenas • Covered by ORCP 55. • Play nice with other side.	• Consider any objections or request in camera reviews for sensitive info. • Waive 14-day waiting period if no objection.	• Powerful tool. Use it to make sure you actually have full records.

PRETRIAL PREPARATION

	Plaintiff	Defense
Consider ADR • Mediation • Arbitration – required on all cases $50,000 or less • Settlement conference – required on all cases in Clackamas County	• Review with client about whether they agree to ADR. • Wonderful tool to assist if one party is being stubborn in negotiations. • Much more cost and time efficient to get case resolved when liability not at issue.	
Determine and retain experts	• How many doctors needed for client's injuries. • If liability denied should already have identified and retained experts such as accident recon. • Do you need Billing expert. If yes, consider deposing vs put on at trial. • Keep costs in mind. • Rebuttal expert?	• Revisit records review vs. IME. If IME needed must be set up well in advance of trial. • Consider which experts can have testimony preserved by deposition.
File motions • Do not file motions for things that can be worked out. Judges HATE unnecessary motion practice.	• Move for MSJ on issues not at issue is applicable, usually will be D filing motions other than punitive damages. • Prepare Motions in Limine.	• Evaluate if MSJ available or reasonable for filing. • File Offer to Allow Judgment. ORCP 54. • Prepare Motions in Limine
Amendments to complaint/answer • Can be amended at almost any time, even during trial. • Either party can move to bifurcate trial if multiple issues or parties.	• Has anything changed since filing. Increased bills from ongoing treatment? • Has client died and now need to amend to change client to estate and have representative appointed. • File motion to add punitive damages.	• If previously denied and do not have good faith basis to continue denying, consider amendment. • Amend answer to reflect RFA answers to avoid attorney fees.

1ST PARTY CLAIMS – UIM/UM IN 3D

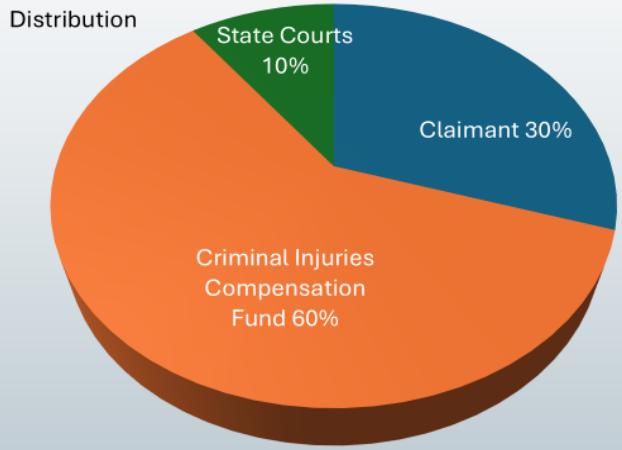


- You cannot receive more than the contracted amount. There is no such thing as 1 st party bad faith in Oregon…*
- Oregon is a stacking state, meaning you have access to your entire policy regardless of how much you have already received. States such as Washington and Idaho do not require stacking outside of certain circumstances. If policies do not stack, policy limit is reduced by amo unt received in the BI policy limits, meaning it is possible to have a valid UIM claim but still be owed no benefits because your UIM coverage is equal to or less than the BI policy limits for the at fault party.

*Still can make the threat under *Moody v. Oregon Community Credit Union*, 371 Or. 772, 542 P3.d 24 (2023). Insurers do not want to be the test case.

PUNITIVE DAMAGES CONTINUED

- Award for punitive damages does not go entirely to claimant. Follows formula in ORS 31.735.



- Defense to punitive damage award is the defendant's ability to pay an award.

LEARNING THE ROPES: PERSONAL INJURY



OR

HOW I LEARNED TO STOP WORRYING AND LOVE INSURANCE COMPANIES

"There are a couple of things I can't do. I can't get you justice, I wouldn't start at the courthouse, and fair isn't a concept that survives long in a court of law. All I can do is try to get you as much money as I possibly can."

-BERNARD MOORE

MEDIATOR EXTRAORDINAIRE

FROHNMAYER, DEATHERAGE LAW FIRM

WHAT WE WILL BE COVERING

1) Insurance Companies and their Role in Personal Injury
2) Life of a Case
3) Ways to Practice
4) Types of Cases
5) Types of Damages
6) AI's Impact on the Field

1) INSURANCE COMPANIES

Plaintiff

- Deep pockets
- Designed to pay out on claims
- Less need to educate
- Less of a fight

Defense

- Deep pockets
- Access to defense
- Steady stream of clients

*Remember, no matter who the client, most of your cases will revolve around working with insurance adjusters **so play nice!**

2) THE LIFE OF A ~~SHOWGIRL~~ CASE

- New Case/Prelitigation
- Trial
- Post trial/Settlement






NEW CASE/PRELITIGATION

Plaintiff

- Do you take the case (after passing conflicts)?
  - Venue
  - Jury appeal
  - Can I prove it/SOL issues
  - Cost to value
  - Can I tolerate client
- After signing
  - Make sure client treats and bills get covered
  - Alert CMS
  - Order records and make settlement demand when client done treating
- Filing considerations
  - Were we able to negotiate
  - Can I still prove it/Cost to prove it
  - Venue
  - Jury appeal
  - Pleading amount: <$10,000, <$50,000, or

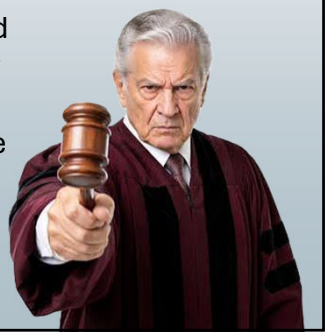


Defense

- Do you take this case?
  - Unless conflict, you don't have a choice
- When are you being brought in?
  - Prelitigation
  - After filed
- Thoughts on litigation chances
  - SOL satisfied
  - Any defenses
  - Are there coverage issues I need to avoid
  - How will client present to a jury
  - Chances of getting this settled
  - Costs

TRIAL

- Trial is a last resort not a first resort. Most do not need to be tried.
- Keep in mind who is actually benefitting by going to trial
- PROS:
  - Plaintiff - Attorney gets higher fee rate and costs go up exponentially.
  - Defense - Great way to rack up billable hours. Good trial record helps enhance internal reviews.
- CONS
  - Plaintiff - Significant chance your client would have received more in their from settlement. COSTS! Someone has to pay them win or lose.
  - Defense - Excess verdict and putting your client through one of the most stressful experiences of their life.



POST TRIAL/POST SETTLEMENT

PLAINTIFF

- ENSURE ALL LIENS ARE ACCOUNTED FOR AND ALL PARTIES WITH INTEREST ARE NOTIFIED
- **PROTECT MEDICARE INTEREST**
- RUN COST REPORT
- ADVISE CLIENT THEY ARE RESPONSIBLE FOR ANY ADDITIONAL LIENS OR BILLS
- PREPARE ACCOUNTING
- PREPARE AND HAVE CLIENT SIGN ACCOUNTING DOCUMENT
- DISBURSE FUNDS (AFTER 4 BUSINESS DAYS IN FEDERALLY INSURED ACCOUNT)*
- ENSURE CASE PROPERLY DISMISSED IF FILED
- BEG CLIENT FOR REVIEW

DEFENSE

- ORDER CHECKS (IF NECESSARY)
- **PROTECT MEDICARE INTEREST**
- DRAFT CLOSING MEMO TO INSURANCE CLIENT
- ENSURE CASE PROPERLY DISMISSED IF FILED
- BEG NONINSURANCE CLIENT FOR REVIEW

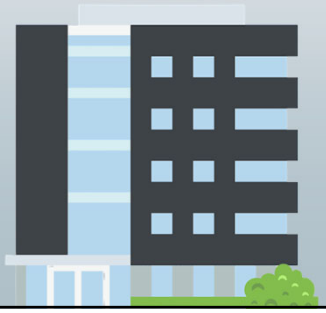
*If your client is a minor follow ORS 126.700 and 126.725.

3) WAYS TO PRACTICE

- **PLAINTIFF**
- **DEFENSE**



vs.



PLAINTIFF PRACTICE

Solo/Partnership	Firm
High financial risk	Less individual financial risk
High control over who you represent	Less control over cases
Responsible for all advertising	Partners handle advertising
Schedule flexibility, you can work wherever or whenever	You are an employee of the firm, even once you make partner. Still have flexibility.
Small or no staff, and shared or no private office space	Expected to use staff and office provided

DEFENSE PRACTICE

Firm	In House
High workload. Can reject cases but partner's decision, not yours.	Highest workload, you never get to reject a case being assigned.
Still need insurance companies to hire you. If insurer is not happy, they can pull cases mid litigation.	No need to advertise. Company will always send you cases. Can just focus on cases.
Potential for more financial rewards. Can negotiate contracts and pay scale periodically with insurers. Still possibility of slow months depending on caseload. Pay based on billable hours.	Often the lowest paid but also very consistent in pay and no worry of slow months.
Often have to fight with insurer about bills.	Salary, no billables. No fuss.

4) TYPES OF CASES

- **AUTOMOBILE ACCIDENT**
- **SLIP AND FALL/PREMISES LIABILITY**
- **DOG BITE**
- **MEDICAL MALPRACTICE**
- **BREACH OF CONTRACT, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, TOXIC TORTS, PROPERTY DISPUTES, CIVIL RIGHTS…***



"It's a no-go area."

*covered in Learning the Ropes 2: The Electric Boogaloo

AUTOMOBILE ACCIDENTS

- Involve any injury sustained during use or occupancy of a motor vehicle. Does not require operation of the vehicle.
- 2 types of claims for injuries:
  - 3rd party
  - 1st Party
- Property damage.*



*Not being covered today but will be in Learning the Ropes: Back in Action

AUTOMOBILE INSURANCE COVERAGE

- Why do we care?
- What governs?
  - ORS 742.520. Any injury, "resulting from the use, occupancy, or maintenance of any motor vehicle," is covered by automobile insurance.
  - "Use" is a very broad term, typically includes loading and unloading the vehicle, and does not require the actual injury to occur while any of the parties are still inside the motor vehicle.
  - *Carrigan v. State Farm Mutual Auto Insurance Co.*, 326 Or. 97, 949 P.2d 705 (1997).



*Really hope they don't have the State minimum

3RD PARTY CLAIMS

- Claims against another party.
- Can be multiple layers of insurance. ***Lamb-Weston v. Ore. Auto. Ins. Co.*, 219 Or. 110, 346 P.2d 643 (1959).**
- Statute of limitations is typically 2 years, unless:
  - ORS 12.160 applies because claimant is minor;
  - Wrongful Death claims have 3 years; and
  - Property damage claims have 6 years.
- Can claim economic, non-economic, and move for punitive damages from at fault party.
- Includes Dram Shop Claims, subject to ORS 471.565.



1ST PARTY CLAIMS – UIM/UM/PIP

- Underinsured and Uninsured Motorist Coverage
  - UIM – At fault doesn't have enough money.
  - UM- At fault doesn't have insurance or isn't known, including Phantom Vehicles. ORS 742.508(5).
  - PIP – No fault health care and wage loss coverage.
- 2-year SOL, no exceptions.
- Attorney's fees!!!!!! Unless Safe harbor met. ORS 742.061.
- UIM Statute of limitations satisfied by:
  - Filing lawsuit against the insurer;
  - Filing lawsuit against the tortfeasor; or
  - Formally demanding the initiation of arbitration proceedings against the insurer.



SLIP AND FALLS/PREMISES LIABILITY

- 2-year SOL for most cases, 1 year for ORLTA.
- Claims covered by the policy on the property, and can still cover off property.*
- Waivers do not always work. *Bagley v. Mr. Bachelor, Inc.*, 340 P.3d 27 (2014).
- Oregon Recreational Use Law. ORS 105.682.
- Oregon Landlord Tenant Act (ORLTA), codified in ORS 90.
  - Covers all areas of property. *Jackson v. KA-3 Associates, LLC.*, 374 Or. 1 (2025).



*Your home policy is your own personal hamster bubble that protects the world from you. Do not test it out until we cover Intentional Torts in Learning the Ropes 33[1/3].



SLIP AND FALLS CONTINUED – STANDARD OF CARE

- Property owner's duty is based on status of the person on their land. Three different statuses recognized by Oregon Law:
  - Invitee – highest level of care owed. Two types, Business and Public.
  - Licensee – Person who is on property owner's land for their own benefit or personal/social purposes.
  - Trespasser – Party did not have a lawful right to be on the property.





DOG BITES

- Covered by home policy, some exclusions apply.
- 2-year SOL for most claims.
- Dog owner is strictly liable for economic damages. ORS 31.360.
- One Bite Rule for strict liability for noneconomic damages. UCJI 52.01.
- Can also prove with negligence standard, no strict liability. UCJI 52.02.
- Defense: Comparative fault available, even in strict liability case.

MEDICAL MALPRACTICE



- SOL is 2 years from date of discovery.
- Statute of Ultimate Repose is 5 years from date of treatment. ORS 12.110.
- "Ordinarily Careful" standard of care. UCJI 44.01.
- A doctor is not liable just because the treatment was unsuccessful. UCJI 44.03.
- Can be liable to nonpatients. *Stone v. Witt*, 374 Or. 524 (2025).
- Battle of experts.

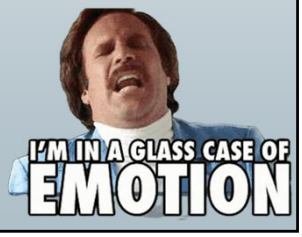
4) TYPES OF DAMAGES

- NONECONOMIC DAMAGES
- ECONOMIC DAMAGES
- PUNITIVE DAMAGES
- ATTORNEY'S FEES
- DOUBLE, TREBLE, CONTRACTUAL, ETC…*



NONECONOMIC DAMAGES

- Pain and suffering.
- Covers all nonmonetary losses that the claimant has suffered. ORS 31.705. Damage cap in wrongful death.
- If economic awarded jury must award nonecon unless injury is subjective or only minor. *Wheeler v. Huston*, 288 Or. 467 (1980) and *Fatehi v. Johnson*, 207 Ore. App. 719 (2006).
- Cannot receive if claimant was DUII or uninsured at time of MVA.
- Common Defenses:
  - Mitigation – See . *Zimmerman v. Ausland*, 513 P.2D 1167(1973), UCJI 73.01, and ORS 31.760.
  - Causation/Preexisting Injuries.

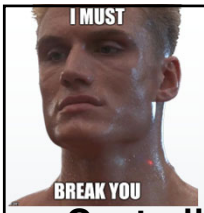


ECONOMIC DAMAGES

- Tangible and objective damages caused by the defendant.
- Covered in UCJI 70.03.
- Medical expenses includes the total amount billed to the claimant. *White v. Jubitz Corp.*, 347 Or. 212 (2009).



- Wage loss is the actual loss to the person.
- Future losses are based on present value. *Miller v. Pac. Trawlers, Inc.*, 204 Ore. App. 585 (2006).



PUNITIVE DAMAGES

- **Controlled by ORS 31.730.**
  - **Must proven by "clear and convincing evidence" that defendant acted with malice or showed a "reckless and outrageous indifference" to unreasonable risk of harm and that they exhibited a "conscious indifference" to others.**
- **Examples:**
- **Cannot be pled in the initial complaint.**
- **Most of it doesn't go to claimant.***





***See handout for how it is paid out.**

ATTORNEY'S FEES

- Listed as a damage for our discussion, however the court treats them as a cost. ORS 742.061.
- The fees must be "reasonable." See the Oregon State Bar Economic Survey.
- ORS 20.080 – Attorney's fees for demands $10,000 or less
- To make a claim under ORS 20.080 you must do the following:
  - Step 1: Send written demand with adequate supports to both insurer **and** the tortfeasor for $10,000 or less;
  - Step 2: Wait 30 days for best offer
  - Step 3: File suit and win by $0.01.
  - Can have multiple claims in same suit. *Frost v. Jacobs*, 330 Or. App. 61 (2024).



* You get to charge for time to prepare the fee petition and argue your fees.

6) AI'S IMPACT ON THE FIELD

- Very powerful tool when used properly
- Can process large quantities of medical records and is great at checking for missing records
- Can start documents and put down initial Information into a document template.
- Great for providing a jumping off point for legal research.
- Does not fact check itself and can lead to false results.
- Does not know what is truly important in the analysis of a case.
- It is very easy to identify AI generated memos.
- Garbage in is still garbage out.
- AI does not care about your client



BONUS CONTENT – A FEW TIPS

- You catch more flies with honey than vinegar. Your life will be easier, and your clients will be happier if you treat everyone with respect and kindness. The people opposing you are just doing a job, and probably getting yelled at just as often as you are, so keep that in mind.
- Find a hobby that lets you interact with a community in a positive way. Whether it is collecting something, baking, writing, playing games, or recreational sports. Find something that takes you away from a monitor and makes you happy.
- You will only be as successful as your team.
- Never forget, you work for the client and not the other way around.
- Check out the PLF's Redbook in BarBooks.

- And finally....



*

Even smart people make mistakes. The Professional Liability Fund has your back. Never be afraid to call them!

*Courtesy The Far Side by Gary Larson

THANK YOU!

Jeffrey Carter
Jeffrey@rdwyer.com

*Feel free to keep my contact information and reach out if you have any questions. Also, if you are the first to pick up on any of the references regarding future Learning the Ropes seminars, I will buy you Roseline Coffee and let you pick my brain.

CHAPTER 11

CRIMINAL LAW

Lisa Ludwig
Ludwig Runstein LLC

Chapter 11

CRIMINAL LAW

TABLE OF CONTENTS

I. CRIMINAL COURTS BY THE NUMBERS..... 11-1
II. PARTIAL BIBLIOGRAPHY OF CRIMINAL LITIGATION RESOURCES 11-4

OREGON CRIMINAL COURTS BY THE NUMBERS

Time a defendant can be held in custody without the court making a finding of probable cause, in hours: 36[1]

Time in which a release decision must be made by a magistrate for an in-custody defendant, in hours from arraignment: 48[2]

Number of days a defendant can be held on a District Attorney's information prior to preliminary hearing: 5 [3]

Number of days a probationer can be held in custody before the court must conduct a probation violation hearing or release: 14[4]

Number of days a defendant may be held in custody pre-trial, absent a waiver or good cause: 60[5]

Maximum number of days from citation to appearance: 30[6]

Statute of Limitations for most felonies, in years: 3[7]

Statute of Limitations for a misdemeanor, in years: 2[8]

Statute of Limitations for a violation, in months: 6[9]

Number of days prior to trial that pre-trial motions must be filed: 21[10]

Number of days prior to trial that "412 Motion" to admit hearsay must be filed: 15[11]

Number of days prior to trial alibi notice must be filed: 5[12]

Number of affidavits of prejudice against judges that can be filed per case: 2[13]

Number of jurors for felony trial: 12[14]

Number of jurors required for a felony verdict of acquittal: 10[15]

Number of preemptory challenges per party in felony case: 6[16]

Number of jurors for a misdemeanor trial: 6[17]

Number of jurors required for a misdemeanor verdict: 6[18]

Number of preemptory challenges per party in misdemeanor trial: 3[19]

Maximum number of alternate jurors in a felony trial: 6[20]

Minimum time between plea or verdict and sentencing, in days: **2**[21]

Maximum period sentencing can be set after plea or verdict for in-custody defendant, in days: **31**[22]

Number of person misdemeanors that equal one person felony for felony sentencing purposes: **2**[23]

Days from date of DUII arrest to request DMV license suspension hearing: **10**[24]

Driver license suspension for first breath test failure, in days: **90**[25]

Period of license suspension for first breath test failure before driver is eligible for hardship permit, in days: **30**[26]

Driver license suspension for first breath test refusal, in years: **1**[27]

Period of license suspension for first breath test refusal before driver is eligible for hardship permit, in days: **90**[28]

Time from arraignment for defendant to enter the DUII Diversion program, in days: **30**[29]

Term of Diversion program, in years: **1**[30]

Maximum extension beyond first 12 months to complete Diversion program, in days: **180**[31]

Length of driver license suspension for DUII conviction, in years: **1**[32]

Number of DUII convictions in prior ten year period that causes next to be a felony: **2**[33]

Presumptive prison sentence for first felony DUII conviction if defendant has no other criminal history, in months: **13-14**[34]

Maximum fine for violation of Breath Test Refusal, in dollars: **1000**[35]

Number of months you can be confined for remedial contempt of court: **6**[36]

[1] ORS 135.010, subject to a good cause exception.
[2] ORS 135.245(2), applies if defendant does not request security release at arraignment.
[3] ORS 135.070(2); in some jurisdictions this must be asserted in writing. See local rules.
[4] ORS 137.545(6)
[5] ORS 136.290(1); but see examples of good cause and ORS 136.295 for rule in cases of murder, attempt or conspiracy to commit murder.
[6] ORS 133.060(1)
[7] ORS 131.125(8)(a); but see ORS 131.125 for exceptions for sexual offenses, frauds, etc.
[8] ORS 131.125(8)(b); but see ORS 131.125 for exceptions
[9] ORS 131.125(8)(c); but see ORS 131.125 for exceptions
[10] UTCR 4.010. Exception for good cause, and practice modified in many counties. Consult Supplemental Local Rules for your jurisdiction.
[11] OEC Rule 803(18a)(b)
[12] ORS 135.455
[13] ORS 14.260(5)
[14] ORS 136.210(1)
[15] ORS 136.450, Oregon Constitution, Article I, section 11.
[16] ORS 136.230(1). Note, in cases of multiple defendants, each defendant gets usual number of challenges and State gets a total number equal to total of all defendants' challenges. ORS 136.250.
[17] ORS 136.210(2)
[18] ORS 136.450
[19] ORS 136.230(1)
[20] ORS 136.260(1)
[21] ORS 137.020(2)(a), except when defendant consents to earlier sentencing.
[22] ORS 137.020(5); subject to defendant's consent to longer delay and see ORS 137.767 for cases where a pre-sentence investigation is conducted.
[23] OAR 213-004-0008
[24] ORS 813.410(4)
[25] ORS 813.420(3)
[26] ORS 813.520(2)
[27] ORS 813.420(1)
[28] ORS 813.520(1)
[29] ORS 813.210(1)(a); but see 813.210(1)(c) when a urine or blood test is involved.
[30] ORS 813.230(3)
[31] ORS 813.225(5); but see 813.225(7) which permits longer extensions when the petitioner is in armed forces.
[32] ORS 813.400; ORS 809.428(2)
[33] ORS 813.011(1)
[34] ORS 813.012 and Oregon Sentencing Guidelines, OAR 213-004-0001 through 0009.
[35] 813.130(3)(e) but note the fine cannot be less than $500.
[36] ORS 33.105. However, summary contempt sanctions are limited to 30 days of incarceration per contempt. 133.105(3)(b).

Lisa J. Ludwig 2025. With apologies to Harper's.

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Oregon Criminal Defense Lawyers Association https://www.ocdla.org/

National Association of Criminal Defense Lawyers https://www.nacdl.org/

Federal Defender Services Training Division https://www.fd.org/

Oregon District Attorneys Association https://www.oregonda.org/

National District Attorneys Association https://www.ndaa.org/

ABA Standards: Prosecution Function
https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/

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Bellin, Jeffrey, "The Evidence Rules That Convict the Innocent" (2021). Faculty Publications. 2020. https://scholarship.law.wm.edu/facpubs/2020

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Locators for People Detained and Incarcerated

DHS https://vinelink.dhs.gov/#!/map

Federal Inmates https://www.bop.gov/inmateloc/

Oregon https://visor.oregon.gov/

Multnomah County https://apps.mcso.us/paid

CHAPTER 12

ADR IN ACTION: PRACTICAL TOOLS AND STRATEGIES

Hon. Eve Miller (Ret.)
Eve Miller Mediation
Christopher J. Drotzmann
Davis Rothwell Earle & Xóchihua PC

Chapter 12

ADR in Action: Practical Tools and Strategies

TABLE OF CONTENTS

I. Arbitration and Mediation PPT Slides 12-1

II. Notice – Civil Mediation – Oregon Judicial Department 12-8

III. Arbitration after Mediation Memo 12-11

ARBITRATION & MEDIATION



LEARNING THE ROPES

YOUR PANEL



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OVERVIEW

- Is there an agreement or statute calling for arbitration?
  - Contract, ORS Chapter 36
- Is Mediation a condition precedent to Arbitration? Is it required (family law, landlord/tenant, small claims, others?)
- Choosing a Mediation/Arbitration Provider
  - Arbitration Services of Portland, American Arbitration Association, JAMS, OM&A, Court Annexed
- Mediator/Arbitrator Selection Considerations
  - Research his/her background- defense or plaintiff oriented
  - Conflict considerations
  - Cost
  - One vs. Three
- Activities to Prepare for Arbitration
  - Written Discovery
  - Depositions
  - Experts
  - Investigation
  - Prehearing Statement
- Arbitration Hearing

REASONS TO ARBITRATE/MEDIATE

- Cost, Efficiency
- Compelled by contract or statute
- Mediation as condition precedent to fee award at Arbitration
- Not a public record like court
- Accessibility to Arbitrator and Streamlined Docket
- Confidentiality Protections (See ORS 36.220 to 36.238)
- Ability to participate in/control the outcome
- More predictable outcome less swayed by crazy jury prejudices
- More informal
- Facilitated decisions are more acceptable to parties

What is the difference between Mediation and Arbitration?

- Mediation
  - Mediator
  - Voluntary Process vs. Mandatory ADR
  - Negotiated Resolution
  - No decision if a negotiated agreement is not reached
  - OEC 408 Confidentiality
- Arbitration
  - Arbitrator
  - Evidence presented like trial, witnesses, exhibits, opening and closing arguments
  - Decision rendered
  - Can be turned into enforceable judgment with court
  - Asset seizure, garnishment

ARBITRATOR/MEDIATOR SELECTION

- Research background- Subject matter expertise, Defense vs. Plaintiff oriented
- Conflict Considerations
- Cost
- Single vs. Panel
- Location
- Evaluative, Facilitative, Collaborative
- Other Considerations?

PREPARING FOR MEDIATION

- Confidential Mediation Statement
- Pre-Mediation discussions with mediator, opposing party, counsel
- Demand
- Compiling Mediation materials
  - Statement of Claim, Complaint
  - Exhibits
  - Demand
  - Deposition transcripts
- Managing expectations and emotional considerations

PREPARING FOR ARBITRATION

- Written Discovery (Requests for Production/Admissions, Subpoena Duces Tecum)
- Depositions
- Experts
- Investigation
- Prehearing Motion Practice
- Witness Preparation
- Exhibits/Evidence
- Prehearing Statement

MEDIATION PROCESS AND PROCEDURE

- Dress to impress, show up early, bring stuff to do during down time, bring lunch
- Always be professional, do not let emotions get the best of you
- It will be a frustrating process and you will want to pack up, take your toys and go home 3X
- Good Mediators tell two very different stories
- Keep an open mind
- Joint caucus
- Questions for mediation
- Kick the mediator out of the room, kick your lawyer out
- Assume the mediator tells the other side everything unless you tell him/her not to
- Use the mediation as a fact finding exercise, never a waste of time
- Narrow the issues in dispute
- If the case doesn't resolve, it still can and probably will in time

IF YOU DON'T SETTLE AT MEDIATION WHAT HAPPENS NEXT?

- Additional Discovery (Requests for production, subpoenas, investigation, depositions)
- Additional Motion Practice
- Follow up mediation, settlement discussions, judicial settlement conference
- Mock Trial, Arbitration
- Arbitration
- Trial
- Appeal
- Appellate Mediation
- Oral Argument
- Supreme Court

ARBITRATION PROCESS AND PROCEDURE

- Dress to impress, show up early, bring lunch
- No pre-arbitration ex parte contract with arbitrator
- Pre-arbitration settlement discussions
- Site View
- Opening Statement
- Witnesses
- Exhibits/Demonstrative Aids
- Directed verdicts
- Opposing case
- Rebuttal
- Closing Argument
- Interim arbitration award
- Attorney Fee Petition and Cost Bill
- Final Arbitration Award
- Judgment

HOW DOES ARBITRATION DIFFER FROM TRIAL

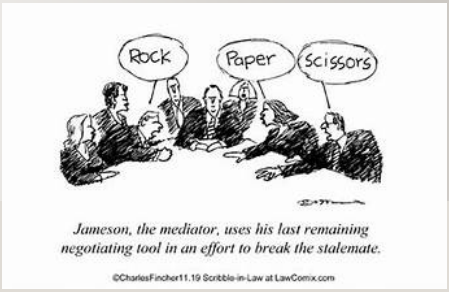
- Arbitration
- Arbitrator
- Private Venue
- No official records/transcript
- Arbitration Award
- Less Formal
- No appeal unless non binding
- Non binding appeals de novo
- Cost

- Trial
- Judge and Jury
- Courtroom
- Court reporter
- Judgment
- Trial Fees
- Formal
- Appeal



Judith sensed that the mediation would take more time than the half-day that it had been scheduled for.

c.07CharlesFincher09.03 Scribble-in-Law at LawComix.com



Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.

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Bob was the first casualty at the mediation of the "hold your breath till your face turns blue" negotiation strategy.

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Oregon Courts
Oregon Judicial Department

An Option for Resolving Your Dispute: Mediation

Important Notice: If you are receiving this form as the filing party, you must serve this form on the responding party.

What is mediation?

- A voluntary way to resolve your case with the help of a neutral person (the mediator). Instead of having a judge decide your case, you can work with a mediator to settle your case. You can still go to trial if you do not reach an agreement.

- The mediator will help you and the other party communicate and come up with options to settle the case. The mediator does not take sides or give legal advice.

How does mediation work?

- The mediator will explain the process at the beginning of mediation. Parties may meet with the mediator together or the mediator may meet with you each separately. Either party can ask to meet with the mediator alone.

- During mediation, each party has an opportunity to suggest ideas for moving forward. The mediator helps the parties come up with ideas and possible solutions.

- If both parties agree to a resolution, you may not need to go to court or arbitration. There is only a resolution in mediation if both parties agree to it.

Why should I mediate?

- It can be faster, less expensive, and less stressful than a trial or hearing.
- Parties decide the outcome instead of a judge.
- Parties can find more creative ways to resolve the dispute.
- It's private and confidential (with a few exceptions).
- It gives parties an opportunity to hear each other's perspectives.
- Parties are more likely to follow mediated agreements than court judgments.
- Parties often report higher satisfaction than in a court trial.

Things to consider before mediation.

There may be times when mediation is not appropriate. Tell your mediator or attorney if:

- Mediation poses a risk to your safety;
- You can't make decisions about your case; or
- You think you'll agree to something you don't want.

The mediator may be able to address your concerns so that you can mediate.

Where do we meet with the mediator?

Mediation usually happens in person or by video conference (for example, Zoom or Webex).

Who chooses the mediator?

Some courts will provide a mediator in landlord-tenant and small claims cases. The parties may also agree on a private mediator on their own.

Another option is to go through a Community Dispute Resolution Center (CDRC). To find one go to: Oregon Office for Community Dispute Resolution | School of Law (uoregon.edu)

You can also find private mediators using these resources:

- Oregon Mediation Association – Find a Mediator: https://ormediation.org
- The mediator search tool at Mediate.com: https://mediate.com

How much does mediation cost?

Some courts offer free mediation services in landlord-tenant and small claims cases. Otherwise, the cost for a mediator varies. Private mediators usually charge by the hour. Community dispute resolution centers (CDRCs) may be less expensive.

Can I get an interpreter for mediation?

If the court sends the case to mediation, interpreters are available for people with limited English proficiency and for people who are deaf (ASL) or hard of hearing for free. Please let your mediator or the court know that you will need an interpreter prior to your court date or mediation conference.

How do I get my case to mediation?

- The court may refer your case to mediation without you asking.
- You can also ask the court to send your case to mediation by filing a request for mediation (check with your local court for forms).
- You may talk with the other person directly and agree on mediation. If you decide to work with a private mediator, contact the mediator directly to learn more about their process.

My case is going to arbitration — can I mediate my case instead?

Yes, some courts have an established mediation program and can refer you to a mediator. In these counties, arbitration is not required if the parties don't agree on an outcome in mediation. Instead, they are referred to a judge for further case processing.

If your court does not have a mediation program, the parties can still choose to mediate with a private mediator but may be required to attend arbitration if they can't agree on an outcome.

Oregon Courts
Oregon Judicial Department

LOCAL MEDIATION PROGRAM INFORMATION

Court location: Clackamas County Circuit Court

Mediation programs:

☒ **Small claims:**

Cost to parties: ☒ $50 per side if claim amount is less than $2500 and $90 per side if claim amount is more than $2500.

☒ The court will refer the parties to mediation

☒ **Landlord tenant:**

Cost to parties: ☒ Free

☒ Parties must request mediation.

☒ **Civil:**

Cost to Parties: $125/hour

☒ Both parties must request mediation

Link to mediator information: https://www.clackamas.us/ccrs. For the fastest response, look for the tile that describes your case type (Small Claims, Landlord-Tenant, or Civil Litigation) and submit an intake.

Link to mediation forms: https://www.clackamas.us/ccrs

Phone: 503-655-8415 (voicemail only, slowest response time)

Email: rs@clackamas.us

Arbitration After Mediation Memo

In this case I was retained as a mediator. The parties and their attorneys have agreed i.e. formed a contract that they would submit all remaining disputes to me as an arbitrator.

Oregon law provides rules for parties who agree on private mediation.

ORS 36.620(1) provides:
existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

Here is a link to the statutory basis for this type of "private" contract. This is different from **court annexed mandatory arbitration** where the parties are entitled to de novo appeal. My arbitration decision will become a judgment that is appealable to the Court of Appeals. https://oregon.public.law/statutes/ors_36.620

This process should be distinguished from **court annexed mandatory arbitration** where the rules are set forth in UTCR chapter 13.

ORS 36.665 provides:

(1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

The statute also provides for the hearing and then goes on to require:

(4) At a hearing under subsection (3) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

CHAPTER 13

FINDING YOUR WAY TO LONG-TERM SUCCESS IN DAILY PRACTICE

Rachel Edwards
Monica Logan
Rita Alister
Professional Liability Fund
Practice Management Attorneys

Finding Your Way to Long-Term Success in Daily Practice



Rachel Edwards, Monica Logan, and Rita Alister
PLF Practice Management Attorneys

The Journey Ahead

1. Career Mapping
2. Practice Management
3. Stay the Course

CHAPTER 1

Career Mapping

Build a practice aligned with who you are and where you want to go



Why Does Career Mapping Matter?

Competence & Diligence	**Fulfillment & Sustainability**	**Skill Alignment**

Planning for Now and the Future



Know Yourself



Know the Legal Field



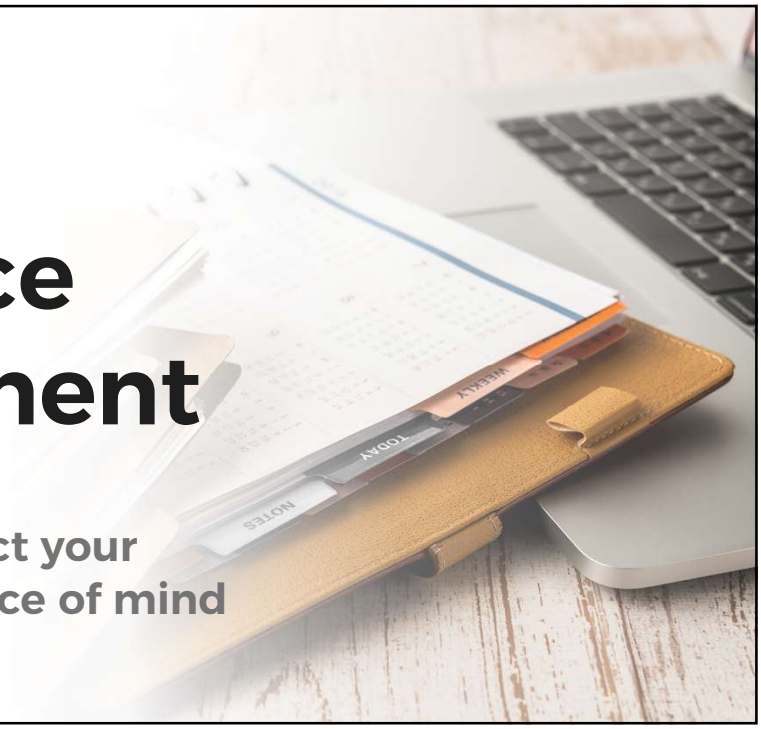
Know Your Role

Updating Your Career Map

- **Life Changes**
- **Continually Assess**
- **Yearly Review**

CHAPTER 2

Practice Management



Habits that protect your practice and your peace of mind

Why Focus on Practice Management?

Career Growth

Professional Safety Net

Better Daily Work Life



Client Intake & Onboarding

Sourcing Clients

Screening Clients and Cases

Creating a Positive Start

Conflict Checking

- **Know Your System**
- **When to Check**
- **Document Results**

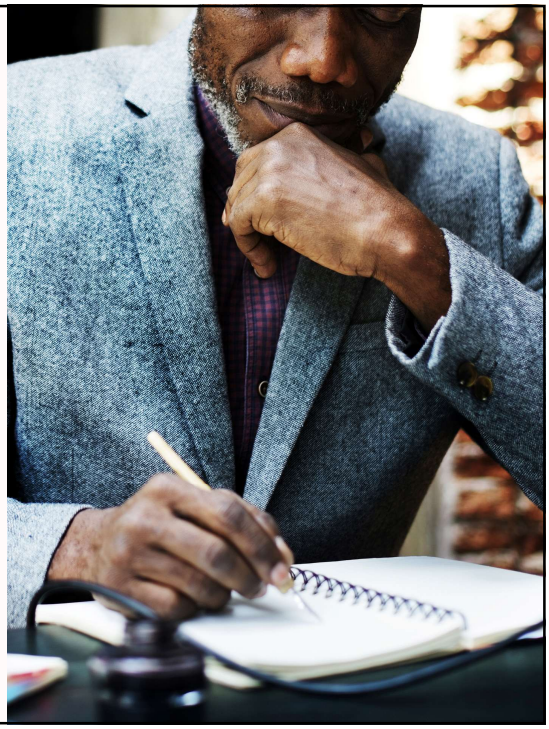
Initial Consult

Verify Intake Form Information

Ask Open-Ended Questions

Understand Client Needs and Expectations

Document Everything



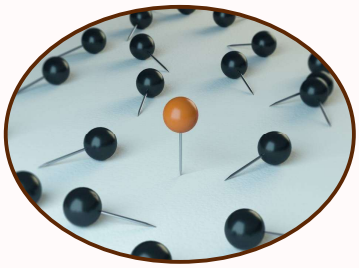
Red Flags with Potential Clients



Multiple Previous Lawyers



Unrealistic Expectations



Self-Declared Expert

Engagement Letters

Define Terms of Representation

Set Clear Expectations

Detail Key Processes & Guidelines

Nonengagement Letters



Why They Matter

Confirming no attorney-client relationship was formed

What to Include

No responsibility for upcoming deadlines or appearances

Case Management

The nuts and bolts of representing a client

- **Getting Paid**
- **Deadline Management**
- **Communication**
- **Drafting Documents**
- **Client Files**
- **Disengaging**



Timekeeping

Track time simultaneously

Track even if not billing hourly

Tie to matter and provide detailed description

Use timekeeping software

Billing

- Draft Clear Invoices
- Know Billing Procedures
- Send Regular Statements

Lawyer Trust Account = Not Your Money



Two Types of Trust Accounts



Precise Accounting Prevents Errors

Calendaring as a Defense



Immediately document



Capture dates from all sources



Synchronize calendars

Accurate Deadlines

- Know the SOLs
- Add Buffer Time
- Check Your Math

Task Management

Find a method that works for you

Prioritize your tasks

Plan for time to plan

Color-code your calendar



Email Inbox Management

Customize Inbox for Efficiency

Outlook and Gmail Tools

Unsubscribe and Filter

Use Alternative Channels

Time-Saving Tips

Two-Minute Rule

Pomodoro Method

Eat the Frog

Break Down Tasks

Why Focus on Communication?

Tool of the Profession

Facilitate Relationships



Ethical Duties

Avoid Malpractice

Ensure Clear Communication

- Know Your Audience
- Know the Why
- Avoid Legalese
- Leverage Tools



Communication Boundaries

- **Set Clear Guidelines**
- **Clarify Your Expectations**
- **Maintain Boundaries**

Drafting Documents

Update Templates

Master Microsoft

Utilize Automation Tools



Centralize Document Access

- **Collaborate on Documents**
- **Track Document Versions**
- **Compare Versions**

Client Files:
OSB Formal Ethics Opinion No. 2017-192

- Pleadings
- Correspondence
- Billing
- Notes
- Research
- Related Documents

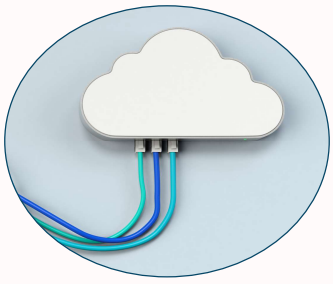
Storing Client Files



Paper



Digital On-Premise



Digital Cloud

Managing Client Documents

Sending Documents
- Encrypt with Password
- Client Portal

Receiving Documents
- Document Originals
- Track Discovery
- Sorting System

Timely Disengagement

Has the Representation Come to an End?

Do Circumstances Require Withdrawal?

Effective Disengagement

Send disengagement letter

File removal as attorney of record

Return client property

Store the client file



Client File Retention

Securing Sensitive Client Information

Ten-Year Guideline

Statutory Considerations

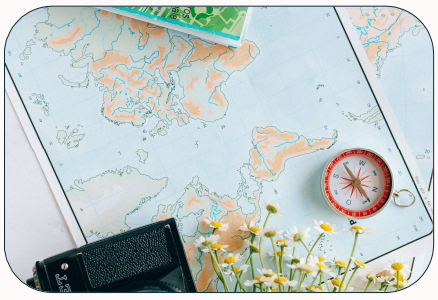
CHAPTER 3

Stay the Course

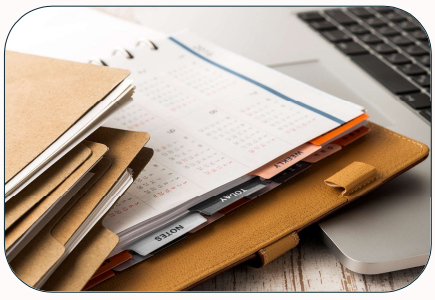


Keep your law practice intentional

What We've Covered



Map Your Career



Develop Your Practice Management Skills

Looking Forward

Maintain Knowledge & Skills

Look for Opportunities

Take Care of Yourself

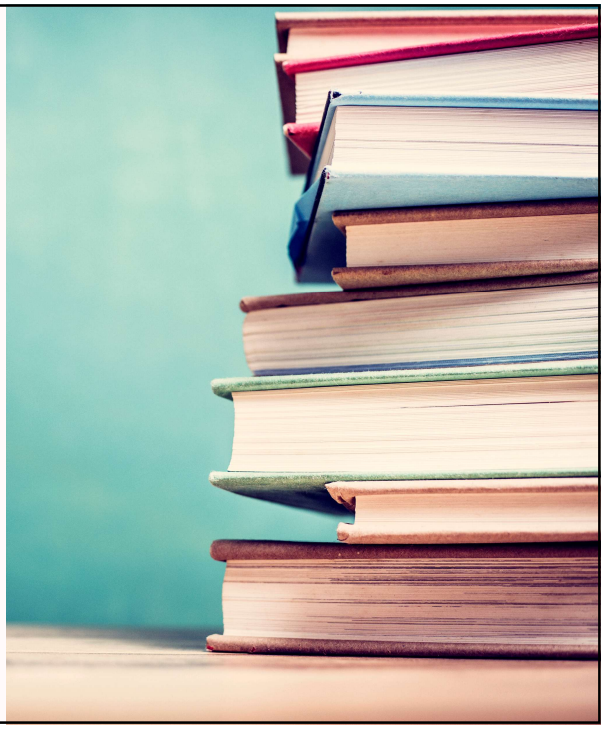
Be Who You Want to Work With

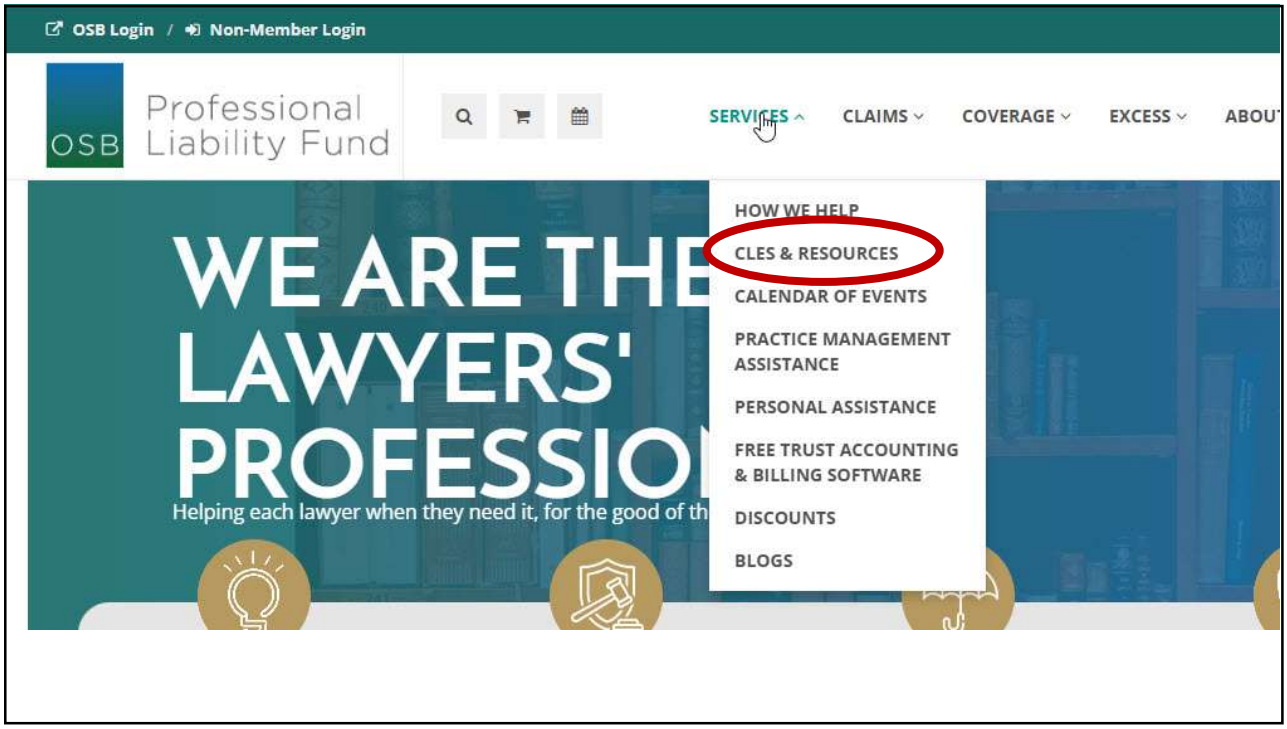
Resources

Professional Liability Fund
osbplf.org

Oregon State Bar
osbar.org

Oregon State Courts
courts.oregon.gov




OSB Login / Non-Member Login
OSB
Professional Liability Fund
SERVICES
CLAIMS
COVERAGE
EXCESS
HOW WE HELP
CLES & RESOURCES
CALENDAR OF EVENTS
PRACTICE MANAGEMENT ASSISTANCE
PERSONAL ASSISTANCE
FREE TRUST ACCOUNTING & BILLING SOFTWARE
DISCOUNTS
BLOGS
WE ARE THE
LAWYERS'
PROFESSIO
Helping each lawyer when they need it, for the good of th

Learning the Ropes 2026

Finding Your Way to Long-Term Success in Daily Practice

Resources from the PLF provide a great variety of free CLEs, practice aids, publications, newsletter articles, and blog posts. Use the search box to help you locate materials.

I. General PLF Resources
   1. Free CLEs available at https://www.osbplf.org/services/resources/#cles
   2. Practice aids available at https://www.osbplf.org/services/resources/
   3. Blog, *in*Practice, available at https://www.osbplf.org/blog/inpractice/
   4. Publications available at https://www.osbplf.org/services/resources/#plf_books
   5. Newsletter, *in*Brief, available at https://www.osbplf.org/services/resources/#inbrief

II. Specific Topics
   1. Joining or Departing a Firm
      i) PLF Practice Aids *(see Transitions and Closing a Law Practice > Joining or Departing a Firm)*
   2. Opening a Law Office
      i) PLF Practice Aids *(see Opening a Law Office > Opening or Moving a Law Office)*
         (1) Checklist for Opening a Law Office
         (2) Law Office Business Plan Worksheet
         (3) Monthly Budget
         (4) Start-Up Budget
      ii) PLF Books
         (1) Launching Your Own Practice
         (2) Mastering Your Lawyer Trust Account
   3. Office Systems and Procedures
      i) PLF Practice Aids *(see Firm Operations > Office Systems and Procedures)*
         (1) Office Systems Review Checklist
   4. Client Engagement and Relations
      i) PLF Practice Aids (*see Client Engagement and Relations > Engagement Letters and Fee Agreements)*
         (1) Checklist for Drafting Engagement Letters
         (2) Engagement Letters and Fee Agreements
      ii) PLF Practice Aids (*see Client Engagement and Relations > Client Relations)*
         (1) Client Relations Best Practices
   5. File Management
      i) PLF Practice Aids *(see Firm Operations > File Management)*
         (1) Setting Up an Effective Filing System
   6. Disengagement
      i) PLF Practice Aids (*see Client Engagement and Relations > Disengagement and Nonengagement)*
         (1) Disengagement Letters

CHAPTER 14

JOINING A FIRM

Marry Karam
Lissa Kaufman Law LLC
Matt Heldt
Tonkon Torp LLP
Monica Logan, Moderator
PLF Practice Management Attorney

Joining a Firm

Marry Karam, *Lissa Kaufman Law LLC*
Matt Heldt, *Tonkon Torp LLC*

1

Thank You!

Marry Karam
Lissa Kaufman Law LLC
marry@lissakaufmanlaw.com

Matt Heldt
Tonkon Torp LLC
matt.heldt@tonkon.com

2

Learning the Ropes 2026

PLF Resources

I. Checklist for Joining a Firm
    1. Click on the Services tab > CLEs & Resources > Practice Aids > Checklist for Lawyers Joining a Firm
II. The Early Practice Playbook: Common Challenges and Practical Solutions for New Legal Professionals
    1. Click on the Services tab > CLEs & Resources > CLEs > The Early Practice Playbook: Common Challenges and Practical Solutions for New Legal Professionals
III. Calendaring and Time Management
    1. CLE: What You Water Will Grow: Nurturing Your Productivity Habits
        i) Click on the Services tab > CLEs & Resources > CLEs > What You Water Will Grow: Nurturing Your Productivity Habits
    2. Blog: Apps to Help Legal Professionals Stay Organized (October 30, 2023)
        i) Click on the Services tab > CLEs & Resources > Blogs > Apps to Help Legal Professionals Stay Organized
    3. CLE: Avoiding Malpractice Claims When Filing and Serving a Complaint
        i) Click on the Services tab > CLEs & Resources > CLEs > Avoiding Malpractice Claims When Filing and Serving a Complaint
    4. Blog: Efficiency Unleashed: Mastering Outlook (June 28, 2024)
        i) Click on the Services tab > CLEs & Resources > Blogs > Efficiency Unleashed: Mastering Outlook
IV. Drafting Error-Free Documents
    1. Blog: Steer Clear of Mistakes in Your Documents and Forms (October 10, 2023)
        i) Click on the Services tab > CLEs & Resources > Blogs > Steer Clear of Mistakes in Your Documents and Forms
V. Malpractice
    1. Blog: Welcome New Lawyers (November 20, 2023)
        i) Click on the Services tab > CLEs & Resources > Blogs > Welcome New Lawyers
    2. InBrief: Empower Yourself to Avoid the Risk of Failing to Know or Apply the Law
        i) Click on the Services tab > CLEs & Resources > InBrief > Empower Yourself to Avoid the Risk of Failing to Know or Apply the Law

Additional Resources

American Bar Association:

Young Lawyers Division: http://www.americanbar.org/groups/young_lawyers.html

Publications: https://www.americanbar.org/groups/young_lawyers/resources/tyl/

Oregon State Bar Oregon New Lawyers Division: http://www.osbar.org/onld

Multnomah Bar Association:

Multnomah Lawyer newsletter: https://mbabar.org/newsletter

Young Lawyers Section: https://mbabar.org/YLS

Oregon Attorney Assistance Program: www.oaap.org

inSight newsletter: https://oaap.org/insights/

Oregon Women Lawyers:

Working Parents Committee: https://oregonwomenlawyers.org/resources/working-parents/

CHAPTER 15

LAUNCHING A PRACTICE

Spencer Aldrich
Aldrich & Brunot LLC
Simonne Weyand
Weyand Law
Rachel Edwards, Moderator
PLF Practice Management Attorney

Launching a Practice



Spencer Aldrich, *Aldrich & Brunot LLC*
Simonne Weyand, *Weyand Law*

Agenda

- Background
- Practice area(s)
- Office location(s)
- Hardware
- Software
- Budgeting
- Attorney fees
- Bookkeeping
- Client development
- Staff
- Challenges


Office Systems


Budgeting

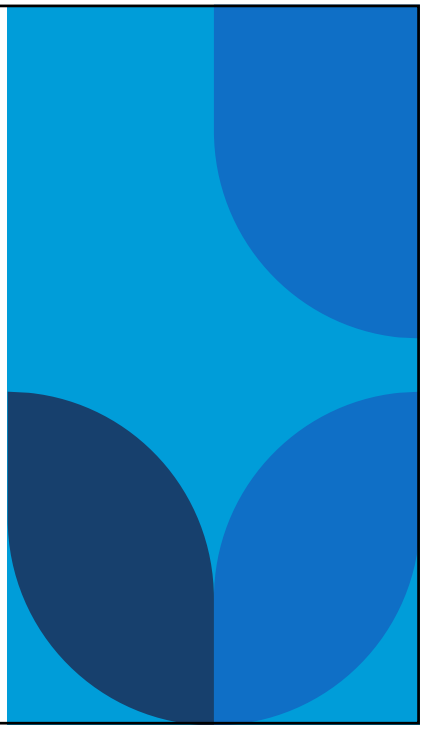

Client
Development


Staff

Thank you!

Spencer Aldrich
Aldrich & Brunot LLC
spencer@aldrichbrunot.com

Simonne Weyand
Weyand Law
simonne@kswwlaw.com



Learning the Ropes 2026: Exploring Career Pivots

Launching a Practice

Resources from the PLF provide a great variety of free CLEs, practice aids, publications, newsletter articles, and blog posts. Use the search box to help you locate materials.

I. General PLF Resources
   1. Free CLEs available at https://www.osbplf.org/services/resources/#cles
   2. Practice aids available at https://www.osbplf.org/services/resources/
   3. Blog, *in*Practice, available at https://www.osbplf.org/blog/inpractice/
   4. Publications available at https://www.osbplf.org/services/resources/#plf_books
   5. Newsletter, *in*Brief, available at https://www.osbplf.org/services/resources/#inbrief

II. Specific Topics
   1. Opening a Law Office
      i) PLF Practice Aids *(see Opening a Law Office > Opening or Moving a Law Office)*
         (1) Checklist for Opening a Law Office
         (2) Choice of Entity for a Legal Practice in Oregon
         (3) Law Office Business Plan Worksheet
         (4) Monthly Budget
         (5) Start-Up Budget
      ii) PLF Practice Aids *(see Opening a Law Office > Marketing)*
         (1) Law Practice Business Development Goal Setting Checklist
         (2) Create a Marketing Plan for Your Small Law Firm
         (3) Marketing and Business Development Worksheets
         (4) Marketing and Business Development: Crucial Skills
         (5) Marketing Plans- Sample and Completed
      iii) PLF Books
         (1) Launching Your Own Practice
         (2) Mastering Your Lawyer Trust Account
   2. Office Systems and Procedures
      i) PLF Practice Aids *(see Firm Operations > Office Systems and Procedures)*
         (1) Office Systems Review Checklist
   3. File Management
      i) PLF Practice Aids *(see Firm Operations > File Management)*
         (1) Setting Up an Effective Filing System

CHAPTER 16

GOVERNMENT AND IN-HOUSE COUNSEL

Yumi O'Neil
Cambia Health Solutions, Inc.
Benajmin Gutman
Oregon Department of Justice
Rita Alister, Moderator
PLF Practice Management Attorney

Learning the Ropes 2026

Resources

I. Government Law
   1. OSB Section: https://www.osbar.org/sections/government.html
   2. ABA Government and Public Sector Lawyers Division: https://www.americanbar.org/groups/government_public/
   3. ABA Article:" Profiles in Government Service: Advice from the Trenches" https://www.americanbar.org/groups/government_public/resources/public_lawyer_career_center/Career_Articles/laforge-article-career-profiles-in-government-service/
   4. ABA Article: "Never a Dull Moment: A Career in Public Service as a Local Government Attorney" https://www.americanbar.org/groups/government_public/resources/public_lawyer_career_center/Career_Articles/carter-article-never-dull/
   5. ABA Public Lawyers Podcast: https://www.americanbar.org/groups/government_public/resources/podcasts/

II. In-House/Corporate/General Counsel
   1. OSB Section: https://www.osbar.org/sections/corporate.html
   2. Association of Corporate Counsel (Oregon Chapter): https://www.acc.com/chapters-networks/chapters/oregon
   3. ABA Young Lawyers Division Blog: "Pathways to In-House Counsel (And the Ins and Outs of Working In-House)" https://www.americanbar.org/groups/young_lawyers/resources/tyl/practice-areas/pathways-in-house-counsel/
   4. ABA Book: The Corporate Counsel Survival Guide https://www.americanbar.org/products/inv/book/278464342/

III. Book: The New What Can You Do with a Law Degree: A Lawyer's Guide to Career Satisfaction Inside, Outside & Around the Law by Larry Richard and Tanya Hanson

CHAPTER 17

PRO BONO, LEGAL AID, AND OTHER TOOLS TO REACH JUSTICE FOR ALL

Ayla Ercin
Executive Director, Campaign for Equal Justice
Erika Hente
Executive Director, Oregon Law Center
Eric McClendon
Director of Pro Bono and Legal Referral Services, Oregon State Bar
James Geringer
Kotoba LLC
Mikaela Marino
Sussman Shank LLP

Pro Bono, Legal Aid, and Other Tools to Provide Access to Justice for All

Learning the Ropes
November 18, 2026

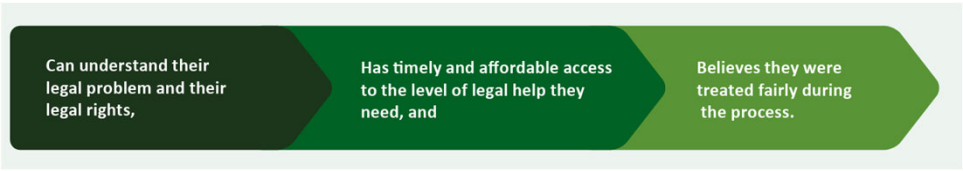


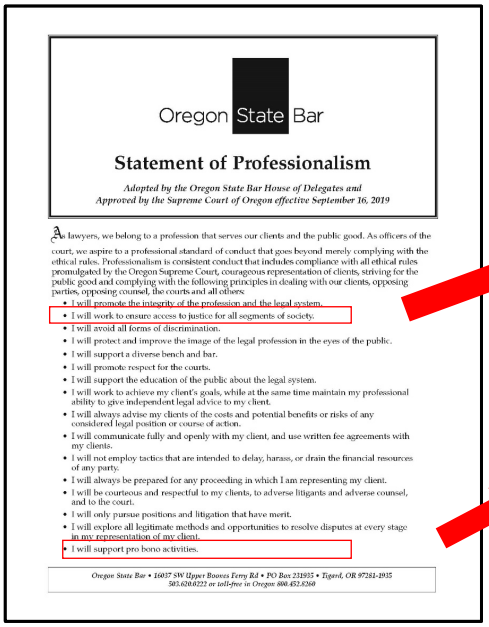


- **Mission:** Increasing access to justice
- **Functions and Goals:** Advance a fair, inclusive, and accessible justice system

What is Access to Justice?

"Access to Justice" is a broadly used term with variable meanings. Often, it is shorthand for "equal access to justice"– namely, that all people with a legal issue, regardless of income or demographics, are entitled to a fair and just resolution to their legal case.





Oregon State Bar

Statement of Professionalism

Adopted by the Oregon State Bar House of Delegates and Approved by the Supreme Court of Oregon effective September 16, 2019

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is consistent conduct that includes compliance with all ethical rules promulgated by the Oregon Supreme Court, courageous representation of clients, striving for the public good and complying with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts and all others:

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will support a diverse bench and bar.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

Oregon State Bar • 16037 SW Upper Boones Ferry Rd • PO Box 231935 • Tigard, OR 97281-1935
503.620.0222 or toll-free in Oregon 800.452.8260

I will work to ensure access to justice for all segments of society.

I will support pro bono activities.

An aspiration:
80 hours of pro bono services.

80

Direct legal service to people with low incomes:
20 to 40 hours or two cases.



OSB Policy 12.100

"If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor."

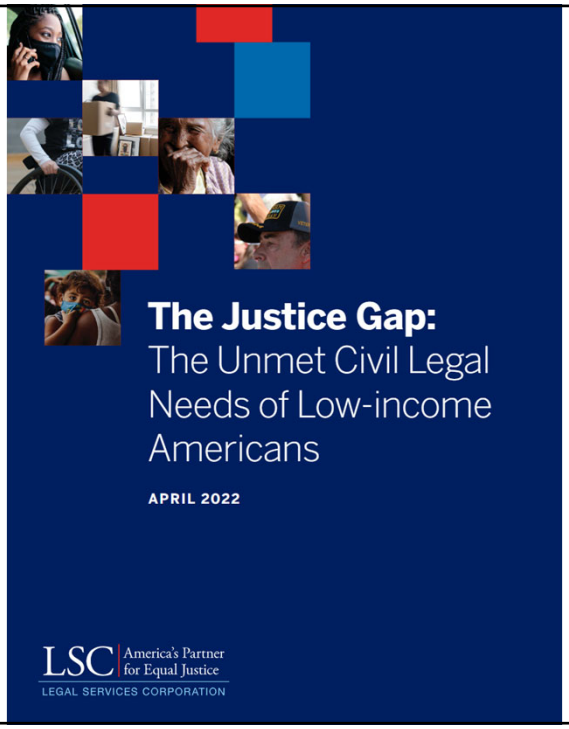


The Lawyers' Campaign for Equal Justice



The Lawyers' Campaign for Equal Justice

Supports legal aid by providing centralized coordination of fundraising, education, and outreach efforts.


The Justice Gap:
The Unmet Civil Legal Needs of Low-income Americans
APRIL 2022
LSC America's Partner for Equal Justice
LEGAL SERVICES CORPORATION


Low-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems.
EVICTION NOTICE
Low-income America
About 50 million Americans have household incomes below 125% of the poverty threshold – including more than 15 million children and nearly 8 million seniors.*
Civil legal needs
Civil legal needs typically involve securing and protecting basic needs, such as housing, education, health care, income, and safety.
The justice gap
The justice gap is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.
*Data source: U.S. Census Bureau's Current Population Survey, 2021 Annual Social and Economic (ASEC) Supplement.

The Prevalence of Civil Legal Problems

Most low-income households have dealt with at least one civil legal problem in the past year – and many of these problems have had substantial impacts on people's lives.



3 in 4 (74%) low-income households experienced 1+ civil legal problems in the past year.

2 in 5 (39%) experienced 5+ problems and 1 in 5 (20%) experienced 10+ problems.

Most common types of problems: consumer issues, health care, housing, income maintenance.

43% of low-income, renter households experienced at least one civil legal problem related to housing in the past year.



Concerns about the cost of legal help stand out as an important barrier to seeking and receiving legal help.

Nearly one-half (46%) of those who did not get legal help for one or more problems cite concerns about cost as a reason why.

Higher Income = Belief in System

They seek help more often: People with higher incomes are more likely to seek legal help for problems with substantial impact (32% vs. 25% of problems).

Their justice gap is smaller: They are less likely to go without any or enough legal help for problems with substantial impact

They have better access: They are more likely to be confident that they could find and afford a lawyer if they needed one (73% vs. 45%).

They believe in the system: They are more likely to believe that they can use the civil legal system to protect and enforce their rights (59% vs. 39%).

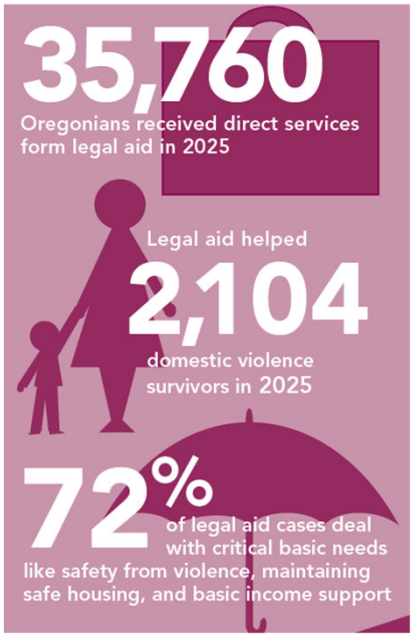
*These statements compare people at or above 400% of FPL with people at or below 125% of FPL.
Data source: 2021 Justice Gap Measurement Survey





The Lawyers' Campaign for Equal Justice

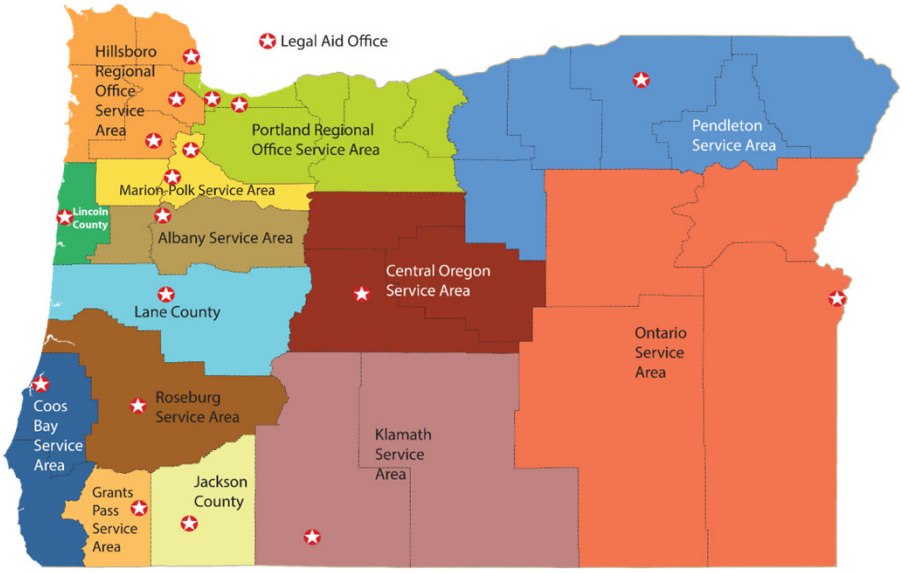
Jenny's Story



Legal Aid holds more than 300 community education events each year.

1 out of every 4 Portland lawyers supports legal aid through the Campaign for Equal Justice

Legal Aid Offices



2025 Income Eligibility

Number in Family	125% of Federal Poverty Level
1	$19,562 per year $1,630 per month
2	$26,437 per year $2,203 per month
3	$33,312 per year $2,776 per month
4	$40,187 per year $3,348 per month

Limited Resources

1 out 2: One out of every two requests for legal help have to be turned away due to limited resources.

56%: Even when legal aid can provide some help, only 56% of client's legal issues can be fully resolved by legal aid.

71%: Legal aid organizations are unable to provide any or enough legal help for 71% of the legal problems that are brought to their doors

National data from Legal Services Corporation funded organizations.



Civil Court filings are rising. Over the past five years, landlord-tenant and general civil cases have shown the most growth.

Legal help is in short supply. Oregon's attorney count has stayed flat for more than a decade. The state now ranks 40th on the National Center for Access to Justice's Attorney Access Index.

Legal aid cannot keep up with demand. Free civil legal aid organizations serve many thousands of Oregonians each year, but their capacity is far below the need.

Large number of Oregonians appear in civil court without representation. Navigating legal issues- inside or outside of court- can be overwhelming without legal training.

Legal Aid Lawyers in Oregon

A Crucial Need for Oregon

Ratio of legal aid attorneys to low-income residents:



Statewide Average
1.6-to-10,000



National Guideline
10-to-10,000

Legal Aid Pro Bono Programs

- Bankruptcy Clinic
- Domestic Violence Project
- Expungement Clinics
- Family Law Forms
- Housing Notice Clinic
- Senior Law Project
- UI Benefits Panel
- Night Clinic
- Disaster Assistance Panel
- Wills Clinic
- NAPOLS Project



Domestic Violence Project

Domestic Violence Project

Pro bono attorneys represent survivors of abuse in contested restraining order hearings.
Cases have short timelines, limited issues, & a court appearance.
Excellent opportunity for attorneys seeking courtroom experience.
Volunteers are not expected to assist clients with ongoing family law cases.
Attorneys sign up to be available to take a case on call or on a specific day.
Online CLE's, mentorship and extensive materials available.



Housing Notice Clinic

Housing Notice Clinic

- Volunteer Attorneys review notices of rental termination
- Advise, draft demand letters and negotiate settlements
- Opportunities for continued assistance available
- Attorneys sign up to receive case referrals via email
- Online CLE and extensive materials available
- Excellent opportunity for new attorneys
- Remote volunteer opportunity



Expungement Clinics

Expungement Clinics

Criminal and Eviction Expungements	Volunteer attorney reviews client records to assess eligibility	Attorneys complete all necessary paperwork for eligible clients
Great opportunity for new attorneys and those who cannot commit to long-term cases	Training and resources available	In-person clinics or remote case referrals.

Benefits of Volunteering with Legal Aid

- Mentorship and Support
- Certified Pro Bono Program-PLF Coverage
- Access to Trainings and Resources
- 1 hour of MCLE credit for every 2 pro bono hours – up to 6 per reporting period.

Volunteer Resources

- Trainings and Materials:
  www.probonooregon.org
  www.oregonrentersrights.org
- Interpreter Services
- Templates and Forms
- Case Support
- LASO office space



Certified Pro Bono

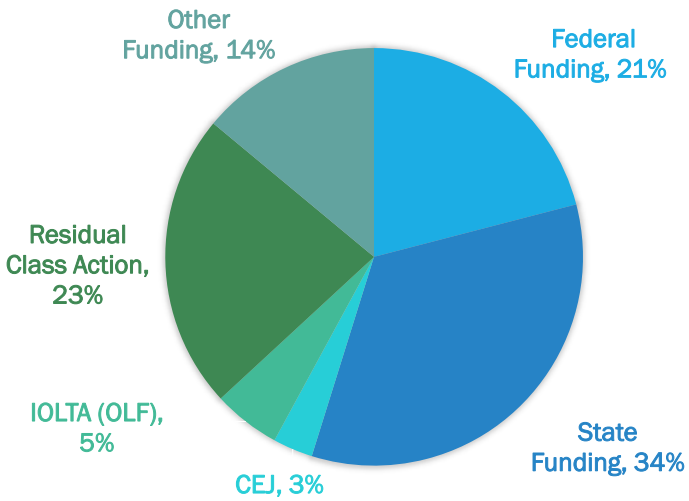
More can volunteer, no PLF coverage required.



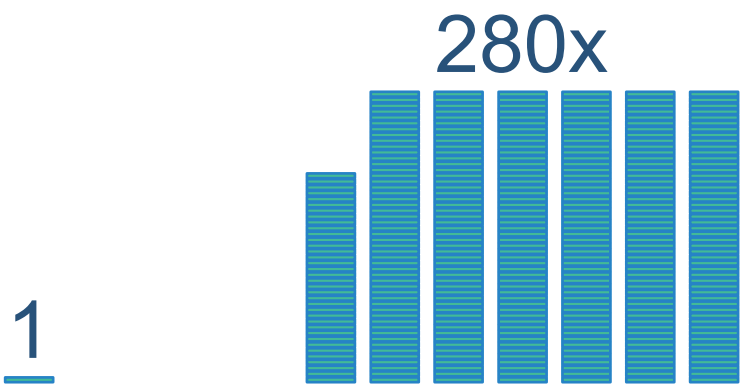
Save time on CLEs with pro bono

1 MCLE credit for
2 hours pro bono.

2025 Legal Aid Funding Sources



Bank where it matters:
Oregon Law Foundation Leadership Banks.



Leadership Banks & Credit Unions

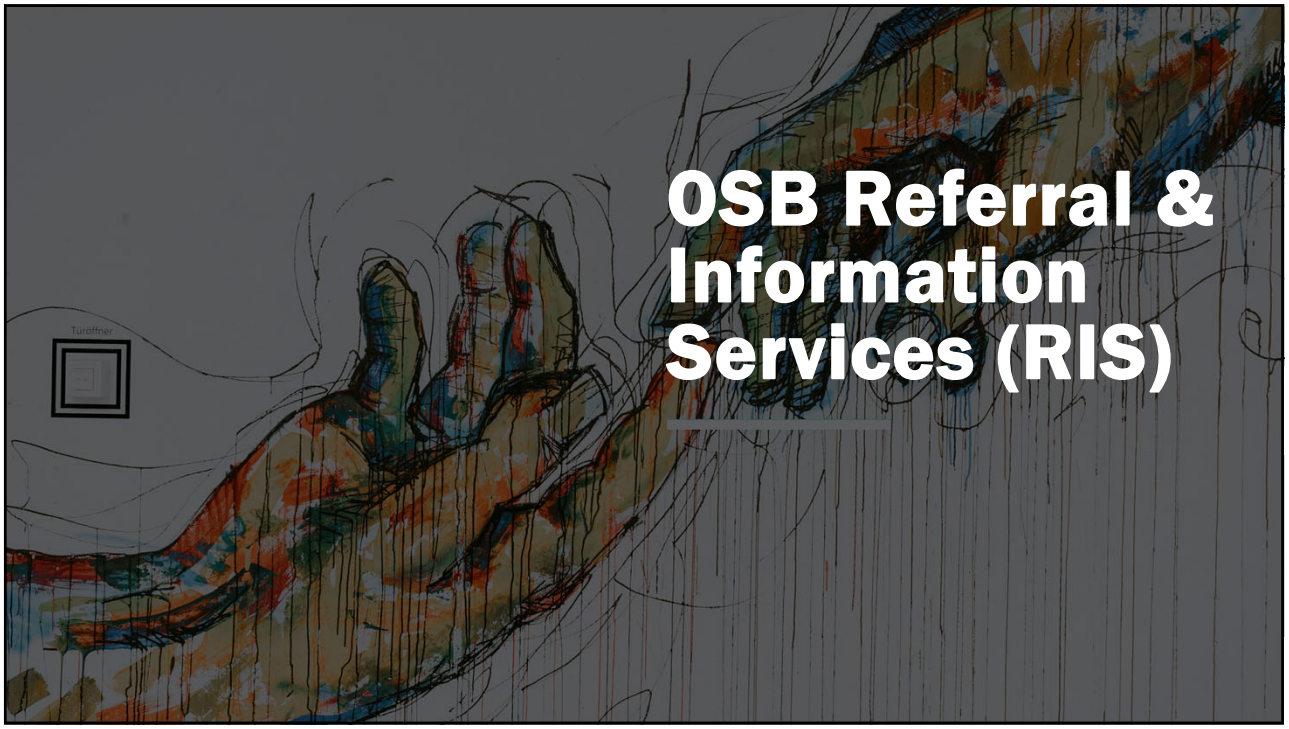
Visionaries: 2.80%+interest

Bank of Eastern Oregon
Beneficial State Bank
Columbia Bank
Columbia Credit Union
First Federal S&L
Heritage Bank
Hingham Inst. for Savings
KeyBank
Maps Credit Union
Northwest Bank
OnPoint Credit Union
OR Community Credit Union
Pacific West Bank
Pioneer Trust Bank
Summit Bank
Washington Trust Bank
Wells Fargo Bank

Leadership Banks & Credit Unions

Advocates: 2.40% to 2.79% interest

Bank of America
Chase Bank
Esquire Bank
First Citizens Bank
1st Security Bank of WA
Oregon Pacific Bank
Servbank
Willamette Valley Bank



Referral Programs and Pro Bono Programs You Can Get Involved With

- Legal Referral Service
- Modest Means Program
- Free Legal Answers
- Military Assistance Panel
- Problem Solvers
- Wildfire Assistance Panel
- www.oregonlawhelp.org

Legal Referral Service (LRS)

Approximately 500 attorney panelists – become a panelist!	Statewide, all areas of law	Bilingual lines for Spanish speakers	$50 initial 30-minute consultation
Over 50,000 referrals per year	Over 100,000 calls, 10,000 online referral requests (OLR)	Resource guide	Adding Licensed Paralegals in the near future

Modest Means Program

- Reduced hourly rates of $60, $80 or $100 per hour based on client income and assets as measured against the Federal Poverty Guidelines
- $35 initial 30-minute consultation
- Family Law, Criminal Defense, and Landlord/Tenant
- 30,000 calls per year with approximately 4,000 referrals made

Pro Bono Programs

Free Legal Answers

- Administered by OSB and ABA
- Virtual legal clinic
- Volunteer attorneys answer specific civil law questions and respond via email
- Frequent questions address family law, eviction, and consumer law
- Allows some follow up questions based on the attorney response
- Will eventually expand into other areas of law
- https://oregon.freelegalanswers.org

Military Assistance Panel

- 2 hours of pro bono work for active duty military and families
- Family law is most common type of legal service requested. Volunteers trained in Servicemembers' Civil Relief Act. Other common issues include consumer and debtor/creditor law, real property (including foreclosure and landlord/tenant) law, and estate planning



Pro Bono Programs

Problem Solvers

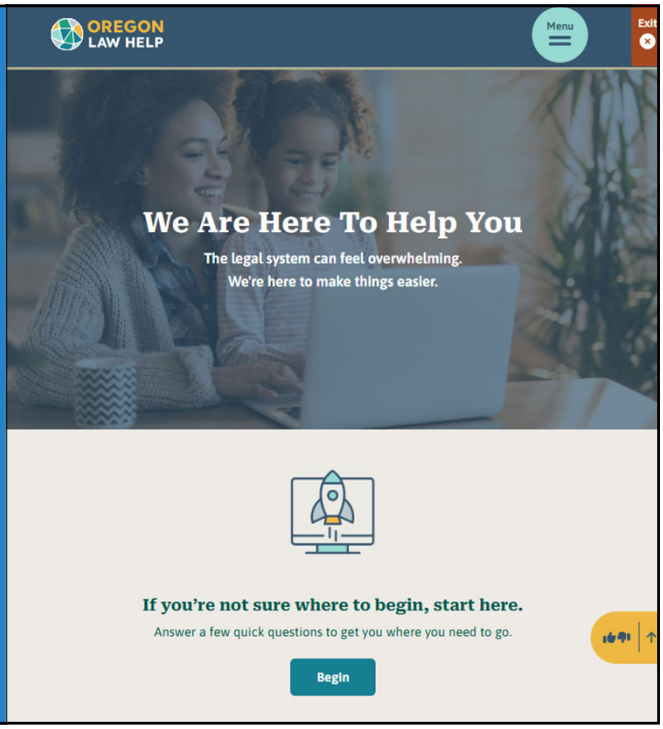
- Free 30-minute consultations for children aged 13-17
- Consultations usually concern family law issues, emancipation and other areas of law pertinent to teens and young adults



Pro Bono Programs

What is Oregon Law Help?

- An online library of **civil** legal information created by lawyers
- An online referral directory of **free and low-cost** legal help in Oregon
- Tools to help people find information and referrals



Who's involved?

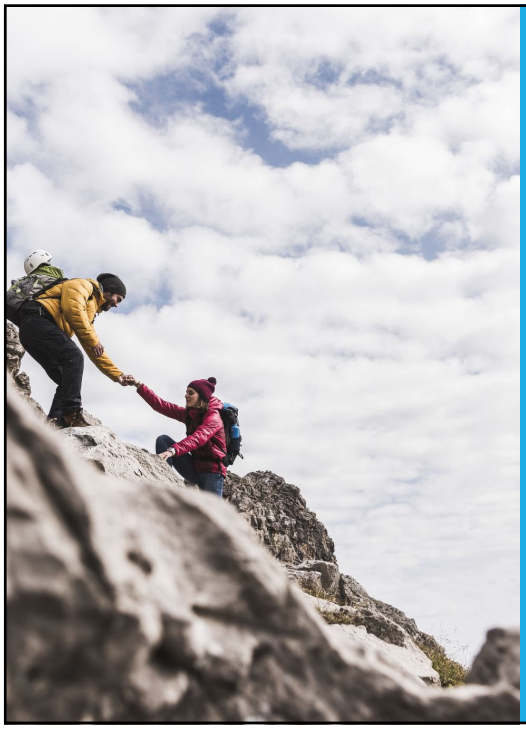
- Oregon State Bar
- Oregon Judicial Department
- Legal Aid Services of Oregon
- Oregon Law Center
- Oregon Consumer Justice
- Community-based organizations
- Giant Rabbit (developer)



How Lawyers Use OLH



1. To brush up on their own knowledge in a way that makes it easy to teach
2. To educate clients
3. To quickly find court forms and resources
4. To assist clients they have to refer out
5. To help with pro bono work



Ways to Help

1. Pro bono opportunities
2. Share with your network
3. Share materials at your office
4. Add a button to your website or email signature

Get involved

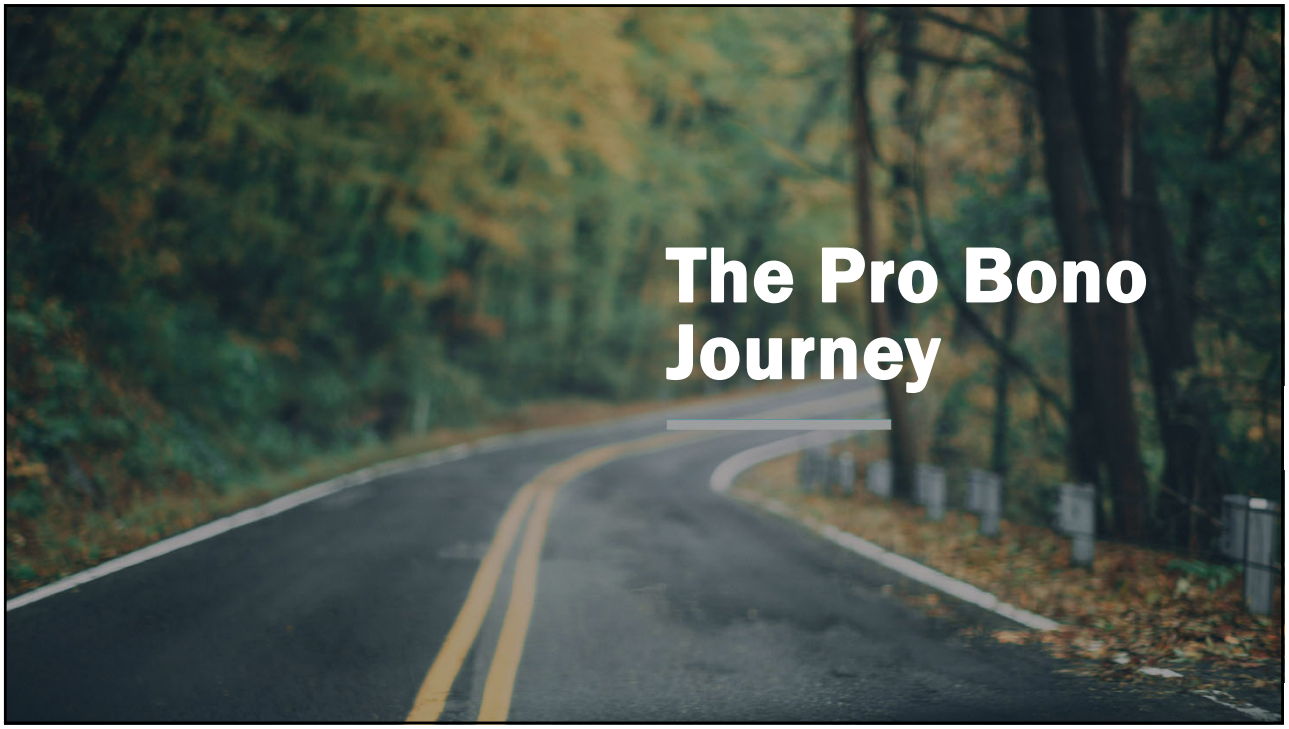
Oregon Law Help is a shared project. We can't succeed on our own.

Find ways for attorneys to get involved, including as pro bono contributors at:

https://oregonlawhelp.org/support-legal-literacy-oregon

https://oregonlawhelp.org/





Mikaela Marino and Jim Geringer



- Associate attorney at Sussman Shank
- 2026 Multnomah Bar Association Michael E. Haglund Young Lawyer Award
- Pro bono work includes:
  - Legal Aid Expungement Clinic and Domestic Violence Project
  - Sexual Assault Resource Center
  - SOAR Immigration Legal Services
  - CLEAR Clinic



- Former partner at Klarquist Sparkman, LLP
- Solo attorney at Kotoba LLC
- 2026 Legal Aid Services of Oregon Pro Bono Volunteer of the Year
- Pro bono work includes:
  - Legal Aid Domestic Violence Project
  - St. Andrew's Legal Night Clinic
  - U.S. District Court Pro Bono Panel

Thank You!

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CHAPTER 18

SMART TOOLS, SHARPER JUDGMENT: AI FOR NEW LAWYERS

Jade Priest-Maoz
Priest-Moaz Coaching & Consulting, LLC
Theodore Reuter
Reuter Corbett LLP

LEARNING THE ROPES

Smart Tools, Sharper Judgment

Practical Skills for New Lawyers Using AI

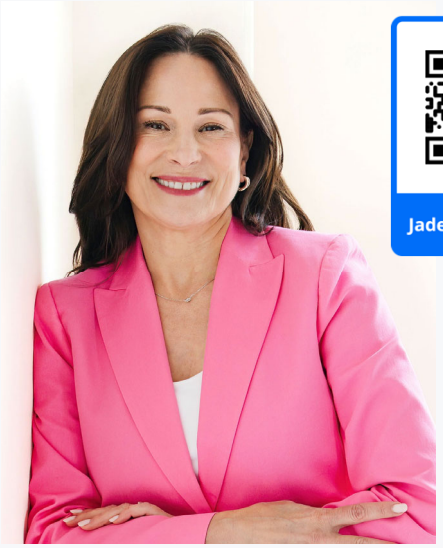


Wednesday, November 18, 2026 · Portland, Oregon · 60 Minutes

Ted Reuter & Jade Priest-Maoz



Ted Reuter



Jade Priest-Maoz

Jade Priest-Maoz

SESSION ROADMAP

Sixty Minutes, Two Parts

1

Practical Grounding

≈ 45 minutes

Four scenarios new lawyers face and practical ways to preserve your professional integrity in an AI-embedded legal practice.

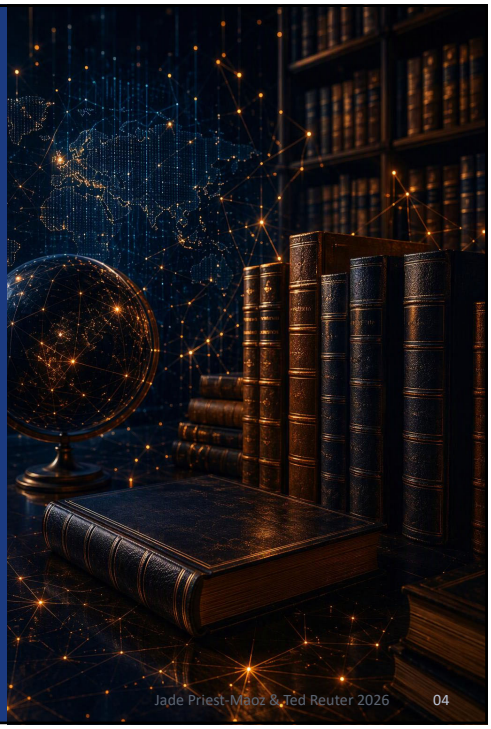
2

Discussion

≈ 15 minutes

A moderated discussion on the use of AI in the practice of law, professional judgment, and where the profession is headed.

You Will Use AI in Practice.
The Question is How.



Six Things to Keep Front of Mind All the Time

1

You own the output.

Verification is non-delegable. Whatever the tool produced, the analysis is yours.

2

Know your client, not just their rights.

The question a client asks is often not the one they need answered.

3

Managing up is a skill.

Most AI problems arrive as an instruction or a deadline. Raise concerns early.

4

Have a policy. Follow it.

A written, followed AI policy turns good judgment into protection.

5

Build discernment. Keep doing the reps.

Some questions are AI questions. Others are human. Know which is which.

6

Candor beats every alternative.

The first mistake is survivable. The cover-up is what ends careers.

SCENARIO 1



AI is NOT a Licensed Attorney.

Maya, a second-year associate, is asked if a client can exit his commercial lease early. The partner wants an answer by Thursday.

The AI-generated memo says a co-tenancy clause allows exit on sixty days' notice. Maya doubts the trigger was ever met — but the memo sounds more senior than she feels, so she stays quiet and sends it up.

The client gives notice. The landlord sues. No one had asked him why he wanted out: a cash-flow crunch a rent deferral would have solved.

WHAT WENT WRONG

It Wasn't Using AI. It Was Silencing Her Own Read.

Maya identified the weak point — the co-tenancy trigger — and then suppressed her own correct read in favor of the machine's confident, wrong answer. Fluency is not accuracy. And nobody asked the client why he wanted out — the question he asked and the interest he actually had were different things.

SCENARIO 1 · KEY CONCEPTS

Even the Smartest Lawyers Can Fall Victim

Automation Bias

Over-trusting confident machine output — even against your own correct judgment. Hardest on new lawyers, since the output sounds more senior than you feel.

The Moral Crumple Zone

When the system fails, the blame is on the human closest to it — often the most junior name on the document. The vendor never shows up at the hearing.

SCENARIO 01 · TAKEAWAYS

What a New Lawyer Should Do

- Verify before it leaves your hands — treat AI output like an unverified draft.
- You are a licensed attorney – have professional self-confidence. Treat hesitation as data. A doubt is a signal to escalate, not to re-prompt until it fades.
- Escalate with a script: “I don't think X is true — I need one more day.”
- Ask the client question anyway: do we actually know why they want this?

SCENARIO 2



Don't Just Believe the Machine.

Devon, a busy solo two years in, files an AI-drafted appellate brief without reading the cases it cites. Two of them don't exist, and a block quote appears nowhere in the real decision it names.

Opposing counsel moves to strike. Devon calls the fabrications "reformatting errors," swaps in real cases, and never mentions AI.

Result: $2,000 in sanctions, a published opinion, a certification requirement on every future brief — and a bar complaint focused on the cover story.

WHAT WENT WRONG

Two Mistakes — and the Second Was Far Worse

Trusting unverified AI output under deadline pressure was a serious failure. But recasting fabrication as "reformatting" is what turned it into a published sanctions opinion. The court's own words: the tool was generating nonexistent law "in accordance with its design."

SCENARIO 2 · KEY CONCEPTS

Even Though You're a Lawyer, You're Still Human

All Humans Make Mistakes, Honest Humans Survive Them

Candor is your professional responsibility, and it preserves trust and integrity. You will make mistakes. Address them forthrightly, and as soon as possible.

Human Skills Are Vital

The Solicitors Regulation Authority reported 78% of clients believe their lawyer's emotional intelligence (EQ) is as important as their legal expertise. AI is diminishing human skills while making them more important than ever.

SCENARIO 02 · TAKEAWAYS

What a New Lawyer Should Do

- Read every case you cite, every time.
- Never let a deadline compress verification — seek an extension, or remove unverified content before filing.
- Found a problem after filing? Full candor, immediately — don't just "wait and see what happens," and never quietly swap citations.
- Tell your supervisor the same day. A candid mistake is survivable. Concealment rarely is.

SCENARIO 3



The Question Behind the Question.

Priya, a third-year associate, uses the firm's secure enterprise AI throughout a retired couple's earnout dispute. She reviews every output, confirms the information is accurate, and bills for her estimated time based on how long the work would have taken without AI.

During a meeting, one client asks point-blank whether she is using AI on their case. Priya, caught off guard, obfuscates in a way that implies that AI was not used.

Weeks later, they see the firm advertising its AI capabilities — and its promise of "the same quality work in a fraction of the time," still billed at full hourly rates. They call the bar.

WHAT WENT WRONG

Being Caught Unprepared Is What Draws Complaints

The obfuscation that triggered bar complaint came from being caught off guard and from a billing practice that varied from the one stated in the engagement letter— not from using AI itself. A client asking a direct question deserves a prepared, firm-cleared answer. It is also important to make sure the client knows what is being done on their behalf.

WHAT ELSE WENT WRONG

The Real Question Was Never About Technology

Two people whose life's work was on the table were really asking one thing: are we in careful hands? A candid answer — what the tool is, and that Priya reviews everything — would have answered that. In addition, the billing practices need to be clearly disclosed to the client and then complied with.

SCENARIO 3 · KEY CONCEPTS

Client Trust is Paramount

Inform Your Client

The absence of communication with a client, clear or otherwise, is the number one driver of complaints to the Oregon State Bar. Keeping the client informed about the process of handling their case is vital to success.

Bill Clients in Accordance with your Fee Agreement

While no Oregon case has dealt with this directly, clear consensus in legal ethics opinions throughout the country is that if your fee agreement says you bill at an hourly rate, you cannot inflate the hours based on time you would have spent but for AI.

SCENARIO 03 · TAKEAWAYS

What a New Lawyer Should Do

- Prepare a plain-English answer to “do you use AI on my matter?” — clear it with your supervisor first.
- Don't know the firm's position? Ask before the meeting. Surfacing the gap is managing up.
- Answer the trust question with the technology question: what you still personally do.
- Calibrate to the client — an anxious individual and an institutional client differ.

SCENARIO 4



The Sunday Night Shortcut.

DeShawn, three months into a junior in-house role at an Oregon healthcare system, has a Monday deadline and no access yet to the approved enterprise AI tool.

He doesn’t ask his supervisor. He pastes a 200-page supply agreement — proprietary pricing, operational data — into a free consumer tool on his personal account, whose terms allow inputs to train the model.

Months later, the vendor’s counteroffer mirrors that internal pricing. The GC opens an investigation; DeShawn can’t show the terms were protected, and outside counsel is retained.

WHAT WENT WRONG

A Missing Policy Was the Upstream Cause

Not malice, and not ignorance of the duty — a new lawyer's misreading of which constraint was fixed and which was flexible. DeShawn treated the deadline as immovable and confidentiality as negotiable. It was exactly the reverse.

SCENARIO 4 · KEY CONCEPTS

Wise Lawyers Will Slow Down and Think

AI is Fast – for Good and for Bad

Failures in judgment, escalation, and communication now scale faster because AI increases speed and volume.

Cognitive Offloading Puts Wisdom at Risk

New lawyers must proactively prevent AI use from impeding their development of legal expertise, human skills, and wisdom.

SCENARIO 04 · TAKEAWAYS

What a New Lawyer Should Do

- Never put confidential information into an unapproved tool — treat consumer generative AI accounts as off-limits.
- Learn the approved tool list in week one. No access when a deadline looms? Call your supervisor.
- Before using a new firm-approved tool with real data, check what happens to that data.
- If a lapse happens, report it immediately — containment options shrink by the minute.

THE GUT CHECK

The winner isn't the heaviest user of AI, or the holdout.

It's the lawyer who keeps their judgment sharp enough to overrule the machine on the day it matters.

PART 2

Moderated Discussion

28

FINAL ADVICE

Elevate your practice with AI, and Stay human.



Thank You.

Questions? Let's talk.

Ted Reuter

Jade Priest-Maoz

36

CHAPTER 19

LAWYER WELL-BEING: A LOOK INSIDE THE NEWEST RESEARCH

Kyra M. Hazilla, JD, LCSW
Director of Oregon Attorney Assistance Program
and Attorney Counselor
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Oregon Attorney Assistance Program
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Oregon Attorney Assistance Program
Attorney Counselor

oaap
Oregon Attorney Assistance Program

We are lawyers and counselors.

- *Well-being & stress*
- *Anxiety & depression*
- *Problem substance use*
- *Compulsive behaviors*
- *Career & lifestyle*
- *Relationships*
- *Challenging times*
- *Burnout & vicarious trauma*
- *Planning for retirement*
- *Law school challenges*

About the OAAP

We help legal professionals develop the skills they need to meet the demands of their professional and personal lives in a healthy way. Our services are confidential and free. Call or email us—we offer hope and help.

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Professional Counselor Associate

Confidential Assistance

All communications with the OAAP are completely confidential and will not affect your standing with the Professional Liability Fund (PLF) or the Oregon State Bar. The OAAP is a confidential service of the PLF for all members of the Oregon legal community. Call us at **503.226.1057** or visit us at **oaap.org.**



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Thrive in law, thrive in life.

oaap Oregon Attorney Assistance Program

inSIGHT

Thrive in Law, Thrive in Life • ISSUE NO. 121 • SUMMER 2023



Five Steps to Overcome Stigma as an Individual in the Legal Profession

By Shawn Healy

In my line of work as a clinical psychologist, one of the biggest barriers to being able to help lawyers, law students, and judges is the stigma that many feel about needing and accepting help. The role of problem-solver or helper is very comfortable to them, but being the one who needs help? Not so much. The stigma associated with mental health treatment has diminished in recent decades, but it is still the number one reason why lawyers resist asking for help for an addiction or mental health concern. Many think that their reputations would be negatively affected if others realized that they needed help. Truth be told, we constantly risk our reputations being challenged whenever anyone finds out about our less than perfect qualities. This is the reason why most people try to get to know new people by finding out all they can about said person while revealing as little as possible about themselves.

Letting people know who you are, what your weaknesses are, and what mistakes you've made in life is a very vulnerable experience. That vulnerability makes us feel uncomfortable. When we feel uncomfortable, we try to reduce our discomfort as quickly as possible. Unfortunately, most of us choose to reduce our discomfort with a short-term solution, usually through avoidance. Avoidance helps you feel better quickly, followed by a more intense feeling of discomfort the next time you feel vulnerable. Avoidance often makes things worse.

Fighting stigma is very similar to confronting fear. Fear grows when you give it space to grow (when you avoid it), and fear shrinks when you approach it. The best way to reduce the uncomfortable feeling of being vulnerable is to practice being vulnerable more often. If a particular stigma makes you want to hide some fact about yourself, choose to tell others about that fact. The more you consciously choose to share your vulnerabilities, the less anxious you will become about someone learning about your vulnerabilities.

Obviously, real life is more complicated than a quick pep talk about embracing your vulnerabilities. While we all know that we are all human and that we are all imperfect in our personal lives, we still try to convince others that we are much closer to perfection in our professional lives. Or at the very least we try to present ourselves as less imperfect than others. So, on a practical level, how do you confront stigma in your life while also maintaining your professional reputation? Since each situation is different, here are a few places to start.

1. Start small.

Confide in those you already trust, those who have shown a propensity for understanding, compassion, and support toward you. Reveal more to them about your struggles. This will help to unburden you, it will improve your relationships with people close to you, and it will make it easier to seek help from others if needed.

2. Build a new community.

Start finding others who understand what you are going through to build community. No matter what your struggle is—substance addiction, stress, depression, anxiety, ADHD, etc.—there are people who have gone through what you are experiencing. Learn from others who understand and from those who accept without judgment.

3. Own your story.

Get more comfortable with your story—your whole story. The more that you can talk about your real self—your struggles and your triumphs, your weaknesses, and your strengths—the more resilient you will become.

4. Make it normal.

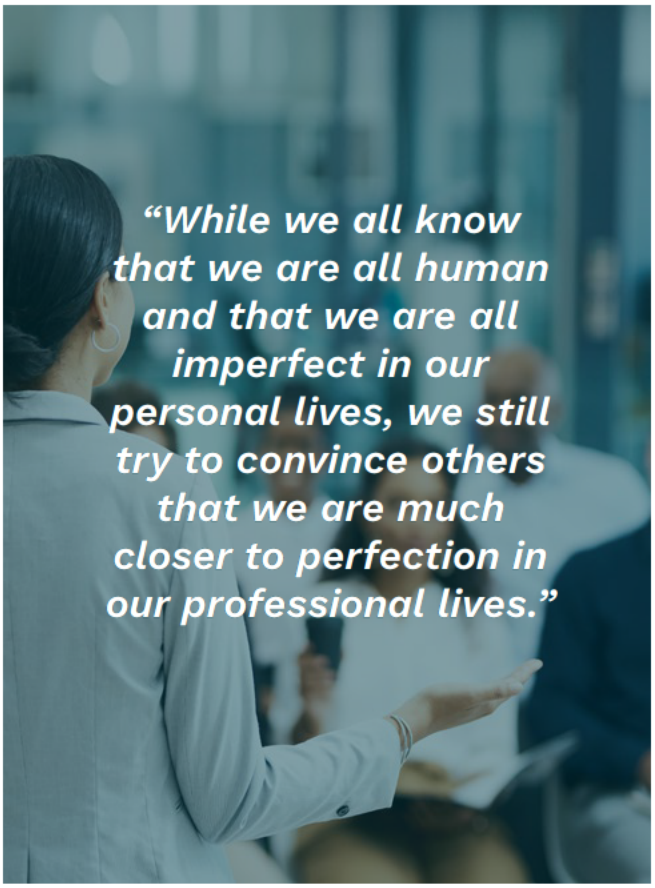
Because it is. There are countless stories of people—both famous and not—who have recognized a need, sought help, and became more resilient as a result. The more familiar you are with some of these stories, the more normal that shared experience will feel. This will not only give you more hope for your future, but it will also normalize your struggle—which is what makes us all human.

5. Reinterpret the responses of others.

Despite all your efforts, you will not be able to control how others respond to you having struggles and flaws. It's surprising how some people react when they learn that we are all human. While you cannot control how people respond to you, you can control how you interpret their response. Most of the time when someone responds harshly to another's vulnerability, it is a defensive response made in fear of their own vulnerabilities—and hence how they personally might be able to handle someone else responding harshly to their own vulnerability. For example, it is often the case that the person who boasts the loudest feels the most insecure. So, try interpreting a person's judgmental response as a subtle reveal of their own vulnerabilities. Instead of responding harshly to their vulnerability, show them how a resilient person acknowledges their own while not backing away.

Stigma, like other fears, only holds power over us when we allow it to.

– SHAWN HEALY



Shawn Healy, PhD, is a Staff Clinician at Lawyers Concerned for Lawyers, the Massachusetts lawyer assistance program.

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Thrive in Law, Thrive in Life • ISSUE NO. 126 • SPRING 2025

In This Issue

Lawyer Well-Being: The How-To of Managing Distress · **PAGE 1**

Communicating for Understanding and Connection · **PAGE 7**

What Is Mindful Listening and How to Build Your Listening Muscles · **PAGE 10**



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Lawyer Well-Being: The How-To of Managing Distress

By Douglas Querin

Distress defies easy definition.[1] When asked, some lawyers might say, "I can't define it, but I know it when I feel it." Others know the term but are oblivious to its presence in their own lives. Still others suffer significant distress, know they are distressed, but have no idea how to cope. For some, it is the simple irritation of a commute in heavy traffic. For others, it is the crushing weight of anxiety, overwhelming pressure, or the anguish of painful memories.

In the context of well-being, particularly within the legal profession, significant distress is no small matter. Studies[2] show it is a major contributor to problematic alcohol use,

The OAAP is a confidential service of the Professional Liability Fund for all members of the Oregon legal community.

depression, anxiety, and other physical and mental health conditions, all occurring within the legal profession at rates much higher than in the general population. The good news is that distress can be identified, avoided, managed, or even removed from one's life.

Rather than using a strict definition, "distress" will be described here by examining how it often manifests within the legal profession. Distress avoidance techniques, prevention, and coping strategies will also be discussed. As with most well-being recommendations, their value comes not because they are necessarily new information, but because they are important reminders that each of us has the power to significantly affect how we feel and experience our lives.

Stress vs. Distress

There is a difference between experiencing stress and being distressed, though they are closely related and often overlap. Stress is the normal physical and psychological reaction to the demands of modern life. A moderate amount of stress is generally considered a normal, even necessary, part of living. This positive stress, known as "eustress,"[3] is often characterized as challenging but manageable, fulfilling, and even rewarding. For legal professionals, it might occur when preparing for a client meeting, getting ready for a court appearance, or researching an important legal issue.

Distress, on the other hand, is a negative state. It is a product of the disparity between the demands required to complete a task and one's ability to meet those demands. Demands may come from anywhere—one's job, family, or social environment, or from unpleasant or painful memories that call for attention. Distress can occur whenever challenges are perceived as beyond one's ability to handle without significant physical or psychological discomfort.

Distress: Common Lawyer Activities

Innumerable activities require a lawyer's professional attention. Some are mundane but necessary, others are unavoidable. Some are anxiety-producing, others are stimulating and rewarding, and still others may be both challenging and distressing. Such activities may include:

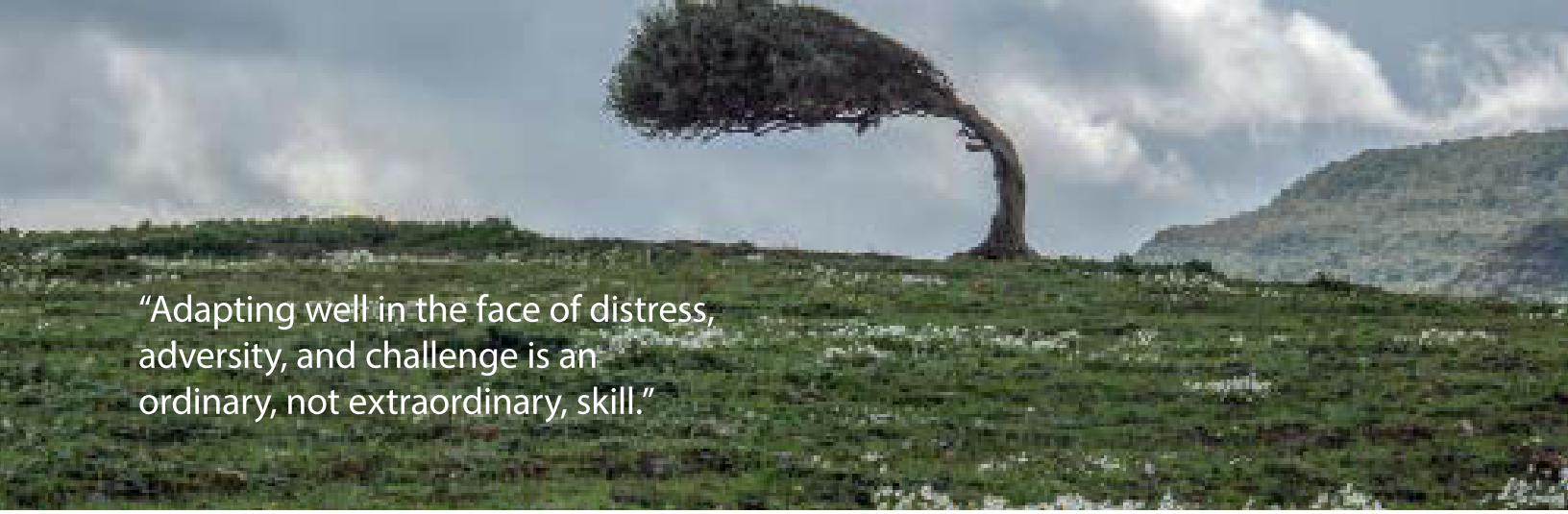
- Meeting billable hour requirements or, for solo practitioners, generating sufficient monthly income;
- Dealing with difficult clients;
- Case management;
- Personality conflicts within firms;
- Traumatic content in cases;
- Unpredictable/long work hours;
- Perfectionism and fear of failure;
- Conflicts with opposing counsel;
- The duties of office administration;
- Court appearances/litigation responsibilities;
- Fear of malpractice/professional mistakes;
- Performance concerns/competition; and
- Work-life balance.

Women's Trauma Support Group

Starting **Spring 2025**, the OAAP will facilitate a confidential support group for women who have experienced trauma, including volatile relationships or childhood trauma, and/or who have struggled with a loved one's compulsive behaviors. Topics will include the process of trauma, power and abuse, grounding and self-soothing, and healthy relationships.

OAAP Director Kyra Hazilla, JD, LCSW, and OAAP Attorney Counselor Associate Kirsten Blume, JD, CMHC Intern, will be the group facilitators.

Please watch for more information on our website, **oaap.org,** or in a broadcast email.



You will rarely find unanimous agreement in the profession about which activities cause significant distress and which do not. Of any two lawyers, one may find the pressure of billable hours to be overwhelming, while another may view it as simply an unpleasant, though tolerable, aspect of law practice. The lawyer distressed by billable hours, however, may enjoy trial work, while the other finds litigation highly distressing. In short, perceptions and opinions vary.

Distress: Signs and Effects

Peoples' physical and emotional reactions to distress likewise differ significantly. Below are common symptoms and behavioral responses that often accompany acute and chronic distress.

- **Emotional Overwhelm:** Intense emotions, such as anxiety, depression, sadness, anger, or fear
- **Physical Symptoms:** Physical manifestations, including increased heart rate, sweating, nausea, insomnia, or fatigue
- **Cognitive Disruption:** Difficulty concentrating, making decisions, or thinking clearly
- **Behavioral Changes:** Procrastination, irritability, substance misuse, or social isolation
- **Loss of Control:** Feeling helpless or unable to manage required tasks effectively
- **Short-Term Focus:** A tendency to focus on immediate relief of symptoms rather than long-term solutions

These symptoms of chronic, untreated distress are red flags, reminders that distress must be appropriately recognized and alleviated.

Developing Distress Tolerance

"Distress tolerance" is the ability to endure and manage emotional, physical, and psychological discomfort without resorting to unhealthy coping mechanisms or experiencing emotional dysregulation. Although you may not be able to completely eliminate distress, it can often be substantially reduced.

Distress tolerance is a multifaceted skillset. It includes knowing potential causes and triggers, recognizing its presence, building resilience, and implementing effective coping strategies. Listed below are research-based recommendations considered most effective in preventing and reducing unhealthy levels of distress. These are the essentials of an effective distress management program.



Recognizing Distress

Awareness is the first step. Some distress may be avoidable, like unhealthy relationships, overcommitting, perfectionism, or procrastination of an important project. For unavoidable distress, however, it is important to be mindful of the emotional and physiological signs, such as anxiety, fear, anger, increased heart rate, restlessness, or feelings of overwhelm.

Managing Distress

Once you are aware of distress, there are multiple ways to manage it.

- **Build Resilience.**[4] Adapting well in the face of distress, adversity, and challenge is an ordinary, not extraordinary, skill. It involves maintaining perspective, staying flexible, and bouncing back from frustrations and disappointments.
- **Cultivate Positive Relationships.**[5] Social connections create buffers against distress by providing emotional support, encouragement, and a healthy perspective. Friends, family, colleagues, and mentors can serve as valuable allies in navigating difficult times.
- **Prioritize Self-Care.** Regularly attending to one's well–being combats the negative effects of distress. An elaborate regimen is not necessary—only consistency and focus.[6] Effective self-care may include physical activity,[7] balanced nutrition, journaling,[8] listening to music, having a pet,[9] and connecting with others.[10]
- **Establish Healthy Boundaries.**[11] Overcommitment is a common source of distress. Learn to say "no" and prioritize to avoid overwhelm. Creating and enforcing clear boundaries is invaluable in preventing distress.
- **Use Relaxation Techniques.**[12] Techniques like deep breathing,[13] progressive muscle relaxation, meditation, and mindfulness have been scientifically demonstrated to calm the nervous system and lower distress levels. Acupuncture, massage, tai chi, qi gong, and yoga have also been shown to be helpful. These and other body calming activities[14] reduce one's physical and/or emotional arousal.
- **Focus on Problem-Solving.**[15] Breaking large, overwhelming tasks into smaller, manageable chunks can reduce distress and restore a sense of control.
- **Develop a Routine.** Structured routines reduce uncertainty and create predictability, which helps manage daily demands more effectively.
- **Use Positive Self-Talk.**[16] Positive thinking decreases distress. Negative thinking promotes it. Current research[17] demonstrates that replacing negative thoughts with positive affirmations helps reframe distressing situations.
- **Practice Gratitude.**[18] Research[19] demonstrates that focusing on thoughts, feelings, and expressions of gratitude and affirming goodness outside ourselves are useful tools to manage distress and replace it with feelings of well-being.
- **Practice Self-Compassion.**[20] Developing self-compassion (treating oneself as one would a friend) may not come naturally for most lawyers. Many view this practice as

Finding Meaningful Work

The OAAP holds a periodic 6-session networking and support group for lawyers making job or career transitions called "Finding Meaningful Work." The sessions assist lawyers in creating a personalized job search plan, developing a mission statement and elevator pitch, learning and practicing networking skills, and honing job search skills.

The next group will start in **Spring 2025**. Sessions meet virtually through videoconference. To participate or for more information, please contact OAAP Attorney Counselor Associate Kirsten Blume, JD, CMHC Intern, 503.226.1057 ext. 11, kirstenb@oaap.org.

antithetical to successful lawyering. Like a gratitude practice, however, self-compassion is well-researched,[21] with many studies confirming its value in distress management and promoting well-being.

- **Limit Stimulant and Alcohol[22] Use.** The survey of attorneys[23] referred to at the beginning of this article clearly demonstrates that alcohol use by lawyers is problematic and needs to be addressed.
- **Emotional Regulation.**[24] Learning to effectively control one's behaviors, thoughts, and emotions is crucial for successful distress management. When confronted with distressing situations, emotionally regulated people are better able to maintain a measured outlook and respond appropriately. Those without such skills often experience elevated levels of distress.
- **Seek Assistance.** Distress often results in social isolation and reluctance to reach out to professionals,[25] close friends, or family members—the people most willing and able to provide support and encouragement. Successful distress management requires seeking assistance when appropriate.

Distress Management: The Bottom Line

Distress is an inevitable part of life, but it need not derail one's well-being.

Integrating the strategies discussed here into daily routines can create a protective buffer against the unique pressures of the legal profession. By prioritizing distress management, lawyers can achieve a healthier work-life balance, improve their performance, and cultivate a deeper sense of fulfillment, both personally and professionally.

– DOUGLAS S. QUERIN
JD, LPC, CADC I
Senior Attorney Counselor, OAAP



OTHER WORKS BY DOUG QUERIN AT OAAP.ORG

***in*Sight**

- Sober Curious: Questions We Can Ask Ourselves (Fall/Winter 2024)
- Is "Happy Lawyer" an Oxymoron? (Spring 2024)
- Social Connections: An Essential For Well-Being (Winter 2023)
- How Anxiety, Depression, Stress, Drinking Impact Lawyers (Spring 2023)

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OAAP Lending Library

Did you know that the OAAP maintains a wide variety of books available for members of the Oregon legal community to borrow? We have titles on diverse topics such as career, stress, anxiety, burnout, relationships, mindfulness, recovery, and retirement that can help you thrive in law and in life.

To learn more, call Jeanne Ulrich at 503.226.1057. We invite you to stop by and peruse our shelves!

Copenhagen Burnout Inventory (CBI)

A burnout self-assessment worksheet for therapists. The CBI is a free, public-domain measure of burnout across three areas: personal, work-related, and client-related. Answer honestly for how things have felt over the past few weeks.

> *You spend your days holding space for everyone else. This is a few minutes to check in on you. At Mentalyc, we build for therapists because your wellbeing is what makes good care possible. Be honest, be kind to yourself, and use what you notice here as a starting point, not a verdict.*

How to score

For items 1 to 17, score each answer: Always = 100, Often = 75, Sometimes = 50, Seldom = 25, Never/almost never = 0. For items 18 and 19, score: To a very high degree = 100, To a high degree = 75, Somewhat = 50, To a low degree = 25, To a very low degree = 0. Item 10 is reverse scored (Always = 0, Never = 100). Average the items within each subscale (you need at least 3 answers per subscale).

Personal burnout

How often do you feel...

1. How often do you feel tired? _____
2. How often are you physically exhausted? _____
3. How often are you emotionally exhausted? _____
4. How often do you think: "I can't take it anymore"? _____
5. How often do you feel worn out? _____
6. How often do you feel weak and susceptible to illness? _____

Work-related burnout

Items 7 to 13. Note: item 10 is reverse scored.

7. Do you feel worn out at the end of the working day? _____
8. Are you exhausted in the morning at the thought of another day at work? _____
9. Do you feel that every working hour is tiring for you? _____
10. Do you have enough energy for family and friends during leisure time? (reverse scored) _____
11. Is your work emotionally exhausting? _____
12. Does your work frustrate you? _____
13. Do you feel burnt out because of your work? _____

Client-related burnout

Items 14 to 17 use the frequency scale; items 18 to 19 use the degree scale.

14. Do you find it hard to work with clients? _____
15. Does it drain your energy to work with clients? _____
16. Do you find it frustrating to work with clients? _____
17. Do you feel that you give more than you get back when you work with clients? _____
18. Are you tired of working with clients? _____
19. Do you sometimes wonder how long you will be able to continue working with clients? _____

Your subscale averages

Personal burnout (items 1-6)	_____ **/ 100**
Work-related burnout (items 7-13)	_____ **/ 100**
Client-related burnout (items 14-19)	_____ **/ 100**

What your scores suggest

Below 50 in an area suggests burnout is not currently a major issue there. 50 to 74 signals a meaningful level worth acting on through boundaries, workload, and support. 75 or above indicates high burnout in that area; consider reducing your load and seeking supervision or your own therapy. A high client-related score alongside lower personal or work scores can point toward compassion fatigue specifically.

The Copenhagen Burnout Inventory is a screening and reflection tool, not a diagnosis. If your scores are high or symptoms persist, treat it as a signal to reduce your load and seek support. If you are experiencing hopelessness or thoughts of self-harm, contact a mental health professional or a crisis line immediately.

Source: Kristensen, T. S., Borritz, M., Villadsen, E., & Christensen, K. B. (2005). The Copenhagen Burnout Inventory: A new tool for the assessment of burnout. Work & Stress, 19(3), 192-207. The CBI is in the public domain.

Made with care for therapists by Mentalyc | mentalyc.com

AUDIT questionnaire

Please circle the answer that is correct for you

1. How often do you have a drink containing alcohol?

· Never
· Monthly or less
· 2-4 times a month
· 2-3 times a week
· 4 or more times a week

2. How many standard drinks containing alcohol do you have on a typical day when drinking?

· 1 or 2
· 3 or 4
· 5 or 6
· 7 to 9
· 10 or more

3. How often do you have six or more drinks on one occasion?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

4. During the past year, how often have you found that you were not able to stop drinking once you had started?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

5. During the past year, how often have you failed to do what was normally expected of you because of drinking?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

6. During the past year, how often have you needed a drink in the morning to get yourself going after a heavy drinking session?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

7. During the past year, how often have you had a feeling of guilt or remorse after drinking?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

8. During the past year, have you been unable to remember what happened the night before because you had been drinking?

· Never
· Less than monthly
· Monthly
· Weekly
· Daily or almost daily

9. Have you or someone else been injured as a result of your drinking?

· No
· Yes, but not in the past year
· Yes, during the past year

10. Has a relative or friend, doctor or other health worker been concerned about your drinking or suggested you cut down?

· No
· Yes, but not in the past year
· Yes, during the past year

Scoring the AUDIT

Scores for each question range from 0 to 4, with the first response for each question (eg never) scoring 0, the second (eg less than monthly) scoring 1, the third (eg monthly) scoring 2, the fourth (eg weekly) scoring 3, and the last response (eg. daily or almost daily) scoring 4. For questions 9 and 10, which only have three responses, the scoring is 0, 2 and 4 (from left to right).

A score of 8 or more is associated with harmful or hazardous drinking, a score of 13 or more in women, and 15 or more in men, is likely to indicate alcohol dependence.

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NOTES:

CHAPTER 20

WHEN LEGAL HELP IS OUT OF REACH: DISABILITY, POVERTY AND DISTANCE

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When Legal Help Is Out of Reach: Disability, Poverty, and Distance

Perspectives from Oregon practitioners on representing clients with diverse needs.

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When Legal Help Is Out of Reach

Senior Fiduciary Services

Disability, Poverty, and Distance

Representing Clients with Disabilities



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Accessible representation

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The client's objectives and participation guide the work.

Recognize barriers

Ask what helps the client receive information and communicate choices.

Adapt communication

Identify the particular decision and the support it requires.

A disability or diagnosis alone does not establish legal incapacity.

02

Barriers to legal help

Senior Fiduciary Services

Cost and distance

- Transportation and travel costs
- Fees and limited local services
- Physical access and endurance

How services work

- Documents and explanations
- Broadband and online portals
- Video platforms and meeting options

"What would make this meeting, communication, or document more accessible for you?"

Remote service is not universally accessible. Ask rather than assume.

03

Communication that fits the individual

Senior Fiduciary Services

Sensory	Accessible documents, interpreting, captioning or assistive listening
Cognitive	One issue at a time, concrete explanations, response time and usable summaries
Mental health	Predictable agendas, breaks, fewer interruptions and preferred communication methods

Discuss options with the client. These are examples, not diagnosis-based prescriptions.

04

Jones: A consultation hypothetical

Senior Fiduciary Services

The situation

- Age 68, seeking an estate-plan change and help with unresolved consumer debt.
- Limited broadband outside the metro area.
- Requests an in-person meeting.

The consultation

- Jones wants a relative present.
- The relative reports early dementia and answers many questions.
- Jones expresses a different preference.

Jones responds more clearly to one issue at a time and plain-language written choices.

What would you do before assessing Jones's ability to make this decision?

05

Before drawing a conclusion

Senior Fiduciary Services

1. Clarify the representation and decision.
2. Hear Jones directly.
3. Discuss the relative's role and privacy.
4. Adjust communication and check understanding.

"I want to make sure I explained that clearly.

Tell me in your own words what you understand your choices to be."

Identify any debt deadline promptly. Identify the estate-planning instrument before applying its legal standard.

06

Oregon RPC 1.14: Client participation

Senior Fiduciary Services

The starting point

Maintain a normal client-lawyer relationship as far as reasonably possible.

Protective action threshold

The lawyer reasonably believes all apply:

1. The client has diminished capacity.
2. Substantial harm threatens unless action occurs.
3. The client cannot adequately act in their own interest.

Action and protective disclosure must be limited to what is reasonably necessary to protect the client.

07

Client direction, support and confidentiality

Senior Fiduciary Services

The client

- Clarify objectives.
- Explain usable choices.
- Hear the client's words.
- Document supports and unresolved questions.

Support person

- Clarify the role.
- Discuss privacy.
- Check conflicts.
- Attendance does not settle privilege.

The payer

Payment does not automatically entitle someone to client information.

Confidentiality and privilege require separate analysis. See RPC 1.2, 1.4, 1.6–1.8, 1.18 and ORS Chapter 40.

08

Office access and court accommodations

Senior Fiduciary Services

Lawyer's office: Title III

- Lawyer's offices are expressly listed.
- Address applicable policy modifications, communication and physical access.

Courts: Title II

- Follow the court's request process.
- Contact the court office or ADA coordinator.

4 **judicial days**

- Notify the court as soon as possible.
- No later than four judicial days before the proceeding.
- Provide details. Confirm arrangements.

UTCR 7.060 allows waiver of advance notice for good cause.
Remote participation depends on the proceeding, rules and orders.

09

Protective proceedings and alternatives

Senior Fiduciary Services

The actual need

Personal care
Guardianship standards and retained rights

Financial management
Conservatorship findings

Existing support and authority

- Decision support and bill-management help
- Valid powers of attorney and their scope
- Advance directives for health-care matters
- Social Security / SSI representative payees
- Appropriate limited protective orders

Jones's facts alone do not establish grounds for guardianship or conservatorship.

A litigation guardian ad litem differs from a Chapter 125 guardian. Verify authority, limits and risks.

10

ACCESS: a consultation checklist

Senior Fiduciary Services

ASK	Identify the client, objectives and access needs.
COMMUNICATE	Use an effective method.
CONFIRM	Check objectives and understanding.
EVALUATE	Identify the decision, standard and risks.
SUPPORT	Examine accommodations and alternatives.
SAFEGUARD	Document, verify authority and obtain help.

What will you change in your next intake conversation?

ACCESS is an educational checklist, not a legal test.

11

Thank you

Senior Fiduciary Services

Questions and discussion



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12

Representing Clients Experiencing Poverty

Reducing barriers and strengthening the client attorney relationship

Sarah Lora & Rianka Macwan

Poverty Is More Than an Economic Condition

- It affects a client's ability to get to appointments
- Take time off work
- Find childcare
- Pay filing or service fees
- Gather documents and communicate with counsel
- Comply with deadlines and agency procedures

Key question: Are our procedures creating barriers the client cannot realistically overcome?

The "Cost" of Legal Help

Barrier	What it can look like
• Money	• Filing fees, copies, postage, phone costs
• Time	• Missing work or unpredictable schedules
• Transportation	• No car or unreliable public transit
• Childcare	• Cannot attend without bringing children
• Technology	• No computer, printer, scanner, or reliable internet
• Communication	• Disconnected phone or limited data
• Documents	• Lost records or difficulty obtaining records

Meet the Client Where They Are

Barrier	Possible response
• No transportation • No scanner • Can't miss work • Missing documents • Doesn't understand notice • Cannot complete form	• Remote meeting or transit assistance • Allow photographs / clinic scanning / offer scanning app assistance • Phone appointment / flexible hours • Help identify alternative sources • Plain-language explanation • Step-by-step assistance/prefill and explain forms

Reduce the Friction, Reduce the Costs

- Fee waivers
- Free copies, printing, and scanning
- Prepaid envelopes
- Telephone or video appointments
- Text/email communication
- Extended hours

Limited-Scope Representation

The client doesn't always need a lawyer for everything.
Discrete legal tasks can include:

- Explain a notice
- Research one issue
- Draft or review one filing
- Prepare for a hearing
- Help complete a form
- Negotiate one issue

Limited scope can stretch scarce legal resources while preserving meaningful legal assistance.

Self-Help Doesn't Mean "You're on Your Own"

Useful tools

- Checklists
- Plain-language explanations
- Step-by-step instructions
- Document-gathering lists
- FAQs
- Sample letters and scripts
- Templates

Better: lawyer + self-help

- Lawyer identifies the legal issue
- Client uses tools for routine steps
- Lawyer provides targeted assistance
- Client retains control

Sliding Scale & Alternative Fee Structures

- Sliding-scale fees
- Reduced initial consultation fees
- Flat fees for discrete services
- Unbundled services
- Payment plans
- Deferred payment where appropriate
- Pro bono referral for particular issues

Affordability is not the same as willingness to pay.

Takeaways

- Easy tweaks may be the difference between a client getting legal help and not.

- Think through the ways we can reduce friction for our clients in poverty.

Access to justice is not just about whether legal help exists.
It is about whether the client can use it.

When Legal Help Is Out of Reach:

How to provide competent, ethical, client-centered representation when clients, courthouse, notary, experts (and pretty much everything else) are all far away from each other?

Representing Rural & Remote Clients
Learning the Ropes • Oregon State Bar Professional Liability Fund
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1. Start With the Client's Reality

At intake, ask practical questions—not just legal ones:

- Where are you located, and how do you normally travel?
- What is your most reliable way to communicate?
- Is your internet/cell service dependable?
- Can you receive and print documents?
- What days/times are realistically workable?
- What would make an in-person trip difficult?

Build the process around the client, not the office.

Scenario #1: The Zoom Meeting

You schedule a 45-minute Zoom meeting.
The client has weak internet. The video freezes.
They disconnect twice.
You send a long PDF afterward and assume the matter is handled. Ask yourself:

- Could this be avoided?
- Was there a backup plan?
- Does the client understand what happens next?
- How will you confirm that?

2. When Something Has to Happen in Person

"Just come to the office" can mean a full day of travel.

Before requiring a trip, ask:

- Does this truly require physical presence?
- Can several tasks be coordinated into one trip?
- Can a local professional or service provider help?
- Are weather, work, transportation, or childcare likely to interfere?

Good planning can turn multiple trips into one

3. Become a Connector

You do not have to personally solve every problem. Build a rural resource network:

- courts/ court staff/ law enforcement
- notaries and mobile notaries
- traveling service providers (case managers)
- interpreters and experts
- process servers
- regional attorneys and professionals
- DHS/Worksource/HUD
- Medical Care

4. Professional-Responsibility Questions

Remote representation still requires the same professional standards:

- Competence — Can I handle this matter effectively from here?
- Communication — Can my client and I communicate effectively?
- Confidentiality — Is the communication environment appropriate?
- Deadlines — What is my backup plan if technology fails?
- Documents — How will signing, notarization, delivery, and originals be handled?
- Jurisdiction/venue — Does the client's location change anything I need to consider?

The Divide

- COMMUNICATION
- RELATIONSHIP
- AGREEMENT VS. UNDERSTANDING
- SOCIAL MEDIA

A Rural-Client Checklist

LOGISTICS • Mode of communication, document signature & return, etc. Calendar dates in advance.

TRAVEL • What truly requires an in-person appearance?

DEADLINES • What happens if mail, travel, or technology fails?

RESOURCES • Who serves this geographic area?

RELATIONSHIP • What else do I need to remember about the client's circumstances?

Questions

Thank you!

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